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# THE ADMINISTRATION OF JUSTICE A CENTURY AFTER ROSCOE POUND: FUTURE DIRECTIONS AND EMERGING TRENDS

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The American Bar Association in 1906 was not prepared for Roscoe Pound's address challenging the status quo. Presiding over the twenty-ninth annual meeting of the Association in Minneapolis, George R. Peck of Illinois, the Association president, introduced Dean Pound on August 29, 1906, to present his paper *The Causes of Popular Dissatisfaction with the Administration of Justice*.<sup>1</sup> One can imagine the hush that must have fallen upon that hall in Minneapolis while Pound critiqued the American justice system—the very system in which those gathered as representatives of the American legal elite had prospered. Indeed, when asked merely to publish the remarks Pound offered, those in attendance debated with some solemnity whether it was appropriate to circulate “an attack on the entire remedial jurisprudence of America.”<sup>2</sup> Pound defended himself by making clear that he would “disclaim emphatically a great many of the statements that have been quoted here as emanating from me.”<sup>3</sup> After this spirited debate, the Association agreed to publish the paper by recognizing that printing did not endorse the substance of the paper.<sup>4</sup>

Why did the remarks of this little known law dean from out-of-

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1. AMERICAN BAR ASSOCIATION, REPORT OF THE TWENTY-NINTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 11 (1906) (recounting the proceedings but not reprinting the speech); see also Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 AM. L. REV. 729 (1926) (containing Pound's actual address).

2. AMERICAN BAR ASSOCIATION, *supra* note 1, at 63 (remarks of M. A. Spoonts).

3. *Id.* at 59–60 (remarks of Roscoe Pound).

4. *Id.* at 65 (remarks of Seneca N. Taylor).

the-way Nebraska generate such controversy among the giants of the profession? Speaking in the midst of the Progressive Era, Pound offered critiques of a legal system that endured in a world undergoing rapid transformation. The criticisms of antiquated and formalistic pleading, a sporting theory of justice, judges beholden to political gamesmanship, and costly processes, were borne of a time when developing theories suggested that empirical data, scientific theory, and rationality would solve the problems facing society. Through study and adaptation, better systems could be developed for more efficient and effective services. This was a time when the weaknesses of social Darwinism, as embodied in the laissez faire doctrine endorsed by the Supreme Court of the United States in *Lochner v. New York*,<sup>5</sup> were being exposed and rooted out. Change was in the air, and Pound's address to the staid establishment of the American Bar Association was received as a shot across the bow.

To understand the implications for our time, some comparisons between now and a century ago might be in order. Upon reflection, it is apparent that the changes underway in 1906 might have comparables today, at least in scope and effect, for how society is organized and operates. Just as society was transforming itself a hundred years ago—creating an environment for change as noted by Dean Pound—we can see similar evolutions underway in society today from which opportunity exists to create change and reform that may be essential, if not inevitable.

It is always appropriate to begin with some basics. In 1906, manifest destiny was not quite complete as there were forty-five states in the Union; Alaska, Arizona, Hawaii, New Mexico and Oklahoma had not yet been admitted.<sup>6</sup> The Nation's population was about eighty-five million in 1906,<sup>7</sup> whereas we welcomed our three-hundred millionth American in 2006.<sup>8</sup> This dramatic increase in population affected more than the mere size of the country. For example, sixty

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5. 198 U.S. 45, 57 (1905).

6. Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat. 4 (admitting Hawaii); Act of July 7, 1958, Pub. L. No. 85-508, 72 Stat. 339 (admitting Alaska); Act of June 20, 1910, Pub. L. No. 219, 36 Stat. 557 (admitting Arizona and New Mexico); Act of June 16, 1906, Pub. L. No. 234, 34 Stat. 267 (admitting Oklahoma).

7. The Census Bureau estimated the U.S. population on July 1, 1906 to be 85,450,000. POPULATION DIVISION, U.S. CENSUS BUREAU, HISTORICAL NATIONAL POPULATION ESTIMATES: JULY 1, 1900 TO JULY 1, 1999 (2000), <http://www.census.gov/popest/archives/1990s/popclockest.txt>.

