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Wayland B. Cedarquist

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THE NEED FOR JUDICIAL REFORM IN ILLINOIS

WAYLAND B. CEDARQUIST

THERE is today a widespread movement for judicial reform throughout the United States. Illinois shares in that movement. The purpose of this article is to state the need for a change in the courts of Illinois and in the methods of choosing judges for these courts; and to review the progress currently being made toward the securing of these reforms. The statement will be brief, in the belief that, as Justice Holmes observed, the restatement of the obvious is often more important than the elucidation of the obscure.

History teaches that without courts there is anarchy, and that without independent courts there is tyranny. People today are aware of these dangers and of the need for strengthening all the departments of our government and, among them, our courts. The need for judicial reform is made all the more acute by a growing lack of confidence in the courts.

The primary function of the courts is to decide disputes between persons promptly and justly. The courts cannot entirely discharge this function unless they are organized efficiently and supplied with judges of the best caliber. The courts in Illinois today suffer both from inefficient organization and from the present political methods of selecting judges.

The Illinois courts of 1952 are organized substantially along lines set forth in the Illinois Constitution of 1848. That constitution provided for most of the constitutional courts as we now know them—a supreme court, circuit courts, county courts, and justices of the peace; and it authorized the legislature to create local courts in cities. The Constitution of 1870 made possible the creation of appellate courts and probate courts, and provided additional courts for Cook County. Aside from the Chicago Charter Amendment of 1904, which

MR. CEDARQUIST received his A.B. at the University of Illinois and his LL.B. at Harvard University Law School. He is a member of the Joint Committee on the Judicial Article, appointed by the Illinois State Bar Association and the Chicago Bar Association. The views expressed in this article are his and not necessarily those of any other member of the Joint Committee or of either Association.

abolished justices of the peace in Chicago, there have been no constitutional changes from 1870 to the present. In short, the judicial business of Illinois, now a state of almost 9,000,000 people, is conducted under constitutional provisions unchanged since 1870, and along lines formulated to meet the needs of those who lived in 1848, when the population of the entire state was a mere 800,000 and when conditions were far different from the present.

The major defects in the Illinois court system as organized under the 1870 Constitution are: first, there are a large number of courts with conflicting jurisdictions; and, second, there is an almost complete lack of supervision of the administrative affairs of the courts.

The trial courts of the state furnish an example. In the counties outside of Cook County, there are one hundred and one county courts, seventeen circuits with a court operating in each county, thirteen probate courts, twenty-six city courts, and about four hundred police magistrates and twenty-seven hundred justices of the peace. In Cook County, there is a county court, a circuit court with twenty judges, a superior court with twenty-eight judges (nine from these courts being assigned to the appellate court), a criminal court (whose judges are assigned from the circuit and superior courts), a probate court, the Municipal Court of Chicago with a chief justice and thirty-six judges, the city courts for Chicago Heights and Calumet City, the Municipal Court of Evanston, and about one hundred twenty-five justices of the peace and ninety police magistrates in that part of Cook County outside Chicago.

These courts are all trial courts in the sense that they hear evidence and decide cases for the first time. However, each class of court has a separate jurisdiction, with power to hear some cases but not others. If a suit is filed in the wrong court, time and money are lost and justice may be denied. This multiplicity of courts with differing jurisdictions is one of the principal causes of inefficiency and delay in the administration of justice in Illinois.

Moreover, every one of these trial courts is, so far as administrative supervision is concerned, separate and independent. The 1870 Constitution vests the judicial power in specified courts; but with the exception of the right of appellate courts to review the judgments of the trial courts, authority to superintend and co-ordinate the work of the judicial department rests nowhere. The courts have no central agency to collect statistics, to find out which judges are overloaded and which are too often tardy or on vacation, and to recommend changes in

assignments. Even if it could be determined precisely where additional judicial help is needed, there is no central authority to make assignments of judges freely between courts on the same level or on different levels. There is, in short, no administrative office to help the courts in disposing of their business.

The various classes of courts, and indeed the individual judges, are practically isolated so far as judicial administration is concerned. Trying to organize the work of the courts is like trying to run a business with every worker the superior of every other. Each courtroom is literally a kingdom unto itself. The result has been a tragic waste of judicial manpower. Some courts are years behind in their work while others are not busy. The public and the lawyers complain of delays in having cases decided, and of inefficient and lazy judges. Heroic efforts are made to correct the situation by using new techniques in assignment of cases for trial, by requesting judges from other areas of the state to volunteer their help, and by the judges' working additional hours or weeks. These efforts are, of course, essential since it is wise to use every means possible under the present system to dispose of cases promptly. But the defects—the existence of a large number of courts with conflicting jurisdiction, and the lack of any central administrative authority—these defects are basic and are implicit in the present system. The only way to overcome these defects is to revise the system, to revise the Judicial Article of the 1870 Constitution.

The problem is not merely one of organization of the courts, however, but of staffing the courts with judges of the highest caliber.

No system of courts will work unless there are good judges to run it. The qualities of a good judge are integrity, judicial temperament, legal ability and diligence in the dispatch of business. Whether the judges have these qualities depends in large part on the method by which they are selected for their office.

