Roscoe Pound’s Sociological Library: The Foundations of American Sociological Jurisprudence

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ROSOCOE POUND'S SOCIOLOGICAL LIBRARY:
The Foundations of American Sociological Jurisprudence, A Bibliography

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PART I: ROSCOE POUND AND SOCIOLOGY

Introduction

Roscoe Pound was an interdisciplinarian of the first order. His active reformation of legal thought and administrative practice in the United States was grounded in careful study of European and American legal and social theorists. He read widely in the discipline of sociology, as the following bibliography of his personal sociological book collection attests. Pound's study of sociology reached more widely and deeply than cursory examination of his published work reveals.

This bibliographic essay introduces modern scholars to the theoretical and intellectual contributions of the discipline of sociology to the foundations of twentieth-century juristic thought in the United States as molded and interpreted by one of America's leading jurists: Roscoe Pound. The opportunity to "browse" through the personal library of a major thinker is a rare opportunity that suggests new lines of critique and theoretical development. The first part of this bibliographic essay outlines Pound's connections to American sociology, and the second part details the specifics of Pound's sociological library.
Roscoe Pound (1870-1964) is perhaps best known as the dean of the Harvard Law School and the founding author of American sociological jurisprudence (e.g., Wigdor 1974: Sayre 1948). His prolific intellectual output is bibliographically detailed in Setaro (1942) and Strait ('1960). Pound's work includes major statements in the disciplines of botany, law, criminology, and sociology.

Pound came of age in a frontier community. Born in Lincoln, Nebraska, Pound was educated at the University of Nebraska in the company of the likes of Amos G. Warner (later author of American Charities) and Alvin Saunders Johnson (later co-editor of The Encyclopedia of the Social Sciences and co-founder of the New School for Social Research). This was an exciting intellectual period at Nebraska, distinguished by creative scholars, eager students, and the institutional freedom of a new university.

At the turn of the century, it was Pound's genius to revolutionize legal thought in the United States by combining thorough legal study with the pioneering insights of sociology then evolving in American universities. Pound's early twentieth-century critiques of the American bar expanded the frontiers of administrative law and invited the social sciences into the courtroom much as many sociologists at that time, including Jane Adams, actively invited sociology into the community and neighborhood (Deegan 1988).

Prior to his major work in law and sociology, Pound made revolutionary contributions in the discipline of botany (in which he took his doctorate at the University of Nebraska in 1897) and co-founded the American school of plant ecology with the publication of Pound and Clements' (1898) Phytogeography of Nebraska (Hill forthcoming a, forthcoming b; Tobey 1981; Wigdor 1974). Subsequently, Pound intensified his study of law, building on an apprenticeship in his father's law firm and a year of study at Harvard Law School (1889-1890), and became Dean of the University of Nebraska Law College in 1903. He was accustomed to disciplinary revolution when in 1906 he became the first law school professor to address the American Bar Association.
Pound and Sociology

Pound's (1906) address on "The Causes of Popular Dissatisfaction with the Administration of Justice" chastized the legal profession for failure to recognize that the "law in action" as it unfolded in courtrooms across the country was not simply the mechanical interpretation of the "law in books" but necessarily required active interpretation by judges during the application of abstract legal principles to specific cases. The basis of interpretation, in Pound's view, should rest on the reasoned adjustment of competing social interests. Further, Pound argued that the character of modern social interests in urban industrial societies differed greatly from social interests in traditional, rural societies. The legal profession must be alert not only to social interests per se, but also to regional variations and changes in social interests. For Pound, sociology provided an intellectual platform from which to examine social interests and an empirical methodology for assessing the alignment between judicial decision-making and legitimate social interests.

Pound's sociological analysis of law concluded that the law and the court system were fundamentally overburdened. That is to say, the law as a social institution could not meet the demands that society often placed upon it, pragmatically as well as theoretically. Injustice, Pound argued, could not be solved by the courts alone. Cooperation and coordination between social institutions such as family, religion, and education were also required. He severely critiques the legislative arm of government for making laws that could not (or, often as not, should not) be enforced in the courts. As a remedy, Pound proposed a Ministry of Justice to assist legislators in the framing of socially responsive, legally consistent, and pragmatically enforceable legislation.