8. Press Release, Office of the Press Secretary, Statement by the President on U.S. Reaching 300 Million Population Milestone (Oct. 17, 2006), <http://www.whitehouse.gov/news/releases/2006/10/20061017-8.html>.

percent of the population in 1906, or approximately fifty-one million Americans, lived in rural areas.<sup>9</sup> In 2006, the number of Americans living in rural areas was about the same, sixty million, but those country denizens made up only twenty percent of the population.<sup>10</sup> This shift in population reflects a major transformation that was just crystallizing a century ago—the urbanization of America and its dramatic impact on economy, lifestyle, and social interaction.

In 1906, most people lived without proximity to others, used what they produced, and raised their own food—there was no mass consumer society as we know it today. Most people were largely self sufficient—fulfilling their needs with what they could make. Publication of *The Jungle* by Upton Sinclair, detailing the weaknesses and hazards of mass produced food products,<sup>11</sup> created a stir in 1906 because the masses were not yet exposed to the ramifications and necessity of consumer goods. Contrast these circumstances with 2006 when the mall is the gathering place of choice, consumerism is touted as patriotic, and food poisoning outbreaks from fast food chains barely raise an outcry from the public and their elected representatives. *Fast Food Nation*<sup>12</sup> and *Super Size Me*,<sup>13</sup> not to mention *An Inconvenient Truth*,<sup>14</sup> reflect the development and consequences of mass production to feed our modern consumerism, with the concomitant risks in the chains of distribution simply being accepted as a byproduct of modern life.

Our modes of transportation and communication likewise have changed dramatically. It was in 1906 when the Wright Brothers were granted the patent request for their flying machine.<sup>15</sup> Today, the world economy depends not just on intercontinental and transoceanic flight

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9. U.S. CENSUS BUREAU, UNITED STATES SUMMARY: 2000, 5 (2004), available at <http://www.census.gov/prod/cen2000/phc3-us-pt1.pdf>.

10. *Id.* at 9.

11. See generally UPTON SINCLAIR, *THE JUNGLE* (Dover Thrift Editions 2001) (1906) (detailing the weakness and hazards of mass produced food products). For a synopsis of the book, see [enotes.com](http://www.enotes.com), *The Jungle*: Introduction, <http://www.enotes.com/jungle> (last visited Apr. 19, 2007).

12. See generally ERIC SCHLOSSER, *FAST FOOD NATION* (2001) (discussing the effects and developments of the mass production of fast food). For a synopsis of the book, see Press Release, Houghton Mifflin Company, *Fast Food Nation*, [http://www.houghtonmifflinbooks.com/booksellers/press\\_release/schlosser](http://www.houghtonmifflinbooks.com/booksellers/press_release/schlosser) (last visited Apr. 19, 2007).

13. See generally *SUPER SIZE ME* (Morgan Spurlock and The Con 2004) (examining the health effects of fast food). For a synopsis of the movie, see *Super Size Me: A Film of Epic Portions, About the Movie*, <http://www.supersizeme.com> (follow “About the Movie” hyperlink) (last visited Apr. 20, 2007).

14. *AN INCONVENIENT TRUTH* (Lawrence Bender Productions 2006).

15. U.S. Patent No. 821,393 (filed Mar. 23, 1903) (issued May 22, 1906).

but on an aviation industry that produces jets so enormous that they are unable to use existing facilities—such as the new Airbus A380 which is too large for standard jetways, runways, and terminals.<sup>16</sup> The interstate highway system that enables our contemporary mobile society provides pathways for some 241 million registered vehicles;<sup>17</sup> whereas the Model T was still under design by Henry Ford in 1906,<sup>18</sup> and horses were the predominant mode of transportation. Less than ten percent of American homes had telephones in 1906;<sup>19</sup> whereas a hundred years later, there are over 150 million cellphones in use by Americans<sup>20</sup> and most homes have a landline phone. Concerns today are about too much information, not too little.

