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Maynard E. Pirsig: Idealism in the Service of Judicial Administration

Charles W. Wolfram*

On the occasion of Professor Maynard E. Pirsig's retirement from the active teaching of law, it is particularly fitting for several reasons that some note be taken of his work in the field of judicial administration. He originated the course in judicial administration in 1934¹ at the beginning of his academic career as a member of the University of Minnesota Law School faculty. From this subject developed much that in the course of time has led to a national reputation for him in at least five other fields of legal service and scholarship—civil procedure, legal ethics, juvenile corrections, criminal law and arbitration. In addition, to take his measure in only one of these fields offers the best hope of doing justice to some part of his work within the scope of the present piece. Moreover, because of our shared interests in judicial administration problems and because I have recently had the good fortune to be able to sit in on the last classes that Professor Pirsig will teach in judicial administration, my credentials will be least suspect in that area.

The relatively short overlap of our respective tenures will confine me to the Maynard Pirsig that his students and some of his colleagues knew best—his published writings and his classroom lectures. I am thus unable, because of the incompleteness of my information, to canvass adequately the very great public service contributions, most of which have eluded publication, that Professor Pirsig has made to the ongoing task of improving the administration of justice.

In the almost 40 years that Professor Pirsig has labored at the Law School, during which time he has known almost every graduate in one or another of his classes, he has produced an amount of scholarship that could only laboriously and prematurely be reduced to a bibliography. It would be laborious because it would necessarily encompass, on a rough count, eight new or substantially revised editions of books, some 16 full-length articles, a number of monographs, several published symposium papers, and literally dozens of reviews. In addition, there is the great deal of his writings that has seen the light

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1. See M. PIRSIG, *CASES ON JUDICIAL ADMINISTRATION* viii (1946).

of day under comparatively anonymous authorships—from the opinions in 18 cases on the Minnesota Supreme Court, the voluminous commentary prepared as Reporter for what became the 1963 Minnesota Criminal Code,² his writings as a Commissioner of the National Conference of Commissioners on Uniform State Laws, as a member of the advisory Committee on Rules of Criminal Procedure in the federal district courts, as a member of the Governor's Crime Commission, and much more. That the preparation of a bibliography would be premature is proved by the fact that Professor Pirsig has at least two substantial works known to be in manuscript³ and doubtless will now redouble scholarly efforts that in the past have led to the compilation of one of the most significant records of scholarly production that Minnesota has ever witnessed. It is this assurance of continuing contributions from Professor Pirsig and the realization that a respite from heavy teaching responsibilities has been so well earned, that leads on balance to our welcoming his retirement.

In the preparation of this brief appreciation of Professor Pirsig's work in the field of judicial administration, his published writings and my notes of his class meetings have been reviewed with an eye to presenting the "essential" Pirsig. As this review progressed and as I attended Professor Pirsig's classes, however, an apprehension developed. It began to appear as if my previous notions of the types of problems to which a study of judicial administration would be addressed were really not shared by him in some important particulars. These differences seemed to center in the task of constructing at least zones of white, gray and black to divide the subject matter of judicial administration from that of legal ethics and jurisprudence on the one hand and from that of civil and criminal procedure and evidence on the other. The division would be necessary for my present purpose, because, among other things, Maynard Pirsig had also established widely recognized expertise in the field of legal ethics and civil procedure and I certainly did not want to take on more of the task of attempting to comprehend the man than I already had. After some thought and a bit of rearranging did little to dispel the apparent differences, my thought was to let the matter go and do without a common definition. But the problem of scope and definition continued to gnaw. Only slowly

2. See 40 MINN. STAT. ANN. x (1964).

3. See *Contributors to this Issue*, 54 MINN. L. REV. facing page 1 (1969).

did it occur to me that much more might be at stake than is typically involved in a theoretician's attempt to impose an artificial discipline upon intractable materials. What perhaps best crystallized the issue was encountering the following two statements, neither by Professor Pirsig, but each said in review of his casebook on judicial administration:⁴ "Fundamentally the concern of judicial administration is to create statesmen out of judges and lawyers . . ." ⁵ and

[t]his reviewer notes the absence of materials on a number of administrative topics, such as court budgets, the collection of fines and costs, expenditures, accounts, bail-bond practices, and other financial matters; the selection, classification and control of the subordinate personnel of the courts; dockets, records, and administrative reports; court libraries and research facilities; the provision of competent personal assistants for the judges; and court rooms and equipment⁶

Plainly enough, each reviewer is speaking to a different issue. But it is also fairly apparent that were the two writers each asked to classify the core concerns of judicial administration they would, if I may take their isolated statements as sufficient proof, take similarly widely varying viewpoints—the former largely idealized, the latter more mechanistic.

