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ESSAYS IN JURISPRUDENCE IN HONOUR OF ROSCOE POUND. Prepared by The American Society for Legal History. Edited by Ralph A. Newman. – MR. DOOLEY REMEMBERS: THE INFORMAL MEMOIRS OF FINLEY PETER DUNNE. Edited With An Introduction and Commentary by Philip Dunne.

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Book Reviews

ESSAYS IN JURISPRUDENCE IN HONOUR OF ROSCOE POUND. Prepared by The American Society for Legal History. Edited by Ralph A. Newman. Bobbs-Merrill, 1962. Pp. 670. \$12.

In this monograph twenty-five distinguished lawyers contribute a testimonial to Dean Pound. It is a valuable and appropriate form of homage: one in which words can speak as loudly as deeds.

The essays vary in length from a bare five to over fifty pages, and, despite the editorial arrangement under three headings, there is a diversity just as marked in subject-matter. The sweep is a wide one, instance such titles as *Equity in Chinese Customary Law* (Wen-Yen Tsao), *On the Functions and Aims of the State* (Del Vecchio), *Wager of Law* (Plucknett), and *Legal Equality of Husband and Wife and the Child's Welfare in Private International Law* (Muller-Freienfels).

For this reason the book presents something of a problem to your reviewer. It would be impossible, within respectable confines, to review all twenty-five contributions, and moreover your reviewer is undistinguished enough to be able to admit to a limited expertise in such areas as Chinese customary law. This does not, of course, stifle interest, and certainly Wen-Yen Tsao's essay is interesting enough. Those of us who detect a certain caprice in equity would do well to read how a Chinese court divined the intention of a testator two thousand years ago (p. 41).

The book, then, is one which may be opened at any page, and a recommended start would be at p. 151 where there is an entertaining and profound study of the concept of right by Olivecrona. His conclusion that with the word 'right,' as with the word 'pound' or 'dollar,'—

The essential thing is to distinguish between *the question of truth* and *the question of conformity with legal and social rules*.—

is an important one, and one which is, by him, carried with conviction.

There is a valuable contribution by Kahn-Freund (at p. 362). Advocating, as Pound has done, more attention to the comparison of English and American law, his own comparison of aspects of family law is a model of its kind. He carries Pound's thesis that it is not enough to compare the laws themselves without their operation in society; a lesson which, as his essay shows, courts have just as frequently forgotten as comparativists. Decisions, especially within the common law framework, have consequences.

Valuable also is Glueck's essay, *Toward Improved Sentencing* (p. 410). He has, of course, expressed similar ideas before but, as Dean Griswold observes in his introduc-

tion, "Some ideas are fully worthy of repetition." When so much progress has been made in this century it is sad to reflect how little has been made in the treatment of criminals. But the criminologist is due to have his day.

And there is much else. There are scholarly contributions by Stein and Cohn, and Castejon's essay contains at least one revelation your reviewer found startling. Inevitably, not all the essays are of the same standard and some your reviewer found just plain fare. There is, however, a full menu from which to choose.

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MR. DOOLEY REMEMBERS: THE INFORMAL MEMOIRS OF FINLEY PETER DUNNE. Edited With An Introduction and Commentary by Philip Dunne, Little Brown and Company, Boston, Massachusetts, 1963, \$5.95, pp. 307 and "MR. DOOLEY ON THE CHOICE OF LAW." Introduction by Roscoe Pound, 1963. The Michie Company, Charlottesville, Virginia, \$4.95, pp. 231.

1963 will be long remembered as the year in which four new books on "Mr. Dooley" were published.

The two above are the first books on Dooley in hard covers since Elmer Ellis, now the President of the University of Missouri published his *Mr. Dooley's America: A Life of Finley Peter Dunne*: (Alfred A. Knopf, 1941) and *Mr. Dooley At His Best* (Charles Scribner's Sons, 1938) although there are now two paper backs (*Mr. Dooley on Ivorything and Ivorybody*. Edited by Robert Hutchinson, One Dollar, 1963, 244 pages, Dover Publications, 180 Varick Street, New York 14, New York. It consists of reprints from six Dooley books. The other paper back is entitled *World of Mr. Dooley*. Edited by Louis Filler, 253 pages, 95 cents, 1963, Crowell-Collier Books (MacMillan) Fifth Avenue, New York, New York. It is broken up into categories and consists of several parts: some reprint Dooley pieces and others, editorials and articles written by Peter Finley Dunne in the American Magazine).

