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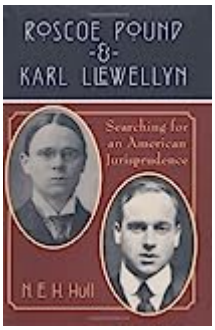

N. E. H. Hull. *Roscoe Pound and Karl Llewellyn: Searching for an American Jurisprudence.* Chicago: University of Chicago Press, 1997. xii + 354 pages. $34.95 (cloth), ISBN 978-0-226-36043-0.

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The Private and the Public Faces of Realism

N.E.H. Hull's *Roscoe Pound and Karl Llewellyn: Searching for an American Jurisprudence* answers many questions and raises many others, though many of the latter will no doubt form the subject of her forthcoming book on the American Law Institute. In the work reviewed here, Hull (Distinguished Professor of Law and member of the Graduate Faculty in History at Rutgers University, Camden) has written the definitive study of the professional and personal relationship of the two dominant personalities in American academic legal thought in the first half of the twentieth century. The story that Hull tells is definitive in large part because of her unparalleled ability to mine the archives for ore and to refine the raw material into a coherent and fascinating story.

For example, we now know that Pound not only took an interest in but also played an active role in the controversy surrounding the review of the verdict in the Sacco-Vanzetti case, although it was a role that kept him behind the scenes. Constrained by his position as Dean of Harvard Law School, which made him responsible for the School's reputation among (and ability to raise money from) its alumni, and his membership on the Wickersham Commission, which gave him a podium from which to put his school "in the forefront of social scientific inquiry into criminal law," Pound limited his advocacy and criticism to private communications (p. 156). Hull suggests that Pound's approach contained an element of calculation as well as caution. Pound did publicly advocate the appointment by the governor of Massachusetts of an independent panel to review the case, and, by working behind the scenes and not taking a public stand, he may have hoped for an appointment to the panel (pp. 160-62). He also lobbied a former president of the American Bar Association, warning the Association not to take a stand without careful consideration of the matter (p. 162). Pound's activities were in strong contrast to Llewellyn's public petition, which all but condemned the trial as a miscarriage of justice (p. 160).

Hull also gives us at last a full picture of the collaboration between Llewellyn and E. Adamson Hoebel that resulted in the publication of *The Cheyenne Way* (Norman: University of Oklahoma Press, 1941). Besides telling the story of the difficult attempt to make law and anthropol-

ogy work together, Hull shows how important it was for Llewellyn to find in Cheyenne culture what he wanted to find–a regime in which rules and precedents could be applied with "juristic intuition" to reach just results in individual cases without being overwhelmed by a need for consistency (pp. 286-95). Llewellyn's interest in the Cheyenne project was related to his attempts to reform the law through the creation of the Uniform Commercial Code. Just as the Cheyenne "felt" their way to results, merchants had a "feel" for the course of business which the statute should reflect (p. 296). The use of the word "feel" in this context is not merely a metaphor. Llewellyn put great stock in the notion of "feel" as an explanation of how one understands the world. (In this context, "feel" seems quite similar to the idea of "situation sense" in Llewellyn's later work, *The Common Law Tradition* [Boston: Little, Brown, 1960]). Indeed, Llewellyn wrote his therapist that "feel" "was at the root of [his] problems and successes." The link between Llewellyn's analysis of legal process and of his own life can be illustrated, of course, because of Hull's thorough command of the archives. The private letter to the therapist opens a new perspective on the public discourse about Cheyenne law and the Uniform Commercial Code by showing the relationship between Llewellyn's public and private thoughts (p. 296 n. 47).

And, finally, we have the definitive story of the birth of legal realism, or at least of its christening, in Hull's meticulous reconstruction of the quibbles, quarrels, misunderstandings, tender egos, and outright bad temper that went into the famous published interchange between Pound and Llewellyn (pp. 173-222). The creation of Llewellyn's "list of realists" was a complex process, and Hull shows that at one time it included far more names than the list as published. In her analysis, that earlier, more catholic list more clearly showed Llewellyn's vision of the new way of studying law that he tried to describe. It was not a jurisprudence, as Pound's criticism assumed, but a "method or technology for looking at the law," and a method that could be used by anyone "irrespective of their legal philosophy or political orientation" (p. 212).

