Vanderbilt Law Review

Volume 14
Issue 1 *Issue 1 - December 1960*

Article 12

12-1960

The Legal Philosophy of Morris R. Cohen

Huntington Cairns

THE LEGAL PHILOSOPHY OF MORRIS R. COHEN

HUNTINGTON CAIRNS*

I

If the classical tradition in philosophy be defined as the doctrine that general principles operate in nature, then Morris Cohen was undoubtedly the foremost representative of that view in contemporary American thought. In the American speculative world, it is an unfashionable position. The chief characteristic of American thought is its anti-metaphysical bias, as represented by the varieties of positivism that dominate nearly all branches of inquiry. Nevertheless, it is an inexplicable feature of American philosophy that Cohen shares with John Dewey the distinction of being the most popularly influential of contemporary thinkers. It has become the habit nowadays to observe that there is a dearth of original ideas in his works; he is regarded as having had no impulse towards novelty, nor any desire to found a new philosophical system. Cohen himself, in a passage of strong autobiographical overtones, once offered the same observation about Spinoza. He suggested that the large impression Spinoza had made was due to the singular purity of his light, and the way in which traditional ideas were fused into a coherent whole by the fire of his concentrated intellectual energy that kindled a lyric ardor for human well-being.[1] The same observation could be made of Cohen's own work. But it is an underestimation to hold that he did nothing more.

His life effort was devoted to the discovery of the logical presuppositions of scientific method. His equipment for this task was unrivaled. He was endowed with a mind of exceptional philosophical power, and he made it his business to have at his command all the tools that he felt were necessary for his work. He was at home in Greek and Latin as well as the principal European languages; his knowledge of the history of science was exceptional; he was able to follow mathematical arguments of the utmost profundity; his grasp of other subject matters—physics, logic, psychology, history, economics, law—was always at the professional level. He did not hesitate, when he regarded formal instruction as necessary—as in law—to subject himself to the discipline of the expert training of the professional schools. The outcome was an exposition in scores of articles, now collected in a dozen or so volumes, of the nature of

* Secretary-Treasurer and General Counsel, National Gallery of Art, Washington, D.C. Author, *Legal Philosophy from Plato to Hegel* (1949).

1. COHEN, THE FAITH OF A LIBERAL 13 (1946).

scientific method, which, for richness of content and acuteness of insight, probably stands alone on the shelf of volumes devoted to that treacherous subject. To the works of no other writer is it possible to turn for a more comprehensive or a more penetrating account of scientific method in its manifestations in so many fields.

At the outset of his speculative career Cohen found himself repelled by the tenets of the two commanding camps. He rejected Neo-Hegelianism and all other forms of metaphysics which purported to test the discoveries of the natural sciences by theological, social or other like standards. It seemed to him that if there were such a thing as knowledge the conclusions reached by science were probably closer to it than those reached in any other department. He rejected the views of the positivists and other allied approaches which attempted to eliminate metaphysics; their efforts to dispose of the problems of reality appeared to him naive. Science was occupied with specific discoveries; no general physics, neither that of Descartes nor Newton, attempted to account for the world in its entirety. His repudiation of Neo-Hegelianism involved also the rejection of the view that the world was an absolute totality and the Hegelian denial of the reality of abstractions. Our knowledge of the world in its totality is fragmentary, and in what sense it has a unity—if it has one—we do not know. His repudiation of positivism also caused him to refuse to attempt to construct the world from atomic data. It appeared to him that every element had a domain in which its true existence was beyond itself, *i.e.*, the larger system of which it was a part. His refusal to accept the two current explanations left him, however, with what seemed the major problem of the meaning of science still unsolved: Why should we accept the admittedly fragmentary and incomplete conclusions of science as valid? We ought not to accept the report on the nature of the elephant from the seven blind men who each examined a part of its anatomy. Further, how was it possible that the jigsaw pieces of the different sciences fitted into a picture as science developed?

It did not seem to Cohen, as it has to so many philosophers since Locke, that the solution might lie through the tortuous paths of epistemology. He was inclined to regard the bulk of contemporary writing on that subject as inspired merely by professional interests, although he recognized that the existence in the universe of knowledge itself was a fact for which philosophy must account. However, he followed Hegel in holding that we are justified in examining the ontological realm without worrying too much about the tasks set us by the theory of knowledge. He thought the assumption that we can know only our own ideas is a dogmatism that involves an infinite regress. Since it was difficult to see how awareness of a given entity

could determine any one known trait more than any other, it was safer to assume that awareness did not determine any of the objects' specific characteristics. This hypothesis left him free to search for the most general formula for the nature of things without undue emphasis upon the fact of knowledge.

Nevertheless, at one period in his life he studied Hume with great attention, and also Kant's effort to solve Hume's problem. Hume's theory seemed to him to issue in a flat contradiction. If we assume the mind knows its own impressions only, then we cannot logically know that there is an external world that produces or causes those impressions. Further, Hume described causality as the habitual succession of impressions *in* our minds; but this does not describe the relation between the external world that causes impressions and the impressions of the mind. Hume's contradictions appeared to Cohen to arise because he had assumed both that the mind knows nothing but its own impressions, and also that we know that our individual mind is only one among other objects in the universe. If the second assumption is true the first must be false; but the assumption of the existence of the larger world is involved in our very discussion, and therefore the mind cannot be limited to a knowledge of its own impressions only. In addition, that which is known is always more than the mere knowing activity itself, otherwise there could be no present recognition of past thoughts.[2]

It was the study of Russell's *Principles of Mathematics* that brought all the threads together for him. The classical realism at the basis of the book convinced him of the reality of abstract or mathematical relations. Russell has since given up this view, but, as Cohen once remarked, Mohammed kept the faith even though Allah himself departed from it.[3] To Cohen the circumstance that pure mathematics asserts only logical implications, and that such logical implications or relations cannot be identified with either psychologic or physical events, but are determinates of both, seemed to him to offer a well-grounded and fruitful starting point for philosophy.[4] It at once ruled out for him the empiricism of Mill, since relations if they exist in the mind only cannot connect things external to the mind; it also ruled out the effort to locate relations in an absolute totality that is beyond the grasp of the mind and therefore of no explanatory value. On the positive side, the doctrine, since it constitutes a ground for the procedures of scientific method generally, permitted him to take full advantage of the remarkable developments of science. It led him also to return to what constituted the concern of classical

2. COHEN, STUDIES IN PHILOSOPHY AND SCIENCE 6 (1949).
3. A TRIBUTE TO PROFESSOR MORRIS RAPHAEL COHEN 70 (1928).
4. COHEN, *op. cit. supra* note 2, at 7.

philosophy before it became preoccupied with the problem of knowledge—mathematics, physics, biology, psychology, ethics, law, art, religion and history. In philosophy proper it enabled him in the course of his extensive writings to raise almost every methodological question of importance, and it resulted in the composition of the long series of articles, now collected in various books, which constitute one of the treasure stores of the subject.

