izations about the failure of democracy and the evils of government that come from phony aristocrats. The opening theme needs wide acceptance today, when so many are eager to retreat from the civic responsibilities which an interdependent society compels, and ignore the problems left unanswered by a belief that free enterprise is, as Harding said of government, "a simple thing." What such a society as ours requires in organization and procedures to permit the minimum fruits of its productive powers to be available was well stated thirty years ago by Brooks Adams, who believed that the conditions necessary for personal "success" destroyed the development of capacities necessary to administering "the Great Society." Professor Merriam finds in the new sciences or technologies evidence that man can, by taking thought, accept the responsibilities of citizenship. It is good that youth can enlist under the leadership of such experience and wisdom.

JOHN M. GAUS*

Teoría egológica del derecho y el concepto jurídico de Libertad. By Carlos Cossio.

For half a century prior to the end of World War I, Latin American philosophy of law had been dominated by Auguste Comte's positivism. But in the last decades Comte's influence has been replaced by Kant and neo-Kantian philosophy. Instead of a rather crude sociological-biological jurisprudence a philosophy of law on neo-Kantian lines has come into existence. Together with this change another new development can be seen. From colonial times on, Latin American philosophy of law has hardly been more than a restatement of continental European jurisprudence, following first scholastic philosophy, then the French droit naturel of the eighteenth century, finally, as a reaction against natural law, Comte's positivism. The new turn toward neo-Kantian philosophy follows again, it is true, the rhythm of continental European thought, a reaction against positivism; but for the first time we see a serious attempt no longer to be satisfied with a restatement of foreign systems, but to achieve creative, original thought, to create an original, Latin American philosophy of law.

There is a revival of philosophy of law in Latin America; the number of scholars dedicating their life work to this field is growing, many scientific journals are entirely or in part dedicated to philosophy of law, and particularly, works of high quality, making original contributions, are being written; leading philosophers of law have appeared.

While neo-Kantian philosophy dominates the contemporary Latin American philosophy of law, the ruler of Latin American thought in theory of law is unquestionably Hans Kelsen, the head of the "Vienna School of Jurisprudence," the founder of the Pure Theory of Law. Even in Brazil, where Comte's influence was not only strongest, but has also lasted longest, the new trend is making progress; but in Spanish America the new trend has achieved a complete victory.

But while the work of Kelsen is mostly accepted as basic, as far as theory of law is concerned, there can also be seen all over Latin America a "new thirst for justice," an attempt to retain Kelsen's theoretical achievements, and yet to go beyond him in philosophy of law. This tendency makes itself felt in nearly all of the Spanish American republics, but the two undoubtedly leading countries are Mexico and Argentina.

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The desire to go beyond Kelsen, not to be satisfied with the mere study of the forms of law, uses, to achieve its goal, the German philosophy of culture, the phenomenology of Husserl, the philosophy of values, as developed by Nicolai Hartmann and Max Scheler, and, finally, the philosophy of life, as set forth by Martin Heidegger and the leading Spanish philosopher, José Ortega y Gasset. The result of this desire is mostly the distinction between theory of law, where Kelsen is followed, and the philosophy of law, as metaphysics, fully within the realm of pure juridical axiology.

It is against this historical background and contemporary setting that we must understand the work of Carlos Cossio, who, using the same materials, arrives at a result entirely different from that of the other leading Latin American philosophers of law.

Carlos Cossio, professor of philosophy of law in the University of La Plata, president of the Argentine Institute of Juridical and Social Philosophy, is exercising, through his writings and teachings, through adherents and disciples, great influence in Argentina and all over Latin America; a “Cossio-School” is, so to speak, in the making. Since 1931 Cossio has developed his ideas incidentally in a series of monographs, dealing with detailed problems; but the book under review is the first systematic exposé of his doctrine.

Cossio, the head of the “Kelsen-School” in Argentina, starts from Kelsen and his logical normativism. In an article, written at the occasion of Kelsen’s sixtieth birthday and reprinted in the book under review, he has paid full homage to Kelsen, who is to him the jurist of the contemporary epoch, a personality of genius, a man who has achieved a cyclopean task, one of the most extraordinary and fertile cases in the history of juridical ideas of all times. Kelsen’s *Pure Theory of Law* is to him not just another theory, but a Copernican turn; it means a revolution of legal science, which is only possible as a science since Kelsen; it has an eternal, irrevocable value. No Latin American philosopher of law has better understood Kelsen than Cossio. Cossio seems to this writer to be also nearest to Kelsen by the temper of his mind: a logician, a theoretician rather than a philosopher of law, taking this term in a metaphysical sense, and strongly polemic in the building up of his ideas. A very substantial part of the book under review is a very detailed polemics with the Mexican philosopher of law, Eduardo Garcia Maynez, on the concept of juridical liberty.

