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Book Review. Cairns, H., The Theory of Legal Science

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can work himself into a lather over a single case. The rest of us can only envy him!

Max Radin.

UNIVERSITY OF CALIFORNIA
BERKELEY, CALIFORNIA.

The Theory of Legal Science. By Huntington Cairns. Chapel Hill: University of North Carolina Press. 1941. Pp. viii, 155. \$2.00.

Those who found Mr. Cairns' first book, *Law and the Social Sciences*, a valuable contribution will find this one much more important. For in the earlier work, Mr. Cairns, though concerned with the relationships of law and the social disciplines, did not present any theoretical basis for their integration. In the present book he has advanced far; while much of this book, perhaps the largest part, consists of resumes of social science literature, as did the earlier work, these are here constructed with a crucial difference, namely with reference to a sociological theory which provides a focal point and a method of cohesion. The theory that guides Mr. Cairns is "the principle of disorder" which "directs attention to the central fact of social life, namely, that it is essentially incongruous and disorderly." (56) For him, jurisprudence "is the study of human behavior as a function of disorder" (1), *i. e.*, he seeks "a social science jurisprudence." (3)

Unfortunately Mr. Cairns does little more than hint at the meaning of "disorder." It is a "principle" occasionally; frequently it is a description, as when he states "social life and social relations are * * * basically incongruous and disorderly." He believes, apparently, but "disorder" occurred first in time, that "the order we observe in society is an invention of man" (53), although he presents no reasons for assuming the priority of the former. In any event, "disorder" is not analyzed in terms sufficiently detailed to suggest the utility of the notion for social research. Certainly there is nothing new in the ideas "order" and "disorder." Spinoza employed these terms (*Ethic*, Oxford, 1923, pp. 39, 43) and they can be found as far back as the pre-Socratic Greeks. But Spinoza and others realized that "order" and "disorder" were not mere descriptive terms, but were rather polar categories suggested by human reason and desire, in relation to which social events could be organized, analyzed, and evaluated. This indicates also that Mr. Cairns has not grasped an essential quality of human relations, namely "value," which is so integrated in social relations as to require distinctive explanation, not merely relegation to later separate analysis. As to "disorder," it may be added, further, that even if it had been carefully articulated it would not provide the most fruitful notion for construction of a social science—quite apart from the deficiencies of any particularistic theory. The reasons cannot be set forth in a book review; the writer

can merely assert that he has found the concept "social problem" much more adequate, more cogent, and more suggestive of the nature of the discipline to be constructed. Not least important are the sharply diverse ethical implications of the two points of view.

The major limitations of Mr. Cairns' book are revealed in the basic contradictions in his thought regarding the physical sciences and their relations to legal sociology. On the one hand he repudiates "simple mechanical explanations" and "the Holbachian view that man is the work of nature"; and he asserts that "three centuries of failure should teach us to look in new directions." (52) So, also, as to "the shallow mechanism which seeks to explain the motion of human affairs by parallels drawn from physics." With these views the reviewer is in hearty accord, and was encouraged to hope that their significance for any social science would be explored. On the contrary, Mr. Cairns, so far at least as this reviewer can follow his analysis, relapses into the very ideology he has repudiated. He is content with the observation that "since the behavioristic realm and the value realm are distinct, they can easily be joined at a later time." (145) He clings to the ideal of the natural sciences (7, 8), "envisages a completely determinate system" (10), embraces logical positivism as regards verification (74-75, 78), apparently unaware that this represents the extremist empiricism and the very analogizing from physical science that he elsewhere condemns. We "can hardly hope to emulate" the precision of the physicists, Mr. Cairns concedes, but he prophesies that jurisprudence will "take on more of the characteristics of the exact sciences." (90) It is impossible in a book review to elaborate the issues involved, suggested above, for they concern the most fundamental problems of social science. Mr. Cairns' book is abundant evidence that the nature of these problems still needs discussion even among widely read legal scholars.

Jerome Hall.

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Declaratory Judgments, (Second Edition). By Edwin Borchard.
Cleveland: Banks-Baldwin Law Publishing Co. 1941. Pp.
xxxvii, 1152. \$22.50.

Edwin Borchard has long been a crusader for wider adoption of the declaratory judgment practice and its liberal construction and use where adopted. The first edition of his book and its predecessors, the author's law review articles, were an immeasurable influence on the trend desired. At least a large part of the goal had been reached by the time this second edition appeared. That is, a large majority of the states had adopted the practice, and the courts of most of these jurisdictions, including the Federal, had adopted a fairly liberal view as to its scope. Nevertheless, accomplishment of purpose has by no means lessened the importance and effectiveness of the second edition,