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Not the least interesting contribution in this study is the account of the development of the idea of the inalienability of the police power. This development Mr. Wright attributes chiefly to state courts and legal treatises, particularly Cooley on *Constitutional Limitations*. But emphasis upon the police or regulatory power was accompanied by the "rise of due process," expanded to include substantive as well as procedural limitations. To the extent that a standard of "reasonableness" has been adopted for both, it is not surprising to find a tendency to merge the contract clause into the due process clause, not so much because the former has lost its own vitality as because the latter covers a wider range of state activity.

Professor Wright disclaims any plan of a treatise on the law of the contract clause, but I find him more satisfying when he writes about the cases than otherwise. Doubtless that is because I am somewhat familiar with them, less so with the larger background against which he develops his study. As I put the book down an impression lingers that, with all his efforts to trace and appraise the judicial history of the clause, the author was not without a purpose to make a case against the Supreme Court for having absorbed too much of the economic attitude of John Marshall and for having permitted that jurist to turn the clause into such "a mighty instrument for the protection of the rights of private property."

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A scholar's life unfolds on the printed page and in the classroom. Words are his sole vehicle, and they hold all the insight and understanding, all the humility and heroism that his mind and spirit have known. When the teacher-scholar's book is Roscoe Pound's, even though the book be short, its suggestiveness is enormously increased by its reference to an exceptionally broad context that has become classic in the legal literature of this century—and a reviewer is hard put to provide an adequate synopsis.

On the centennial of Edward Livingston's death, Dean Pound delivered at Tulane University the four lectures, building in part upon his *Spirit of the Common Law*, that compose the chapters of this book: Natural Law, Legislation, Judicial Decision, and Doctrinal Writing. The chief problem of the formative era was the construction from English materials of a general body of law suited to the needs of the frontier and of an emerging commercial economy. The scene was novel and changing; there was the perennial demand for security. The philosophical instrument which provided the central, organizing idea was Natural Law. Dean Pound counts the accomplishment of legislation as definitely less than that of the other contributing agencies. Some of the reasons are apparent: state legislatures interrogated judges regarding pending cases, enacted statutes reversing specific judgments, exempted particular wrongdoers from liability, validated void marriages and probated wills. There was like legislative interference with the executive. Parliamentary supremacy joined with distrust of tyrannical judges to give the
legislature an initial paramount status in public opinion; codification was in
the air. Dean Pound argues that legislation was chiefly negative in its opera-
tion, pruning away feudal restrictions. Moreover, judges, limited by a tra-
ditional common-law attitude towards statutes, did more pruning and "interpre-
ting" on their own premises. The current needs are: scientific research
and drafting agencies, a ministry of justice, and a developed technique for
judicial interpretation of statutes.

In his discussion of judicial decision, Dean Pound opposes the dogma of
class bias; he marshals economic and personal data concerning judges and
decisions, and he demonstrates the weakness of a simple Marxian interpreta-
tion. The judges started handicapped by deep distrust of the English ju-
diciary, by incompetent personnel: laymen, including blacksmiths and clergy-
men, sat upon the supreme courts; and there were no reports until nearly
1800. Judicial decision began with a creative theory focused upon English
materials and implemented by study of commercial and comparative law; the
dominant Natural Law theory changed in everything but name until it became
a stabilizing factor and still later, as regards the new social legislation, an ob-
struction. Analytical and historical theories supplanted Natural Law and
brought conservatism and "mechanical" decision. Dean Pound concludes
that compromise of conflicting interests was obtained largely through "ju-
dicial empiricism," a process of trial and error which should be enlightened
by ideals of the end of law which "must be our reliance today and tomor-
row." The final chapter is replete with information about the great treatises
of American law, especially those published from 1816 to 1880, by which
time case law and reporting had become well established. The special job of
the early writers was to provide abridgments of the cases, to expound theory
and to integrate and innovate in the light of American conditions. In the
formative era treatises were especially valuable because there were no re-
ports; in the second half of the last century, reports were abundant, yet man-
ageable. Now, they are much too voluminous; doctrinal writing has there-
fore revived, and we have the Restatements.

Some question may be raised regarding a number of statements: with the
Reformation, "Jurisprudence was divorced from theology" (p. 15); "Ben-
tham's utilitarianism has nothing in it which was not in the utilitarian natural
law which went before him except his calculus of pains and pleasures" (p. 21);
the late eighteenth and the nineteenth centuries sought "a maximum of free
individual self assertion" (p. 60) with the apparent implication that they
were not concerned with human welfare; "Tenacity of a taught legal tradi-
tion is much more significant in our legal history than the economic condi-
tions of time and place" (p. 82, and cf. The Spirit of the Common Law,
especially c. 5). But such assertions must be interpreted in the full context
of Dean Pound's other writing. The issues are, of course, debatable.

If scholarly concern with American legal history signifies a coming-of-age
of this aspect of our culture and an avowal of its distinctive worth, Dean
Pound's splendid contribution is the promise of a much hoped for renaissance.
Pound has shown rare insight in the choice of significant problems. He has
formulated many of the major issues; he has provided a body of theory and
at least the preliminary rationale — all of which make it possible to direct
further research profitably. His own type of history has wide ramifications.
The factors included are: (1) logico-legal, i.e. the given conceptions and the
techniques of applying them; (2) at the other pole, socio-economic; (3) philosophical; and (4) legislative, including biography. These factors are reciprocal and interwoven; what is needed for further systematic research is the construction of an apparatus which will include them all in a configuration that is best suited to analysis of American legal history. Pound has carried us a good way in the desired direction.

