Volume 2 | Issue 3 Article 8

July 1956

Book Reviews

BOOK REVIEWS

THE CHALLENGE OF LAW REFORM. (The William H. White Lectures, University of Virginia Law School, 1954.) By Arthur T. Vanderbilt. Princeton: Princeton University Press. 1955. Pp. vi, 184, and 10 (index) with annotations. $3.50.

FIFTY years have run their course since Dean Emeritus Roscoe Pound made the first of many addresses to the American Bar Association. The paper, read at the Capitol Building in St. Paul, Minnesota, on the twenty-ninth of August, 1906, bears the significantly challenging title, *The Causes of Popular Dissatisfaction With the Administration of Justice.*[1] It is a clear, concise, and penetrating analysis of fundamentals touching the field of judicial reform. That Pound's labors were to be productive of thought and action in the years that lay ahead is fully attested to by Chief Justice Vanderbilt's outstanding mid-century contribution to the literature of law reform. In one of many reprints of Pound's paper, thirty-one years later in the *Journal of the American Judicature Society,*[2] the late John H. Wigmore characterized these pioneer exertions as the spark that kindled the white flame of progress in law reform. The volume under consideration bears witness to the fact that the torch has been well passed. The author's Herculean labors in establishing a model judiciary in his state, of which an inspirational and challenging account is set forth in the volume, together with various plans of action for the improvement of the world of law make the flame of progress in law reform burn brighter at this, the mid-century mark.

Dean Emeritus Vanderbilt's book may best be described as a *vade mecum* of reform in judicial personnel, procedure, and administration for jurist, legal scholar, practical lawyer, and the lay public alike. Its pages give heart to the proposition that the judicial administration of our nation can be improved if the will to do so is present. The reader will also perceive a forceful distinction between legal scholarship in books and in action.

In broad outline, Chief Justice Vanderbilt's work contains a stimulating prologue of the present day problems of law reform and then proceeds to a penetrating and invigorating discussion of four well-defined categories of action. These are the necessity for improvement of judicial personnel, the simplification of the structure of judicial systems and court procedures, effective management of judicial systems, and finally the critical need for modernization of the substantive law.

The opening chapter, in a sense a prologue, is in its essentials a forceful statement of the urgent need for reform in the legal polity of our nation. Of especial value is the author's specific identification of the obstacles which presently beset effective solution. In brilliant contrast, the reader will encounter an enumeration of the various successes in the improvement of judicial administration during the past eighteen years, from the Federal Rules of Civil Procedure to the Uniform Rules of Evidence of the National Conference of Commissioners on Uniform State Laws. More has been accomplished during this period, Dean Emeritus Vanderbilt assures us, than in the entire preceding century.

With respect to improvement of judicial personnel, judges as well as jurors are brought within the dimension of discussion. Against an historical background of the

[1] Report of the 29th Annual Meeting of the American Bar Association (vol. 29), part I, pp. 395-417 (1906). *Reprint:* n. p., n. d. 23 p., 40 AM. L. REV. 729 (1906); 14 AM. LAWYER 445 (1906); 20 J. AM. JUD. SOC'Y 178 (1937); 72 U. S. L. REV. 28 (1938); 6 LAWYERS' J. (Manila, P. I., July 31, 1938); CCH Legal Periodical Digest, 4027-4028 (1938 ed.)

[2] Volume 20, pages 178-187, February, 1937.

struggle for an adequate and impartial judiciary from Anglo-Saxon times to our colonial days and thence through the past century, the author admirably sums up the position of the problem in our day. Of outstanding quality is the author's presentation of present-day effects of the Jacksonian Revolution on our courts, as well as the impact of Canon 28 of the Canons of Judicial Ethics on the maintenance of an impartial judiciary.

Drawing upon materials chiefly historical, the author takes us from complicated judicial systems, an involved system of procedure and pleadings, and artificial restrictions on evidence, which plagued the pages of Anglo-American Law from *Coke's Institutes,* to such modern innovations as the Federal Rules of Civil Procedure, the pretrial conference, and the Uniform Rules of Evidence.