This new method emerged "in the course of Pound's and Llewellyn's search for an American jurisprudence." Hull continues:

What gave it substance was not a preexisting, self-conscious school or movement–indeed, those men whom Llewellyn regarded as realists either refused to join in the debate or doubted whether there was such a coherent philosophy as legal realism–but the public and private conversations between Pound and Llewellyn, into which Jerome Frank intruded. It was all networks and bricolage, but that is just what one should expect to find. (pp. 175-76)

These sentences sum up the most provocative thesis in Hull's book. Realism becomes what law professors talked about among themselves as they tried to figure out what they were supposed to do with their professional lives. Thus the personal assumes great importance, and, not surprisingly, the personalities of both Pound and Llewellyn are as important to the story as anything they wrote, because, of course, what they wrote had much to do with their personalities. Equally important is the content of the new construct. Pound and Llewellyn were bricoleurs, creatively cobbling together a working approach to law from the relevant bits and pieces of the works and ideas of others.

The few preceding paragraphs are only the briefest summary of a complex story crafted with great skill from a daunting array of sources. This is clearly a work that everyone interested in American law in the twentieth century will read. Hull does not pretend to explain it all for us, and her forthcoming *The New Jurisconsults: The American Law Institute and the Restatement of the Law* will continue and undoubtedly broaden the story. Since there is more to the story, however, perhaps it is appropriate to speculate on the place of this work in the larger picture.

Perhaps the most haunting aspect of the story of American Legal Realism is what became of it. Where did all that ferment of the 1920s and 1930s go? In *American Legal Realism and Empirical Social Science* (Chapel Hill: University of North Carolina Press, 1994), John Henry Schlegel argues that the heart of realism was the attempt to bring empirical social science into the law school and that the professional identity of law professors doomed the effort. Law professors could not get beyond a "legal science" based on cases and the "rules" found in cases. After reading Hull's book, it is hard to escape the conclusion that Llewellyn and Pound, at least, could not get beyond themselves. One of the most fascinating manuscripts Hull discusses is Llewellyn's draft of an unpublished appendix to *The Cheyenne Way* which attempts to explain why, contrary to the best anthropological theories, he insisted that the Cheyenne must have "law," or, as Llewellyn, put, that there was "law-stuff" there. The draft is a rambling intellectual autobiography, a "pilgrim's progress" (as Hull calls it), that "was almost impenetrable … even to those with access to the private discourse" (p. 292). And it never mentioned Pound, who

would have agreed with Llewellyn, but on grounds the younger man abhorred–the existence of "legal ideals" in every society. Perhaps it is not surprising that out of all this sturm und drang came very little that would last, so personal was it all. For all the talk about understanding what law does or should do in society, what was accomplished?

Llewellyn, of course, had the Uniform Commercial Code. Hull begins in this work the discussion of his frustrations with the job of drafting to satisfy many competing interests, a story that her next book will continue. Pound did turn his hand to a similar task early in his career. Hired by the then newly-created American Judicature Society to write model procedural rules that would help cure the popular dissatisfaction with the administration of justice that was the topic of his widely noted 1906 speech to the American Bar Association, Pound found it difficult to live with other people directing his work. The project was a frustrating failure. Like other professors identified with realism, these two leaders had great difficulty making ideas into law.

The message of Hull's book is exactly that. Realism was about understanding law and thinking about law and writing about law; it was about what law professors do, and was created in the course of discussion among law professors. In one sense, Hull's and Schlegel's theses work together: Hull chronicles the discussion that failed to create the new professional identity that in Schlegel's story is the necessary prerequisite to the creation of an empirical legal science. Hull's contribution is to explain for the first time the role of personal relationships in the formation–or the failure to form–that new professional identity. That contribution is made possible, in turn, by the most striking feature of Hull's work, the use of archival material as an integral part of intellectual history. She has been able to use the archives not only to illuminate what the public discourse meant, but to show how the public discourse was created through personal interaction.

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