

1965

## Dean Roscoe Pound

Richard W. Smith  
*Woods & Aitken*

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

---

### Recommended Citation

Richard W. Smith, *Dean Roscoe Pound*, 44 Neb. L. Rev. 1 (1965)  
Available at: <https://digitalcommons.unl.edu/nlr/vol44/iss1/2>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.



DEAN ROSCOE POUND

## DEAN ROSCOE POUND

RICHARD W. SMITH

In San Francisco, in August of 1962, more than 750 lawyers were crowded into a banquet hall at the Mark Hopkins Hotel. The occasion was a luncheon for alumni of Harvard Law School during the American Bar Association's national convention. The first man to be introduced after lunch was a grand gentleman of ninety-one who started to walk from the far end of the speaker's platform toward the podium. Here he came, green eyeshade and all, to address the group. As one, all lawyers present, representing fifty years of graduating classes, stood to applaud the man they knew and cherished as their Dean and Dean Emeritus.

Dean Roscoe Pound delivered his remarks with typical wit, charm, and fresh wisdom. From the podium came the same voice and the same incisiveness these men had known since their years in law school. He introduced his comments that August day by saying that he felt like the elderly speaker who, on opening his remarks, said: "I have nothing to say, but I shall strive to say it in the greatest possible number of words." Then, as expected, he followed that self-effacing introduction with great words concisely spoken.

Were nothing else to be said about Roscoe Pound, that August day alone might sufficiently attest to the reputation and high regard he enjoyed among lawyers. That occasion expressed more eloquently than words the well-earned compliment due Roscoe Pound for a lifetime devoted to a grateful profession. More than any other man in this century, he helped the legal profession to re-examine its precepts and to improve the judicial machinery through which those precepts were to be realized. The bibliography alone of his contributions to legal literature is more than three hundred pages long.

In recognition of his contributions to the law, he has had doctorates of law or other degrees bestowed upon him by many universities, including Northwestern, Michigan, Nebraska, Missouri, Chicago, Brown, Harvard, Union, Pittsburgh, Colorado, George Washington, California, Cincinnati, Rutgers, Boston, Stanford, Cambridge, and the University of Berlin. In 1940, the American Bar Association awarded him a medal for "conspicuous service to the cause of American jurisprudence."

Roscoe Pound was born into the law. His father, Stephen Bosworth Pound, was the District Judge in Lancaster County, Nebraska, in 1870. Notwithstanding an early interest in botany, Ros-

coe left Lincoln when he was nineteen to attend Harvard Law School during the year 1889-90. When he returned to Lincoln with his single year of legal education, the lawyers with whom he sought employment, after having satisfied themselves that his training to date had been suitable, are reported to have said, "Roscoe, you know enough law. Go see the County Bar Examiner and take along a box of cigars." It is further reported that the examiner, noticing in particular that the cigars which Roscoe offered him were his favorite brand, said to the young man, "If your boss has educated you as well in the law as he has in cigars, you are well enough qualified to practice."

Although this anecdote is at best an exaggeration, it is no exaggeration to say that, in 1890, Roscoe Pound easily earned his admission to the Bar, after which he entered private practice as a member of Hall, Woods, and Pound, where he remained for six years. Also during this period, he taught jurisprudence and Roman law as an associate professor at the University of Nebraska College of Law. From 1900 to 1906, he served as the first Secretary of the Nebraska Bar Association.

In 1901, at the age of thirty-one, he became a Commissioner of Appeals in the Supreme Court of Nebraska and served in that capacity until 1903. In that year, he became Dean of the University of Nebraska College of Law, a position in which he served until 1907. It was during his tenure at the University of Nebraska, in 1906, that Dean Pound delivered his historic St. Paul Address to the American Bar Association.

In 1907, he left Lincoln to become professor of law at Northwestern University. In 1909, he moved to the University of Chicago. In 1910, at forty, he joined the Harvard Law School faculty as Story Professor of Law. He became Carter Professor of Jurisprudence in 1913. In 1916, at forty-six, Roscoe Pound assumed the office of Dean of Harvard Law School, a position in which he served until 1937.

