

## Editorial Comment

Edward T. Fagan

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# Editorial Comment

Six years ago THE CATHOLIC LAWYER opened its pages to a continuing colloquium among experts in law, history, philosophy and theology as a means of clarifying thought in the essential areas wherein a public philosophy of law must lie. It was hopefully envisaged that as a result of the exchange of such ideas, a dialogue might be established between Catholics and non-Catholics alike, aimed at a consensus on truths commonly held by the American people.

In line with this undertaking, the current issue of THE CATHOLIC LAWYER highlights a new aspect of the colloquium—a detailed examination of Dean Roscoe Pound's Sociological Jurisprudence. Written by Father Linus J. McManaman, O.S.B., it originally appeared in the ST. JOHN'S LAW REVIEW and attracted such widespread demand that the particular issue was soon out of print.

The relevance of Father McManaman's analysis and critique of Sociological Jurisprudence to THE CATHOLIC LAWYER colloquium lies in the fact that its founder, Roscoe Pound, is an example of those who see philosophy and natural law only as something to fill lacunae in the positive law, or to serve as *post factum* critique of the established law. The traditional meaning of natural law has been lost, and scholastic philosophers are not without fault. Too often natural law has been rejected by jurists such as Pound outside of Thomistic schools because it has not been properly presented. As Father McManaman says, there is a task for natural law proponents of guarding against being deserving of the criticism directed at the contemporary received natural law, and of entering into the arena with their contemporaries to confront them with the true natural-law tradition.

In praise of Roscoe Pound it can be said that implicit in all that he has written on the law is the recognition of the fact that man does not live in society because he needs to have law. Rather,

it is because man does live in society that he needs law. Society, therefore, is the end of the law, and law is the means which social man uses to organize his society. When Pound began to write, most of those who had influence in legal education and practice viewed law either as an end in itself which society existed to serve, or as a fixed price which men, both the ministers of law and its subjects, must pay in order to enjoy society and its benefits. Pound, of course, did not discover the general principles he espoused. Nor did any of his writing directly and explicitly elucidate them in a theoretical way. The measure of Pound's greatness is that, for most of a century and throughout the civilized world, he has inspired and taught men to implement the principles. His work and theirs have had enormously good practical effect. By and large, society is better served by law in our time because of the work of Pound and his disciples.

Criticism has been directed toward Dean Pound in that prior to his death his writings indicated a deep disturbance about the uncertainties of law in action and a trend toward the security of a quasi-natural law system. While still adhering to his earlier pragmatic ethical values, he adopted neo-Hegelian idealism to a considerable extent and devoted his final years to a vigorous defense of such system. This fusion of pragmatism with Hegelianism has created certain problems as to where Pound stands as a philosopher and how consistent he remains. While Pound's philosophy admits of a viewpoint that does not assert immutability, nevertheless for practical purposes it must be treated as if it did.<sup>1</sup>

Elsewhere in this issue an extremely interesting commentary on Canon Law is undertaken by Dr. Miriam Rooney. The interest of the layman in this area and the contribution which he may make, are amply illustrated by Dr. Rooney's article.

Exception may be taken however to her suggestion that we reconsider the more ancient classifications of Roman Law for the purpose of canon law. As a matter of fact it can be argued that

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<sup>1</sup> See generally Gardner, *The Sociological Jurisprudence of Roscoe Pound*, 7 VILL. L. REV. 1 (1961).

the present Code is divided exactly as Dr. Rooney suggests that it should be divided. Professor Rodes of Notre Dame has another suggested order for the new Code of Canon Law, putting the emphasis on the mission of the Church in the world. He suggests the following order: (1) The witness of the Church; (2) Life and conversation of Christians; (3) Sacramental and liturgical life of the Church; (4) Institutional life of the Church.

Dr. Rooney also states that canon law has been divided into public law and private law. It may be argued that the public ecclesiastical law is not referred to as canon law and that canon law has always been private law although it does contain much of the constitutional law of the Church.

With respect to ecclesiastical public law, Dr. Rooney seems to restrict it to the topics which were previously considered by concordats. The indices of the manuals of public ecclesiastical law will show that they consider the general notions of law, of society and of jurisdiction as well as the traditional division of jurisdiction into legislative, judicial and coercive powers. Thereafter, these books take up the relationship between the Church and the State and finally the matter of concordats.

While issue may be taken with certain of Dr. Rooney's observations, the fact remains that the opinion of the layman is being preferred in the area of Canon Law revision and such opinion is most helpful to canon law scholars. It is hoped that more laymen will offer their suggestions for the forthcoming Canon Law revisions since this is a task in which all duly educated members of the Church should participate.

A handwritten signature in black ink, reading "Edward Tegan". The signature is written in a cursive style with a long horizontal line extending to the right.

**EDITOR**