

1937

Correspondence

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Correspondence, 6 Fordham L. Rev. 356 (1937).

Available at: <https://ir.lawnet.fordham.edu/flr/vol6/iss2/12>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CORRESPONDENCE

The FORDHAM LAW REVIEW is pleased to publish correspondence which it considers interesting to its readers, but without implication that it accepts or rejects the contentions therein expressed.

TO THE EDITOR OF THE FORDHAM LAW REVIEW:

I trust that I may be permitted to impose upon your long suffering columns once more to answer the question that Professor Kennedy puts to me in his latest article. He asks¹ whether I deny that I said (or believe) that "jurisprudence is transcendental nonsense." In answer I must say that I do deny ever having said or believed that. I did point out, in my original article,² that certain traditional premises, which I reject, lead to the conclusion that jurisprudence is transcendental nonsense. I do not accept the conclusion any more than the premises. My own belief is that jurisprudence is a scientific discipline that deals with the observable conduct of courts. Incidentally, the notion that legal concepts are supernatural entities, which Professor Kennedy, in his second article,³ accuses me of holding, is likewise an opinion which I stated not as my own view but as one of the "basic assumptions of traditional legal theory"⁴ which I reject. My own view is that legal concepts are not supernatural at all but are real elements in actual cases.

It is regrettable that my respected critic, in both his articles, should proceed by ascribing to me the basic assumptions that I attack and then discovering, naturally enough, that the result doesn't make sense. It is doubly regrettable because this procedure has obscured the real issue, which is how far the methods of science—methods of logical analysis, observation, statistical calculations, *etc.*—are applicable to the field of law. On that issue I shall look forward with eagerness to the further statement of his views that Professor Kennedy promises.⁵

Washington, D. C.

FELIX S. COHEN.

1. Kennedy, *More Functional Nonsense—A Reply to Felix S. Cohen* (1937) 6 FORDHAM L. REV. 75, 87.

2. Cohen, *Transcendental Nonsense and the Functional Approach* (1935) 35 COL. L. REV. 809, 821.

3. Kennedy, *supra* note 1, at 80.

4. Cohen, *supra* note 2, at 821.

5. Kennedy, *supra* note 1, at 88.