Dean Pound's phenomenal ability to remember what he read was due, he said, not to a photographic memory, but to careful reading followed by momentary summaries. My first experience with his amazing recall was a lecture which he delivered in the Courtroom of Langdell Hall in 1934. During the hour lecture period, he cited fifty to seventy-five reported cases, giving volume, page, and date of each from memory. He apologized for having reversed one pair of digits in the citation of one year. On another occasion, Oliver Wendell Holmes used Pound's phenomenal memory at a social gathering to squelch a fellow who was flaunting his knowledge of strings of baseball scores from years past. Pound

was led into the conversation and, as expected, knew even more scores.

One of the phenomena which most interested Roscoe Pound was the manner in which human attitudes of centuries past have brought about the fashioning and acceptance of particular rules of law, instead of the alternatives which might have been. From his study of this phenomenon, he concluded that certain strict rules of the English common law could be traced to ancient Germanic attitudes. He also traced more recent changes in various rules and concluded that these changes reflect the present tendency of our courts to adopt into the law a more socially conscious attitude.

Few scholarly endeavors could be more rewarding than the re-examination of precisely those vital premises the validity of which has long been assumed. As long ago as 1921, Dean Pound turned the eye of scholarly skepticism upon our acceptance of the expansion of administrative jurisdiction at the expense of the judicial courts, when he protested against "the rise of executive justice, the tendency to commit everything to boards and commissions which proceed extrajudicially, and are expected to be law unto themselves." By the sheer persuasiveness of his reasoning, his writings and lectures concerning abuses in the field of administrative law helped to bring about the enactment of the Federal Administrative Procedure Act of 1946, which eliminated or restricted a number of the undesirable practices then followed by many of the alphabet agencies which often have a greater impact upon our daily lives than do the courts.

Roscoe Pound could criticize without being immodest or impolite. He knew that American courts work long, hard hours to arrive at the best and most just decisions, so his reminder to them never to be tempted to give less than their best was palatably capsuled in the words of the fictional Mr. Dooley: "Hinnissey, I've the judicial timpermint. I hate worruk." He cautioned lawyers of their own obligations, while reminding legislatures that they, too, had responsibilities, with the admonition: "When the lawyer refuses to act intelligently, unintelligent application of the legislative steam roller is the alternative."

In 1954, Miss Louise Pound was quoted as saying that she hoped her brother would visit Lincoln for the holidays, since he had now finally terminated his official association with Harvard. He was then eighty-four. Miss Pound expressed the belief that he would return to Lincoln, because it seemed "as though he might at last wish to be his age and retire." She could hardly have been more mistaken. Two years after she had expressed the hope that he might retire, Roscoe Pound began a five volume work on American

jurisprudence which he completed in three years. He was then eighty-nine.

Perhaps Louise Pound's own stamina at the age of eighty-two should have reminded her of her family's heritage of vigorous good health. Both she and her sister, Miss Olivia Pound, had led active, talented lives that had earned them recognition in Nebraska which rivaled that accorded here to Roscoe himself. Neither she nor Olivia had retired into inactivity. From this she might have suspected that there was little likelihood that her brother would retire. She should, perhaps, have recalled that Dean Pound had continued to run a mile a day until he was fifty, and that he had covered many miles of the northern English and Scottish countryside on foot. She should not have been surprised that he continued to be phenomenally active and productive almost to his last day.

His optimism vitalized his wisdom. In a world characterized by conflict, the philosophy expressed by Dean Roscoe Pound at Franklin and Marshall College on March 4, 1941, merits careful consideration:

We are told we must be relegated to will and force. But [even] if we grant that the ends of law are logically conflicting[,] they can nevertheless be kept in balance by reason on the basis of experience. . . . There is no need of despairing skepticism even as to a world legal order. Since the time of the Romans men have learned to do better and better the practical task of adjusting relations and ordering conduct so as to keep in check the individual instinct of aggressive self-assertion and utilize the urge to cooperative self-assertion for the advancement of civilization.

This optimistic but scholarly challenge by a man of seventy-one serves at once as a fitting conclusion for our tribute to him and an appropriate starting point for our commitment to the work he began.