At the same time, notwithstanding his intense concern with abstract thought, he was equally occupied with the problem of human existence. No doubt his background contributed to this interest. He was born in Minsk, Russia on July 25, 1880, and was educated in the traditional manner of the Orthodox Jews of Eastern Europe. His love of philosophy was awakened in him as a boy by his grandfather, a poor tailor in the Russian town of Nesviesk. "Though he never learned to write and had only a moderate reading knowledge of Hebrew," Cohen wrote,[5] "he had become the master of an extraordinary amount of knowledge and wisdom. Walks and talks with him stimulated my imagination about the world at large and its history. From him, also, I acquired a certain ineradicable admiration for the ascetic virtues and a scorn for the life of wealth, ease, creature comforts, and all that goes under the old name of worldliness." It was from his grandfather's lips that he first heard of Aristotle as well as Maimonides, and of Napoleon's campaign in Russia, some monuments of which, in the form of earthworks, were still visible outside the town. After he came to the United States at the age of twelve his interest in the Socialist Labor Party led him to technical philosophy. As a college student he read *Das Kapital* and other socialist classics. He was gripped by the references in Marx and Engels to Hegel's dialectical method, and he felt that the fundamental issue between individualism and socialism was inextricably bound up with the difference between the psychologic and inductive method represented by Mill and the dialectic and historical method of Marx and Engels.

His interest in the abstract when coupled with his concern for human welfare gave to all his studies their chief characteristic. For the most part the authors of works in logic, physics, jurisprudence and other branches of inquiry are more occupied with the development of their premises and the exhibition of the links between their deductions than in strengthening the foundations of their superstructures. Cohen's entire effort was devoted to the foundations. He endeavored always to isolate the fundamental problems which lay at the roots of the various disciplines, and to show the consequences

5. *Id.* at 3.

of the different purported solutions. Whenever those problems touched upon the affairs of human life that fact was also always present to his mind and the connections were duly weighed. Fichte's idea that his own theory of law needed to be worked out on several planets for its full implications to be seen was simple nonsense to Cohen.

II

Cohen's own work in law is an illustration of his basic position. His initial interest in law was due to his dissatisfaction with the course of judicial decisions in labor cases. The prevailing doctrine held that judges declared or discovered law and did not make it. His attempt to meet this contention led him in turn to re-examine the distinction between realism and idealism when it turned on the issue whether the mind makes or discovers the nature of the world. He came finally to the position that the distinction was not an absolute one. His legal philosophy was a mixture of both formal and material elements, but at bottom it was dominantly social. In his view human beings cannot live together without restraints upon their anarchic impulses. We therefore have laws which secure obedience because their ultimate appeal is to the community. This, of course, leaves open the ancient problem of the necessary insufficiency of general rules when applied to particular cases. Cohen recognized that many things must be left to the discretion of well-disposed and competent officials. Law for the most part is not self-executing and government must be administered by men with personal inclinations and desires. The essential problem, therefore, is to discover means of guarding against arbitrary and tyrannical abuse of the discretion which must necessarily be entrusted to judges and other officials. At this point his general standpoint again came to the fore. The solution to the entire problem, he thought, was to find the reason or rule in sound discretion.

His study of labor decisions led him to a consideration of the moral basis of the American Bill of Rights, on which the cases turned. This caused him to re-examine the whole question of natural law. His point of departure was the conception that in its essence the doctrine of natural law, in all its forms, turns on the appeal from the law that is to the law that ought to be. He held that the principles of natural law are not, of course, self-evident, and when formulated must be defended on the basis that they establish a system of law which is preferable to that which can possibly be established on the basis of their denial. They must be tested in the same manner as all other scientific hypotheses, namely, by their certainty, accuracy, universality, and coherency. Cohen thought that several serious diffi-

culties stood in the way of the formulation of a valid theory of natural law. First, the ideals that we do set up are so hazy that their application does not solve the problems the law must face. Thus the classical legal definition of justice makes it consist in rendering everyone his own. But what is rightly anybody's own is precisely the problem the law must determine according to some principle of justice. If this is not the case, the just and the legal are identical and the possibility of unjust law is eliminated. Cohen was of the opinion that no ideal so far suggested was both formally necessary and materially adequate to determine definitely which of our actually conflicting interests should justly prevail.[6] Second, there are inherent limits to the legislative power, inherent difficulties in forcing obedience to the law, and limits to the effectiveness of legal machinery, which must all be understood before a rational system of natural law is possible. As Spinoza[7] observed, "he who tries to fix and determine everything by law will inflame rather than correct the vices of the world." Lastly, the third limitation of legal idealism is due to the fact that legal practice must operate with abstract general rules.[8] Cohen points out that the attempt to correct the legal system by some form of individualization, or equity, must itself be subject to rules or else it remains lawless. His final admonition was to recall the ancient wisdom that it is romantic foolishness to expect that man by his own weak efforts can make a heaven on earth. But it is the essence of human dignity, Cohen held,[9] to wear out our lives in the pursuit of worthy though imperfectly attainable ideals.

III

Cohen was drawn to the study of legal philosophy not only for its own sake but in part for its bearing on philosophy in general. He saw legal inquiry as a field of thought amenable to logical procedure and containing within itself philosophical problems of a most profound nature. He was distressed that so rich a subject matter should be neglected by professional philosophers. He argued that the meaning of many doctrines in the history of philosophy itself could not be grasped without an understanding of their connections with legal speculation. The Aristotelian and Stoic theories of nature and its laws, the character of the Leibnizian monadology, and Kant's *Summum Bonum,* are unintelligible unless account is taken of their legal settings.[10] But his specific appeal to his philosophical colleagues

6. COHEN, REASON AND NATURE 419 (1931).
7. SPINOZA, TRACTATUS THEOL. POLIT. ch. 20. Quoted in COHEN, REASON AND NATURE 423 (1931).
8. COHEN, *op. cit. supra* note 6, at 425.
9. *Id.* at 426.
10. COHEN, REASON AND LAW 130 (1950).

to once again turn their attention to the legal domain was on the level of usefulness. If philosophers would avail themselves of the large amount of material at hand in the law it would enrich their insights and bolster their teaching in logic, epistemology, and metaphysics.

