

Book Review

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Book Review

THE THEORY OF LEGAL SCIENCE. By Huntington Cairns. Chapel Hill. The University of North Carolina Press, 1941. Pp. ix, 155. \$2.00.

Those who attended the 1937 meeting of the Maryland State Bar Association will remember that Mr. Cairns read a paper before that meeting under the same name as that of this book. The contents of that paper constitute the first chapter of the book.

Mr. Cairns, a former member of the Baltimore City Bar and former Lecturer at the University of Maryland School of Law, is now Assistant General Counsel of the United States Treasury Department. This is his second book in the field of general legal theory, his "Law and the Social Sciences" having been published in 1935.

This, the later book seems relatively more definitive than was the earlier one, and yet even this one does not purport to give finally all of the answers on general jurisprudence. Rather it represents a skeptical inquiry into whether such a thing as a science of law is possible. After asserting that a science of law is possible, he concludes that "jurisprudence as the pursuit of knowledge justifies itself; [and] its knowledge with complete propriety may be extended to questions of social welfare."

The author defines jurisprudence as "the study of human behavior as a function of disorder". This, and the subsequent development of the concept of "order" suggest, without complete development, an aspect of general jurisprudence, viz., the question whether rules of law regulate human conduct directly, or only indirectly by means of litigious procedures calculated to deal with those whose conduct deviates from the orderly.

He asserts that a general theory of law should seek to discover the factors which operate in all areas in the creation, modification, transformation, and disappearance of legal systems. It must search for the "enduring circumstances of change, the permanent conditions present in all cultures". This, indeed, is a large task. It may be that the explanation of why so much of general legal theory makes for hard reading and seems so inconclusive is that different legal systems really do not have enough in common, after

all, to make plausible the existence of any general legal theory more general than the limits of an area once or now subject to a unitary system of courts and legislatures.

Mr. Cairns purports to find six elements common to all known systems of law, modern, ancient or archaic, or primitive. These are, respectively, regulations of behavior with respect to persons, associations or groups of persons, the community, property, promises, and administration. This is true, but these groupings are under concepts of no sharp outline, and the author admits that they are but tentative.

It is obvious from the wealth of citations and references, that Mr. Cairns has read much. In fact, as another reviewer has earlier remarked, he tends unduly to support his points by citations to others really less authoritative than himself.

Even if one were both able and inclined either to corroborate or to refute Mr. Cairns' thesis, it could not be done within the scope of a review, it would take a disquisition of equal length. In writing this book, Mr. Cairns has consolidated the position he established with his earlier one, as a person to be reckoned with in American juristic thought and writing.

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