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Vanderbilt: The Challenge of Law Reform

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RECENT BOOKS

THE CHALLENGE OF LAW REFORM. By *Arthur T. Vanderbilt.* Princeton, N.J.: Princeton University Press. 1955. Pp. vi, 194. $3.50.

Lawyers who heard Chief Justice Vanderbilt deliver the William W. Cook Foundation lectures in Ann Arbor in 1948, or who read the book *Men and Measures in the Law* published the following year, know in general the New Jersey jurist's views on judicial reform which are the subject of the University of Virginia lectures published in his latest volume. They cover the fields of selection of judges, procedural reform, elimination of delay, court organization and administration, and the simplification and modernization of the substantive law. As to each he offers a happy combination of historical background, current developments, constructive criticism, and his own original suggestions.

Typical of the latter is the interesting suggestion that we cannot hope to make much progress in improving the caliber of the judiciary until we have a simple and understandable declaration of the qualifications and attributes of a good appellate judge, a good trial judge, and a good local magistrate, so that those who are responsible for the selection of judges may have adequate standards by which to measure candidates for judicial office. Such a declaration, he suggests, would be no more difficult to formulate than the canons of judicial ethics; the only difference would be that the proposed declaration would deal with traits and experience necessary to equip a lawyer to go on the bench rather than with the rules governing his conduct once he is there. Although not designed as such a declaration, a passage of rare eloquence from the first page of the second chapter is of extreme interest in that connection:

> "We need judges learned in the law, not merely the law in books but, something far more difficult to acquire, the law as applied in action in the courtroom; judges deeply versed in the mysteries of human nature and adept in the discovery of the truth in the discordant testimony of fallible human beings; judges beholden to no man, independent and honest and—equally important—believed by all men to be independent and honest; judges, above all, fired with consuming zeal to mete out justice according to law to every man, woman and child that may come before them and to preserve individual freedom against any aggression of government; judges with the humility born of wisdom, patient and untiring in the search for truth and keenly conscious of the evils arising in a workaday world from any unnecessary delay."

In his treatment of judicial selection Chief Justice Vanderbilt commends the Missouri plan (appointment by the governor from a list of names submitted by a nominating commission, appointees thereafter going before the voters in a non-competitive election for continuation in office), but he also emphasizes another principle of judicial selection about which not very much has been said—the bi-partisan judiciary. This, he says, has been en-

joyed for many years in Delaware by constitutional provision and in New Jersey by tradition. It insures that at least half of the judges will not be appointed for political considerations, but because they are competent lawyers with judicial temperament. Furthermore, judges are not exposed to the danger of not being reappointed simply because the governor at the moment is of the opposite political faith. He adds that decisions of a bi-partisan court have more weight in cases of political importance. These considerations suggest that in appointive states steps should be taken to achieve a bi-partisan judiciary, which, says Chief Justice Vanderbilt, really is the only way in this country to achieve a non-partisan judiciary.

In elective jurisdictions we think this is not quite so clear. The only way to have a bi-partisan judiciary in a state like New York or Illinois is for the party leaders to agree in advance on how many from each party are to be elected in each judicial election, and draw up the slate of nominations accordingly. But that is the substance of the "deals" that have been widely denounced in New York and Chicago on the ground that they effectually deprive the voters of all the power of choice and amount to outright appointment by party leaders. Nobody can deny, however, that the Missouri plan, good as its record is, would have been strengthened if the Missouri governors had established a tradition of bi-partisan appointments.

Perhaps the greatest contrast between the Michigan and Virginia lectures is to be found in their respective chapters on court administration. In 1948 the New Jersey constitution had just been revised, but the new system had not yet gone into operation at the time of the lectures. Chief Justice Vanderbilt described the efforts of the Supreme Court of Pennsylvania to compel a trial judge to decide his cases, and he spoke briefly and approvingly of the administrative offices in Connecticut and in the federal system. During the intervening years, he established in his own New Jersey judicial system an administrative office probably more effective and efficient than any other, and wrought miracles in cleaning up decades of delay and congestion through introduction of efficient procedures and business management. He rightly devotes a half-dozen pages of the 1955 volume to describing this office and its work. It is the agency through which the power to assign judges from one point to another as needed is exercised, and it compiles the statistics on which the need for such assignments is predicated. It manages the fiscal and business affairs of the courts, including a $3,000,000 budget. Its director supervises publications of opinions, serves as public relations officer for the courts, supplies information and investigates complaints.