In logic Cohen complained of the use of such elementary biologic propositions as "all men are mortal." He saw law as the only social institution that is mainly a deductive system, or employs predominantly the logic of subsumption. Mill had held that the laws of evidence were of the essence of logic, and Cohen remarks that neither Mill nor any other logician had taken the trouble to observe how the evidentiary laws had been worked out under the pressure of life's demands.[11] It is in fact a source of wonderment that logicians for the most part have neglected the field of evidence, or the rules of real property and contract, in the employment of illustrative material, since there is at hand here a wealth of deductive practice which could animate many a dull page. However, the criticism is unfair to Mill. In preparing Bentham's five volumes on the *Rationale of Judicial Evidence* for the press Mill had attempted to master the whole of the English law of evidence as a necessary preliminary to his task. Years later in his own *Logic* he drew on legal material when appropriate to his discussion, as in his argument that scientific method is applicable not only to nature but to all other subject matters including, specifically, law.[12] Further, he saw law as not the only social institution which availed itself of the logic of subsumption. In attempting to establish the doctrine that all inference is from particulars to particulars Mill was forced to meet the general propositions of revealed religion as well as those of positive law.[13] Cohen also urged logicians to examine the results reached by jurists in their own analyses of logical processes. No logician has yet accepted this suggestion, but it still remains an important one. The conclusions arrived at in logical studies are purportedly general in nature and hence should fit the circumstances of the legal order. But in actual fact they do not always do so, and the struggles of Jhering and others to develop more pertinent theories are perhaps capable of suggesting something of importance to logic itself.

No juristic problem has closer connections with philosophical thought than the issue of the achievement of justice through the rule of law or through the medium of expert officials. Although Plato[14] believed that as a general rule it was advisable to observe the law,

11. *Id.* at 131.
12. MILL, A SYSTEM OF LOGIC 447 (1864).
13. *Id.* at 130.
14. PLATO, STATESMAN 300.

he thought it would be ruinous if magistrates were not permitted to decide cases without regard to the law when they were able to offer something better. His argument rested on the analogy of the physician and the pilot who must be free to act in accordance with the facts of each situation. Aristotle[15] concluded that the law should be supreme and that magistrates should act on their own initiative only in cases where the law is silent.

Philosophically the issue is between rationalism and empiricism. The notion that justice can be achieved empirically through the device of permitting the judge to decide each case on its own merits is unrealistic. Power not subject to external restraints may be wilfully abused. In addition, before they act men must know with some measure of certainty what is permissible and what is not. However, if rationalism regards all concepts as unchangeable entities independent of their actual context, rules are likely to become an end in themselves and the results are frequently in flagrant disregard of the ends of justice.[16] In modern times in the United States Pound was the leader in the fight against this form of intellectualism, which he termed mechanical jurisprudence, and Cohen was a close second. Aristotle is evidence that this aberration is not wholly modern. Under Greek law if a plaintiff sued for 20 minae when but 18 were proved to be due him, the finding would have to be for the defendant. Against the proposal of Hippodamus to correct this and allow a verdict for the amount proved due, Aristotle answered that "a judge who votes acquittal decides, not that the defendant owes nothing, but that he does not owe the 20 minae claimed."[17] Comparable doctrines obtained in the English common law for centuries and were not overcome until ethical considerations were balanced against the law's pure formalism.

On the ground of the inseparability of two dominant impulses in human life, the desire for novelty and the desire for order, Cohen did not commit himself to either the rule of law or the rule of the just man.[18] The same result was reached by Pound through the Bergsonian notions of intelligence and intuition. The former gives us the mechanical rule applicable to the security of acquisitions and transactions where every promissory note is like every other, every fee simple like every other. The latter allows for the more or less trained instinct of the experienced magistrate in such a field as negligence, where no two cases have been alike or ever will be alike.[19]

15. ARISTOTLE, POLITICS, bk. 3, ch. 10; 1281 a34-39. (McKeon ed., Modern Library, 1947).
16. COHEN, *op. cit. supra* note 10, at 132.
17. ARISTOTLE, POLITICS, bk. 3, ch. 10; 1268 b15 (McKeon ed., Modern Library, 1947).
18. COHEN, LAW AND THE SOCIAL ORDER 266 (1933).
19. POUND, INTRODUCTION TO THE PHILOSOPHY OF LAW 70 (1954).

In truth the legal dilemma represents an issue that all fundamental subjects have had to face and none has resolved. In art it takes the form of classicism versus romanticism, in religion in America of fundamentalism versus modernism, in science of reason versus empiricism. In law, which is the art of adjusting the claims of the commonweal to the claims of the individual, the quandary is particularly pressing. The legal system must provide assurances on the basis of which men can act, yet it must not stand in the way of more satisfactory solutions to the old way of doing things.

Throughout his philosophical writings generally Cohen conducted a continuous war against the kind of empiricism, or sensationalism, which holds nothing real except sensible entities that have a position in time and space. He thought that if philosophers would only examine the nature of legal rights or obligations, the characteristics of debt and property, they would find that these are real in any sense in which the word real is worth anything. He observed that a contingent right to receive a dividend may fetch more in the open market than the chairs, desks, tables or bedposts which seem to be all the furniture at the philosopher's disposal.[20]

For Cohen the point of these examples, which in themselves might seem insignificant, is that the attempt to understand the meaning of fundamental concepts and methods of science cannot be carried on without a *Weltanschauung* or at least a system of values. In that task the philosophy of law is inescapably an integral part. The validity of this position, however, is dependent on the level at which the discourse is conducted. By temperament and intellectual inclination Cohen was possessed of a deep ethical sense and a concern for the world's affairs. However much he might respect him, his own attitude was largely foreign to the seeker after truth solely for its own sake, who even rejoices in the belief that his inquiries can have no practical applications. This subject, Hardy[21] wrote of pure mathematics, has no practical use; that is to say, it cannot be used directly for the destruction of human life or for accentuating the present inequalities in the distribution of wealth. Cohen's position, although he nowhere touched upon it specifically, would undoubtedly be that the affirmation of any ultimate proposition, such as that the world is intelligible, necessarily implied particular ethical and political consequences. Whatever others might do he himself was always inclined to draw those consequences. In that enterprise he was unquestionably correct in his insistence upon the great value of the legal experience as an end in the clarification of the issues at stake. This saved Cohen from the extreme formalism of Kelsen, Kaufmann,