Philip Dunne's book is unusual in its organization. Philip, who adores his father, wanted him before his death to write an autobiography but Finley Peter Dunne had just read revolting details in the autobiography of H. G. Wells and refused. In lieu thereof, he agreed to write Philip some letters and give him permission to publish them after his death.

Philip Dunne's book, therefore, consists of five letters from his father: *On Biography and Related Subjects; On The Irish; On Warren G. Harding and Others; On Theodore Roosevelt*; and, *On Mark Twain*. Philip writes an Introduction and Postscript but before each letter, he also writes a "Commentary."

In addition, the book contains a selection of ten pieces of Finley Peter Dunne translated into English from the Irish dialect in which each was originally published.

I have seldom had a more enjoyable time than when I read this book. To Dooley and Dunne fans the world over, I heartily recommend it.

Because I have known three generations of them, I particularly enjoyed Finley Peter Dunne's tales about Irish Americans. Not only did he live when greenhorn Irishmen were a dime a dozen but what's priceless is that he appreciated their foibles.

For instance, there is the story of the murder of Carey who kept a "Pub," turned Queen's evidence and informed on the good men who murdered Lord Cavendish and his secretary Burk in Phoenix Park, Dublin. The Irish Americans were incensed that Carey should be rewarded by the British Government. They raised a fund of \$10,000 and from many candidates selected a lad named O'Donnell of St. Paul, Minnesota to do Carey in. The \$10,000 was to find Carey and, if O'Donnell were caught, to hire a lawyer.

O'Donnell took the train out of St. Paul but fell into a gang of card players on the train who fleeced him out of the whole \$10,000. O'Donnell sought help in Chicago and an Irishman, named Cusack, sent him to see Jack Shea of the Chicago Police Department. Shea "knew as any copper does, that, if a gang of cardsharppers works on a railroad train, they can only do it under the protection of the conductor, the brakeman and the railroad's Chief of Police." It's the same on boats where the split is with the steward, purser and captain.

Shea, immediately, sent "Grab-all Murnane" to bring in "this railroad dick," who was a German. While Shea had enough on the poor fellow to hang him, he was content to tell him that O'Donnell's money had been raised by the "Irish Invincibles" of Chicago and, if it were not promptly returned their long knives would shortly go into action. The railroad Police Chief "caved in completely" and assured Shea the \$10,000 would be returned by five o'clock. It was.

A month later, the papers reported that O'Donnell stepped up in front of the informer Carey, who was travelling through the Suez Canal on a "P. and O." boat under an assumed name, and shot him dead. O'Donnell was taken off the boat at Port Said and returned to Liverpool to be hanged. While O'Donnell looked like a fool, Dunne assures us "He was really quite an intelligent fellow and a brave one, but he was a thorough fanatic from Mayo, God help us."

As for Jack Shea, he assured Dunne that his recovery of the \$10,000 was not on his conscience. His attitude was that "political killings" were different. He hated the British and felt that "The beast Carey had to be killed."

To me one of the most amusing stories concerns Synge's play, *The Playboy of the Western World*. Lady Gregory brought the Abbey Players to produce the farce in New York. You will recall that the hero of the play is a hero because he was so good a fighter as to be able to murder his father who appears in bandages in the last act to join in the praise of his gallant son.

Dunne was a good friend of Lady Gregory and also of John Devoy, who ran the *Glan na Gael* and started the Gaelic American. Devoy and his followers regarded *Playboy* as an insult to the Irish and vowed to prevent its being performed in New York.

Lady Gregory demanded Dunne attend a performance and John Devoy demanded he keep away. Then Lady Gregory invited both Dunne and Theodore Roosevelt to

her box and dinner at the Hotel Algonquin. Dunne accepted, intending to slip away after the meal, but Theodore Roosevelt insisted that he attend. After dinner Teddy took a good grip on Dunne's arm and Dunne knew the jig was up.

Just as they emerged from the dining room, "a tall man wearing an enormous Stetson hat, a black frock coat and black trousers that covered but did not conceal, a pair of old fashioned high boots" ran up "to the Colonel, with two great hairy paws extended, and cried: 'Well, by the great horn spoon, Colonel Roosevelt.'"

As Dunne puts it, Teddy Roosevelt had few weaknesses, "but one of them was that he couldn't resist an invitation to shake hands with a man in a Stetson hat." As the Colonel said "Dee-lighted," he "let go" of Dunne's arm and Dunne was off like a flash into the night.