Concerning the popular complaint of the law's delays and the solution thereof by way of promoting effective judicial administration, the author has given us a stirring and inspirational account of the phenomenal results which have been achieved in his state over—as time runs—the infinitesimal period of six years. As Chief Justice of the Supreme Court of New Jersey, the account of stewardship recorded is, without doubt, the brightest commentary on American justice, certainly within our generation, if not from the founding of the Republic.[3] The author has clearly and concisely depicted the judicial revolution[4] which has taken place in his state based upon the principle that the courts exist for the benefit of the state and of the litigants and not the judges and the lawyers.

Attention is turned, in the concluding phase of Chief Justice Vanderbilt's studies, from reform in the machinery of the administration of justice to that in substantive content; that is, adapting the law to the needs of our era.

The problem is drawn with superior expertness of artistry. The fantastic number of our reported judicial decisions together with the rapidly increasing stream of current ones, and the incredible bulkiness of existing statutory law together with an ever-lengthening flood of annual production staggers the imagination. And in the field of administrative regulations and decisions, the result is of a magnitude which eludes sane approximation. To all this, proper and intelligible indexing is either totally lacking or for the most part totally inadequate. The conclusion is most pungently described in

[3] "The New Jersey constitution of 1947 brought to complete fruition a generation of effort to establish a modern, effective system of judicial justice. Here and in the already improved organization of the federal judicial system and the modernizing of federal procedure America has models of an administration of justice made equal to its tasks." Pound, *Procedure Under Rules of Court in New Jersey,* 66 HARV. L. REV. 28 (1952).

[4] *Vide:* Vanderbilt, *The First Five Years of the New Jersey Courts Under the Constitution of 1947,* 8 RUTGERS L. REV. 289 (1954); *The Record of the New Jersey Courts in the Sixth Year Under the Constitution of 1947,* 9 RUTGERS L. REV. 489 (1955); *The Record of the New Jersey Courts in the Seventh Year Under the Constitution of 1947,* 10 RUTGERS L. REV. 397 (1955); Karcher, *New Jersey Streamlines Her Courts: A Revival of "Jersey Justice",* 40 A. B. A. J. 759 (1954); Kearns, *Rule-Making in New Jersey: Denial of a Republican Form of Government,* 41 A. B. A. J. 435 (1955); Woelper, *Reorganization of the Judiciary in New Jersey,* 1 SYDNEY L. REV. (Australia) 46 (1953); *Court Reform in New Jersey,* 28 CONNECTICUT BAR J. 398 (1954).

An exhaustive bibliography (under titles: I. Courts and Administration. . . . II. Practice and Procedure. . . . III. Surveys of the Law and Procedure. . . . IV. Constitution. . . . V. Legal Education) of materials appearing prior to February, 1953, will be found in appendix form to Chief Justice Vanderbilt's five year report, at pages 311 to 315, cited *supra.*

the words of the author—to the burden of intolerable bulk must be added the vice of unknowability in the vast wilderness of statutes and the jungle of administrative law.[5]

Stated succinctly, Chief Justice Vanderbilt urges that the task should be undertaken chiefly by law centers; in fashion, a revival of the enthusiasm for the law engendered by the law schools of Bologna, Padua, and Ravenna in the eleventh and following centuries. The subject of practical solution is introduced historically—from Lord Coke to Bentham in England and Kent and Story in America. The encouraging conclusion reads, "What lawyers have done before they can and will do again."[6] To the question—to whom shall we turn for help—the author expresses concern that the magnitude of the job will not make possible a duplication of the work done by the great judges and commentators of the past from Glanvil to Blackstone. The author discusses the possibility of one device which bears the gavel marks of debate through the past thirty years: a ministry of justice. There is a clear and concise summary of this possible instrumentality of law modernization placed against a comparative study of evaluation in the light of continental practice. Concerning the work of the American Law Institute as embodied in the Restatements, the author assigns reasons why the project should not take on the traditional form of a textbook commentary. Chief Justice Vanderbilt then proceeds to a treatment of the purposes and functions of law centers. His analysis of how the work should be done instills vitality to his words, "Never has our profession faced a greater challenge."[7]

Truly, the most pressing need of law reform in the half century ahead is the modernization of our substantive law. Surely, Chief Justice Vanderbilt's constructive contribution will serve to rekindle the white flame of progress in law reform for the second half of the twentieth century.

FRANKLYN C. SETARO
LIBRARIAN AND PROFESSOR OF LAW
NEW YORK LAW SCHOOL

CRIME, COURTS, AND PROBATION. By Charles Lionel Chute and Marjorie Bell. New York: The Macmillan Company. 1956. Pp. 268. $4.75.