Fuller reflection prompts me to offer the former of these attitudes—the idealized, perhaps some would say the romantic, philosophy—as the essential character in Maynard Pirsig's 40 years and more of service to the administration of justice. Statesman-like, he has sought throughout to lead the judicial system by degrees, away from the barbarisms of its past, toward the fuller realization of its potential utility as a powerful force for decency. The search for improvements in the administration of justice has led him to the exploration of virtually any legal topic so long as it had some impact upon the way that lawyers and courts behave. The inquiry could lead to such apparently disparate subjects as the rules of evidence and of civil procedure,⁷ the quality of education in the law schools,⁸ many of the aspects of administrative law,⁹ and the like. While perhaps somewhat haphazard as a

4. M. PIRSIG, *supra* note 1. Garner, Book Review, 60 HARV. L. REV. 680 (1947), cautioned that ". . . [T]he specific gravity of the volume is very high"

5. Taylor, Book Review, 42 NW. U.L. REV. 410, 411 (1947).

6. Anderson, Book Review, 41 AM. POL. SCI. REV. 367, 368 (1947).

7. See, e.g., M. PIRSIG, *supra* note 1, ch. 4. Professor Pirsig's independent work in civil procedure is perhaps best represented by his two-volume text M. PIRSIG, MINNESOTA PLEADING (rev. 4th ed. 1956).

8. See M. PIRSIG, *supra* note 1, at 865-902.

9. *Id.* at 80-165.

"science," this conception of judicial administration as the entree to virtually any legal subject reflected more the initial and continuing instincts of a man whose humaneness is his most basic attribute.

Aspects of Professor Pirsig's early professional life suggest the sources of this instinct. From a time soon after his graduation from law school, Professor Pirsig was closely associated with the Legal Aid Society of Minneapolis and practiced rather extensively in local courts in behalf of impecunious clients. Forty years later, his memories of the treatment of his legal aid clients at the hands of a sometimes quite unsympathetic judicial system made a vivid impression on students whose social instincts, despite their youthful exquisiteness, were no more sensitive than his own. A second aspect will also be familiar to Professor Pirsig's students of judicial administration. During the early 1930's, he spent a happy and well-remembered year in London as clerk in the office of a solicitor. While quick to point out the defects in the solicitor-barrister arrangement of the English bar, Professor Pirsig also seemed to have carried away from his exposure a profound respect for the traditions of professionalism of the English bar. He has stated explicitly that the largely superior judicial system in England—with much less time, delay, cost, and more professional and public confidence in the results—is owed in large measure to the bar's habits and traditions. This could well have had a pervasive effect upon Professor Pirsig's future thinking about problems of judicial administration. For one under these influences, the problem of the improvement of the judicial system could become largely a problem of the improvement of the moral attitudes of the bar and the judiciary. Profoundly impressed with what he had experienced, he returned to his native state and has spent the intervening years of his professional career attempting to build a similar tradition, with a similarly just and expeditious judicial system.

Thus, perhaps, has it also come about that Maynard Pirsig has been acknowledged as an authority in both judicial administration and professional responsibility or "legal ethics." For Pirsig, as for others, the study of the workings of the judicial process leads inexorably, at some time or another, into a study of the role to be played by the lawyer in that system. This absorption of the scholar of judicial administration in the problems of professional responsibility is demonstrated in a graphic way by the 1949 printing of *Cases on Judicial Administration*

which contains as an appendix the collection of cases and materials that eventually appeared in a separate and expanded form in his 1957 work, *Cases and Materials on the Standards of the Legal Profession*. The author was careful in the latter work to point out, however, that this apparent divorce was dictated only by considerations of curricular convenience and was not to be taken as an indication that the study of matters of professional responsibility could be substituted for a course in judicial administration.¹⁰

Here, I think, lies the nub of what Pirsig believed to be the judicial system; here too is the point of greatest contrast between the "classical" thinking about the judicial system and modern, "systemic" thinking. For the classical mind—and for this purpose I would rank together such otherwise hardly compatible persons as Roscoe Pound, Jerome Frank and Maynard Pirsig—the ultimate answers to the problems thought to beset the judicial process were to be found in its personnel. At bottom, it was the judges and lawyers that manned the system that determined how well it would work. Perhaps as a result of this concentration, I believe it fair to say that Professor Pirsig disliked, and thus never fully came to grips with, the more mundane and technical problems of judicial administration. Not, of course, that he ignored them; in fact, there is a chapter on some problems of the mechanics of judicial administration in his casebook.¹¹ But that is just the point: one chapter out of eight, and at that a chapter that he typically did not assign or discuss.

In Professor Pirsig's classroom the emphasis upon the human elements in judicial administration was almost total. Such things as the mechanical operation of a local court system were completely ignored. Nor was it simply a question of an allocation of emphasis made necessary by the lack of sufficient time to cover all desired materials; for the words themselves made clear that most problems of judicial administration were simply a matter of educating the profession and instilling a will to reform. Easy steps lead from this concern with the role of lawyers in the adjudicatory process to their larger roles in advising clients and performing other out-of-court functions. In this area—variously called "professional responsibility" or "legal ethics"

10. M. PIRSIG, *CASES AND MATERIALS ON THE STANDARDS OF THE LEGAL PROFESSION* xi (1957).

11. M. PIRSIG, *supra* note 1, ch. 5.

—Pirsig attained his most recent and perhaps his most enduring fame.