The legal historian who follows in his steps will need detailed knowledge of the economic, social, and political history of this country. He will need to know how the various aspects and periods of this history can best be integrated with development of law, and which particular contexts facilitate the most meaningful analysis. He will require a detailed discriminating analysis of "Natural Law." The pervasiveness of Natural Law theories throughout the formative era is rightly emphasized by Dean Pound. But many studies will need to be projected before we shall be in position to evaluate this influence with precision. For Natural Law has been used in many senses, among them, as (1) divine ordination (especially in the writing of the clergy, but rather generally also, as, e.g., in Wilson); (2) the measure or dictate of reason (which stems from Aristotle, Cicero and Thomas Aquinas); (3) the "useful"; (4) conscience, i.e., a reflection of the altruistic nature of man; (5) ethical principle (the just, the equitable); (6) inalienable right (used in the period prior to 1775 in aid of revolt against the Crown; used also in opposition to slavery and to promote woman suffrage); (7) ideology, again, to mask other interest-seeking, e.g., protection of the existing distribution of property and resistance to change. (While Garrison, Thoreau and Channing opposed slavery in the name of Natural Law, Calhoun and a group of college professors supported the institution (as Aristotle had) by calling upon "Natural Law and the law of God"—all with appropriate citations from the Bible. So, too, in the drafting of the Constitution, the positive job of law-making and the need for control dominates—quite a different situation from that of 1775. By 1790 we find attempts to support an aristocracy by emphasis upon natural differences among men, and upon the "right" of the superior to dominate.); (8) attribution of essential goodness to Nature (e.g., in the pantheistic connotation of the Transcendentalists); (9) the established, the traditional, the customary (as in the "rights of Englishmen"); and (10) a law of Nature, i.e., a scientific generalization.

No one, to my knowledge, has supplied an analysis of Natural Law in relation to American jurisprudence and legal history that the critical temper of this age requires, i.e., one which sets facts against concepts and both against claims and arguments and ethics—and includes all of these in a comprehensive meaningful context. The creation of an American jurisprudence upon which an adequate legal history can be constructed calls for still more: jurisprudence must be brought into explicit relationship with the contemporaneous general philosophies. Both Berkeley and Priestley lived in the United States. Jefferson and Franklin went to Paris and had intimate contact with the Encyclopaedists. The work of the English Platonists was well known. Various forms of more or less traditional realism, especially the Scottish, became so pervasive and so dominant—especially at Princeton—as to be termed "the American philosophy." Deists, Calvinists, Transcendentalists, and Evolutionists had their day—and more. Livingston and others were utilitarians.
Southern lawyers had personal contact with Comte and wrote the first American sociologies. And not least, introduced by the German refugees of '48, Kantian Idealism spread all the way to St. Louis whence, later on, Hegel was widely disseminated. All of these movements became part of American thought in the formative era.

Finally, this much, at least, would seem evident: if such terms as right, reasonable, just, equitable, and so on, and the search for such ends make sense, then we cannot intelligently dispense with a philosophy of Natural Law, whatever be the term by which we designate it. In our long, deep-seated tradition of Natural Law on the one hand, and in our typical, inquiring, fact-minded probings and questionings on the other, we have the essential concomitants of the creation of an adequate American legal history. The need is as imperative as the lack is great. But the pioneering work of the great scholar who has been the teacher of us all, provides stimulation and the promise of success.

Jerry Hall.*


In his preface Mr. Leflar tells us that the idea of a local book on conflict of laws was prompted by a realization of the limitations involved in attempting to present the Arkansas law through the medium of an annotation to the Restatement. Even at their best annotations to the Restatement are likely to be lifeless mechanical devices whose principal utility consists of affording a busy lawyer access to local cases, which when they deal with problems of conflict of laws are rarely grouped together under one single title in the available digests and encyclopedias. If the annotator feels that his task is restricted to listing the cases in one of two columns designated under the titles "accord" and "contra," the tabulation presents an imperfect picture of the local law since it is but seldom that judicial decisions involving conflicts problems can be sorted out and definitely placed in one of two neat columns. Even though the annotator may feel free to indicate the judicial thought process by which particular results have been reached, the picture of the relationship of the local law to the entire body of Anglo-American law is nevertheless incomplete, since the lawyer or judge who relies upon an annotation is likely to gain the impression that the Restatement, in all of its details, is to be regarded as representing a sort of composite norm and that decisions which do not conform are out of line with what the "law" is or should be.

By way of contrast Mr. Leflar's method of presentation allows play for critical comparative discussion. His book is unusual in a number of respects. It is the only one which purports to emphasize the law of conflict of laws of a single state. Unlike most local books, the method of presentation consists of discussing by way of background, as each topic is dealt with, the divergent views taken by American courts generally and of then indicating the Arkansas decisions. In addition, instead of rehashing the cases as they are

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