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Book Review of Roscoe Pound: Philosopher of Law, by David Wigdor

Edward A. Purcell Jr.

New York Law School, edward.purcell@nyls.edu

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Roscoe Pound: Philosopher of Law. By David Wigdor. [Contributions in American History, No. 33.] (Westport, Conn.: Greenwood Press. 1974. Pp. xi, 356. \$12.95.)

Scholars invariably treat Roscoe Pound as a major figure in American legal and intellectual history, and yet they often discuss only a handful of his essays written in the half dozen years between 1906 and 1912. That seems anomalous for someone who lived ninety-four years, wrote literally millions of words, and for almost half a century enjoyed a reputation as the most distinguished legal philosopher in America. One of the merits of David Wigdor's biography is to justify that anomalous treatment.

Wigdor argues that Pound's creative work was limited by both his social-professional attitudes and his intellectual confusion. While the sociological and empirical thrust of his early essays contained progressive implications, Pound himself had only partial sympathy with the currents of political reform. His main concerns were to defend the common law tradition, to improve the existing legal system with minor procedural reforms, and to further professionalize and exalt the work of lawyers and judges. "Mechanical jurisprudence" was an evil primarily because it represented inefficient technique and brought the legal profession under unnecessary criticism. Additionally, Wigdor seems to imply, "Mechanical Jurisprudence" was a useful concept for an essentially

conservative set of values—it implied that the social difficulties the courts were involved in stemmed from faulty technique rather than from class bias. For Pound, then, true reform narrowed to a modification of judicial technique carried out by legal experts. Traditionalism and professionalism, by constantly placing what were essentially status-quo oriented ideological limits on his work, soon robbed it of its innovative, dynamic qualities.

More broadly, Wigdor attributes the severe limitations of both Pound's political progressivism and his systematic jurisprudence to his "organicism." From his devotion to the common law, from late nineteenth-century sociology, from his training in botany, and from his own traditionalism, Pound came to conceive of society as an integrated organism—all parts mutually interrelated, self-contained, essentially unified, and progressively developing by stages toward a natural perfection. When that deeply held organicism confronted progressivism and instrumentalism in the years after 1900, the friction sparked Pound's period of greatest creativity. The attempt to graft instrumentalism onto organicism, however, also created a "crippling dualism" which "confined his mature jurisprudence to a collection of brilliant but inconclusive insights" (285). Instrumentalism disguised his organicism, and organicism distorted his instrumentalism; hence Pound's work after 1920 never fulfilled the promise of the earlier essays. Wigdor concludes, Pound more and more sought recourse in administrative responsibilities and increasingly ponderous historical summaries.

The emphasis on traditionalism and professionalism is apt, providing a needed corrective to Pound's continuing reputation as a "progressive." The discussion of his theoretical confusion is provocative but less convincing. The author seems to assume that there is some *necessary* connection between philosophical "instrumentalism" and political "progressivism," between method and ideals. He suggests that Pound was forced to "compromise the instrumentalist features of his thought" because fundamentally he "wanted to implement only those reforms that promoted one of his larger loyalties"—that is, traditionalism, professionalism, and organicism (209). And yet "larger loyalties," rather than being external forces of perversion, are intrinsic parts of any "instrumentalism." Pound may have been guilty of "compromise" in the minds of his pragmatic-progressive contemporaries, but his guilt is not so clear in light of either the continuing challenges of theoretical

jurisprudence or subsequent discoveries about the confusions in pragmatic-progressivism itself. In other words, that Pound's mind was plagued by an unresolvable theoretical confusion may well be true, but that the confusion was rooted in *the necessary logical implications* of two contradictory world views, "instrumentalism" and "organicism," seems unlikely and misleading.

Wigdor concentrates on Pound's early years, telescoping the last half of his life into two of the eleven chapters. The result is an interpretative, rather than a comprehensive, biography. Its strengths are a clear focus, easy readability, and an insightful overall evaluation of its subject. The author provides an extended discussion of Pound's formative years in Nebraska and, in one of the most thoughtful sections of the book, illuminates the nature of his work as a botanist and its relationship to his later jurisprudence. Such a concise biography necessarily has gaps. Pound's personal life, and its connection with his public career, are touched on only briefly. The nature of his special guru-like function within the legal profession, especially in the later years, is merely suggested. Finally, his elaborate and formal work in jurisprudence is largely ignored. The whole book is essentially an argument to justify that exclusion, of course, and it is largely valid. Still, a chapter on Pound's systematic jurisprudence would have been useful to the general reader, and it could also have strengthened the author's thesis.

Roscoe Pound: Philosopher of Law is a thoughtful, perceptive synthesis that leads the reader constantly to confront the questions of the significance and nature of Roscoe Pound's work. It will quickly and deservedly become a standard source, not only for Pound's career, but also for American legal and intellectual history in the twentieth century.

EDWARD A. PURCELL, JR.