Whatever else by way of the intrinsic persuasiveness of his exposition has made Professor Pirsig an authority on matters of judicial administration, certainly a major contributing factor was his service during 1942 as an associate justice of the Supreme Court of Minnesota.¹² His service as a temporary associate justice was necessitated chiefly by the exigent state of the court's docket at the time. Although he served for only three months at the end of the 1942 Term of the court, during that time he doubtless became much more aware of the workings and limitations of the appellate judicial system. At the same time he rendered 11 majority, three specially concurring and four dissenting opinions, some of which have become standards in their respective substantive fields.¹³ In addition, a number of his opinions reflect concern with appropriate appellate procedure and the relative roles of appellate and trial courts, persistent problems of appellate judicial administration.¹⁴

Justice Pirsig was by no means a timid judge. In fact, his first official words were filed by way of a dissenting opinion.¹⁵ This temperament of judicial independence was maintained throughout his tenure as attested, among other things, by his three special concurrences and four dissents. Of the 88 cases in which he cast votes, he registered six dissents and four special concurrences.

The topic most likely to stimulate dissent from Justice Pirsig was that of the proper functioning of an appellate court vis-à-vis

12. Pirsig was appointed associate justice of the Minnesota Supreme Court on October 6, 1942, to serve out the term of Associate Justice Royal A. Stone. Justice Stone had died before the end of his regular six-year term of office but after he and four other candidates had filed for the 1942 election. See *Enger v. Holm*, 213 Minn. 154, 156, 6 N.W.2d 101, 102 (1942). Justice Pirsig was not, of course, among the candidates. His term expired at the beginning of the 1943 Term of the supreme court on January 4, 1943.

13. Undoubtedly the most famous of these was Justice Pirsig's opinion for the majority in *State v. Northwest Airlines, Inc.*, 213 Minn. 395, 7 N.W.2d 691 (1942), *aff'd by a divided Court*, 322 U.S. 292 (1944).

14. See note 15 *infra*.

15. *O'Brien v. O'Brien*, 213 Minn. 140, 145, 6 N.W.2d 47, 50 (1942). In a "political" case in which he was clearly right on the law but apparently on the wrong side of the politics, Justice Pirsig rejected the notion that O'Brien's designation of himself on his certificate of nomination as a "Real Democrat" constituted an attempt to create a new political party.

the trial courts.¹⁶ Herein is something to be learned of his judicial administration thinking as applied to appellate courts. Basically, his position in dissent in these cases was that the trial courts must, of necessity, be entrusted with the day-to-day operation of the judicial system and that attempts by an appellate court to intrude their judgment on matters of no pervasive importance and upon which legitimate differences of opinion could exist would seriously undermine the working authority of the trial courts and place the appellate courts in the position of second-guessing the legion of trial judges on a myriad of issues. This attitude of relative restraint in reversing trial judges was paralleled by another dissent in which Justice Pirsig objected to the majority's insistence that an administrative body follow the analogy of judicial procedure with respect to giving notice to a person about to be affected by a proposed ruling.¹⁷ For many administrative purposes, methods may be appropriate that differ from those employed in the judicial process, notwithstanding their strangeness to traditional judges.

The lessons thus learned from life and in varied careers in the law were all focused in what an observer feels was the major occasion of Professor Pirsig's day, the class meeting with his students. For the student subjected in other classes to the perhaps nagging demands of the Socratic method rigidly applied, the class meetings with Professor Pirsig must have seemed like calm respite from a storm. Here the emphasis was not upon the elaborately reasoned development of doctrine—although sloppy thinking was always mildly reproofed. Instead, the inquiry was almost always normative: based upon the descriptive materials assigned for the hour, how should the system be improved? Professor Pirsig's classroom analysis was generally initiated by his recounting a personal experience from his wealth of memories of recent and past controversies in the administration of justice followed by a challenge to his students to devise a better method. The ultimate insistence was for a scheme of solutions that would more nearly approach an ideal accommodation of decency and efficiency. The approach was designed to emphasize and develop innovative and "legislative" skills. This doubtless reflected in part a belief that reforms in the legal system must largely come from agencies other than courts operating in their

16. The best of this genre is Justice Pirsig's dissent in *Czanstkowski v. Matter*, 213 Minn. 257, 267, 6 N.W.2d 629, 634 (1942).

17. *Juster Bros., Inc. v. Christgau*, 214 Minn. 108, 122, 7 N.W.2d 501, 509 (1943).

narrow judicial capacity in the decision of individual cases, although the operation of courts in their rule-making and administrative capacities were often encouraged as alternatives. The hope, one gathered, was that students thus equipped with a challenging attitude, a reformer's zeal for ideal solutions, and a full arsenal of possibilities for innovation would continue to confront the judicial system with the challenges to ever more humane conduct that alone will guarantee its continuing legitimacy.

Scholar, public servant, teacher, judge—in all of these capacities Professor Maynard E. Pirsig has served as a preeminent spokesman for humanity and decency in the administration of justice. His teaching will be missed at the University of Minnesota Law School, but the example that he continues to set in the work of improving the system of justice will remain as constant as ever in what is destined to be a very active retirement.