20. *Id.* at 133.
21. HARDY, A MATHEMATICIAN'S APOLOGY 60 (1940).

and others, who, on the analogy of mathematical physics, attempted to derive substantive rules of law from purely formal or logical principles. Cohen rejected the analogy since it was really against them. Pure mathematics makes no assumptions with respect to existence, and it is therefore impossible to derive any conclusions about existence from it. However, mathematical physics does make such assumptions. That is the exact point of difference between the two fields. It is a logical absurdity to find positive rules of law by quasi-mathematical methods in principles devoid of material content.[22]

IV

One of the major concerns of Cohen's life was the meaning of scientific method. He gave it more attention than he gave any other subject, and its principles were always part of his approach to any of the numerous topics on which he wrote. He distinguished science from ordinary common-sense knowledge by the severity with which it pursued the ideal of certainty, exactness, universality and truth. Although he described himself on several occasions as a "stray dog unchained to any metaphysical kennel"[23] his outlook was pronouncedly anti-positivist and anti-nominalist. There was a strong sceptical strain in him, but it never amounted to universal scepticism. He could not believe that as human beings we start with absolute certainties; at the best we initiate our inquiries with hypotheses or guesses suggested generally by tradition and previous knowledge, but not on that account necessarily free from error. His attitude was not dissimilar to that of a late Chief Justice of the United States who, upon being faced with a proposition upon which he wished to reflect, would remark: "Let us take it over to the light and look at it." For Cohen the great lesson of scientific method was not that traditional views are fallible, but that the way to truth is to treat a proposition as one among a number of possible views and compare it with others. He objected with particular force to the practice of the courts in appealing to such premises as "requirements which shock the sense of justice,"[24] and then proceeding to deduce from them conclusions of grave social consequence. He looked to logic and scientific method as the best sources for correctives to judicial habits of this sort.

It is convenient to look at Cohen's views on this subject under three headings: (1) the extent to which law is amenable to scientific method; (2) the status of universals, positivism, and the normative

22. COHEN, *op. cit. supra* note 18, at 196.
23. COHEN, *op. cit. supra* note 1, at 3.
24. People *ex rel.* Hotchkiss v. Smith, 206 N.Y. 231, 242, 99 N.E. 568, 572 (1912).

in legal thinking; and (3) law as a deductive system. In Cohen's outlook not only would the philosopher benefit by taking account of legal materials, but it was of equal or greater importance for the legal theorist to have an understanding grasp of philosophical and scientific techniques.

(1) Scientific method in Cohen's approach was relevant to law both as an intellectual ideal and as a social activity. As an intellectual ideal Cohen's plea for a place for scientific method in the law was a simple one: It enables us to see legal systems as a whole and the relations between their parts, and to that extent it thus increases the effectiveness of the legal system itself. In primitive law, that is in all legal systems where Greek science is unknown, we are in the presence of miscellaneous rules either not arranged at all or else held together under rudimentary rubrics. In legal systems influenced by Greek science there is an attempt to reduce the law to a small number of general principles from which all possible cases can be reached. The Federal Internal Revenue Code is a modern example of the former, and the great treatises of Williston and Wigmore of the latter. Something more than a sound classification is aimed at in a scientific system. It seeks to establish intrinsic connections in its subject matter so that all the ideas of the system are shown to be connected in essence. In mathematics, logic, and certain aspects of ethics, the success of this approach has been marked. At bottom legal theory is analogous to those disciplines. Its inherent function is the integration and amplification of ideas in relation to a specific social subject matter, and as such it is strictly amenable to scientific method.

Our appellate courts are constantly faced with the necessity of deciding the most complex social issues when brought to them on constitutional or other legal grounds. They come from the realm of political theory, economics, sociology, criminology, even biology, as in the sterilization cases. Of necessity the courts must pass upon the issues thus arising on the basis of a few hours of oral argument and briefs by lawyers. Many of the propositions urged upon the court are supported by sound expert opinion in the fields from which they originate; but on many important points there is a serious conflict of opinion among the social scientists themselves. To meet this predicament Cohen modestly proposes that the law itself, in the persons of jurists, judges, and advocates, have a trained sense of scientific method.[25] However, juristic thought in general has little for which to apologize in this respect. From Roman days to the present the law has given as good an account of itself in the field of scientific

25. COHEN, op. cit. *supra* note 18, at 187.

method as any of the social sciences. If scientific method be taken to mean the elaboration of the value of rival propositions and an ultimate decision between them, then this was precisely the approach of the Roman jurisconsults, the medieval lawyers, and the serious legal students of today. The dialectical development of ideas has been one of the major tasks of the law, and the law is perhaps the most honorable exception to Poincaré's dictum that while physical scientists are busy solving their problems, social scientists are busy discussing their methods. This is not to say that amateurish views in grave social matters are not to be found in the legal domain. This, however, is an infirmity which some spokesmen of the law share not only with some fellow practitioners in other social sciences, but with eminent voices in that most exact of subjects, physics.

(2) The doctrine that universals exist as universals, not as additional individual things, that is they exist as qualities or relations of things, Cohen believed to be demanded by actual legal procedure. Metaphysically he thought it quite clear that universals exist in every situation in which individual things can be said to exist, and by the same evidence. If any statement of the sort "Smith is white and an honest man" is true, whiteness, honesty, and manhood must exist as truly as Smith. He did not hesitate to assert that an adequate discussion of cases like *Berry v. Donovan*,[26] *Adair v. United States*,[27] or *Commonwealth v. Boston & M. R.R.*[28] involves the whole medieval controversy over the reality of universals. It is on this essentially Aristotelian basis that Cohen conducted a lifelong polemic against absolutisms in legal thought.

