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The Challenge of Law Reform

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BOOK REVIEWS

THE CHALLENGE OF LAW REFORM. By Arthur T. Vanderbilt, Princeton, N. J.: Princeton University Press. 1955. Pp. 184. $3.50.

This book has special significance for lawyers and judges of West Virginia. It deals with many of the specific subjects now under consideration by the State Bar, the Bar Association, the Judicial Council, and the Judicial Association—and other problems equally deserving of study in this state. In this connection it is significant that West Virginia ranks only forty-third among the states in adoption of the minimum standards of judicial administration developed by the American Bar Association.[1]

Based on a series of lectures given at the University of Virginia Law School in the spring of 1955, *The Challenge of Law Reform* has a lucid, readable style. Vanderbilt writes with the insight of the judge, the care of the professor, and the vision of the great public leader. An acknowledged authority on reform of procedure and on reorganization of the courts, he is now Chief Justice of the Supreme Court of New Jersey.

After a brief introductory chapter Vanderbilt takes up the problem of obtaining better judges and jurors.[2] He points out that prior to about 1840 almost all judges in the United States were appointed rather than elected. Moreover, judges are appointed in most foreign countries. It was only the Jacksonian revolution that brought popular election to America.[3] This system requires candidates for judgeships to take an active role in politics in order to be elected and reelected. Often there is conflict with Rule 28 of the Canons of Judicial Ethics, which discourages such participation. Can a judge be impartial between his political allies and opponents? Vanderbilt concludes that appointment is better than election. He recommends the plan developed by the American Bar Association, forms of which have been adopted in Missouri and California. Under this plan the governor (sometimes with the

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[1] Porter, *Minimum Standards of Judicial Administration*, 36 A.B.A.J. 614 (1950), quoted in Wise, *The Public and the State Bar*, 53 W. VA. L. REV. 65, 66 (1950). See generally MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION (Vanderbilt ed. 1949).

[2] *Cf.* Howard, *The Mechanism of Our Jury System Should Be Adjusted and Lubricated*, 56 W. VA. L. REV. 39 (1954), W. VA. BAR ASS'N 1953 ANN. REP. 38.

[3] In West Virginia popular election of judges has always been provided. W. VA. CONST. 1863, art. 6, §§ 4, 7; W. VA. CONST. 1872, art. 8, §§ 2, 10.

consent of the state senate) appoints judges from a list of qualified names submitted by the appropriate bar association. The plan may permit reappointment after the judge has served for a time, or may require him to submit his name to the electorate, without any opposing candidate, on the question, "Shall Judge Blank be retained in office?"[4]

In another chapter Vanderbilt advocates simplifying the hierarchy of courts. He proposes that each state should have only three levels of courts: a supreme court of appeals, a trial court of general civil and criminal jurisdiction, and a local court for small civil and criminal matters.[5] (This reviewer infers that under this plan the more populous counties of West Virginia would have only a circuit court, but this court would have several divisions; there would also be a lower court supplanting the justices of the peace.) In the same chapter the author also considers improvement of trial practice. He recounts the struggle for adoption of the Federal Rules of Civil Procedure and describes the comparable struggle in England. (West Virginia readers will find this section of interest as background for the West Virginia Rules of Civil Procedure now under consideration.) Vanderbilt strongly advocates the pre-trial conference, reporting that it has been very successful in New Jersey.[6] He also discusses improvement of criminal procedure and appellate practice.

In another chapter Vanderbilt suggests how to improve the day-to-day administration of the courts. He recommends creation in each state of an administrative office for the courts. This office would assume such functions as purchasing supplies, publishing opinions of the supreme court, and keeping records of the number of cases tried in each court and other matters. Vanderbilt describes the New Jersey administrative office in detail and points out certain disadvantages of the Administrative Office of the United States Courts.

In the final chapter, which is probably the most original, Vanderbilt says that once the urgent job of overhauling the procedural

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[4] See MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 3-17 (Vanderbilt ed. 1949); HAYNES, SELECTION AND TENURE OF JUDGES (1944). But see Berle, *Elected Judges—or Appointed?*, N.Y. Times Mag., Dec. 11, 1955, p. 26. He contends that an interested and informed public rather than the method of selection is the best safeguard for obtaining better judges.

[5] On integration of courts see MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 32-64 (Vanderbilt ed. 1949); Virtue, *Improving the Structure of Courts*, 287 ANNALS 141 (1953).

[6] *Cf.* Hugus, *Pre-Trial in West Virginia*, 55 W. VA. L. REV. 110 (1953).

machinery of the courts has been accomplished, there will remain the great task of modernizing the substantive law to better meet the needs of this era of rapid social change. This is a monumental task. The substantive law is already a mountain of court decisions, statutes, and administrative rules and decisions. There are now 2,100,000 reported American court decisions, and they are increasing at the rate of 22,000 a month. While this case law is fairly well indexed and digested, the vast bulk of the statutory law is inadequately indexed. Each state has its own system with local subject names and categories. And much of the administrative law is not indexed at all. Vanderbilt proposes that the total resources of the legal profession be utilized to make a systematic study of each field of substantive law. For this purpose he would have the law schools broaden their scope to become law centers, where professors, practicing lawyers, judges, and interested laymen would combine their talent and experience. Scholars would study and borrow from the law of foreign countries where appropriate. Each law center should specialize in the law of its own state, and the larger centers could consider problems of national and international scope.

Judge Parker has said, "This is a book which ought to be read by every lawyer and judge in the United States."[7] If this be so, then the lawyers and judges of West Virginia should read it twice, for there is too much good material here for the reader to absorb the first time.

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CASES AND MATERIALS ON THE LAW OF OIL AND GAS. By Howard R. Williams, Richard C. Maxwell and Charles J. Meyers. Brooklyn: The Foundation Press, Inc. 1956. Pp. xlv, 790. $9.50.

The authors (the word is used advisedly, for they have done much more than editing) state in the preface that this casebook is prepared for use in a third year course or seminar in the law of oil and gas. It is certainly true that inexperienced students would be perplexed, if not entirely overwhelmed, by its wealth of detailed and complex materials.

In the first chapter there is a twelve-page introduction to scientific and engineering background, which is excellent and is illus-

[7] Parker, Book Review, 42 A.B.A.J. 259 (1956).