Where courts were overburdened by cases essentially administrative in character, Pound advocated the creation and use of administrative boards. For good or bad, this notion took solid
root, and in subsequent decades administrative regulations for outstripped the number of laws enacted by legislatures (in his later years, Pound eventually questioned the overbearing nature of some administrative agencies). Although Pound is well-known for his work on criminology and delinquency, he critiques the popular view (held by not a few sociologists as well) that law dealt primarily with criminal prosecution when, as empirical data clearly showed (then as now), civil matters consume the lion's share of legal services and court time. Civil procedure often worked more smoothly than criminal procedure, and Pound saw in this a positive lesson to be learned.

Pound drew on sociology not only for theoretical insight, but also for empirical methodological techniques. His survey of criminal justice in Cleveland (Pound and Frankfurter 1922) was cited as an exemplar of sociological methodology by Robert Park and Ernest Burgess (1924) and became the model for subsequent crime surveys throughout the United States. Pound instituted a series of criminological studies at Harvard University, resulting in the long, distinguished line of investigations on delinquency conducted by Sheldon and Eleanor Glueck. Pound was a central and effective participant on the National Commission on Law Observance and Enforcement from 1929-1931 which sponsored several sociological investigations of crime and the administration of justice in the United States, including work by Edith Abbott, Mary van Kleeck, Clifford Shaw, and Henry McKay. After World War II, Pound personally organized and conducted an intensive field study of criminal justice in eastern China from 1946-1948. For Pound, sociology offered methods and ideas to be used in the real world.

The influx of sociology into Pound's analyses of American juristic problems began shortly after his appointment as a law teacher at the University of Nebraska in 1899. In 1901, the noted American sociologist Edward A. Ross (whose influential book, Social Control, was published that same year) was successfully brought to the University of Nebraska by Chancellor Benjamin Andrews following
the infamous firing of Ross by Stanford University. Pound and Ross became friends and colleagues who debated the application of sociology to law (Hill forthcoming a; Ross 1936). The first published result of this association was Pound's (1904) short monograph on "A New School of Jurists" (Hertzler 1979). These ideas gained national attention in Pound's famous 1906 address to the American Bar Association.

The story of Pound's participation in American sociology is told elsewhere in greater detail (Hill forthcoming a). Suffice it to say here that Pound was a member of the American Sociological Society (now the American Sociological Association), published articles in the American Journal of Sociology, taught sociology of law at Harvard University, and was a collegial friend to Edward A. Ross, Albion Small, and George E. Howard, among others. This was stellar company. Ross, Small, and Howard were all presidents of the American Sociological Society; Ross and Small were noted theorists; and Small was not only the first chair of the first graduate department of sociology (at the University of Chicago) but also the founder and editor for many years of the American Journal of Sociology. Pound occupied a central location in the collegial network of American sociology.

Pound anticipated writing a book to be titled Sociological Jurisprudence and completed much work to that end at the invitation of Richard T. Ely and the urging of E. A. Ross, but the book was never completed or published as a unified sociological treatise. It is in part for this reason that sociologists (in particular) have generally failed to appreciate Pound's pivotal accomplishment in pragmatically and fruitfully linking law and sociology. The major components of Pound's sociological theory of law were published separately, often in law journals, over a period of several years (e.g., Pound 1904, 1906, 1907, 1911-1912, 1912, 1913a, 1913b, 1915a, 1915b, 1916, 1917, 1921, 1927, 1928, 1937-1938, 1942, 1943, 1945a, 1945b, 1958, 1959). Together, these works and the sociological insights on which they are based, form an
interconnected set of arguments. It is noteworthy that at least two of Pound's major points (the need for a Ministry of Justice to assist legislators, and public preoccupation with criminal law to the exclusion of lessons to be learned from civil law) are as fresh today as ever.