Changes in health care likewise demonstrate the dramatic changes afoot over the past century. In 1906, life expectancy in America was less than fifty years.<sup>21</sup> A hundred years later, life expectancy exceeds seventy-seven years.<sup>22</sup> Whereas almost all births occurred at home in 1906—only some five percent of all births were in a hospital—almost none occur at home today.<sup>23</sup> Also, the American Medical Association's specially developed and published "minimum and ideal curriculum standards for medical schools" were only a year old in 1906;<sup>24</sup> today, all medical professionals—doctors, nurses, therapists—are highly educated, credentialed, and licensed.

Perhaps most dramatic, the average annual wage for Americans

16. Noelle Knox, *A380 Makes Massive Debut*, USA TODAY, Jan. 16, 2005, at 3B.

17. FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, STATE MOTOR-VEHICLE REGISTRATIONS: 2005 (2006), <http://www.fhwa.dot.gov/policy/ohim/hs05/pdf/mv1.pdf>.

18. See Fontenac Motor Company, *The Ford Model T: A Short History of Ford's Innovation*, [www.modelt.ca/background-fs.html](http://www.modelt.ca/background-fs.html) (last visited Apr. 20, 2007).

19. See Harvey Tobkes, *America, In 1906*, <http://tobkes.othellomaster.com/archives/2006/12/15/america-in-1904> (last visited Apr. 20, 2007).

20. Press Release, U.S. Census Bureau, *U.S. Cell Phone Use Up More Than 300 Percent*, Statistical Abstract Reports (Dec. 9, 2004), <http://www.census.gov/Press-Release/www/releases/archives/miscellaneous/003136.html>.

21. Elizabeth Arias, *United States Life Tables, 2001*, 52 NAT'L VITAL STAT. REP., Feb. 18, 2004, at 34 tbl. 12, available at [http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52\\_14.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_14.pdf).

22. National Center for Health Statistics, Center for Disease Control, *Life Expectancy*, <http://www.cdc.gov/nchs/fastats/lifexpec.htm> (last visited Apr. 20, 2007).

23. See *Midwifery Today, The History of Midwifery and Childbirth: A Time Line*, <http://www.midwiferytoday.com/articles/timeline.asp> (last visited Apr. 20, 2007) (statistics for 1900); UpToDate, *Home Birth*, <http://patients.uptodate.com/topic.asp?file=labordel/15656> (last visited Apr. 20, 2007).

24. American Medical Association, *AMA History 1900 to 1920*, <http://www.ama-assn.org/ama/pub/category/1924.html> (last visited Apr. 20, 2007).

in the early twentieth century was only slightly above \$500,<sup>25</sup> which reflects the rural, self-sufficiency of the times. Some one hundred years later, with a more urbanized, consumer oriented society, the average annual wage is approximately \$37,000,<sup>26</sup> which requires payment of all the accoutrements of modern life—food, shelter, clothes, education, and entertainment. The development of mass credit, which essentially did not exist a century ago, makes modern life possible.

The world in which Pound was living was undergoing dramatic transformation with developing social and cultural patterns forging new economic and lifestyle structures. These changes required new approaches to the developing needs of society. Pound's speech offered challenges to create these new approaches in a manner consistent with the prevailing tenets of Progressive theory—logic, science, and rationally. No problem was too difficult that it could not be identified, studied, and solved. The changing world needed only to be analyzed so that rational solutions could be developed and deployed to understand, master, and improve the changing circumstances. If the nation needed mass produced food, the Pure Food Act of 1906<sup>27</sup> would cure the ills that Upton Sinclair exposed in *The Jungle*.<sup>28</sup> If modern life required greater mobility, mass-produced automobiles would provide accessibility to transportation for the population moving out of the rural areas. If workers were needed in urban factories, conditions and wages would be established to promote safe and efficient production systems.