Dunne assures us "the riot at the theater came off according to schedule and was highly satisfactory to all concerned. A few potatoes and onions were thrown at the male members of the company and one reckless patriot nearly obscured the gaiety of nations by hitting one of the best of modern Irish comedians, Joe Kerrigan, on the ear with an Ingersoll watch fired at close range. But most of the rioting was declamatory or musical in its nature." Reminds one of negro sit-in demonstrations.

The police came "whereupon the ladies of the company" urged their compatriots to "destroy the peelers." They also made faces at the police, "all Irishmen in complete sympathy" with the riot they were suppressing. After the riot Lady Gregory started the play all over and played it to the finish.

Since it is now almost 125 years since my Irish ancestors had the colossal courage to leave Ireland during "the big wind" (the potatoe famine of 1839) for America, it is hard for me to realize how tough, rough and blood thirsty the Irish of yesterday were. It was brought sharply home to me one day at St. Francis Xavier Church on West 116th Street, New York. A great priest, Monsignor Drew, who has spent his life working in Harlem among the negroes and Porto Ricans, pleaded with the Xavier Sodality, a distinguished group of successful men, for charity and understanding of the race problems of our day. He did it by reading a petition to the Board of Aldermen of the City of New York filed about 1850 depicting how knifings and muggings by the Irish on 14th Street, Manhattan made walking there day or night a great danger.

The Irish of that period were highly nationalistic. Dunne says Richelieu Robinson, a Brooklyn Congressman met John F. Finerty, a Representative from Chicago one day on the steps of the Capitol. "Anything going on inside, Jawn?" said Richelieu. "No," replied Finerty. "Nothing but some damned American business."

But the story of Dunne's I love the best is the Irish peace meeting that Judge Morgan J. O'Brien attended "in a hall in Lafayette Street." The hall was packed. Miles O'Brien, who had strong friends in both factions was chosen Chairman. Ex-Mayor Grace, Eugene Kelley, Joseph O'Donoghue and all the "H.T.I.'s" (High Toned Irish) of the time were there. Miles O'Brien had barely opened the meeting, then,

"a tall young man rose in the hall and said without being recognized by the Chairman. 'Mistur Chairman, I have listened to your speech with great interest. Ye spoke well and I suppose it is a good thing to get these gentlemen up on the stage who believe in conciliation to meet those of us that haven't the least faith in the world in British friendship. But I only wish to say this—that we'll have to come to force finally, and I tell ye now that under this very platform where these

friends of peace are sitting so comfortably, there is enough dynamite stored to blow both Houses of Parliament and the Bank of England to smithereens."

Dunne says that at once his friend William R. Grace "had a violent fit of coughing and walked off and didn't come back." O'Donoghue and Kelley followed and Miles O'Brien quickly adjourned the meeting. Morgan J. O'Brien followed Miles O'Brien to the stairs. At "the head of the stairs, a big man stepped out of the crowd and hit Miles O'Brien over the back of the head with a lead pipe. Miles pitched forward down the whole flight of stairs and Morgan J. O'Brien heard the voice of a man near him say angrily:

'What the hell did you hit that man for, ye omadhaun?

'Well, you told me to hit O'Brien, didn't you?

'Yes but that wasn't O'Brien. We wanted you to get Morgan O'Brien.

'Well,' said the other fellow sulkily, 'I done the best I could. How was I to know which O'Brien you wanted me to soak?'

Morgan J. O'Brien went off in a run, not stopping until he reached the Manhattan Club. Needless to say, thereafter he never again attended an Irish conciliation meeting.

Finley Peter Dunne was an Irish Catholic. His wife was a Boston Brahmin whose ancestors were buried in Mount Auburn. Dunne, himself, was not a practising Catholic. In fact, when once asked if he was a "Roman" Catholic, he replied "No, A Chicago Catholic."

Mrs. Dunne raised her children as "Proper Bostonians." Finley Peter Dunne only put his foot down when she entered Philip and a brother for Groton, abetted by Teddy Roosevelt. He did not want his nominal Catholic sons to be educated as Episcopalians. At the suggestion of President Eliot of Harvard he sent them to Middlesex, officially nonsectarian but "vaguely Unitarian." As Philip Dunne tells us "A man who never went to mass, himself, was in no position to provide his children with sound Catholic leadership."

It was one of his fears that when he died his friend Frank Garvan would give him a funeral at St. Patrick's Cathedral and before his death he warned Philip to save him from it. His letters to Philip were started after he had contracted cancer of the throat and he knew he did not have long to live. He died at age 69 in California in 1936 and the family brought him home to New York for burial.

