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Book Reviews

ORGANIZATION OF COURTS, by Roscoe Pound. Little, Brown and Company, Boston, 1940. Pp. ix, 322. \$5.00.

Thirty-four years ago Roscoe Pound read before the American Bar Association his first paper on organization of courts, entitled "The Causes of Popular Dissatisfaction with the Administration of Justice." He argued that "our system of courts is archaic in three respects: (1) in its multiplicity of courts, (2) in preserving concurrent jurisdictions, (3) in the waste of judicial power which it involves." In this same paper he "urged consideration of Lord Selborne's plan, and advocated a single court, complete in itself, of which the inferior courts, at one end, the courts of general jurisdiction of first instance, and a single court of final appeal, at the other end, were to be but branches or departments."¹

During the following years Mr. Pound has elaborated this idea persistently. In a long series of powerful and thought provoking articles and addresses he has done much to awaken the legal profession to the weaknesses and defects of our almost planless systems of court organization. He has lived to see marked progress in a few jurisdictions, notably in California, Massachusetts, Connecticut and in the federal courts. As Director of Research of the National Conference of Judicial Councils he continues to sound the same note, now made more effective by the backing of an influential and nation-wide professional group. His address at the meeting of this Conference in May, 1939, printed in the Journal of the American Judicature Society for August of that year, is as fresh and vigorous as if made by a youthful enthusiast for a brand-new idea.

This background of the author's interest is relevant in any attempt to appraise his present book. For a generation he has been a special pleader and in the concluding two chapters of the book he frankly assumes that rôle. In these chapters he puts an unerring finger upon the defects of the system as we received it from the last century: hard and fast jurisdictional lines wasteful of time and money of litigants and the public; rigidly fixed terms of court; piecemeal handling of single controversies in different courts; general lack of cooperation for want of any administrative head. He stresses particularly the deficiencies in the admin-

istration of criminal justice, in the problems arising out of small causes, and in juvenile and family relations cases. Finally, he returns to a vigorous and convincing restatement of his plans for reform proposed at the beginning of the present century.

Thus it seems fair to assume that this is a book with a purpose, that Mr. Pound intended it to be the capstone of a lifetime of practical effort for reform. Measured by this standard, has he succeeded? I think not. Argumentative exposition ought to be interesting and arresting, ought to be something you can put your teeth into. This book, except for its last two chapters, represents the very antithesis of these characteristics. In two hundred and forty-six dull and tedious pages Mr. Pound traces the history of court organization in England, in the American colonies, in the federal and the forty-eight state courts during their formative era before and after the Civil War, and so on down to the present time. The ground he attempts to cover is enormous. He has exercised great skill in selecting and arranging historical data to demonstrate that the haphazard lack of planned system in our state courts has its roots in a similar stage of development in the England of the eighteenth century that was our model.

This is certainly a valuable contribution to legal history. But the very magnitude of his task has led Mr. Pound to write history in its most unimpressive form. Turn at random to almost any page of his first six long chapters, and you find so many dates and details of legislation, so many bare bones of historical fact that you feel as if you are reading a telephone book or a mail-order catalogue. True, the author attempts, sometimes brilliantly, to organize these data into a meaningful pattern at the end of each chapter. But often the reader is so exhausted when he reaches the synthesis that he is tempted to skip it. Moreover, again because of the mass of his material, Mr. Pound has been compelled to exercise discriminative selection so rigidly that there seldom emerges a complete picture of the present organization of the courts in any specific jurisdiction. Thus, as history, the account is singularly truncated, as argumentative exposition it is amazingly dull.

Cardozo, it will be remembered, said in another connection that "The directive force of a principle may be exerted along the line of logical progression; this I will call the rule of analogy or the method of philosophy; along the line of historical development; this I will call the method of evolution; along the line of the customs of the community; this I will call the method of tra-

dition; along the lines of justice, morals and social welfare, the *mores* of the day; and this I will call the method of sociology."² Mr. Pound has chosen to write the present book along the line of historical development; he emphasizes the method of evolution. From that standpoint he has done an important piece of work and done it well though often in pedestrian fashion. But if I am right in believing that he intended his book to be a tract, he would have done better to use what Cardozo calls "the method of sociology." An analytical table presenting graphically the forms of court organization in half a dozen fairly typical states, preceded by a very brief condensation of historical background, and followed by factual and statistical analyses of the unhappy results would be far more effective as argument.

This is not to say that Mr. Pound has written an unimportant book. Probably no one is so well qualified to make a historical study of this nature; certainly anyone who attempts to follow it up by the method of sociology will draw heavily upon Mr. Pound's learning and research as here recorded. The book will stand as a monument to his industry and perseverance in the pursuit of an ideal. Perhaps its greatest value will prove to be that it will inspire another student and publicist with a characteristically different method of approach to publish a more effective argument upholding Mr. Pound's original thesis.

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CONTEMPORARY JURISTIC THEORY, by Roscoe Pound. Claremont Colleges, Claremont, 1940. Pp. viii, 83. \$1.50.

In this book Pound points to the rise of administrative tribunals with far reaching powers over the affairs of others, which powers are little restrained and controlled by law; points also to the modern juristic theory advanced by the realists that legal rules and principles are a sort of judicial superstition, and that judges really decide each case as they want to decide it without much regard to rules and principles, except as a means of making plausible what they have done; and then Pound holds that this growth of law-free administrative tribunals plus the growth of law-scoring juristic theory tend toward a new absolutism, in

2. Cardozo, *The Nature of the Judicial Process* (1921) 31, 32.

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