Likewise, American jurisprudence would respond to Pound's admonitions with modern rationality. Over the next decades, a number of innovations were established to address the challenges to American justice that prompted Pound's critique. For example, merit selection of judges developed in the early years of the twentieth century to diminish the participation of judges in political matters.<sup>29</sup> The Federal Rules of Civil Procedure and other codified reforms to federal and state procedures and processes were adopted to diminish antiquated pleading systems. Central administration of court systems

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25. See DAVIS R. DEWEY, REPORT ON EMPLOYEES AND WAGES liii (1903).

26. Social Security Online, AWI Development, 1985 & Later, [www.ssa.gov/OACT/COLA/awidevelop.html](http://www.ssa.gov/OACT/COLA/awidevelop.html) (last visited Apr. 20, 2007).

27. Pure Food and Drug Act, Pub. L. No. 59-384, 34 Stat. 768 (1906) (repealed 1938).

28. See generally SINCLAIR, *supra* note 11 (discussing the poor sanitary conditions at food manufacturers).

29. White Paper Task Force, *The Case for Judicial Appointments*, 33 U. TOL. L. REV. 353, 360 (2002).

and even a building for the Supreme Court reflected a new-found respect for and professionalization of the judicial branch and the justice system. Alternatives to traditional forms of litigation were designed to diminish the cost of legal services and enhance access to dispute resolution.<sup>30</sup> Ethical rules for lawyers and judges were adopted to lessen the gamesmanship that had come to dominate the adversary system of justice and reassure the public that high standards would animate the American system of justice.<sup>31</sup> Organizations like the American Judicature Society and the American Law Institute were established to bring modern, rational approaches to the development of effective law making.<sup>32</sup>

These reforms had significant impact in how the law was practiced and how legal policy was made throughout the twentieth century. Indeed, it is hard to imagine the significant efforts that were involved in decreasing the cost and delay of litigation toward the end of the twentieth century without these earlier reforms. On the seventieth anniversary of Dean Pound's polemic in 1976, Chief Justice Burger convened a gathering of America's leading judges and lawyers to ruminate on the progress since 1906 and to provide "systematic anticipation" for the future of American justice.<sup>33</sup> The Civil Justice Reform Act of 1990 might be seen as one of the results of just such attention.<sup>34</sup> Certainly the centralization of state court systems and the adoption of merit selection in several states in the 1960s and 1970s can be credited to the reformers' efforts earlier in the century. Pound may not have spelled out a precise agenda but his speech certainly can lay claim to encouraging these concrete improvements to the administration of justice.

It is surprising that the centennial of Pound's address has come not with a bang but with a whimper. Anniversaries, centennials in particular, are wonderful opportunities to celebrate achievements, to assess accomplishments, and to cajole further activity. Chief Justice Burger did not even wait for a Seventy-fifth Anniversary of Pound's speech, preferring instead to use the occasion of the nation's bicentennial to celebrate Pound on the seventieth anniversary of his

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30. *Dispute Resolution*, 88 YALE L.J. 905, 906 (1979).

31. See MODEL RULES OF PROFESSIONAL CONDUCT preface (2004).

32. American Law Institute, Creation of the Institute, <http://www.ali.org> (follow "About ALI" hyperlink) (last visited Apr. 20, 2007).

33. Warren E. Burger, *Agenda for 2000 A.D.—A Need for Systematic Anticipation*, in THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE 23 (A. Leo Levin & Russell R. Wheeler eds., 1979).

