

POUND'S CENTURY, AND OURS

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ABSTRACT

The centennial anniversary of Roscoe Pound's famous speech on the *Popular Causes of Dissatisfaction with the Administration of Justice* provides an occasion to look back at the procedural system that Pound successfully engineered, as well as to look forward to the ways in which the pressures that the system is undergoing in the early twenty-first century is likely to reshape Pound's vision. Pound argued for a highly discretionary procedural system in which cases were decided on their merits. The costs of that system have become apparent during the last few years. At present, the American litigation system is under severe competitive pressures from its encounters with foreign legal systems and from various methods of alternative dispute resolution. The costs of a system of discretionary rules have become clear, and legitimate questions exist whether judges should be entrusted with discretionary power to both create and apply procedural rules. Adversarial process, to which America are more committed than any other major legal system, poorly corresponds to the needs of complex litigation, as does jury trial. Yet we adhere to Pound's century-old ideal of a procedural system, rather than trying to find a new set of ideas in more recent jurisprudential scholarship that might lead the procedural system forward. This article raises a number of topics that might be considered in a future reform effort: merging the best of litigation and ADR, perhaps eliminating jury trial and excessive reliance on adversarial process, and making the procedural system fit better with modern jurisprudential ideals.

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