

## Louisiana Law Review

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Volume 2 | Number 3

March 1940

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of America Press, Washington, D. C., 1939. Pp. 182.

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### Repository Citation

James J. Kearney, *JUBILEE LAW LECTURES: 1889-1939, by Roscoe Pound and others. The Catholic University of America Press, Washington, D. C., 1939. Pp. 182.*, 2 La. L. Rev. (1940)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol2/iss3/19>

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JUBILEE LAW LECTURES: 1889-1939, by Roscoe Pound and others. The Catholic University of America Press, Washington, D. C., 1939. Pp. 182.

This book contains the eight lectures delivered at the School of Law of the Catholic University of America in connection with its participation in the festivities celebrating the Golden Jubilee of that institution. The first four lectures, which are by Dean Roscoe Pound, cover the general topic, "The Church in Legal History." The remaining four lectures, on the "Function of Law in Society Today," were prepared by Daniel J. Lyne, Grenville Clark, the Honorable Hector David Castro, and John J. Burns.

Dean Pound's series of lectures reveals him at his best, in that field in which he excels—legal history. At times he is so much the historian that it is difficult to determine whether he speaks as a narrator of history or whether he is giving his own views, which may not coincide with accepted historical tradition.

He certainly discusses the field in the law wherein the Church played her most important role. He considers the role of the Church in relation to four fundamental ideas, namely, *universality*, *authority*, *good faith*, and *law*. No better examples of the influence of the Church could be chosen.

To Dean Pound "The idea of universality is the antidote to extravagant nationalism,"<sup>1</sup> and in his lecture on *universality* he points out that current philosophies of law based upon economic determinism, psychological realism, skeptical realism, and phenomenalism can lead only to state absolutism.<sup>2</sup> The stress which he places on the importance of *law* rather than *laws* is quite sound and peculiarly appropriate at this time when law schools are teaching only laws instead of law; which to Dean Pound, "is something that gives vitality to rules of law and makes it possible to use them as instruments of justice."<sup>3</sup> It is sincerely hoped that Dean Pound will remain in contact with law schools for many years to come, notwithstanding his retirement as Dean of the Harvard Law School, for the very reason that he appreciates the difference between teaching laws and law, and realizes the great importance of instruction in the latter.

In his first lecture Dean Pound urges a return to the idea of universality, which once was developed by the Church. He sees evidence of a trend for a unification in the law in this country in

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1. P. 8.  
2. P. 6.  
3. P. 4.

the work of the National Conference of Commissioners of Uniform State Laws, in that of the American Law Institute with its restatements of the law, in the influence of national law schools, and in the revival of studies in comparative law.<sup>4</sup>

In his second lecture on the idea of *authority* Dean Pound gives two bases for the quest for authority: The first is psychological and rests on man's distrust for his fellow man who is given power over him; the second is economic, resting "on the need of predictability of judicial and administrative action as assuring long term enterprises and investment of time and energy and money therein."<sup>5</sup> Concerning the psychological basis he makes the following accurate and very interesting observation:

"Few things are more striking in legal history than the obstinate fondness of men in all times for mechanical, non-rational disposition of causes, not on their merits, but on technical procedure and rigid rule. They have preferred unjust results under arbitrary rules to just results under what they feared were arbitrary men."<sup>6</sup>

The accuracy of this statement is discernible in the fight which has been made in this country against the development of administrative law.

In his development of the roles of the Church and the Scholastic philosopher in the evolution of the concept of authority Dean Pound apparently falls into an error common to many lawyers who have not read deep into the writings of St. Thomas Aquinas, especially into his *Summa Theologica*. Dean Pound says, "Reason was appealed to, to sustain authority. But the reason appealed to was a reason itself resting on authority."<sup>7</sup> This is quite true on the theological level, but on the philosophical level it is expressly refuted by St. Thomas Aquinas, who wrote that "argument from authority based on human reason is the weakest, yet the argument from authority based on divine revelation is the strongest."<sup>8</sup>

The role of the Church in developing the idea of authority is succinctly summed up by Dean Pound at the conclusion of his lecture in the following statement:

"The Middle Ages left as a permanent contribution to legal science the method of insuring certainty by logical develop-

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4. Pp. 21-22.