34. 28 U.S.C. § 471 (2001).

speech. Yet the centennial has come and gone with little attention to a speech that prompted much improvement to the nation's justice system. It is true that the Conference of Chief Justices devoted some attention to the occasion of Pound's centennial,<sup>35</sup> and the Massachusetts Bar Association used the centennial to convene a panel to discuss the future of justice in the Commonwealth.<sup>36</sup> Additionally, the South Texas College of Law's symposium must be recognized as a contribution. However, it still seems as though there was a missed opportunity for there was no significant convocation of judges, lawyers, advocates, scholars, public officials, business leaders, citizens, journalists and others to celebrate, assess, and cajole. After all, it is the beginning of a new century, there is a new young and vigorous Chief Justice,<sup>37</sup> and there are many issues confronting the justice system. Indeed, in terms of social and cultural phenomenon leading to new patterns of interaction and economy, we may now find ourselves at a time as ripe for change as that in which Roscoe Pound found himself a century ago. It is appropriate to recognize that change and wonder about its impact on how justice is administered a century after Pound and how it may be administered a century from now.

Perhaps the most pervasive development is the pace at which life is lived. In a century, we have evolved literally from the horse and buggy to instantaneous global communication. The presence of wireless communication, email, voicemail, and a host of other tools has encouraged an expectation of continuous accessibility, instant responsiveness, and constant availability. A 24/7 presence, whether in person or by distance, is prevalent throughout the global economy where 'round-the-clock work hours allow constant attention and updating. In this environment, work can be efficiently and contemporaneously performed in London, New York, Singapore, Calcutta, Sydney, or anywhere else on the globe. Innovation tends to further diminish the time it takes to accomplish things with moments being increasingly measured in nanoseconds. There is no down time when everyone, everywhere is accessible for the next phase of involvement on a project. This goes not just for business and commerce but also for all other activities with education, recreation,

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35. See Indiana Law Journal, Other Events, <http://www.law.indiana.edu/ilj/events/others.shtml> (last visited Apr. 20, 2007).

36. Roscoe Pound's "Dissatisfaction with the Administration of Justice" Speech Still Resonates on 100th Anniversary, MASS. BAR ASS'N LAW. J., Dec. 2006, at 21.

37. United States Supreme Court, The Justices of the Supreme Court, <http://www.supremecourtus.gov/> (follow "About the Supreme Court" hyperlink; then follow "Biographies of Current Justices" hyperlink) (last visited Apr. 20, 2007).

and celebration capable of joinder at any time, from anywhere.

Under these circumstances, when interaction is always available and expected, the pace is bound to be frenetic. Work and play become intermingled—with boundaries low and expectations high. It is a challenging atmosphere for more deliberative activities, which function most effectively and efficiently without time constraints. Judicial decision making, lying at the heart of the administration of justice, is just such an activity: deliberative in nature, heavily dependent on collegiality, thoughtfulness, and reflection. It is apparent then, that the pace of change runs counter to the core components of the judicial process by which courts resolve disputes in our justice system. It is worth contemplating whether courts can remain competent in a time of rapid change, especially when that change is only going to continue to accelerate. Looked at differently, the question may be whether the deliberative process can remain relevant when innovation and change occur in the blink of an eye. Certainly changes to the judicial process to ensure a responsiveness that is consistent with the pace of society are appropriate and timely. It remains to be determined how those accommodations can be made.

The changes in pace have been made possible by the rapid advances in technology. Of course the information age is borne on the back of technology: from the ubiquity of the personal computer and Internet to the increasingly pertinent understanding of genetics. We have witnessed the explosion in efficiency and productivity through the adaptation of technology to replace human endeavors. Robotics on the production line are a common deployment of the technological trends but are really just the tip of the iceberg. The potential for humanesque artificial intelligence, resulting from technological innovation, remains a real possibility as technology affords increasing potential in the fields of medicine, genetics, engineering, and elsewhere.

If we now live in a time when drones undertake a variety of our physical and mental work, and we can envision even greater overlap of the technological with the human, why should we imagine that judging is exempt from the realm of technological innovation? As the core component of the administration of justice, judicial decision-making is carried on today in much the same way it was exercised a century ago. Apart from email connecting chambers, personal computers speeding some evidence demonstrations, and many disputes being resolved in nontraditional forums like administrative tribunals and mediation, isn't the judicial process strikingly the same today as when Roscoe Pound spoke to the American Bar Association

a century ago? The familiarity of the judicial process over time seems almost anachronistic—especially if one remembers Benjamin Cardozo’s assessment that nine out of ten cases must come out only one way.<sup>38</sup> If most cases have a result that is essentially preordained and if technological advances are supplanting human activity to enhance efficiency, wouldn’t it seem logical, if not inevitable, that the judicial process can be adapted to take advantage of the developing advances in technology and artificial intelligence?

