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## The School of Law Observes its Centennial Year: Harvard's Dean Pound Delivers Lectures

Roscoe Pound  
*Harvard University School of Law*

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# THE Georgia

ALUMNI RECORD

February 1960



**HARVARD'S DEAN POUND DELIVERS LECTURES**

**The School of Law Observes its Centennial Year**

# THE Georgia ALUMNI RECORD

VOLUME 39 NUMBER 5  
February 1960

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### The Alumni Society

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# The School of Law Observes its Centennial Year

One of the students in Dean Pound's last class at Harvard was W. M. (Don) Henderson, now a law professor at the University. He was asked to introduce Dean Pound at one of his lectures, and his eloquent tribute is printed in the box at the right. He was also asked to prepare a resume of the lectures, which the RECORD presents below and on page 5. The University will publish the lectures later this year.

## HARVARD'S DEAN POUND DELIVERS LECTURES

DEAN Emeritus Roscoe Pound of the Law School of Harvard University came to the Georgia campus in early February and delivered a series of three lectures. Dean Pound, now in his ninetieth year, is the outstanding legal scholar in America and perhaps in the world. His visit was the highlight of the Centennial of The University of Georgia School of Law. The lectures had to do with the science of law, a subject to which he has devoted seventy years as a lawyer, supreme court justice, author, and law teacher.

In the first lecture, *Law Making and Law Finding*, he discussed three senses in which the term "law" is used: The legal order, a regime of adjusting relations and regulating conduct; law as a body of precepts or laws by which the regime is carried on so as to achieve justice; and laws, an aggregate of precepts constraining conduct. He maintained that law is needed to achieve and maintain justice and it is experience developed by reason and corrected by further experience. On the other hand, individual laws are principally needed to maintain order. Law is found; laws are made. He then discussed the historical background of law making and law finding on the continent of Europe, in the British Isles, and in America, taking up the work of analytical, historical, and philosophical schools of legal thought. Cautioning his hearers that law is not merely an aggregate of laws but has an ideal element in it as well and a principle of growth, he observed that much of the codification of the Emperor Justinian required amendment during the lifetime of that em-

In the course of a man's life there are few things so delightful as to be in the presence of one whom he gratefully remembers, and I am therefore honored to introduce Dean Pound to this University of Georgia audience. His is indeed an illustrious and honored name!

This morning Dean Pound was introduced and you were told what many people in this world, lawyers and otherwise, know: That he has been a lawyer, a judge, an author, a teacher, the Dean of the Harvard Law School, and that he has filled eighty-nine years with glorious achievement. Schools in this country and overseas have honored him. Ever a skillful and vigorous advocate of just causes, steadfastly he has pursued the even tenor of his way and proved to the world once more that truth is great and must prevail.

It is as my teacher that I remember him tonight. It was in 1947 and at that time hundreds of students, mostly veterans, went up to Harvard. Just out of the Navy and from a remote part of Georgia, I went myself. The class was large and his last in Jurisprudence. There were students from this country and from other lands. And there was our great teacher. To be his student was one of the fine things in life. He was learned, interesting, considerate, charming. There was an inestimable pleasure communicated and a lasting benefit conferred upon us. The circumscribed spheres of contracts, or torts, or property, or the law of crimes, gave way to the wider view, the loftier aim, which the science of law reveals. Our perceptions were thereby quickened and we could feel more keenly the virtue of the maxim: "Fiat justitia ruat coelum!" — "Let justice be done though the heavens should fall!"

A word or so more and I am finished. There are a few teachers we recall with the utmost affection and esteem. Amongst my teachers thus remembered is Dean Pound. One of the great lawyers of all time was Marcus Tullius Cicero. As a boy he had a teacher, one Archias, who taught him the beauties of the Greek language. Years later Cicero as a lawyer recalled his teacher in one of his most laudable orations: "Pro Archia Poeta."

And so tonight, ladies and gentlemen, you can quite readily apprehend the pleasure and the honor afforded unto me to stand in this venerable Chapel where my classmates and I were graduated some years ago, and present my well-loved teacher from Cambridge, who has illumined the minds of thousands of young men with what Lord Coke called "The gladsome light of jurisprudence." Dean Roscoe Pound.