If we cannot separate the universal from the particular, if there is no separate world of universals, then the universals with which the law occupies itself are as mutable as the instances in which they are embodied. Thus, Cohen denies that there can be only one true or correct definition of any object. Maine would not accept the Austinian definition of law as an imperative or command of the sovereign on the ground that there are communities in which there is no one who habitually issues commands that are generally obeyed, and yet conduct in them is governed by some law. But as a matter of fact in classical Rome and in modern states, which were the subject of Austin's analysis, the conditions of Austin's theory are fairly met, and Maine does not refute Austin by showing that the word "law" has a different meaning in a different context.[29] Just as there is a craving for absolute definitions, there is a similar craving for abso-

26. 188 Mass. 353, 74 N.E. 603 (1905).
27. 208 U.S. 161 (1908).
28. 222 Mass. 206, 110 N.E. 264 (1915).
29. COHEN, *op. cit. supra* note 10, at 65.

lute divisions, *e.g.*, between the civil and the criminal law, between public and private law, between substantive and procedural law, and between judicial and administrative law. While these divisions are a helpful device in the law, and perhaps even necessary so that we can draw logical conclusions from them, nevertheless it is not difficult to show that in actual situations they are not as clear-cut as they appear.[30] Again, the law is studded with principles which have the appearance of self-evident truths, *e.g.*, that men desire their economic advantage, and are deterred from actions to which penalties are attached; that property should be protected; that men should be equal before the law; that no man can be his own agent; that no man can convey more or a greater estate than that which in law he has; that no one can acquire a right by committing a wrong; that the law is a closed or complete system of rules, so that no matter what case comes up, a positive answer can be deduced from the principles embodied in statutes or in previously decided cases. Cohen will allow no principles of this sort to be absolutely true.[31] His method of attack upon them is to show that the law always recognizes exceptions to them. Thus, in the case of the apparent truth that no one can acquire a right by committing a wrong, nevertheless a thief does acquire the right of possession against everyone except the owner, and even against the latter after a certain lapse of time.

At the same time, he would not give up all reliance on principles. That would be analogous to giving up the use of our eyes because they are not optically perfect. Just as optics attempts to correct our vision through the determination of myopic or astigmatic errors, so the law should aim at making its apparently self-evident principles more useful by showing their necessary limitations.[32]

Behind Cohen's thinking on this question lies a distinction upon which he insisted in his logical studies. The self-evident principles of the law are material propositions, that is, they are either factually true or untrue. They are to be distinguished from formal propositions which assert that it logically follows from, or necessitates as consequences, certain other propositions. In the case of material propositions there is always an issue of fact to be settled by evidence. If we argne that there is no life on Mercury because life cannot exist except at certain temperatures, it can be answered that on this planet life has been empirically found to exist between certain temperatures, but in other planets it may be different. But formal propositions are not subject to the test of fact but to the logical test of

30. COHEN, REASON AND LAW 70 (1950); COHEN, LAW AND THE SOCIAL ORDER 178 (1933).
31. COHEN, *op. cit. supra* note 10, at 71.
32. COHEN, *op. cit. supra* note 18, at 177.

necessity, which is whether it is or is not possible for the antecedent to be true and the consequent to be false at the same time. In the demonstrations of the formal propositions of pure mathematics 2 + 2 = 5 is impossible in any universe in which 2, 5, and = have the meanings assigned in our arithmetic.[33]

In legal theory the controversy over absolutisms comes to its most precise focus in the issue whether law is a natural phenomenon or an eternal ideal to which external human conduct ought to conform. Kant is the great exponent of the latter view. The law to him was not what empirically exists but what is categorically imperative upon all societies at all times. As instances he gives the property right of the first occupier, and the duty to execute a murderer. But, as Cohen has no difficulty in showing, neither of these imperatives has been able to maintain its absoluteness. His main objection to all such propositions is that as specific directives they are altogether arbitrary, that they are norms which happen to prevail among certain peoples at certain stages, but are set up as valid everywhere for all times.[34] While these norms are open to this kind of criticism Cohen is nonetheless not willing to dispense with them, anymore than he is with so-called self-evident principles. If properly formulated, they are ideals of what ought to be although they are historically conditioned. They are developed from recurrent events and upon estimates as to the probable effects of certain regulations. The task of the law is to select certain norms or patterns of conduct and attempt to repress extreme variations from them. It should be observed that Cohen's technique here is not, as he saw it, one simply of compromise between irreconcilable opposites. Ultimately it flows from one of his most cherished principles, the doctrine that opposite categories, like identity and difference, rest and motion, individuality and universality, must always be kept together though never identified.[35]

Much of Cohen's writing was devoted to the criticism of the positivist outlook in science, ethics, politics, history, and jurisprudence. He rejected altogether the view that since science can deal only with the facts of existence, judgments of what ought to be are so arbitrary that no science of norms is possible. In its essence science for him consists of the formulation of hypotheses based upon the best available knowledge and anticipating new situations which can be experimentally tested so that greater determination can be achieved. This procedure, he holds, is open to the law. A legal system, he argued, can achieve the status of a scientific system if adequate hypotheses as to what is desirable or undesirable, or what is necessary in order

33. COHEN, A PREFACE TO LOGIC 6 (1944).
34. COHEN, *op. cit. supra* note 10, at 78.
35. COHEN, *op. cit. supra* note 2, at 11.

to achieve certain ends, are developed.

Some juristic schools insist that by restricting themselves to the realm of factual or historic existence, and not concerning themselves with what ought to be, they are thereby making themselves scientific. They possess only the merit, in one of Cohen's favorite phrases and in his view, of the courage of their confusion. Thus the historical school began as a reaction against the philosophy of natural rights with the dogma that the jurist is limited to a description of what actually happens in legal history and must not impose his own judgment. This, in turn, led to the conservative natural rights theory, that is to the glorification of the *status quo* as desirable. Similarly, jurists of the type of Duguit and Ardigò, who attempt to restrict the science of law to the law that is, are in reality crypto-idealists, that is, the result of their analyses is some idealization of the actual law as the desirable state that ought to be.[36] Although Cohen had a vast respect for Holmes' juristic thought he could not associate himself with the American attempt to develop into a science of law Holmes' dicta that the law is merely the set of predictions as to what the courts will decide, and that experience and not logic is the life of the law. The first fails on the ground, when we are confronted with the problem of law in the making, that the problem of the court is not to predict what it will do but to determine how the case should be decided. Both dicta strictly elaborated would lead to the neglect of the requirements of consistency in the law. The courts must decide not only individual cases, but they must develop the legal system so that there is a clear understanding of rights and duties, what may or may not be done in recurrent situations.[37]

(3) A developed science is systematic, and in Cohen's view this is its one essential trait. System is arrived at through the method of beginning with hypotheses and deducing conclusions, and then comparing these conclusions with the factual world. By the use of deduction we are able to develop the implications of propositions and thus find out their true meaning; it helps us to make our assumptions explicit and this makes possible a critical attitude towards them. It enables us to deal not only with the actual, but also with the possible. This latter takes us into the field of possibility where there are to be found many things better than the actual.[38]

