

BOOK REVIEWS

Interpretations of Modern Legal Philosophies. Edited by Paul Sayre. New York: Oxford University Press, 1947. Pp. ix, 807. \$12.50.

This collection of studies was prepared as a tribute to Professor Roscoe Pound on the occasion of his seventy-fifth birthday on October 27, 1945. The volume was delayed because of war difficulties, and it is now presented to him as an international honour which takes on further significance with the announcement that he will retire from the Faculty of Law in Harvard University on June 30 of this year, with the title of Professor Emeritus. Thus this long active career closes, and we join with all his world-wide friends and admirers in the ancient liturgical wish—*ad multos annos*. He can indeed know that "at evening time it shall be light."

The distinguished editor, Professor Paul Sayre, deserves warm congratulations, and it is well that they should be given without reserve. It too frequently happens that the editor of such a volume as this is lost amid his writers and that his difficult and exacting task is obscured. Professor Sayre has carried out his work with the greatest care and scholarship. He has brought to it the finest skills, and it is a pleasure to read a book so accurate in its references and so free from vain repetitions. Our only criticism is that we sorely miss a comprehensive analytical index, which would have added greatly to the value of the book. It is unfortunate that this is wanting, and for ourselves we have tried to compile a rough and ready one, to assist in those references to the studies which many will continue to demand. Professor Sayre has succeeded in gathering together a group of thirty-six contributors, outstanding in their own right. Drawn from all over the world (Canada excepted) they have presented, as a group, a fine view of the philosophical side of the law; as the editor points out, they have thus made available to the profession and to all those concerned with these significant modern activities, in a convenient form nowhere else available, studies "which cover with amazing completeness the legal philosophies of the world today." The editor himself contributes a charming intimate introduction, which sets Pound so before us, that those of us who know him will welcome a vignette which is excellent. Here we find something of his training—from which we may learn a good deal more about education, legal or prelegal, than may be found in much of the battle of the schools; something of his exacting scholarship; something of his countless intellectual and public activities; something of his urbane humanity; something of his philosophical growth; something of that totality of personality which has called forth the devoted and indeed affectionate honour to which this volume will continue to bear witness.

It is impossible for any reviewer to review in detail a work of this nature; and anyone who attempted it would at once write himself down as either a fool or incompetent—perhaps both. At any rate, in accepting the honour of being invited to review it, I entered an unqualified *caveat* that I could and would attempt nothing more than a broad general view. Indeed, this is all the more necessary because, as is the case here, only two or three of the studies deal with Pound's characteristic work, and there is no grouping under any classification of subject-matters, as was the case with the *recueil*

d'études presented to Edouard Lambert in 1938—one of the most outstanding collections of its kind. These difficulties do not disqualify us from saying that Professor Sayre's collection is more than worthy to stand beside the volumes which paid honour to Lambert.

Pound stands in a class by himself. His scholarship is amazing, as the long record of his learned publications discloses; and they stretch far beyond those listed in Mr. F. C. Setaro's bibliographical volume, up to July 1940. He has brought to all this an extraordinary width of legal learning, great practical and administrative experience, and juristic insight of the first order, which have made his an outstanding seminal mind. Running through all this is his exposition of law as a scheme of social engineering. Others may find delight and perhaps profit in seeking the possible sources which lie behind this philosophy and in examining the difficulties of its application; for ourselves the main interest at the moment is that he has made the profession sit up and listen. Professor Kocourek has given us a study from the point of view of a former colleague, but he has included in it Wigmore's description of the sheer consternation and alarm which Pound produced when he addressed the American Bar Association in 1906. It is almost impossible to believe that Wigmore records an event less than half a century old, which may well be taken as Pound's Archimedes' place where he stood and moved the legal world—and it needed and still needs moving. He has done more directly, and indirectly, to disclose how barren have been historical and analytical jurisprudences, whether as specifically taught, or as explicably or implicitly informing teaching and practice. They tore the law away from life and society, fortified it as a mystic cult living on its own fat and deriving its ideals and philosophies from contemplating its own navel. To all this Pound has continued to throw down his challenge. He was the first, as Professor Sayre says, who successfully tried to persuade both faculties of law and the practicing lawyers to think of law not in terms of patterns of legal rules, but in terms of the ways of living of actual human beings. He deliberately cut law away from its water-logged anchorage of systematic perfection, and called on it to launch out into the deep and let down its nets to catch a great harvest from the sea of human wants and human interests—in a word to become not merely the essential condition of organized living but the fertile assistant of all other activities aiming at similar needs. All this is well known, but we scarcely realize until we deliberate how profound has been his influence—from that scene to which Wigmore has borne witness, as well as from the challenge which he threw down to the faculties of law as long ago as 1907: "Legal monks who pass their lives in an atmosphere of pure law, from which every worldly and human element is excluded, cannot shape practical principles to be applied to a restless world of flesh and blood." He has revolutionised the teaching of law and thus fertilized its practice. Law is an imperative but an imperative in an eternal conditional mood, and it must be studied amid the clash of intellectual interests in a university and not in a "trade-school." This is one of the greatest accomplishments of his career; and far outside the United States it has given a great human increase. There is one point here which may well give us thought. I ask a question without suggesting an answer: Is there not a growing danger that our faculties of law are beginning to drift from these fine incentives and surrender too much to the demands of mere technicalities? However that may be, I can at least join gladly in this world-wide tribute; and I only hope that Pound will be spared to give us that systematic and long-looked-for exposition of his philosophy which his scattered writings emphatically demand.