And this point of polemics is for Cossio a matter of principle. He reproaches the traditional science and philosophy of law with restating all the opinions held on a problem since Greek times and with confusing philosophy of law with its history. The history of philosophy of law has to present these different opinions, but the philosophy of law has to use only those which matter for the development; it has to criticize; by its very nature the science of law is of a polemic character.

The science of law, says Cossio, is not possible without a philosophy of law; but the latter he conceives in terms of a theory of cognition, of a science of sciences rather than as metaphysics. Philosophy of law must evolve around the science of law. The utter worthlessness and sterility of most philosophies of law is, according to him, a consequence of the fact that these philosophies are anchored in some metaphysical pre-suppositions which cannot be proved and can give, therefore, no help to the jurist who is occupied with the study of a positive law. A fruitful philosophy of law must take as its starting point the science of positive law, just as Kant’s *Critique of Pure Reason* took as its starting point natural science. It presupposes, therefore, the existence of a science of positive law, which excludes any reference to natural law; for the science of
law can only be the science of positive law. This science of positive law exists only since Savigny.

Philosophy of law, thus understood, has, according to Cossio, four tasks.

The first task is that of juridical ontology, the answer to the question: What is law? To give this answer he starts from Husserl’s phenomenology. The method to be followed in this task is the method of intuition. With Husserl, Cossio distinguishes the objects into ideal objects—here the adequate method is the rational deductive method; into natural objects—here the adequate method is the empirical method; and finally into cultural objects—here the adequate method is the empirical-dialectic method, the method of comprehension, of seeing something in its meaning. Law is a cultural object. But among the cultural objects he distinguishes the objects produced by human activity and human conduct as such. The latter, because of being related to the ego, he calls “egological” objects. Contrary to Recasens Siches, law is to him not “objectivated human life” such as a statue, but “living human life”—human conduct. Hence the name “egological theory of law” for his doctrine.

On this basis and by the method of intuition he answers the question, What is Law, by saying: Law is human conduct in its intersubjective relationship. Here is the first original idea of Cossio: As law is human conduct, it is human conduct which is the object of the science of law. This science is, in consequence, not a science of ideal objects, the legal norms, but the science of human conduct, and hence a science of reality, an empiric science, but not of an experience of nature, but of juridical experience, of human conduct, which is “metaphysical liberty phenomenalized.”

The science of law is the science of human conduct; but as a science it is cognition by conceptions. It needs, therefore, concepts; these concepts are the legal norms. The part of philosophy of law which deals with the norms is formal juridical logics. Here the method is not intuition, but thinking. Whereas the science of law has as its object human conduct, the object of formal juridical logics is norms. Science is not possible without logics. But the logics must be adequate to the object of a science. And as human conduct in its intersubjective relationship is an experience of liberty, not of necessity—an experience of values, not of neutrality to values, Aristotelian logics must necessarily be fruitless. Only a logics adequate to the egological object of legal science can give true results, a logic of “oughtness.” To have discovered and developed this new logics of “oughtness” is the immortal merit of Kelsen. The logics which the science of law needs is neither a logics of subsumption, as in natural science, nor a logics of formalization, as in mathematics, but only a logics of individualization.

While other Latin American philosophers of law, to go beyond Kelsen, contrast the pure theory of law with metaphysical philosophy of law, Cossio contrasts philosophy of law with science of law. The latter has as its object human conduct; formal juridical logics has as its objects norms, which are merely intellectual representations of human conduct, concepts with which we think human conduct.

While highly praising Kelsen’s work, Cossio reduces it to formal juridical logics, which is, it is true, an indispensable tool for the science of law, but by no means identical with the latter. It is on this basis that Cossio in interesting pages refutes the erroneous interpretations of the pure theory of law, and gives an excellent, correct interpretation of this theory on logical lines. All the great themes of the pure theory of law are purely logical problems, problems of law as a single object (the legal norm), of law as a whole (the legal order), and of the architectonic structure of law. He recog-
nizes Kelsen's postulate of the purity of method as the right way to liberate the science of law both of the sociological and jus naturae approach. Kelsen's "fundamental norm" is nothing but the transcendental and a-prioristic pre-condition for the possibility of juridical cognition, is a logical category of juridical cognition in the sense of Kant, and has no contents. The pure theory of law studies and describes the pure and formal structures which gnoseologically pre-condition the possibility of juridical cognition. As the pure theory of law is logics—but the logics of "oughtness"—it is, by necessity, a priori, formal, neutral to values. Cossio on the whole accepts the pure theory of law as naked, formal, juridical logics. He tries to introduce some changes here; the most important is the replacement of Kelsen's definition of the norm as a hypothetical judgment by his definition of the norm as a disjunctive judgment, in order to overcome Kelsen's doctrine of the "primary" and "secondary" norm.