Chief Justice Vanderbilt then makes sharp criticism of certain features of the federal administrative system, and of practically every feature of the administrative set-up established last year in New York. The

federal system, he says, lacks an executive head. It is like a corporation with a board of directors but no president. Not enough use is being made of the power of assignment of judges, even within circuits, and practically none at all from one circuit to another, largely because such assignments have been kept on a voluntary basis. He commends the statistical work of the federal office, but points out one gaping hole in it—a total lack of information as to how the individual judges spend their time and how much work they do. Finally, he criticizes the federal administrative system for its reluctance to make mandatory such well-recognized improvements as pre-trial procedure, even now in use in less than half of the federal courts.

But it is the New York "court administration" plan recently enacted at the behest of the Temporary Commission on the Courts which the Chief Justice really finds lacking in merit. The quotation marks around the words "court administration" are his, for although those words are used over and over again in the statute, he denies that there is anything in it to justify them. In eleven scorching pages he shows how the judicial conference is manned with persons who will always and inevitably be defenders of the *status quo,* and that although the language of administration is used, the group has no real administrative powers at all, but can only "study and make recommendations" with respect to the several areas where administrative action is so urgently needed. "The legislature has merely purloined a term that has a definite, known meaning in the nineteen states that have administrative establishments and misappropriated it for an office that is utterly without administrative powers."

Again drawing on experience in New Jersey since 1948, Chief Justice Vanderbilt denounces the practice of scheduling oral argument before the judges have read the briefs, and he has nothing but scorn for the intra-court procedures that give rise to the one-man opinion—"a fraud on the litigants and the public." "No opinion," he says, "should become the opinion of the court without a full discussion by the entire court of all the issues developed at the argument before the case is assigned for the writing of the opinion; and after the opinion has been written it should likewise be studied by every member of the court and subjected to frank criticism in conference as to both substance and language." Reasonable and minimal standards, surely, and yet they are not met in many courts of last resort.

In his last lecture the Chief Justice reviews, much as he did in 1948, the tremendous growth of judicial, legislative and administrative law and the efforts of the American Law Institute and others to find a way through the maze. He then develops a theme recently voiced by Pound, Harno and others that the best hope is through law centers built around law schools, where judges, legislators, teachers and laymen may work together for the improvement of the law. Any law school, he says, which lifts its sights beyond the traditional role of training law students to face these problems is properly called a law center.

In his foreword to *Men and Measures,* Chief Justice Vanderbilt acknowledged that there was a great deal of criticism in it, but justified it by saying frankly that the times were critical times. He added that young people prefer the "unembellished truth." It is an interesting sidelight on the judicial office that seven years have not softened the vigorous spirit of this man who all his life has fought his battles with all he had. On the contrary, the new volume is still more forthright and outspoken, as we have seen, and we cannot refrain from quoting one more somewhat dramatic example. In 1948 the new justice, who had just donned judicial robes after a long and active career at the bar, had this to say about the judges who oppose judicial reform:

> "Now and then we find an unusual judge or lawyer who is genuinely concerned with procedural reform, but generally we must expect active opposition from the bench and, at best, inertia from the bar."

The following blistering words are from the 1955 volume:

> "I am convinced that the criminals, the gangsters, the corrupt local officials, the communistic subversives, and the apathetic citizens are no more dangerous to their communities and to the country at large than the judges, many of them amiable gentlemen, who oppose either openly or covertly every change in procedural law and administration that would serve to eliminate technicalities, surprise and undue delay in the law simply because they would be called upon to learn new rules of procedure or new and more effective methods of work. Their number is legion."

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