ONE would be hard pressed to think of an individual better qualified to write on the subject of penal reform and probation, by reason of his training, experience and leadership, than Mr. Chute, Executive Director of the National Probation and Parole Association from its inception in 1921 until his retirement in 1948. Unfortunately, Mr. Chute died in 1953 with the work only partially completed. It was finished in admirable fashion by Mr. Chute's longtime, able associate in the National Association, Marjorie Bell.

The reader is first provided with an historical survey of the development of penal practices throughout the ages, starting with the ancient societies before the flowering of Greek and Roman civilizations, proceeding through the middle ages with its severity of application of penal laws, and into the enlightened eighteenth century. The history of the growth of today's probationary methods in England is traced rapidly. The common law early began to soften its application toward penal violations through the devices of "Benefit of Clergy," "Judicial Review," the forerunner of the present-day practice of suspension of sentence, "Transportation," similar to banishment, and

[5] Page 139.
[6] Page 143.
[7] Page 184.

"Recognizance," a device which led to the modern system of probation, with its all-important feature, the probation officer.

This reviewer would have welcomed a more extensive treatment of these early developments, but it is conceded that, in all probability, such a treatment is beyond the scope of this work, and would be more properly the subject of a separate study.

The main portion of this book begins with Chapter 3, in which the authors begin to trace the growth of the probation system in use today throughout the United States. Complete treatment is given to this subject, and it gives those whose acquaintance with this rather specialized work has been slight, as has been this reviewer's, an excellent idea of the manner in which the system operates, the problems which beset it, and the hopes and direction for its fullest future development.

Led by one John Augustus, who voluntarily undertook to perform functions similar to those of a probation officer, the first use of a probationary scheme as a court device occurred in Massachusetts towards the middle of the 19th century. Finally, in 1869, Massachusetts passed a statute setting up a state agency to take charge of delinquent children, and by 1880 the system had been extended to adult offenders throughout the state. Thus the idea of a probation system as a court function was firmly established in this country.

The authors trace the spread of the system to other states, first by recognition in many states of the power of the court to suspend sentence after conviction and, finally, by legislative enactment, until by 1954, 47 states had some kind of probationary system for adult offenders and all 48 for juveniles, although many of them were rather inadequate. The opposition arguments as to the benefits of uniformity of application of the criminal law, and the deterrent effect of severe punishment had finally been overcome to a great extent.

The chapter describing the fight for a Federal Probationary Law is extremely interesting. Here is a blow by blow, bill by bill description of the battle which was finally won on March 4, 1925, due, in large measure, to the efforts of Mr. Chute.

What might be termed the historical section of the book is concluded with the story of the growth of the National Probation Association.

From this point on the authors have devoted their efforts to a discussion of the methods of an operating probationary system, including the topics of "Pre-Sentence Investigation," "Selection for Probation," and "Counselor and Probationer," involving the actual casework of the probation officer which is the heart of his function. Probationary systems in actual operation are critically analyzed with many constructive suggestions for improvements, together with a review of recent research studies in this field. The special work of probation in Juvenile Courts is treated in a separate chapter.

Concluding the book is an extremely interesting and enlightening chapter written by the now retired Presiding Judge Louis Goldstein of the Kings County Court in Brooklyn, New York. Judge Goldstein describes one of the cases before him and the factors involved in his decision to grant probation to six of seven defendants. Judge Goldstein gives the reader an intriguing insight into a judge's mind as he weighs and balances the good and bad of each individual before him with his duty to the public. His result with these six men is gratifying and encouraging.

This reviewer would be remiss if he did not note that this work is distinguished also by an introduction by Dean Roscoe Pound. Dean Pound's writings are always welcome and especially so here, for he has long been interested in this topic, being a past president and, at present, honorary president, of the National Probation Association. He has written a short but vital discussion of some of the obstacles still facing the advancement of the system of probation, i.e., the retributive impulse, public distrust

of judicial discretion, and the practice of rotating the many judges of the same court in large and populous areas.

To conclude, this reviewer unhesitatingly recommends this book to all persons connected with the probation system, and to all others who are interested in it, either for particular reasons or for general information. Lawyers as a group can particularly benefit from an understanding of the methods and aims of a properly functioning probation system.

