

1923

## Discussion of Judge Pound's Paper, A

Charles M. Hough

Follow this and additional works at: <http://scholarship.law.missouri.edu/lr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Charles M. Hough, *Discussion of Judge Pound's Paper, A*, 27 Bulletin Law Series. (1923)

Available at: <http://scholarship.law.missouri.edu/lr/vol27/iss1/5>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in University of Missouri Bulletin Law Series by an authorized administrator of University of Missouri School of Law Scholarship Repository.

cult one. Those who travel the latter road are not invariably the better lawyers, yet the sum of individual accomplishment as shown by students' notes in the law school journals is probably higher today than ever before. A poorly equipped student may become, in a commercial or popular sense, a successful lawyer, but I observe that Phi Beta Kappa keys not infrequently are worn by members of the Court of Appeals bar.

The law schools fail, if it may fairly be said that they do fail, when they fail to envisage their proper aim. They do not achieve a full measure of success when they assume wholly to fit men for the practice of the profession of law. The ability to obtain clients, to understand their problems and to make things happen for them so that professional efforts shall justly secure an adequate reward, distinguishes the real lawyer from any mere law school graduate. The purely academic law school, however brilliant its accomplishments in other fields, falls short, I think, when it sacrifices everything to intensive training in selective courses in substantive law and refuses even to attempt to narrow the gap between the law school and the law office.

Judge New York Court of Appeals. CUTHBERT W. POUND.

#### A DISCUSSION OF JUDGE POUND'S PAPER\*

The essay submitted asserts in conclusion that the Law Schools "do not achieve a full measure of success when they assume wholly to fit men for the practice of the profession of law."

Yet it is also finally asserted that the "purely academic Law School falls short, when it sacrifices everything to intensive training in selective courses in substantive law and refuses even to attempt to narrow the gap between the Law School and the law office."

I may state my conclusions at the beginning, by asserting that no person, association, or school can by any curriculum wholly fit men of even fair intelligence for the practice of the profession

\*This paper was read at the annual meeting of the Association of American Law Schools at Chicago, December 29, 1922.

of law. Therefore Judge Pound seems to me to criticise our Law Schools for not attempting an impossibility.

Let me point out the conditions which alike confront the student, the teacher, the practitioner, and the judge.

The old-fashioned method of apprenticeship to some member of the bar and of reading law in his office is moribund if not dead in all those regions which most attract ambitious and successful lawyers. The reasons for its passage are many, but probably the most potent is the student's view that he is more likely to "get by" his examination if he goes to a Law School. Perhaps the reason next in importance is that the overwhelming majority of managers of successful law offices today are themselves Law School products; wherefore the aspirant for a chance believes that the first question he will have to answer is "What School do you come from?" Thus the youthful view of that bread and butter minimum of professional fitness to which Judge Pound adverts is that a Law School must provide it.

Another and widely different condition confronting us is this: All lawyers of mature age who pay any thoughtful attention to the output of judicial and quasi-judicial opinions in this country feel, if they do not often say, that the centre of intellectual legal authority in this country has shifted—within about the last generation. It is to the teachers of law who criticise and co-ordinate the better judicial output of all the reports, ancient and modern, that we now look for guidance on doubtful points. The thoughtful judge may be obliged to follow the recent ill-considered judgment of his own superior court, but he can and does call attention, while following it, to the views of legal writers on the subject. Thus the authority of any given decision may be undermined, and I believe that in my lifetime I have seen (for example) Wigmore and Williston become more widely influential on their chosen topics than any one court can possibly be. Therefore the mature friends of youth advise the lads who ask them to go to a law school.

Judge Pound mentions but does not elaborate the dismaying fact that barely one-third of this year's aspirants to the New York bar could show a college degree. There is no magic in any

degree, but it is a safe generalization that the overwhelming majority of those who had no degree, had never even attempted training in close thinking and concise and forcible expression of what they thought. They are in the main the products of the intellectual free lunch system now prevailing in non-technical American high schools.

I heartily agree with Judge Pound's dictum that no subject treated in any legal curriculum is elementary. Whether one attempts substantive law or practice he encounters a very nice adjustment of conflicting interests, and one which by looking at matters in gross often offends in detail, and especially offends the easy sympathies of youth. I know of no legal subject which does not require a trained mind for its accurate and reasonably quick appreciation. Thus in my judgment the Law Schools are confronted with the oftentimes insuperable difficulty of not teaching—so to speak—completely over the heads of their would-be learners.

Doubtless this untrained majority of would-be law students find the atmosphere of the law office far more congenial to them than that of the law school. With everything that Judge Pound says about these two places of study I heartily agree. But even if the fledgling law student could go, or now-a-days wanted to go, into a law office, it is a bad thing for him; because he would at once take to the business side of the office, magnify its importance and think that he was becoming a lawyer by becoming a fair practitioner.

Thus I come to the inquiry whether it is possible for the law school, with the material offered, to give as a law course both the practical and the academic sides of the law. I think it impossible. There is not time; and moreover the only way to learn practice is to practice, and practice varies not only by States but by localities in States.

The *theory* of practice can be taught; and reason for pleadings, the nature of judgments, the distinction between mesne and final process are helps enabling the thoughtful lawyer to see the forest in spite of the trees, and so perceive how often and mark-

edly procedural law has modified if it has not created substantive law.

Furthermore it is bad for the non-studious youthful person to have the practical side of the law magnified. He thinks the practical side is the profitable side; he will magnify it far too much without help, and what he needs is to have burnt into him as much substantive law as can be compressed into a few years. A man who is fairly grounded in substantive law and reasonably instructed in the history of law may easily learn in the first year of his office experience all the practice that he needs for the rest of his life,—if he substantively amount to anything. For these reasons I think it is the duty of the law schools to spend all the meagre time at their command in impressing on material not very well prepared (on the average) all that it can be compelled to take of the origin, development, and tendencies of substantive law.

The apt scholar will acquire his practice later and easier. The clever lad who inclines to the business side of the law will in time be thankful for the learning thrust upon him in his salad days; and the mere dullard will be benefited by being thrown out of the legal ship.

In my opinion the law schools have in my time very sensibly raised the standard of legal education. I think it their duty to continue the good work by concentrating on the academic side of our labors; the practical part will come soon enough, and be better done, by managing clerks and trial judges than by professors.

Judge United States Circuit Court of Appeals, 2nd Circuit.

CHARLES M. HOUGH.

#### A DISCUSSION OF JUDGE POUND'S PAPER\*

I am sure I voice the sentiment of all law teachers in saying that we very much appreciate the interesting and helpful paper by Judge Pound that has just been read.

We indeed heartily welcome the views, favorable or other-

\*This paper was read at the annual meeting of the Association of American Law Schools at Chicago, December 29, 1922.