This view of science and scientific method, which Cohen defended vigorously all his life, may seem today somewhat antiquated when put beside the current highly sophisticated studies. It is rejected by those who maintain that science is purely inductive, that is that

36. COHEN, *op. cit. supra* note 18, at 188.
37. COHEN, *op. cit. supra* note 10, at 78.
38. COHEN, *op. cit. supra* note 6, at 106.

principles and laws are discovered through an analysis of given particulars. In substance Cohen's answer to this position is that we do not know what particulars to look for unless we have an hypothesis to guide us. Data do not speak for themselves. Their meaning and their significance are discoverable only with the aid of critical assumptions. Cohen's view of science is rejected also by those who maintain that deduction and induction are both part of science. But Cohen was not prepared to rule out induction altogether. Its function in science is the establishment through enumeration of the material truth of propositions. For this reason the evidence for universal propositions is never conclusive, it can never be more than probable. In deductive reasoning, however, the inferences are necessary, although they may be materially false. In the current treatments of the subject, apart from those with a strictly positivist approach, Cohen's view is taken for granted. It is the classical one in the sense that it is of great antiquity. There is a tendency to pass over the elements of scientific method, as he isolated them, without discussion, not because they are irrelevant, but because the discussion of them has gone far enough. Interest has shifted to the minutiae and interstices of the process, and is becoming inextricably intermingled with epistemology, the mathematics of probability, linguistics, and symbolic logic. For Cohen's attempt, however, to get at the meaning of the law, the elements of scientific method, as he set them forth, were sufficient for that purpose. While physics and legal phenomena are both amenable to scientific treatment, in Cohen's sense, the level of examination of the two subjects differs conspicuously.

Professor Northrop has labeled Cohen's views and those of his son Felix as instances of "intuitive ethical jurisprudence" and, while he finds they possess some merits, he concludes they are ultimately "barren ethically and legally."[39] Intuitive ethical jurisprudence turns on the root idea of "justice" or "the good life." The approach suffers from two defects, in Professor Northrop's opinion. The notion of "the good life," unless its meaning is made concrete, does not assist the judge in deciding which of two moral principles shall prevail in cases where they are in conflict. In addition, if the Cohen jurisprudence provided the means by which such a criterion could be determined it would be false to its own premise. Where the ethical is taken as a primitive or irreducible concept, an applicable criterion would result in the ethical losing its primitive status and being definable in terms of the concepts specifying the criterion.

Because of the obscurity in the thought of some philosophers there

39. NORTHROP, THE COMPLEXITY OF LEGAL AND ETHICAL EXPERIENCE 69 (1959).

is room for different interpretations of their position, and disputes about their "true" points of view are usually vain. But this is not the case with Cohen. His style is clear and his meaning generally evident. Where there are obscurities it is because the problem has not been resolved or, in his opinion, is unresolvable, and he will then, in order to avoid a decision, use words of great generality which carry too many ideas to be acceptable to the precise approach of much of contemporary philosophy.

We may put aside Professor Northrop's association of Morris and Felix Cohen's thought on this issue since Morris Cohen himself, while his attitude was sympathetic, believed that his son had attempted an impossible task in the ethical field. The senior Cohen believed in "the good life" as distinguished from "life." This in part was a protest against the romantic use of such terms as "life," "experience," and "reality." His plea was for discrimination and it was, he believed, the task of rational philosophy to define the good, the true, and the beautiful.[40]

His narrow point is in substance teleologic. Of the possible decisions open to the judge who is concerned with what is right, he must choose the one which best serves the interest of the community. He does this by determining, as best he may, the ends most advantageous to the community and the decision most likely to reach them.[41] Since it is possible for moral decisions to be mistaken, the problem is to discover the distinction in such cases between the true and the false. We do this dialectically and empirically by developing the consequences of rival propositions. Cohen recognized that the results more often than not are provisional and merely probable, and he answers that we must learn to live in an uncertain world. This may seem to both idealists and empiricists an unduly naive treatment of a vastly difficult problem but, in any case, Cohen is here making a serious effort to meet the concrete requirements of the legal order.

The type of deductive system that Cohen contemplated for the law was one that permitted many legal rules to be derived from a few principles. This would increase both the certainty and the consistency of the law. By certainty he meant not a psychological feeling about a given proposition but a logical ground on which its claim to truth could be founded. Certainty in the law is essential to its usefulness; it increases the degree to which it is readily knowable and this in turn facilitates transactions by strengthening reliance

40. COHEN, *op. cit. supra* note 6, at 457.
41. COHEN, *op. cit. supra* note 18, at 246. Cohen's thought here is close to that of G. E. Moore and the English utilitarians. See MOORE, PRINCIPIA ETHICA, ch. v. (1903).

on the future. Consistency in the law is necessary if the law is to maintain its prestige. In every law suit the expectation of at least one party is defeated. Nevertheless, a persistent and conspicuous effort at impartiality which is most effectively promoted by a genuine devotion to scientific method will impress even the defeated party. Admittedly science is abstract. It places its emphasis on abstract considerations and is concerned with the definable classes rather than with the particular cases. But it forces us to see things from a wider point of view and to make us more just to the diversity of human interest.[42]

This was Cohen's answer to those who urged experience as the basis of law at one extreme and to conceptually mechanical jurisprudence at the other. He held that whatever else law may be it is instituted to promote the good life, but experience without logical vision is stupid and brutish and supplies no guide to the good life. Law that is not logical is like prescientific medicine, a hodge-podge of sense and superstitution. At the other end of the scale the so-called strong judge assumes that the law always consists of theoretically simple cases, whereas the concrete case is complex because it generally involves many principles. Cohen thought that judges who follow principles regardless of consequences were simply too lazy to examine countervailing considerations which were relevant to the application of the principles.[43]

His espousal of system in the law did not mean he believed that the law is most fruitfully developed by deduction or syllogisms. Notwithstanding the powerful influence of deduction in the law, in the main it supplies, in his metaphor, the tracks rather than the motive power of the legal train. The primary motive power is the insight which extends our knowledge. There are limitations even to reason.[44]

Behind Cohen's theory of scientific method was a philosophic view of the world into the details of which we need not enter. It was consistently maintained and was derived in considerable part from Cohen's studies in mathematics and logic at the turn of the century. He once gave a brief summary of his position as follows:

> I am a rationalist in believing that reason is a genuine and significant phase of nature; but I am an irrationalist in insisting that nature contains more than reason. I am a mystic in holding that all words point to a realm of being deeper and wider than the words themselves. But I reject as vicious obscurantism all efforts to describe the indescribable. I reject the euthanasia or suicide of thought involved in all monisms which identify the whole totality of things with matter, mind, or any other element

42. COHEN, op. cit. *supra* note 18, at 194. For Cohen's answer to Jerome Frank's denial of certainty in the law see *id.* at 358.
43. *Id.* at 196.
44. *Id.* at 145.

