

This issue is dedicated to the memory  
of  
FELIX SOLOMON COHEN  
1907-1953  
Visiting Lecturer in Law

FELIX COHEN

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*The following remarks were delivered by Professor Rostow at the funeral of Felix Cohen, Washington, D.C., October 21, 1953.*

My thoughts on this sad and moving occasion turn to our friend's work as a law teacher and as a philosophical scholar of law. His preface to the book, *Readings in Jurisprudence and Legal Philosophy*, by Felix Cohen and his father, has three quotations which serve perfectly as a text for the immense sense of homage, of admiration, and of gratitude which all of us feel so powerfully today.

This is the first quotation: "It is not in heaven, that thou shouldest say, who shall go up for us to heaven, and bring it unto us, and make us hear it, that we may do it? Neither is it beyond the sea, that thou shouldest say, who shall go over the sea for us, and bring it unto us, and make us hear it, that we may do it? But the word is very nigh unto thee, in thy mouth, and in thy heart, that thou mayest do it."

Teaching, thinking, and writing—the occupations of the scholar—were irresistibly attractive to Felix. But they were for him paths, among other paths, to the single dominant goal, the moving passion, of his unified and dedicated life. Felix Cohen was a man of justice. He viewed law as the great instrument of justice. Because he was by temperament and inheritance a scholar and a philosopher, he could not refrain from writing, teaching, and

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thinking about law in the orderly ways of the scholar and philosopher. But he refused all our pleas, over a period of many years, that he give himself over entirely to the intellectual life, central as it was to his being. He could not leave to others the fight for justice for the Indians and for the immigrants, those great and humane causes to which he made so remarkable and so effective a contribution.

Both the scholarly and the practical aspects of Felix Cohen's work in law represent the same noble thought: the truth is with us, in our daily bread, and it is something to be done, not said. Man's duty is goodness. And the men of law must forever labor to make the measure of ethics the measure of law. They must labor in the courts and legislatures, on the soap boxes of political campaigns, in the libraries and classrooms of universities, by the quiet hearths of their own homes. Felix Cohen could not ask "Who shall go up for us to heaven, and bring it unto us." He knew that each man, in the tasks that fall to his hand, must himself seek out the way of goodness, and do it.

But Felix Cohen realized also that his own practical struggles for justice were fought on various sectors of an all-embracing battlefield. To him, more clearly than for most men, every particular was an aspect of the universal. The second quotation in his preface is from Holmes: "To see so far as one may, and to feel, the great forces that are behind every detail makes all the difference between philosophy and gossip." No phase of his work was gossip. All of it stemmed from a deeply conscious, profoundly considered analysis of what law is, and what it is for. He led his students and readers into every corner of the temple, examining and testing the beams and the buttresses, the glowing windows and the unswept cellars too. Where study in the light of ultimates revealed the need for change, he fought for it, to free us, as he said, of "ancient cruelties," and to help man "escape the barbarisms that the future pins to most human hopes." He never forgot that the temple he served is the sum and symbol of all human aspiration. When he proposed change, it was that the temple might better and more truly serve the great dreams which give life and meaning, beauty and power to our civilization. His writing and teaching, however technical, was always focussed on the problems of ethical choice which lie behind every conflict in social relations. He was ever conscious of the necessity for logic—for "rigorous reflective thought," as he wrote, rather than "hit-or-miss trial-and-error." But this emphasis in his work was not mere aesthetic preference. It represented the knowledge he shared with his father, whom he loved with such rare devotion, that civilization, represented by law, its central and all-embracing institution, is a value men can save from evil not by their passive good will alone, but only by the hardest kind of thought and struggle.

Felix Cohen was a teacher of power and purpose. He talked with his students as equals. He left them with a renewed awareness of the issues in law that spell the difference between life and death. For twenty years, his

writings have been a primary force in the world's literature of legal philosophy and jurisprudence. In my judgment his has been, and will remain, the best balanced and one of the most creative voices in the literature of what is loosely called American legal realism. In seeking a just measure of freedom for the law makers, he never failed to give reason its due, and never sought to put impulse on the bench. In urging reform, he never forgot the boundaries which history sets for all our efforts, nor the risk of losing a large battle by winning a small one. He championed the cause of ethics, and thus helped to correct a serious failing in the American realism of the previous generation. But his stress on the ethical content of law and its primary importance, did not lead him to undervalue the role of theory—of logic, that is—in the legal process.

The third quotation from his preface is older still: "The day is short and the task is great. It is not incumbent upon thee to complete the whole work, but neither art thou free to neglect it." The greatest force in life is the image and example of a good man. Felix Cohen was governed by conscience. Every fragment of his work was part of "the great task" of the prophet. He did not complete the whole work, for it will never be completed. But he never neglected it. On the contrary, he gave himself to the cause of justice with a skill, a fervor, and a degree of selflessness which those of us who watched and marvelled at can never forget.