References for Part I


Pound, Roscoe and Felix Frankfurter, eds. 1922. Criminal Justice in Cleveland. Cleveland, Ohio: Cleveland Foundation.

Pound, Roscoe and Frederic Clements. 1898. The Phytogeography of Nebraska. Lincoln, Nebraska: Jacob North.


Sayre, Paul. 1948. The Life of Roscoe Pound. Iowa City: College of Law Committee, University of Iowa.


PART II: POUND'S SOCIOLOGICAL LIBRARY

Roscoe Pound was an avid book collector and a voracious reader throughout his student years and later professional career. During his graduate student days he lamented he had no extra money with which to escape from Nebraska because he invested all his funds in books. The Pound family placed a high value on books. Pound's mother served on the city library board of Lincoln, Nebraska, from 1880-1890, and when the city appropriated no funds for a librarian in 1892, Sarah Biddlecome Pound took it upon herself to fill in as acting librarian. Her son's love of books is no doubt due in large part to her own appreciation for literature and intellectual ideas. Roscoe Pound's personal book collection was donated at his death to the Association of Trial Lawyers of America, 1050 31st Street,
Defining Pound's Sociological Collection

The care catalog for Pound's large collection was searched during a visit to the Association of Trial Lawyers of America in Washington, D.C. Works authored by prominent sociologists and sociologically significant intellectuals (particularly criminologists well-known in the sociological literature) were identified. The following bibliographic inventory is the result. A representative rather than exhaustive claim is made for this list. The list could no doubt be extended somewhat by using a wider and more comprehensive list of sociological writers as the basis of a further search (including, for example, sociological jurists such as Eugen Ehrlich and Benjamin Cardozo). Listing sociological materials that Pound cited but apparently did not add to his personal collection offers another avenue for expanding the contents of Pound's "sociological library."

The authors, titles, and publication dates of significant sociological works were recorded from the dictionary catalog to the Pound Collection. These data were verified in the National Union Catalog to produce the following bibliographic entries. Where joint British and American publication was indicated in the National Union Catalog, the American publisher has been cited as these are more generally available to students in the United States.

Examination of the following bibliography supports the following generalizations. First, despite Pound's documented mastery of several foreign languages, it is noteworthy that his personal library favored English translations of sociological works originally published in other languages (see, for example, the entries for Durkheim, Freud, Marx, Tarde, and Weber). Second, comparison of publication dates in the National Union Catalog with
dates of works in Pound's library demonstrates that he almost always obtained or received first editions of works that subsequently enjoyed many printings and editions, supporting the thesis that Pound was well-informed concerning major developments in sociology into the 1930's. Third, Pound's resources not only covered a wide range of political perspectives, from Marx and the Webbs on the one hand, to Adam Smith on the other, but also contained the major theoretical works of the day.


The analysis which is to be reported in the subsequent chapters reveals that the contributions of such early sociologists as Lester Frank Ward (1841-1913), William Graham Sumner (1840-1910), Franklin Henry Giddings (1855-1931), Edward Alsworth Ross (1866-1951), Albion Woodbury Small (1854-1926), and Charles Horton Cooley (1864-1929) were consciously and pre-eminently theoretical. These men were the founders of the discipline and its major theoreticians. They wrote what was and is regarded as the general theory of the sociology during its first several decades.

Inspection of the following inventory shows that Pound obtained major works by all of the theorists identified by Hinkle: Ward, Sumner, Giddings, Ross, Small, and Cooley. Pound's reading placed him squarely in the midst of informed sociological theory and debate.

The modern equivalent to Pound's library of sociological classics would be the envy of many professional sociologists today. Roscoe Pound was a model interdisciplinarian and was well-versed in the sociological literature of his era. His approach to sociology encompassed not only the major works in sociology, but also relevant works in related fields, including anthropology, criminology, and psychoanalysis.
Acknowledgement

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Bibliographic Description of Pound's Sociological Library