**HARMON W. CALDWELL JR.**  
and his father, the Chancellor  
of the University System of  
Georgia, greet Dean Pound  
following a luncheon



**DEAN POUND**  
with Georgia's  
Dean Hosch  
in Chapel

## LAW CENTENNIAL

peror and that today the Code Napoleon is undergoing revision. The codes themselves are only enactments of what had been worked out in the course of teaching and text-writing by the great jurists. So also in the common law system, law is not an aggregate of laws but it is experience developed by reason in the form of decisions of actual controversies in the courts which serve as a body of precedents. These in turn are starting points for further legal development. Finally, he traced the development of law through the stages of primitive law, the strict law, equity and natural law, the maturity of law, and an approaching stage of development toward a world law with due attention to a certain amount of law particularly necessary to local conditions and circumstances.

The second lecture concerned the doctrine of *stare decisis*. The Dean maintained that "law must be stable and yet it cannot stand still . . . the legal order must be flexible as well as stable . . . it must be overhauled continually and refitted continually to the changes in the social life which it is to govern." Men, he said, have had a picture of a final and complete statement of the law good for all time and peoples everywhere. This, however, has never been true because there must be a certain flexibility and growth in the law. In part this is accomplished by what we call law making, a political process, and law finding, a judicial process. Illustrations were given from the work of the principal jurists in the various twentieth-century schools of juristic thought. The desire for stability in the law as emphasized in the *stare decisis* maxim has oftentimes resulted in the perpetuation of the errors of courts through the use of outworn analogies and doctrines. He gave a number of illustrations from the law of torts and property where *stare decisis* had impeded the administration of justice. Courts, said he, should not wait for legislatures to correct great and glaring errors but should correct these themselves. In closing, the Dean cited the language of Georgia's greatest jurist,



### THE MANY WHO MET HIM

quickly discovered those qualities which have made Dean Pound, who will be 90 in October, the man and scholar he is. As noon approached on the morning of his first lecture, and as a few who had fifth period classes began to leave the Chapel, Dean Pound said, "Well, I see my time is up." Shown with him at top are Mrs. O. C. Aderhold, Dean Hosch, Don Henderson, Albert Saye, and Miss Lucille Epps.

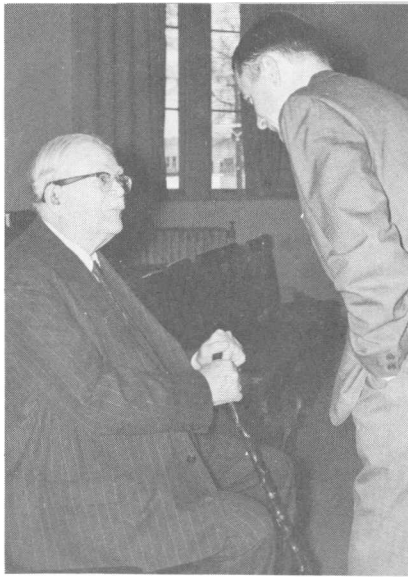
Chief Justice Logan E. Bleckley:

"When an error of this magnitude and which moves in so wide an orbit competes with truth in the struggle for existence, the maxim for a supreme court, supreme in the majesty of duty as well as in the majesty of power, is not *Stare decisis*, but *Fiat justitia ruat coelum*."

The last lecture, *Reason and Reasoning in Law Finding*, dealt with the difference between reason and reasoning. "Reasoning," he said, "does not as such necessarily lead to a reasonable result. Whether reasoning is reasonable depends on what it starts from, how it is carried on and to what end. Reasoning proceeds upon analogies, and too often inept analogies and inept applications of them are taken for reason." There has been too much abstract reasoning from attractive analogies of the past and not enough testing of those analogies in the light of how they meet or fail to meet the reasonable expectations of men in the time and place. He chose ten cases in different fields of the law where the administration of justice today is hampered by analogies which in their application or in the application of deductions from them defeat the purposes of the ad-

ministration of justice. Illustrations were given from the law of pleading and practice, intentional and negligent torts, liability without fault, contracts, and property. Respect for the past and mental laziness account for some instances today when faulty reasoning results in injustice.

Comparing the science of law today with what it was at the end of the last century, Dean Pound observed: "That it is functional, inquiring not only what law is and how it has come to be what it is, but what it does, how it does it and how it may be made to do it better; that it seeks team play with the other social sciences and so studies law in relation to the whole process of social control; that it recognizes the importance of individualized application of precepts in adjudication as well as in administration and seeks to utilize instead of ignore the element of personal judgment and intuition derived from personal experience; and that it appreciates the problem of values, of a criterion of weighing interests or expectations, as one lying behind the whole process of recognition of delimiting and securing interests, of making or finding and shaping legal precepts, and applying them when made or found."



**FOR DEAN POUND**  
there were coffee and doughnuts  
and an attentive audience