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Book Review. Cohen, M. R., Reason and Law

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PHILOSOPHY AND RELIGION


The death of Morris Cohen was a severe blow not only to philosophy in general but also to jurisprudence in particular. Cohen's distinction is that, among the leading philosophers of this century, he was the only one who made law a major concern. Indeed, I do not at the moment recall any other philosopher of the past hundred years who devoted himself to jurisprudence in anything like the degree that Morris Cohen did. (Croce and Dewey, though interested in law, did not make it a major concern.) When one considers that philosophy from Plato to Hegel unvaryingly included jurisprudence as an integral component, the significance of Cohen's return to the long tradition can hardly be exaggerated.

In 1923 Cohen's *Law and the Social Order* was a major contribution to legal philosophy. In *Reason and Law* Cohen supplements this work with a collection of essays of almost equal significance. Both books provide superb introductions to the moot issues of contemporary jurisprudence. They comprise a contribution which, because it rests on a solid general philosophy that specialists in jurisprudence could not match, is unique in the modern literature.

The essays included in this book were originally published between 1913 and 1946. They include two long papers ("Moral Aspects of the Criminal Law" and "Absolutisms in Law and Morals"), some shorter pieces (notably, "Kant's Philosophy of Law" and "Jurisprudence as a Philosophical Discipline"), and several book reviews.

In light of the importance of Cohen's contributions to legal philosophy, it may seem invidious to suggest that there are serious shortcomings in *Reason and Law*. Yet admiration for Cohen's achievement must not blind us to certain of its limitations. Some of the writing lacks significance because it is detached from the polemics of which it formed a part. Some of it now reads as definitely "dated," and much of the writing is so sketchy that it will be of little use to legal philosophers.

Unfortunately, the cursory dismissal of serious issues often smacks of a pontifical finality, when what was especially called for was critical analysis which would give full credit to opposing viewpoints. Most, if not all, of these shortcomings that trouble even an admirer and friend result from the fact that Cohen's genius lay in the essay rather than in a sustained longer vehicle. He was thus necessarily brief and general on many questions where one would have preferred a full display of his unequaled equipment. This raises a challenge to younger men in terms of important tasks to be carried forward, and that perhaps is the way Morris Cohen would have wanted his work in legal philosophy to be understood.

Taking Cohen at his own words, it has become a commonplace to regard him as the scholar who "cleaned the Augean stables of Philosophy"—the remover of misconceptions and obstacles to clear thinking. That he certainly was. But if his work in legal philosophy is a fair sample, it is absurd to say that he was therefore merely "negative." It is true that he did not spell out the many implications of his acute criticism. But they can readily be discovered, and in abundance, by any careful reader. They reveal an extraordinarily informed rationalist familiar with modern science and logical method, and especially sensitive to the moral aspects of law. In this last connection it should be noted that Cohen's very important essay "Jus Naturale Redivivum" (*Philosophical Review*, 1916) has not been included in either of his published books on legal philosophy, but is to be found in his *Reason and Nature*.

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In this volume the authors undertake to show "how systems founded on the supremacy of society have controlled the life of the individual." For this purpose they first develop the conceptual criteria of a free society and subsequently apply