Kelsen [photocopie].

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PREFACE   XV

the law as an offspring of justice, as the human child of a divine parent.
The pure theory of law insists upon a clear distinction between empirical
law and transcendental justice by excluding the latter from its specific
concerns. It sees in the law not the manifestation of a superhuman
authority, but a specific social technique based on human experience;
the pure theory refuses to be a metaphysics of law. Consequently it
seeks the basis of law — that is, the reason of its validity — not in a
meta-juristic principle but in a juristic hypothesis — that is, a basic
norm, to be established by a logical analysis of actual juristic thinking.

Much traditional jurisprudence is characterized by a tendency to
confuse the theory of positive law with political ideologies disguised either
as metaphysical speculation about justice or as natural-law doctrine. It
confounds the question of the essence of law — that is, the question of
what the law actually is — with the question of what it should be. It is
inclined more or less to identify law and justice. On the other hand, some
theories of jurisprudence show a tendency to ignore the borderline
separating a theory of legal norms regulating human behavior from a
science causally explaining actual human behavior, a tendency resulting
in confusing the question as to how men legally ought to behave with
the question as to how men actually do behave and how they probably
will behave in the future. The latter question can be answered, if at all,
only on the basis of a general sociology. To become merged in this
science seems to be the ambition of modern jurisprudence. Only by
separating the theory of law from a philosophy of justice as well as from
sociology is it possible to establish a specific science of law.

The orientation of the pure theory of law is in principle the same as
that of so-called analytical jurisprudence. Like John Austin in his
famous *Lectures on Jurisprudence*, the pure theory of law seeks to attain
its results exclusively by an analysis of positive law. Every assertion
advanced by a science of law must be based on a positive legal order or
on a comparison of the contents of several legal orders. It is by con-
fining jurisprudence to a structural analysis of positive law that
legal science is separated from philosophy of justice and sociology of
law and that the purity of its method is attained. In this respect, there
is no essential difference between analytical jurisprudence and the pure
theory of law. Where they differ, they do so because the pure theory of
law tries to carry on the method of analytical jurisprudence more con-
sistently than Austin and his followers. This is true especially as regards
such fundamental concepts * as that of the legal norm on the one hand,

* Cf. my article *The Pure Theory of Law and Analytical Jurisprudence* (1941)
55 HARV. L. REV. 44–70.