5. P. 33.

6. Ibid.

7. P. 41.

8. *Summa Theologica*, P. 1, Q. 1, a. 8.

ment of the content of authoritatively established precepts, and we owe this method, the oldest and most generally used, and most effective instrument in the lawyer's tool box, to the jurist theologians and theologian philosophers of the church working side by side with those who as doctors of the civil as well as the canon law shaped the formative modern Roman law."<sup>9</sup>

In discussing the idea of *Good Faith* the author first shows that there was no room for such a concept in a period of strict law which deified formality, and that the only force behind the idea of good faith during such period was the Church,<sup>10</sup> which originally introduced it in the chancery courts (as in the case of the infiltration of the doctrine of fiduciary obligations into the rigid rules governing contracts).<sup>11</sup> He concludes this lecture with a well-founded pessimistic note when he says:

"Today unhappily there is no such force (as the Church) behind it. The legal order is operating under a heavy burden in a time of extreme secularization in which the tasks of social control formerly performed by the teaching and internal discipline of the home and conspicuously by the teaching and internal discipline of religious organization are cast upon the law."<sup>12</sup>

Dean Pound's fourth lecture, on the idea of *Law*, is the most interesting, the most informative and the most challenging of his series. He begins by saying, "In the beginnings of the legal order there are laws. We can hardly say there is law."<sup>13</sup> From this one might infer that Pound believes that the legal order starts with legislation. Such an inference would be a mistaken one. Innate in every man is a direction from his Maker, which must be followed under penalty of the deprivation of the end of man. Like the maker's direction to the purchaser of an automobile it is a direction to act according to his nature. If an automobile is used, contrary to its nature, as a pile-driver it will not fulfill its purpose, and therefore will not attain the end for which it was designed. So also with man, if he ignores the dictate of Natural Law to do good and avoid evil he will suffer the punishment for such violation of Natural Law as apprehended by his reason, and he will not merit the end of man—happiness.

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9. P. 46.

10. P. 71.

11. P. 63.

12. P. 71.

13. P. 72.

This fourth lecture contains an excellent summary of the ideas of law as they have evolved through the centuries. It concludes with a declaration that the world presently needs philosophers of the organizing genius of Aquinas and Aristotle "to make what has come after them fruitful for mankind."<sup>14</sup>

The second series of lectures reprinted in this book are entitled "The Function of Law in Society Today." The first of this series, "The Future of the Common Law," was delivered by Daniel J. Lyne. In it is traced the development of the common law in instances such as the change from the concept of liability only upon the fault of the wrongdoer, to the present theory of liability without fault as evidenced in workmen's compensation legislation and other laws of a similar nature.<sup>15</sup>

This lecture which is well prepared, and adequately documented concludes with a thought which is frequently lost sight of. The lecturer cautions against change for change's sake, and says that "the law is also charged with the duty of seeing to it that the urge for constant change does not obliterate the proven values of the past."<sup>16</sup>

Grenville Clark supplies the next lecture, "Law and Civil Liberty." The discussion is limited to freedom of expression in the field of public affairs, and Clark restricts the term, law, to mean that which is on the books. With these limitations it is a well developed thesis which thoroughly covers the field. The author establishes his contentions forcefully with direct and adequate reasons.

The following lecture, "Natural Law and Positive Law," by his Excellency Hector David Castro, Minister Extraordinary of El Salvador, affords an excellent summary review of these two types of law from a comparative standpoint. Natural law and positive law are often regarded as inconsistent. However, Dr. Castro clearly demonstrates that they are correlatives—that the natural law gives man certain inalienable rights and that it is the function of positive law to recognize such rights, regulate their use without impairing them, "and to determine the kind and the extent of the cooperation that is required from the individual in order to take care of the needs of the State."<sup>17</sup>

Dr. Castro's lecture is excellent. Without hesitation it is

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14. P. 97.

15. Pp. 106-107.

16. P. 125.

17. P. 151.

recommended to be read by all who have ever experienced any difficulty with the two concepts of natural law and positive law.

The closing lecture on Law and Ethics, was delivered by John Burns. Although the recapitulation of what had been said in the previous seven lectures is not necessary to those who read these lectures in published form, the summary was appreciated as an integrating agent for the entire series of lectures.

Beginning by defining and differentiating between law and ethics Mr. Burns continues to show how the influence of the philosopher upon the law is more subtle and less immediate but nonetheless more permanent than the influence exerted by any other agency.<sup>18</sup> Among other examples given in support of this proposition is the one showing the recognition of human personal rights over property rights, arising out of the early spring gun cases.<sup>19</sup>

Like Dean Pound, Mr. Lyne and Mr. Clark, Mr. Burns also touches upon some of the problems of administrative law, and perhaps with a more appreciative and informed attitude than that of the others.

He concludes with a comparison between the pessimism of Spengler and the optimism of the modern Aristotle, Jaques Maritain.

Whatever might be the criticism of the content of any one of these lectures there certainly cannot be anything but praise for the School and its Dean Robert J. White who sponsored them. They are a definite contribution to the jurisprudential literature of our day.

JAMES J. KEARNEY\*

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HANDBOOK OF INTERNATIONAL LAW (Third edition), by George Grafton Wilson. West Publishing Co., St. Paul, 1939. Pp. xxiv, 623. \$5.00.

This is the third edition of Professor Wilson's well-known textbook on international law. In style and general content it is similar to the former editions. In the preface the author acknowledges that "International law has in recent years given more weight than formerly to social and economic factors in the life of nations," then adds, "but the principles of law have remained."

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18. P. 167.

19. P. 169.

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