Judges in Illinois are today elected by popular vote. This was not always the case. The prevailing method for selecting judges for the early states was by appointment. The Illinois Constitution of 1818 provided for election by the legislature. This was changed by the Jacksonian revolution which demanded, among other things, that most officers of state governments be elected by popular vote. The 1848 and 1870 Constitutions each provide for popular election of judges.

Changes since the 1800's, however, have raised the question of whether direct election of judges is efficient or effectual. Increases in population and the growth of cities have resulted in a general lack of

knowledge of, or interest in, elections of judges. With the voters not knowing the candidates, and in no position to weigh their qualifications, the task of selecting judges has more and more been left to the political parties. It is true that the people usually have a choice of two candidates for a judgeship, but their choice is between men selected by the political parties. These parties, for reasons made necessary by their particular purposes and functions, do not always select candidates on the basis of their qualifications for judicial office. The party officials consider primarily the candidates' past service in the political organization, his ability to contribute an "assessment" to the party funds, and the likelihood of his continuing "party loyalty." The result is that most lawyers aspiring to be judges must first become politicians; and most of those who become judges and want to remain as judges must continue to be politicians. While there is nothing inherently wrong with politics as such, the political methods of selecting judges are wrong because: (1) the initial selection of the judge is based on too many considerations other than his qualifications to be a judge; and (2) once selected by this method, the judge continues to be involved in one degree or another with the political organization on whose continuing approval he is dependent for re-election. These conditions are not peculiar to any one part of the state; they exist in varying degrees throughout the state. These conditions are not of recent origin; they have existed ever since the great urban centers of the state began to develop, and, indeed, almost all the pertinent considerations were analyzed by one writer as early as 1914.¹

So long as the present methods of selecting judges prevail, the Illinois courts, however organized, will not be able to fully perform their function. That most of the judges are able and honest is not questioned, but this is more in spite of, than because of, the present method of choosing judges. There is need for improved methods of selecting the judges.

What is being done to secure these needed reforms—a more efficient organization of the courts and improved methods of selecting judges?

Following World War II, there was a growing demand for modernization of the Illinois Constitution of 1870, including the Judicial Article.² This demand resulted in the adoption of the Gateway Amendment in November, 1950, designed to liberalize the amending procedures of the Constitution and to "open the gate" for future

¹ Kales, *Unpopular Government in the United States*, c. XVII (1914).

² Witwer, *The Illinois Constitution and the Courts*, 15 *Univ. Chi. L. Rev.* 53 (1947).

amendments. The General Assembly, at its following session in 1951, proposed four amendments affecting the Revenue Article, the Banking Article, and the County Officers Article, all of which will have been voted upon at the general election of November, 1952. No amendment was proposed to the Judicial Article; but an interim Legislative Commission was appointed to consider the need for revision and to report proposals to the next session of the legislature in 1953.

The lawyers have drafted a proposed amendment to the Judicial Article. The Illinois State Bar Association and the Chicago Bar Association appointed a Joint Committee on the Judicial Article. This committee, after meeting throughout the state and after correspondence with all attorneys of record, produced a draft of an Article which was unanimously approved by the governing boards of the two associations, and by the associations themselves at their annual meetings. The draft has been submitted to the Legislative Commission; and, following the general election of November, 1952, it will receive close attention by the legislators and by the public.

The Bar Associations' draft of a revised Judicial Article proposes many changes in the judicial system for Illinois.³ Principal among these changes are those related to increasing the efficiency of the courts and improving the methods of selecting judges. It is proposed that the Supreme Court be given authority to supervise the administrative affairs of the courts; that the many trial courts be unified in one trial court in each circuit, with such branches as may be necessary; and that judges be selected by appointment by the governor from a list of nominees submitted by judicial nominating commissions.

The proposed Judicial Article itself should be examined for the details of each of these changes. There will, no doubt, be extended discussion in law reviews and other periodicals as to the merits of the proposals.

It is worth noting that none of the proposals are new. The proposal for power in the Supreme Court to supervise the administrative affairs of all the courts in the state was a part of the New Jersey Constitution of 1947 and has proved its worth. The proposals for a unified court, eliminating almost all jurisdictional disputes, were embodied in the English Judicature Act. The proposal for a new method of selecting judges has been in force in Missouri since 1940, and, to a limited ex-

³ Proposed Judicial Article, Text and Summary (1952) (this is available at the Illinois State Bar Association, Springfield, and the Chicago Bar Association).

tent, in California since 1934. All of the proposals are being actively considered in other states.⁴

The movement for judicial reform, as with all reform, has its periods of ebb and flow. It seems that we are today in a period of renewed interest, of great activity, and of a very real possibility of some measure of success. The needs are great. The needs for prompt justice for all and for honest dispassionate men to sit in judgment are basic to our society. In the words of Justice Cardozo:

The time is ripe for betterment. The law has "its epochs of ebb and flow." One of the flood seasons is upon us. Men are insisting . . . that law shall be made true to its ideal of justice. Let us gather up the driftwood, and leave the waters pure.⁵

⁴Section on Judicial Administration of the American Bar Association, *The Improvement of the Administration of Justice* (1952) (handbook).

⁵Cardozo, *A Ministry of Justice*, 35 *Harv. L. Rev.* 113, 126 (1921).