Application of technology to judicial decision-making might contribute to eliminating some of the biases that remain throughout the justice system; the importance of this cannot be underestimated as changes in the demographic makeup of the American population are pervasive today, reminiscent of the urbanization transformation a century ago that resulted in the decline of the rural population. Today, demographic trends indicate that over the next five decades the current white majority will fall off and people of color will reach parity in terms of proportion of the population.<sup>39</sup>

In particular, the number and proportion of Hispanic Americans is anticipated to increase dramatically, while those of whites will likely decline proportionately.<sup>40</sup> This demographic shift will have significant ramifications for a justice system that is currently lopsided with a predominant number and proportion of white judges and white court staff.<sup>41</sup> Public opinion work already suggests quite clearly that different demographic groups retain significantly different views of the justice system—with persons of color holding more negative perceptions than whites about the fairness of justice dispensed.<sup>42</sup> As the demographics of the country change, it is worth considering whether a predominantly white court system offers justice to an increasingly diverse society.

In considering this development, it is worth recognizing that the values that have contributed to the development of the justice system in its current incarnation, such as the adversarial nature of the legal system generally—and of litigation specifically—and the hierarchical structure of the judicial process whereby judges dispense justice to

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38. BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 142–43 (1921).

39. U.S. CENSUS BUREAU, *U.S. INTERIM PROJECTIONS BY AGE, SEX, RACE, AND HISPANIC ORIGIN* tbl. 1a (2004), <http://www.census.gov/ipc/www/usinterimproj/natprojtab01a.pdf>.

40. *Id.*

41. AMERICAN BAR ASSOCIATION, *JUSTICE IN JEOPARDY* 42–47 (2003).

42. *Id.* at 43.

those coming before them, have their roots in the Anglo American system of jurisprudence. It may be that those increasingly present in American society do not share those values and the manners in which those values are actualized in the justice system as currently constituted. To be sure, some trends in the justice system, such as problem solving courts, tend to emphasize a more collaborative approach to decision making than traditionally found within the American judicial process.<sup>43</sup> As the amount of litigation diminishes and the trial vanishes,<sup>44</sup> the traditional judicial role may be forced to undergo more dramatic change than previously contemplated, and these changes may occur concomitantly with the demographic alterations.

With these various transitions underway, it certainly remains to be considered how to make the judicial process responsive to the demographic adjustments that we clearly see already impacting American society. We know that the legal profession is among the worst of the learned professions in accepting and accommodating people of color into positions of responsibility and authority, despite decades of attention and programmatic initiative designed to enhance the presence of those traditionally at a disadvantage in the profession.<sup>45</sup> Clearly it is appropriate for the profession to think far more creatively to attract, retain, and promote people of color in the profession at a time when the national demographics suggest the necessity of attracting more diverse practitioners if lawyers are to remain relevant and enhance their capacity to ensure that the justice system is fair and responsive to a changing society's changing needs.

In contrast to how the world a century ago revolved around a vary narrow piece of real estate that was in the midst of changing from rural to urban, today's world is characterized by the availability of and accessibility to global information and communication. Whether in sport or commerce, terrorism or fashion, the world in the twenty-first century is a very small place indeed. Regardless of whether our world continues to be round or is now flat, there is no doubt that modern conveniences have made information more accessible and useable to those in different parts of the world.<sup>46</sup> Social practices in one part of the globe now can easily be adapted for use in another. Business

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43. *Id.* at 40.

