

Introductory Remarks: Human Rights and Effective Legal Action

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INTRODUCTORY REMARKS

HUMAN RIGHTS AND EFFECTIVE LEGAL ACTION

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Our area of concern, the role of the courts and the enforcement of human rights, causes us to think of the splendid address delivered by Roscoe Pound in 1916 before the Pennsylvania Bar Association. In an address entitled *The Limits of Effective Legal Action*,¹ delivered by Dean Pound the year that he commenced his illustrious career as Dean of the Harvard Law School, Dean Pound summarized the various stages of law. He commenced with "primitive law," which is followed by a second stage of legal development which may be called "strict law." This period is followed by a third stage of development when an attempt is made to

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¹ Roscoe Pound, *The Limits of Effective Legal Action*, Address Before the Pennsylvania Bar Association (June 27, 1916), in 3 A.B.A. J. 55, and in *THE LAWYER'S TREASURY* 223 (Eugene C. Gerhart ed. 1956).

identify the legal order with the moral order. In this third period of development, the individual human being, as the crucial moral unit, also becomes the legal unit. Gradually, but finally, a period is reached which tests the limits of effective legal action when, once again, the legal system enters upon the stage influenced by morals. Gradually, the attempt or effort is made to have the law coincide with morals. At this stage, the effort or attempt is to enforce ethical standards, and to transform moral norms into legal duties.

This fourth period of legal development approaches the maturity of law when the moral worth of the individual claims full legal recognition. In the words of Pound, this occurs when the law seeks "ambitiously to cover the whole field of social control."²

Pound, of course, also reminded us that laws are not self-enforcing, and that "[h]uman beings must execute them, and there must be some motive setting the individual in motion to do this above and beyond the abstract content of the rule and its conformity to an ideal justice or an ideal of social interest."³ At this juncture in his presentation, Pound referred to a social reformer who declared that "the real function of law is to register the protest of society against wrong."⁴

Dean Pound's response is worthy of quotation:

Well, protests of society against wrong are no mean thing. But one may feel that a prophet rather than a law-maker is the proper mouthpiece for the purpose. It is said that Hunt, the agitator, appeared on one occasion before Lord Ellenborough at circuit, *a propos* of nothing upon the calendar, to make one of his harangues. After the Chief Justice had explained to him that he was not in a tribunal of general jurisdiction to inquire into every species of wrong throughout the kingdom, but only in a court of assize . . . Hunt exclaimed, "But, my Lord, I desire to protest." "Oh, certainly," said Lord Ellenborough. "By all means. Usher! Take Mr. Hunt into the corridor and allow him to protest as much as he pleases." Our statute books are full of protests of society against wrong which are efficacious for practical purposes as the declamations of Mr. Hunt in the corridor of Lord Ellenborough's court.⁵

² 3 A.B.A. J. at 65.

³ *Id.* at 69.

⁴ *Id.*

⁵ *Id.* at 69-70.

For us, Dean Pound's reference to the remarks of Lord Ellenborough, that Mr. Hunt could protest in the corridor, reminds us that the courts can neither decide cases nor right wrongs unless they have *jurisdiction* to hear a case properly presented for adjudication. Jurisdiction is the key word for courts. It implies the legal right by which judges exercise their authority. Jurisdiction is required to give the authority and power to adjudicate. Without it a court is powerless to hear a case and to give a remedy. Our topic, therefore, promises to be more than a discussion of ideals and ethical norms. We meet to discuss a practical aspect of human rights and fundamental freedoms. We will be discussing the role of the courts, and the extent to which the courts may give legal effect to those moral norms embraced within the words "human rights and fundamental freedoms."

Oliver Wendell Holmes has reminded us that the law is a calling of thinkers. It is worthy of note that it is a calling, a vocation, a ministry. Lawyers, however, are not only *thinkers*, they also must be *doers*. Our speakers, and all of us, will not merely be discussing ideals and lofty goals. We also will learn how, and to what extent, we may give legal effect to ideals and moral norms.

It was for this purpose that I quoted from Pound's notable address, *The Limits of Effective Legal Action*.⁶ Since we know that there are limits, we are here to explore those limits. What are the effective limits of human rights before the domestic courts? To what extent can the domestic courts be utilized to give a remedy in those cases in which people have suffered human rights violations, and wish effective redress or remedy? All of us, therefore, whether as lawyers, judges, teachers, or lawmakers, must do what is necessary to see to it that courts are granted jurisdiction to hear cases when legal wrongs need to be righted, and when human rights need to be vindicated. Having jurisdiction over cases, the power to decide, courts may then proceed to the merits of the cases regardless of the passions and emotions of the moment. So, I conclude my introductory remarks by urging that we continue to work to further the progress that has been made in achieving human rights and fundamental freedoms.

⁶ Pound, *supra* note 1.

