

Gal. 30 Judicial Process & Democracy 1763-R

THIS, I think, is the sort of book you have been hoping to find and savor. If you are already acquainted with Piero Calamandrei's personality or his works, you need no introduction; you know already what a rich store of pleasure he can concentrate in a few compact pages. But if you happen to be a stranger to his name and writings, it may be useful for me to hold you a moment and tell you briefly about him.

If Calamandrei were like most other lawyers, I should be happy to emphasize the strictly professional side of his accomplishments. It is true that he is a full professor of civil procedure at the University of Florence, that he is an extraordinarily successful practitioner, that he was a member of the Italian Constitutional Assembly and subsequently a member of the Parliament, that he has been president of the National Council of Lawyers, and—to put it as shortly as possible—enjoys an illustrious international reputation in the law and philosophy of civil procedure. Yet, when I have listed all these achievements, I have been telling you only about Calamandrei the expert, and Calamandrei the man remains to be described.

As you read *Procedure and Democracy*, you will notice not only flashes of humor and charm of style but also deep compassion and penetrating insight. In this book, Calamandrei expresses an intrepid democratic faith and a reasoned, discerning optimism. Nevertheless, as in everything else he has written, he gives us intimations and overtones of the tragic or pathetic side of human experience. While, for instance, he rebukes the kind of presiding judge who drifts into a state of inattention and somnolence, he simultaneously grieves with him over the inroads of advancing age and the tedium inflicted by long-winded lawyers. Sagely Calamandrei understands and compassionates the winners as well as the losers in this, our world.

I wish there were space here to write in detail about Calamandrei's humanism. Meeting him in person is a very impressive experience. How, one mutters, is it that this twentieth-century liberal jurist is able to embody the most cultivated and courtly qualities of the sixteenth-century Renaissance? Here in modern Florence he lives in easy companionship with the heroic minds of ancient Greece and Rome. Wearing his classical culture lightly and unobtrusively, he values the ancients as did our Henry Thoreau, who said "They only talk of forgetting them who never knew them. It will be soon enough to forget them when we have the learning and the genius which will enable us to attend to and appreciate them. . . . The works of the great poets have never yet been read by mankind, for only great poets can read them. They have only been read as the multitude read the stars, at most astrologically, not astronomically. Most men have learned to read

yet this only is reading, in a high sense, not that which lulls us as a luxury and suffers the nobler faculties to sleep the while, but what we have to stand on tiptoe to read and devote our most alert and wakeful hours to." This is authentic humanism.

But I must not give you the impression that Calamandrei has adopted the life of a cloistered scholar. That would be very misleading. On the contrary, he is a practicing lawyer through and through. The hourly and daily experiences of many years have endowed him with wisdom about courts, lawyers, clients, procedure, and justice. He brings his experience to whatever he writes or reads: just as reading can prepare one to do, doing and observing can prepare one to read. Practice is the great academy where—if anywhere—a lawyer may acquire discernment, sharpen insight, sensitize compassion, recognize mischiefs, concoct remedies, and learn to become aware when he approaches the edge of the possible.

To say that Calamandrei is humane and humanistic and lawyerlike does not provide an adequate picture—unless one notes also that he is devotedly *Tuscan*. I suppose every educated American reserves some special place in his affections for Florence and Tuscany, homelands of the mind and spirit. Yet grateful though we are for the cultural inheritance, we can scarcely hope to appreciate Tuscany as Calamandrei does; that would be exacting too much of ourselves. Consequently, I do not attempt to plumb the depth of our author's patriotism. Instead, I shall add an appendix to this introduction. The appendix will appear in Calamandrei's own words, and will consist of the apostrophe to Tuscany with which he concludes his *Inventario della Casa di Campagna*.¹ It tells of his love for the Tuscan landscape and

¹ Florence: Le Monnier (1941).

people, and it demonstrates—quite effectively, I think—why there is an old saying that Italian is the language of eloquence.

There are so many varied and penetrating insights in *Procedure and Democracy* that each reader may select his own favorites. For example, some students of comparative law will be attracted to the passages about the reforms and ideals of Cesare Beccaria, because Justice William O. Douglas of our Supreme Court has recently emphasized Beccaria's influence on Thomas Jefferson.²

² *Ullman v. United States*, 350 U. S. 412 (1956).

Other readers will discover, perhaps with astonishment, that the much-vaunted Continental system of "career judges" discloses serious drawbacks in practical application. On one page or another, there are perceptions enough to satisfy a multitude of interests. By way of example, let me mention only two of Calamandrei's many sagacious points.

In chapter V, with the boldness of a prophet, he compels us to face and recognize the single greatest obstacle standing in the path of procedural reform. What he has to say is brilliant, incontrovertibly true—and most disconcerting. The obstacle consists in the unpleasant fact that, *by and large*, lawyers do not trust one another, judges do not trust lawyers, and lawyers do not trust judges. Of course, there are a certain number of commendable exceptions; but law reform cannot thrive on exceptions. Calamandrei's generalization is completely valid, and as long as it remains valid, reform of procedure will be slow, sporadic, and insecure. Calamandrei's discussion of this problem presents a challenge to every judge and lawyer in the United States.

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