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THE LAW IN QUEST OF ITSELF, by Lon L. Fuller. The Foundation Press, Inc., Chicago, 1940. Pp. vii, 147. \$2.00.

Thomas A. Cowan

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Mr. Jaffin follows his dissertation on the development of the judicial power of the United States with a short discussion of the different methods of questioning the constitutionality of the laws before the courts.

The development of the three methods of initiating the judicial investigation of the constitutionality of the laws in the United States [(1) the defense or exception of unconstitutionality, (2) the action of injunction and (3), the declaratory judgment] is vividly traced. This and the discussion of the leading cases upholding the constitutionality of these methods might prove of valuable assistance to our neighbors from the south and to the American student in understanding the basic principles from which the court has derived its power.

In Argentina, Mr. Pecach points out, the judiciary works much in the same manner as in the United States. The Federal Constitution of Argentina invests in the Federal Supreme Court the judicial power which, as in the United States, has been extended to give the federal court the power to investigate the validity of the laws. But the procedure employed to bring these questions before the court is somewhat different from that followed in this country. The injunction is unknown in Argentina, and the declaratory judgment has yet to be introduced. The action and exception of unconstitutionality, and the *recurso extraordinario Federal* (which is a proceeding similar to our procedure for removing cases from state to federal courts) are the only methods by which a litigant may raise questions respecting the constitutionality of a law.

The necessity for legislative reform following American tendencies is urged with special emphasis on the adoption of the injunction and the declaratory judgment as additional methods of presenting questions of unconstitutionality.

CARLOS E. LAZARUS\*

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THE LAW IN QUEST OF ITSELF, by Lon L. Fuller. The Foundation Press, Inc., Chicago, 1940. Pp. vii, 147. \$2.00.

This small volume by a distinguished legal scholar is a welcome addition to our rather scanty store of American jurisprudential writings. Delivered at Northwestern University as the Rosenwald lectures for 1940, they fit in admirably with the tradi-

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\* Research Assistant, Louisiana State University Law School, LL.B. 1937, Loyola University (New Orleans).

tion of lecture-writings enriched by Pound, Cardozo, and many others.

American legal scholars are not at home in the philosophical tradition, particularly in that of the Continent. Bound as they are to British empiricism and its American derivatives they liberate themselves, if at all, only to fall back into a modern and refurbished form of the same doctrine—realism or instrumentalism. Most of their difficulties, in the opinion of the present reviewer, can be attributed to their lack of systematic acquaintance with the history of philosophy. Almost without exception, they come late to philosophy and when they do come they are limited by the restrictions of an eclecticism imposed by the legal craft.

Professor Fuller handles legal philosophical materials with a deft touch born of long familiarity. It is not necessary to agree with his analysis of Natural Law and Positivism to admire its skill. He has succeeded in doing for positivism what none of its vociferous friends have been able to do for it—he has made it self-conscious. Instead of extolling its merits, he has unfolded its potentialities. Instead of using it as a club with which to beat natural law, he has attempted to create for it the superior position of a dominant theory, that is, one graciously willing to learn from its enemies. And, finally, he has said all that can conceivably be said for legal positivism. What he has left unsaid are its most serious deficiencies. Like the very skilled advocate, his admissions against positivistic interest, and his proper failure to claim for it more that rightfully is its, should show all its opponents how to meet it with a frontal attack. Those who hereafter do battle feebly with legal positivism cannot have read this book.

THOMAS A. COWAN\*

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\* Associate Professor of Law, Louisiana State University.