When they arrived, Frank Garvan had arranged for "a Solemn High Mass of Requiem in St. Patrick's Cathedral." "Half of New York was there" including certain "scoundrels and bores" he detested but also a "host" of his good friends.

Philip tells us it was "a very long service," made longer by his ignorance of the "ritual" and his not "knowing when to sit, stand or kneel." He "stood at attention throughout the service, this seeming to me the most respectful attitude."

As Philip came out of St. Patrick's, Judge Morgan J. O'Brien, then "in his eighties" came up to him and said:

"'Well', he sighed, 'Peter spent more time in church today than he did in all the years of his life.'"

There is much more that is good in this book. Philip, with his love for his father, would have us believe that even if his father had not inherited over half a million dollars from Payne Whitney, he would not have continued to write "Mr. Dooley" stories.

He maintains the statement of a friend that the Whitneys "ruined Peter as a writer and made him half a millionaire" is "false." He attributes his father's lack of production to his poor health, to his running out of "appropriate subjects" and "the world itself's" moving out of Mr. Dooley's purview.

You can believe this if you wish but I fear the bitter statement of Dunne's friend is true. The Irish like every other human are fundamentally lazy and Philip is honest enough to say that when his father did not "need the money he found it hard to write."

But in all this, let us not undersell Payne Whitney. Before his legacy "every penny" Dunne "possessed he earned himself." In 1918 he was Editor of *Collier's Weekly*, succeeding Mark Sullivan. That year Robert Collier died and left the magazine by will to Peter Finley Dunne, Payne Whitney and Frank Garvan. But unless the magazine were included, there would not be enough in Bob Collier's estate for Mrs. Collier. The three friends promptly refused the bequest and turned the magazine over to Mrs. Collier. For Peter Finley Dunne, this "represented an enormous sacrifice" and Payne Whitney's legacy to Dunne was in part I am sure, to repay him.

Despite my obvious enjoyment of Philip Dunne's book, I would be remiss in my duty as a Professor, if I did not find fault with it.

To begin, the book does not concern "Mr. Dooley" but "Mr. Dunne." Philip Dunne loves his father and his book reflects it. I am not sure Philip Dunne knows "Mr. Dooley" at all.

In the second place, the tone of the book and the presentation of "Mr. Dooley" in English, is bound to give the impression that Philip, like his mother, is a Boston Brahmin ashamed of his father's people and their Irish brogue and bad manners.

Donald Stanley, the Book Review Editor of the San Francisco Examiner states that "nothing" has caused Philip so much "discomfort" as the ten pieces of his father at the end of the book which he translated from the Irish dialect into his Boston or Hollywood English.

He says that readers have accused him "of everything from trampling on my father's grave to trying to rewrite American literature." Philip maintains this is all "nonsense" and that "in going through some of (his) father's papers, (he) found that he had been working on translating some of the stuff himself."

Such criticism was inevitable. Philip is not Irish. He does not know when to stand up or sit down at mass. He writes screen plays, including *The Late George Apley*, *How Green was My Valley*, *Pinky*, *The Agony and the Ecstasy* and *Ten North Frederick*.

For him to tell us Dooley fans to read him otherwise than in an Irish brogue, is like asking us to sing "Adeste Fidelis" or the "Marseillaise" in English. As left footed half-Irish, the Dunnes had better give up asking that their father be read with a Boston Back Bay accent.

My third adverse criticism is that Philip Dunne's commentaries are not well edited. They are repetitive. In addition he doth protest too much. Not only about his father's failure to write more but also about his social work among the rich and his calling "Teddy Roosevelt," "Tiddy Rosenfelt."

No one who knew Finley Peter Dunne would ever think he meant to be anti-semitic

by this. Greenhorn Irish doubtless said "Rosenfelt." The idea that a fellow bursting with Anglo-Saxon blood like Teddy Roosevelt could be called "Rosenfelt" is, itself, pro-semitic. After all, how many people today pronounce Teddy's name correctly as "Rōōsevelt" with the accent on the two "o's" in contradistinction to F.D.R. whose name is pronounced "Rose-velt" as if spelled with one "o"?

My fourth criticism is that Philip's book has no index and no glossary explaining the few Irish words he has in it, such as "omadhaun."