Res est magni laboris. After this long excursus, I must say something of the volume itself. I have already recorded my *caveat*. Carefully guarding it, I may say that here is a *mélange* (in the traditional sense of that word) which is an intellectual treasure house—rich in its variety and rich in its entirety. Each study would suggest a review. I began it with the editor's introduction (I have learned that introductions should be read), with Kocourek's contribution, and I then turned to the discussion of Pound's theory of social interests by Professor Patterson, the distinguished Cardozo Professor of Jurisprudence in Columbia University, which is the best short exposition of this aspect of Pound's career with which I am acquainted. For all the studies, the rule of alphabetical precedence has been followed, as did Pound when he edited, in 1934, the legal essays in honour of Beale and Williston. The wisdom of his rule suggests an equal wisdom on my part. To select any of them for specific reference might be perhaps invidious; worse still, it might disclose (and that would be easy enough to do) the vast limitations on my own reading, interests, and thinking. I must confess that some of the studies I do not understand, either through my own incapacity to grasp the ideas which they may contain or through an inability to follow certain peculiar methods of expression with which I am not familiar. Sometimes I got lost, completely lost, in an empyrean of words, vague at least to me. Doubtless all this is my own misfortune, and doubtless others will find it all full of meaning. However, the book as a whole is eminently human, eminently suggestive, eminently challenging. It is worthy of Pound; and I can give it no higher praise.

In conclusion, certain thoughts suggest themselves. As I look back half a century ago to the beginnings of my own legal education and to law as I long knew it, it is nothing less than amazing to be brought up, dead on as it were, with the progress that has been made. This progress is here a little and there a little, and no single essay in this book answers all the questions, but the cumulative effect is a rich experience, which will bear its finest fruit if the book is carefully and thoroughly read. No practising lawyer, worthy of a professional name, can afford to neglect it. He will find in it food for endless thought; and he will find in it a catechism which will search his very soul for answers. For the faculties of law, the book is of vital importance. A taught law, without and apart from philosophy, may be "tough" as Maitland said,—but toughness is only of value in gangsterdom. Without philosophy, a faculty of law may produce technicians, tradesmen, office-men, businessmen, big executives, but it certainly will not produce legal statesmen; and it is a tragic platitude to say that never before in the history of the world was legal teaching called on to meet a more insistent human demand to train such men. We shall not answer those challenges with a law hammered out on the anvil of a mere cult's analysis, inbred and feeble with inbreeding; and we shall not begin to talk sense about illegal practice of the law or about administrative law and boards and such like, until we ask ourselves how far we are responsible for the consuming public's obvious and increasing neglect of our mystic wares. Here, at any rate, is a book which discloses a great ferment of creative purpose—law and philosophy have joined hands. Pound is the great minister at the wedding, and it is our duty to see that they may never be put asunder.

W. P. M. KENNEDY*

* Dean of the Faculty of Law, University of Toronto.