> in it. But I also reject the common dualism which conceives *the* mind and *the* external world as confronting each other like two mutually exclusive spatial bodies. I believe in the Aristotelian distinction between matter and form. But I am willing to be called a materialist if that means one who disbelieves in disembodied spirits; and I should refer to spiritists who localize disembodied spirits in space as crypto-materialists. However, I should also call myself an idealist, not in the perverse modern sense which applies that term to nominalists like Berkeley who reject real ideas, but in the Platonic sense according to which ideas, ideals, or abstract universals are the conditions of real existence, and not mere fictions of the human mind.[45]

For good measure he added, in terms of current values, that he might seem to be out of touch with what was modern and useful, and yet made no wholehearted plea for the old. He believed in chance and spontaneity in physics, and law and mechanism in life. He had no respect for experience, induction, the dynamic, evolution, progress, behaviorism, and pychoanalysis; he did not line up with either the orthodox or revolutionary party in politics, morals or religion, although he wrote on those themes. He owed no allegiance to the democratic dogma.[46] He claimed to offer no practical message to the man engaged in the affairs of life, and was satisfied to appear to be concerned with purely contemplative surveys of existence.[47]

Stated thus baldly many of those beliefs were profoundly irritating to some of his contemporaries. To Cohen, who enjoyed controversy, this was of no moment. He was sustained through all the vicissitudes of his life by a profound faith in philosophy itself. Its highest function was to give men strength to envisage the truth. In his view this was a much greater good than the perpetual motion without any definite direction which modernists regard as the blessed life.[48]

V

Cohen's interest in the application of law in the social realm was as intense as his concern with the philosophy of law. In his view the basic legal institutions partly maintained the existing social order and also partly blocked the road to a better one. He wrote numerous articles on this aspect of the law, all of them at the least tinged with his technical philosophical outlook. He wrote no trade articles of the usual law review type. He was, however, a close reader of the im-

45. COHEN, *op. cit. supra* note 6, at xii.
46. *Id.* at 6.
47. *Id.* at xiii.
48. ARISTOTLE, NICHOMACHEAN ETHICS, bk. v, ch. 10 (Ross transl., McKeon ed., Modern Library, 1947). For the most extensive, incisive criticism of Cohen's general position from the empirical point of view see Yntema, *The Rational Basis of Legal Science*, 31 COLUM. L. REV. 925 (1931). For Cohen's trenchant reply see *op. cit. supra* note 18, beginning at 219.

portant labor and constitutional decisions and of the great texts, and he kept abreast of developments in certain other major fields. When necessary his articles could be supported with citations worthy of the most learned law professor. While he was occupied with this approach to the law he adopted the sane course of talking about it in the sense in which the word is used by judges, lawyers and in the law schools, *i.e.*, as referring to the rules of conduct determinable by courts.

His principal effort in this field was his examination of what he termed "the process of judicial legislation." In the American popular mind, with its deeply imbred tradition of the doctrine of the separation of powers, the phrase is a derogatory one. Cohen's thoughts on the subject were first put on paper in 1913 when labor problems were very much to the fore in the courts, and judges, in denying relief in patently unjust situations, were taking refuge in the customary arguments that they were merely applying and not making the law. It is still an epithet today as in the criticism of *Brown v. Board of Education*[49] and other major decisions.

We can eliminate this aspect of the problem if we ask whether it is true or false (a) that courts sometimes provide a rule where there was no rule before; and (b) that they sometimes provide a new rule in place of an existing one. Cohen's argument unhesitatingly pronounces both of these propositions to be true. How else, he inquires, if judges never made law, could the body of rules known as the common law ever have arisen or have undergone the changes which it has.[50] When we are in the presence of cases of first impression, where we have no clear precedent, he denied that judges find the law. He argued that in the decisions of the great creative minds in legal history, decisions of the kind written by Mansfield, Gibson, or Shaw, we find that the prevailing ideas of justice, public convenience, and what is "reasonable," are always appealed to as conclusive. But these moral rules or considerations of public convenience do not of themselves have the force of law. They are transformed into legal rules only when courts, balancing the relevant considerations, decide to enforce them. There can thus be no doubt that by direct judicial legislation, based on supposed principles of justice, that the law of quasi-contract, the common counts, the law of boycott, and other divisions have been developed. Similarly the interpretation of statutes is a form of judicial legislation. The meaning of a statute is a juridical creation in the light of social demands. The court decides not so much what the legislature actually intended, nor what the

49. Brown v. Board of Educ., 347 U.S. 483 (1954).
50. COHEN, *op. cit. supra* note 18, at 112.

words of a statute ordinarily mean, but what the public, taking all the circumstances of the case into account, should act on. Finally, even the application of laws can be a mode of law-making. This situation arises when two or more different rules seem applicable and the court must determine which is to prevail. A Board of Health has authority by statute to make such regulations as are necessary for the preservation of public health from impending disaster. The Board of Health quarantines a person who refuses to be vaccinated, thereby interfering with his liberty. In the court's view there is no doubt that the legislature has power to authorize measures for public health; but also that enactments which affect the liberty of the person are to be strictly construed. Which should prevail? In such cases there are few legal rules which offer sensible guidance.