But the pure theory of law is not science of law; it is essentially formal juridical logics; and only in a minor degree is it, what Cossio calls the third task of philosophy of law, namely transcendental juridical logics. Formal juridical logics studies the norm in its normative structure; but transcendental juridical logics is guided by the specific mode of being of its object. Kelsen, Cossio says, has said again and again that the legal norms are schemes of interpretation of human conduct. Human conduct cannot be neutral to values; in consequence the juridical valuation is also a necessary act of cognition by comprehension. As law is conduct, values are immanent in the law. Juridical valuation means that the norm, the law, must also be understood as order, security, cooperation, solidarity, justice, which are the juridical values, the spiritual meanings of conduct in its bilaterality. Formal juridical logics deals with the formal and necessary elements of law, its logical structure. But law has also material elements; but whereas the elements of natural experience are only two: the logical structure—formal, necessary—and the empirical contents—material, contingent; legal experience has three elements: the logical structure—formal, necessary—the dogmatic contents—material, contingent—and the juridical valuation—necessary, but material. Formal juridical logics deals with the logical structures as pure fundamental, a-prioristic concepts; the logical is, of course, neutral to values; justice is no part of the concept of law. Kelsen's "ought" is a purely logical ought, expressing the relation of legal imputation, is not and does not want to be an axiological "ought."

But as values are immanent in the law, juridical valuation is a necessary part of the method of comprehension. Values have no place in the pure theory of law, as formal juridical logics; but values can, because of the nature of human conduct, object of the science of law, not be eliminated from the science of law; yet, if the science of law is to be a science, it must be neutral toward its object, it must not deform the object by approaching it with preconceived ideas of a purely subjective and metaphysical character. That is why, contrary to the systems of other Latin American philosophers of law, Cossio considers only the positive values—from order to justice—embodied in a positive legal order. These positive values are data given to the jurist in the positive law. The juridical valuation by the legislator is politics; the critique of the positive values of a legal order is metaphysics; but the jurist has to deal with the positive values as given in a positive legal order. It is in this way that Cossio arrives, starting from Kelsen's logical normativism, to his own "valuating normativism," which he now calls the egological theory of law. Pure juridical axiology, on the other hand, as a fourth task of philosophy of law, does not deal with the positive values of a positive legal order, but
asks whether these positive values are also the "true values"; it is, therefore, of eminently metaphysical character. Cossio, while fully acknowledging the value problem of law, does not explain it by the metajuridical notion of a superstructure, transcending the positive law, but by the immanence of positive juridical values in positive law. It is perfectly legitimate for a lawyer to ask what the "true ideal" of justice is; but when he does, he does so as a man, not as a jurist.

JOSEF L. KUNZ*


In three main chapters, entitled respectively, "Language," "Cataloging Processes," and "Official Publications," Miss Basset has attempted to give a first-aid résumé of problems confronting the cataloger of Russian law books. The attempt, it must be conceded, is a considerable success. The worst that can be said about the work is that it is too sketchy, too dependent upon the author's own experiences in handling Russian publications. This, naturally enough, results in a certain limitation of scope, especially as regards principles and over-all problems. On the other hand, such problems and solutions as are discussed are characterized by that concreteness of statement which is the direct result of individual experience.

Apart from a suggestive discussion of various systems of transliteration in more or less common practice, the most useful contribution in the first chapter is a list of 130 Russian words most commonly encountered on title pages of Russian legal publications. These are given in both the original characters and in transliteration with the appropriate English meaning. The chapter devoted to cataloging is concerned with the treatment of legal publications only, and on this subject Miss Basset obviously writes with authority. The list of "Official Publications" is made up of legal chronologies and published collections of laws and statutes. Each item is carefully identified and the whole may be taken as basic for any standard collection of Russian law. A bibliography of fifty-seven reference tools, including dictionaries, grammars, language and transliteration guides, and works on the political and legal history of Russia, complete the "Guide." Thus, although primarily intended for the law librarian, Miss Basset has prepared a valuable aid for all librarians who may be called upon from time to time to handle books in the Russian language.

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A list of all treaties and other international acts in force as of December 31, 1941, between the United States and other countries. Treaties are grouped by subject matter, and references are given to the place where the full text can be found.

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