These are, I suppose, minor criticisms but we Dooley fans are like Gilbert and Sullivan fans and, indeed, like Peter Finley Dunne when he wrote: "Mr. Dooley"—perfectionists and sticklers for "the real McCoy."

As good as and as enjoyable as *Mr. Dooley Remembers* is, Edward J. Bander's *Mr. Dooley On The Choice of Law* is better.

This book concerns "Mr. Dooley" and "Mr. Dooley" alone except for "Hinnissy" and "Hogan."

What's best about it, is that it is keyed to the lawyer and the law student.

To begin with it is dedicated "To The Kennedy Administration" with the prayerful wish that it "Have More Dooleys Than Hennessys."

Published shortly before the President's death, the author sent a specially bound leather copy to President Kennedy, receipt of which was acknowledged by Mrs. Kennedy after his assassination.

Edward J. Bander writes a "Preface" and Roscoe Pound an "Introduction."

But the value of Bander's book lies in the organization and selection of the Dooley pieces.

Readers of the *American Bar Journal* will recall that in the January 1959 issue (45 *American Bar Journal* 95) there was published a sample of "Words and Phrases by Mr. Dooley."

For instance:

DE MINIMIS CURAT LEX. "niver steal a dure-mat," said Mr. Dooley. "If ye do, ye'll be invigatged, hanged, an' maybe rayformed. Steal a bank, me boy, steal a bank."

JUDICIAL TEMPERAMENT. "If I had me job to pick out," said Mr. Dooley, "I'd be a judge. I've looked over all th' others an' that's th' on'l wan that suits. I have th' judicyal timperamint. I hate wurruk.

MARRIAGE AND DIVORCE. In my heart I think if people marry it ought to be f'r life. Th' laws ar-re altogether too lenient with thim.

PUBLIC POLICY. A Mormon, Hinnisay, is a man that has th' bad taste an' th' religion to do what a good many other men ar-re restrained fr'm doin' be conscientious scruples an' th' polis.

SUPREME COURT. It niver gives a decision till th' crowd has dispersed an' th' players have packed their bats in th' bags an' started f'r home.

[N]o matther whether th' constitution follows th' flag or not, th' supreme coort follows th' illicion returns.

There follow selections of Mr. Dooley's pieces that lawyers and law students appreciate more than others.

Under "Mr. Dooley At Court," Bander collects: articles on "Trial Practice—Civil and Uncivil," "Appellate Practice"; "Constitutional Law—Mr. Dooley Speaks for the Supreme Court"; then follow these categories: "Mr. Dooley on Administrative Law,"

"Mr. Dooley on International Law"; "Politics—A Branch of The Law"; "Relaxation—A Yacht Club Says Mr. Dooley, Is an Association of Lawyers."

As a last selection, Bander includes: "Mr. Dooley Imitated—"A Good Manny People R-Read Th' Ol' Sayin': Larceny Is Th' Sincerest Form iv Flattery."

And at the very end of Bander's book, you will find a glossary and an index.

The strength of Bander's book is his selection and his retention of "Mr. Dooley" in the Irish dialect. The contrast between Bander's book and Philip Dunne's in this respect is striking. Bander loves "Mr. Dooley" and his book is devoted entirely to him. Philip loves his father.

When Dooley was first published, he came out in many papers and magazines and when he was published in book form, in many books. What Bander has done is to cull from these many sources, the pieces most likely to interest the lawyer and the law student. Though not Irish at all, Bander has a rare appreciation of the Irish dialect and insists upon retaining Dunne's pieces in the language in which he wrote them.

If I have any adverse criticism, it is that the glossary is not complete. In another edition, it should be made so. Us Irish know how the Greenhorn Irish say "equal" but if you don't know it, you need a glossary at the back of your Dooley book to guide you.

The "Imitations" I do not like. The only imitation of Mr. Dooley that I have ever read that I believe to be top-notch is the piece by James Marsh of the Philadelphia bar in "The Shingle" for June 1957 upon which I commented in the June 1958 *American Bar Association Journal* (44 A.B.A.J. 585-586). I weep that Bander did not include it.

Actually, my complaints about both Dunne's and Bander's books are minor. It is a privilege and a pleasure to welcome *Mr. Dooley Remembers* and *Mr. Dooley On the Choice of Law* to the distinguished company of Elmer Ellis's two books.

"Mr. Dooley" belongs to the ages. And no lawyer worth his salt can live and practice in ignorance of him. As for law students, we must not let them in law schools, if they do not know and appreciate "Mr. Dooley" and "Hinnissy."

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