



1957

Book Reviews

Follow this and additional works at: <https://scholar.smu.edu/smulr>

Recommended Citation

Book Reviews, 11 SW L.J. 543 (1957)

<https://scholar.smu.edu/smulr/vol11/iss4/8>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

BOOK REVIEWS

THE ADMINISTRATION OF JUSTICE IN RETROSPECT. ARTHUR L. HARDING, EDITOR. Dallas: Southern Methodist University Press, 1957. Pp. ix, 99. \$3.00.

This volume is the fourth in the series of "Studies in Jurisprudence" resulting from the annual conferences on Law in Society held at the Southern Methodist University School of Law. It is edited by Arthur L. Harding, Southern Methodist University jurist whose national stature has grown large from his thirty years as an outstanding American law teacher and legal scholar. The studies in the current volume include essays by Doctor Harding, Jerome Hall of Indiana, Sheldon D. Elliott of New York University, Horace E. Read of Dalhousie University and Fernando Fournier, Costa Rican ambassador to the United States.

Inspiration for the 1956 Law in Society conference was the fiftieth anniversary of the great address given before the American Bar Association by Roscoe Pound at St. Paul in 1906 on "The Causes of Popular Dissatisfaction with the Administration of Justice." The topic for the 1956 conference, repeated in the title of the book in which the papers are published, refers to that address. The conference and the book constitute a testimonial to Pound's address and to the influence which it has exerted upon the administration of justice in America during the last half-century.

Pound's 1906 address had two impacts, or sets of impacts. One was immediate, the other somewhat delayed but long-continued. The immediate impact was upon the members of his audience, the 370 American Bar Association members who attended the St. Paul convention. The majority of these were old, successful and conservative. They were scandalized by Pound's criticism of the "sporting theory of justice" as it operated in America, of "political judges" popularly elected, of a judicial system that he called "archaic," of methods of pleading and practice which, said Pound, abounded with procedural traps and placed more emphasis on legal technicalities than on substantial justice. When an enthused reformer moved that 4,000 copies of the address be at once printed and distributed by the Association these conservatives reacted violently, vigorously denounced Pound and his speech, and voted instead to refer it to a committee, presumably for non-action. But another smaller group of younger men was present too, and though they said nothing on the floor of the convention they resolved that something should come of the address.

Two of these youngsters were John Wigmore and William Draper Lewis. They saw to it that Pound, then a young Nebraska law teacher and Supreme Court Commissioner, had opportunity to move on to the national law school scene and to the position of world authority which he later came to occupy. They publicized the address as a clear and scientific presentation not only of the ills, but also of the possibilities for rational improvement in the American system of justice.

The delayed impact of the address is well illustrated by the subtitle of an article which Wigmore wrote about it at the time of its thirtieth anniversary. He called the address "the spark that kindled the white flame of progress." As Harding points out, Pound in the fifty years since 1906 has in a long series of learned books and articles published detailed proposals for solution of the problems diagnosed at St. Paul. So have scores of others, taking Pound for their starting point. Much of the reform Pound urged remains still to be achieved, but much more of it has already come to pass or is well on its way toward acceptance, and the number of lawyers who believe in and are willing to labor for Pound's goals has multiplied many times since 1906.

The part of the current volume which points up most clearly the results of Pound's efforts is the summary by Sheldon D. Elliott, Director of New York University's Institute of Judicial Administration, of improvements in judicial administration in the half-century 1906-1956. Elliott enumerates the principal achievements of the period. First was the crusade launched in 1912 which culminated in the 1937 adoption and promulgation of the Federal Rules of Civil Procedure and the 1944 Rules of Criminal Procedure. Another was the establishment in 1913 of the American Judicature Society, dedicated to the aims which Pound's address set forth. Then there was the gradual approval, by state after state, of the integrated bar idea. The systematic use of pre-trial conferences went to the heart of many of the evils Pound described. Improved systems of jury selection are exemplified by the "Cleveland plan" adopted in 1931. The so-called "Missouri plan" for selection of judges, under which an appointed judge runs for election on his record and without an opponent, dates basically from 1934 in California, though Missouri did not adopt it until 1940. Adoption by the American Bar Association of the "minimum standards of judicial administration" and

¹Wigmore, Roscoe Pound's St. Paul Address of 1906, 20 J. Am. Jud. Soc'y 176 (1937). The article reprints the St. Paul address in full.

publication in 1949 of Arthur T. Vanderbilt's book with that title marked an official approval of much that Pound stood for by the organization which in 1906 received his views so coldly. Establishment in 1939 of the Administrative Office of the United States Courts afforded a model for administrative improvement which is being increasingly followed by the states. Chief Justice Vanderbilt's thoroughgoing reform of New Jersey's judicial system, dating from 1947, looms large in any list of modern improvements in judicial administration. Similarly important at the other end of the judicial hierarchy is the improvement of traffic law enforcement which has developed largely through an agency of the American Bar Association. Other events also were mentioned by Dean Elliott, but these are the principal ones. They show a growth which would indeed be pleasing to the Pound of 1906, though the Pound of 1957, now aged 87 and revered as America's grand old man of critical legal scholarship, today looks forward and writes of still other improvements yet needed in our law and in our legal system.

Pound's contribution to legal philosophy is well noted in Jerome Hall's study titled "The Progress of American Jurisprudence, 1906-1956;" and Horace E. Read's analysis of the judicial process in common-law Canada during the same half-century is probably the best part of the entire book. Ambassador Fournier shows that developments in judicial administration in Latin America have in many respects been comparable to those in the United States, and that the problems are not altogether different.

Publication of such volumes as this constitute a distinct contribution to American legal scholarship. Not only those who wrote the published studies but also those responsible for putting them into print deserve the thanks of scholars in the law everywhere.

*Robert A. Leflar**

* Professor of Law, University of Arkansas.