In essence this is Cohen's theory of judicial review which, however, has not won complete acceptance. It is certain that Cohen is on the soundest of grounds in maintaining that the unprovided case is a not unfamiliar phenomenon in the courts. Actually, according to Allen,[51] there are an astonishing number of such specimens and, what is even more remarkable, some fairly recent ones not infrequently involve issues which it might be supposed were settled generations ago, *e.g.*, can a blind man witness a will; is the owner of straying cattle liable for personal injury done by his animals to the occupier of the land on which they trespassed? In the decision of such cases courts will admit that they are handling matters of first impression, but they attempt to reach their conclusions by analogy, by the general course of past decisions, by a declaration of changed conditions, by deduction from amorphous general principles, and by other means for which Cohen had only scorn. Nevertheless, while he claimed that judges do and must make law, he admitted that it would be absurd to maintain that they can make any law they please. He attempted to dispose of this point by arguing that this is also true of the legislature and that the difference is one of degree and not of kind.[52] Cohen's position at bottom rests on a strictly logical point: Was the rule of law announced by the court recognized as prevailing before the decision? If not, then the court has legislated. Putting aside the meaning of the question-begging word "recognized," there is here a division between other systems of law and the Anglo-American. In Switzerland, for example, the Code states that when there is no authority the judge in the last resort should apply the rule which he would establish if he were acting as legislator, a device borrowed from Aristotle.[53] Legal historians no

51. ALLEN, LAW IN THE MAKING 291 (6th ed. 1958).
52. COHEN, *op. cit. supra* note 18, at 146.
53. ARISTOTLE, NICHOMACHEAN ETHICS, bk. v, ch. 10 (Ross transl., McKeon ed., Modern Library, 1947).

longer doubt that the bulk of the common law throughout its history was consciously laid down as such by the courts, however much judicial opinions may indicate to the contrary. As a logician, and as a man deeply concerned with political and economic issues, Cohen was affronted because the courts declared they were doing one thing when in fact they were doing the precise opposite. Nevertheless this is, and always has been, the practice of the courts, however specious their arguments in support of previous "recognition" of the rule may be in particular cases. In this they are supported by the bulk of text writers with arguments of considerable subtlety. Perhaps the failure to avow frankly what is logically the case may be part of an effort to show the reasonableness of new rules and otherwise to enhance their prestige. In any case, logic here is in direct conflict with the Holmesian doctrine of life and experience, and no one has yet succeeded in uniting them in this sphere.

In modern times the rise of the social betterment state was accompanied by a radical shift in the classical theories of contract which Cohen was quick to note. His paper included a useful criticism of the various theories which attempt to justify contract law, and he endeavored to sift the valid from the invalid elements in them. At their core, however, they were individualistic theories of contract in the sense that they were based on, or associated with, the notion of contractual liberty. Their cardinal error, in Cohen's view, was that they assumed that the law did nothing but put into effect what had been agreed upon by the contracting parties.[54] In fact, contract law plays a positive role in social life as we see when the organized force of the state is brought into play to compel the loser of a suit to pay or to do something. In this sense contract law is a branch of public law. This idea, which had gone much further in Europe than it had in America when Cohen published his paper in 1933, leaves little room for the individualist idea of the binding force of promises. If contract is to be linked with sovereignty by conferring the power of the state upon one of the parties to the contract, then Cohen thought we should inquire into the purposes and circumstances under which that power may be conferred. We must be certain that the power of the state is not used for unconscionable purposes, particularly against those in dire need. This view touches the nerve of the political philosophy behind the idea of the social betterment state, a theory which is on the march but which still awaits its effective exposition. There is no question, however, but that Cohen was in the forefront of those who foresaw the development of the new contract law.

54. COHEN, *op. cit. supra* note 18, at 103.

Cohen also published a notable paper on private property in 1927, in which his line of argument followed that of his analysis of contract. Property is rooted in custom, in economic needs, and in individual needs for privacy. But it is only one among many human interests, and it cannot be pursued absolutely without detriment to human life. It is therefore not sacrosanct. The issue is not its maintenance or abolition, but the precise determination of the areas in which private enterprise may be given free scope and where it must be restricted for the common good.[55]

He wrote on various other topics where the law impinged directly upon the social order, from the criminal law to clericalism. He was imbued with a deep sense of social justice, but he was not swayed by sentimental predilections. His ideal was an order of just social relations, and he never wearied of insisting that the necessary condition for such an achievement was the most rigorous intellectual integrity and a concentration on seeing the facts as they are. The key to his outlook in all his writings is to be found in his point of view rather than in any particular set of doctrines. Very simply, as he made clear on many occasions, it is the position which claims for itself the right to question all plausible and self-evident propositions, not for the purpose of refuting them, but to determine the evidence that supports them rather than their possible alternatives.

VI

His figure was slight, with the appearance of fragility, but actually wiry, and topped by a head of magnificent proportions. He was five feet seven inches in height with black, curly hair and keen bluish-hazel eyes. His manner was gentle, sympathetic, even humorous, but there was an unmistakable firmness lurking just below the surface. He wrote during the most active period in jurisprudence that the United States has ever known. Holmes' influence was pervasive and Cohen had close and affectionate relations with him. But there were many other men who made their mark during the same period —Pound, Cardozo, Frankfurter, Cook, Yntema, Llewellyn, Oliphant, Arnold, Frank, and his own son Felix, to name but a few; altogether they brought legal thought to a level worthy of comparison with the best from Europe, and easily surpassing that of England. Although his formal training in the law was small, his equipment philosophically for his studies in jurisprudence was immense, and he drew with sureness for illuminating help from philosophy, logic, the social sciences, and physics. He was a brave and effective public speaker, and a teacher whose classroom was often stretched beyond its

55. *Id.* at 57.

capacity. It was the rule when he appeared on the program of meetings of the American Philosophical Association to place him last in order to help assure a full attendance at the sessions. The diversity of his interests was as wide as that of Leibniz and his mastery of them brought him the respect here and abroad of men concerned with the roots of things. He once remarked that in his youth he coined a beatitude which in later years he still found of some use: "Blessed are they who are not modest; they shall not need any devices to call attention to themselves and to their modesty." But notwithstanding his great erudition his approach always remained Socratic. His close friend and pupil, Sidney Hook, has written that he had heard Cohen say "I do not know" more often than any other person he had known.[56]

Cohen died in 1947 with five of the numerous books he had planned published. Since that time others have appeared. If he did not live to finish his life's work, he accomplished more than is given to most scholars who teach and participate in the numerous public activities that marked his career. Cohen was not a hopeful man and he would not be attracted by the thought, he once said in conversation, of living life over again—particularly, he added after a pause, if he had to teach mathematics to college students. He was disturbed above everything else by the decline of faith in the sense of rationality or logical connection of nature. He was certainly the chief critical philosopher the United States has known. No other mind in the history of American thought has devoted itself with such acuteness and clarity to the exposition of the necessary assumptions which lie behind the branches of inquiry. Nevertheless the positive goal was always steadily before his gaze: To restore philosophia to her proper place as against the prevailing moods of scepticism and philomathia.

56. A TRIBUTE TO PROFESSOR MORRIS RAPHAEL COHEN 93 (1928).