STANLEY N. NISSEL

ASSISTANT PROFESSOR OF LAW
NEW YORK LAW SCHOOL

LEGAL CONTROL OF THE PRESS. By Frank Thayer. Third Edition. Brooklyn: The Foundation Press, Inc., 1956. Pp. 749. $6.50.

The struggle for a free press can be traced back through the centuries. The intellectually tolerant man in all ages recognized that the development of human progress was inextricably entwined with the constant and forceful desire of the masses of people to be informed.

It is of great legal and historical significance that, in addition to the guarantee of freedom which the press enjoys by virtue of the mandate found in the Constitution of the United States, the constitution of each of the 48 states of the Union contains similar guarantees assuring freedom of the press. In those instances where legislators, local or federal, have attempted to invade the prerogative of the press to keep the people informed, the courts uniformly and repeatedly have struck down the challenging offender.

The aura of inventive genius which is so characteristic of the Twentieth Century has brought into the lives of each of us, not only the daily newspaper in multiple editions, but also new methods of transmitting information and imparting news. Certainly, the authors of the Constitution never could have contemplated the advent of the new inventions which we have so readily accepted. Nevertheless, the ambit of constitutional protection radiated by the first amendment has been interpreted by a modern court to include within it motion pictures, radio and television.

This is not to say that there does not exist legal control of the press. As the author states in his preface:

"Newspapers unfettered and unafraid insure the principles of democratic government. In the United States and component states there are guarantees of free press but any serious student of journalism and government realizes the relativity of such guarantees. There are restraints upon the newspaper and periodical press, as well as upon radio. The various means of thought communications have rights but these rights may be abused and so cease in particular cases to be rights or privileges."

Professor Thayer's treatise surveying the legal forces which act as restrictions on the press is most comprehensive and exhaustive. In his presentation, the cases cited as examples of legal control are clearly stated and well illumine the problems presented. This volume thoroughly discusses the law of libel, both in the civil and criminal field, commencing with an historical survey of the struggle for freedom of the press and terminating with a detailed discussion of Copyright as a Press Control and Regulation of Advertising.

To the person interested in the field of libel law, either as a journalist or as a student of law, this well-written volume also discusses such subjects as Libel to Property, Trial of the Libel Issue, Justification, Retraction, Privilege and Fair Comment.

This third edition recognizes the existence of new problems in the field of libel. For example, the right of privacy, first described, identified and presented by Warren and Brandeis, is becoming a recurring problem for the newspaper publisher, editor and reporter. To what extent may a photograph be secretly obtained, and under what circumstances may it be published and circulated by means of a newspaper, are now issues frequently troubling the expert in the field of libel law.

It is recognized in this volume that one of the foremost obligations of the press in examining the functions of the executive, legislative, and judicial branches of our government is its responsibility to report and comment upon public affairs.

But in addition there is another problem with which the author deals, and one of vital interest to all persons concerned with proper and just enforcement of criminal law.

The factual reporting of a Congressional or Senatorial investigation is, unfortunately, frequently subordinated to a quest for an appetizing headline which will stimulate circulation. As a result the guilt or innocence of "witnesses" is rapidly conveyed to the public mind.

We have witnessed repeatedly in our daily press, reports of governmental and police investigations wherein individuals are written about in such manner and under such circumstances that immediate impressions of criminal guilt or innocence are formed.

In a well-publicized criminal case, too, there are only a few who will subscribe to the belief that each prospective juror possesses no preconceived notion of the guilt or innocence of the defendant—and, therefore, is able by intellectual strength to sit in a fair and impartial manner.

It is the duty of the Bar to rally against this present-day tendency to accuse without indictment and to convict without trial.

In keeping with the highest standards of legal ethics and for the purpose of underwriting at all times the constitutional right to a fair and impartial trial which should be enjoyed by each and every defendant, the New York County District Attorney's Office, as a matter of policy, has constantly refused, in advance of its introduction into evidence, to make the contents of an arrested person's confession available to the press.

In this connection, Professor Thayer's words point to the solution:

"The challenge of this problem lies for solution in an area for both press and bar. Both newspaper men and legal scholars have long realized the problem. Efforts have been made to remedy the situation, but a definite remedy would be better education of press personnel and more conscientious understanding and direction by the editors of American newspapers. Under American political or legal philosophy, trial by newspaper cannot substitute for trial by jury."

HAROLD BIRNS

MEMBER OF THE NEW YORK BAR