44. Hope V. Samborn, *The Vanishing Trial*, 88 A.B.A. J., Oct. 2002, at 24, 26.

45. Adam Liptak, *Lawyers Debate Why Blacks Lag at Major Firms*, N.Y. TIMES, Nov. 29, 2006, at A1.

46. See THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE 21ST CENTURY* (2005) (discussing the effects of modern advances in communications).

arrangements across continents are commonplace and can alter prevailing patterns of practice. Cultural understandings can influence developments in far away places, once remote and inaccessible.

The impact of globalization raises fundamental questions about the transmutability of notions of law and justice across continents and cultures. The recent controversies over the Supreme Court of the United States' use of foreign legal practices and norms demonstrate the impact of globalization in the development of legal and jurisprudential thought.<sup>47</sup> Harvard Law School's recent revision of its mandatory curriculum for law students to include topics of international law also reflects the impact of globalization at the beginning of the twenty-first century.<sup>48</sup> No longer relegated to the boutique law firm or the transnational corporate business, issues implicated by international law are becoming commonplace as globalization affects every aspect of our life, and thus our jurisprudence. Under these circumstances, the primacy of Anglo American traditions of law and justice will necessarily come under question as billions of Chinese, Indians, and others around the globe will have greater capability to plead their cases for justice from other perspectives. In this competitive environment, the priority of American notions of justice will be subject to serious assessment and consideration. It may well be that others have ideas that might allow for fuller accommodation and understanding as the world changes.

Perhaps the most fundamental transformation currently underway is the transition from an environment that spreads the risk by affording assistance broadly throughout society to a model based on individual responsibility whereby each person is in charge of their own well being. We all are familiar with the demise of travel agents, sales assistants, and customer service in favor of do it yourself travel arrangements, internet shopping, and computerized phone help. These trends reflect an emphasis on individual responsibility to the exclusion of collective assistance and community well being. These changes are not far removed from other more fundamental transitions such as individual retirement accounts, privatized social security accounts, and cafeteria health care plans replacing, respectively, defined benefit pensions, social security benefits, and health insurance. The emphasis on the individual's responsibility to care for

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47. See, e.g., Dana Milbank, *And the Verdict on Justice Kennedy Is: Guilty*, WASH. POST, Apr. 9, 2005, at A3.

48. Jonathan D. Glater, *Harvard Law Decides to Steep Students in 21st-Century Issues*, N.Y. TIMES, Oct. 7, 2006, at A10.

their own well being, without the assistance of expert organizations or shared risk, derives from the information we all have available through technological innovation but reflects a fundamental shift in how society is organized and operates.

In this environment where individuals are more empowered by access to information yet more vulnerable to the vagaries of forces that upset individuals, we see more pro se litigants taking advantage of widely accessible information so that they can promote their causes without the assistance of lawyers.<sup>49</sup> Yet there is no evidence that outcomes are any more positive or effective in this brave new world. Indeed, as courts continue to be organized and function primarily for those with legal training, it is unclear that those who seek the processes of the justice system without the expertise required by a centuries old institution and provided by years of education will be any more successful than they may be managing their own finances, arranging their own healthcare, or planning for their own retirement.

As the social adjustments promoting individual responsibility become more apparent, the implications for the justice system are at best challenging, at worst dire. Under this scenario for the justice system, a deliberative process operates in a fast paced, impatient environment and promotes certain outcomes for a population increasingly contemptuous of those managing the institutional arrangements and who have insulated themselves from global influences and cultural transitions that are changing the people for whom the system operates. Only by recognizing that change, a fundamental change, like the one that enveloped Roscoe Pound a century ago, will we be able to take charge of the justice system and find ways to improve its fundamental character. Once every century is time enough to look critically and make adjustments. We have reached that time and so it is appropriate to look to the future and think about what kind of justice we will be dispensing in fifty or 100 years. What will we think of Dean Pound's admonitions a century from now, or will we think of them at all?

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49. JUSTICE IN JEOPARDY, *supra* note 41, at 40–41.