

1956

Book Reviews

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Recommended Citation

Book Reviews, 25 Fordham L. Rev. 398 (1956).

Available at: <https://ir.lawnet.fordham.edu/flr/vol25/iss2/11>

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BOOK REVIEWS

THE GUILTY MIND, PSYCHIATRY AND THE LAW OF HOMICIDE. By John Biggs, Jr. Harcourt, Brace & Co., New York: 1955. Pp. 236.

In 1843 a mad Scotsman, Daniel M'Naghten, shot to death the secretary of Sir Robert Peel. He was tried in Old Bailey for murder and the jury returned a verdict of not guilty by reason of insanity. Since M'Naghten's intended victim had been Peel himself, his acquittal was not popular with the public or with Queen Victoria who had herself been recently the target of an assassin. The House of Lords called for the opinion of the common law judges as to the responsibility of a defendant in a criminal case who was suffering from mental disease. The result of the inquiry was the formulation of the famous rule in M'Naghten's case which in essence would excuse a defendant if at the time of the commission of the act he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or if he did know it, that he did not know he was doing an act which was wrong.¹ Despite continuing attacks reaching a crescendo in the past several years, M'Naghten's rule still represents the law in England and throughout all of the State courts of the United States with the exception of New Hampshire,² and is the law in New York by statute.³

Whether or not the rule in M'Naghten's case should continue to prevail is the subject of a plethora of recent comment due to critical studies in 1953 by the Royal Commission on Capital Punishment in England, the opinion of the United States Court of Appeals for the District of Columbia in *Durham v. United States* in 1954⁴ and the tentative draft of a Model Penal Code of the American Law Institute published in 1955. The book at hand is authored by the Chief Judge of the Third Circuit Court of Appeals and is, therefore, of more than casual interest to the bar. Judge Biggs is strongly opposed to M'Naghten's rule and in this volume he expands upon the disaffection indicated in his dissenting opinion in *United States ex rel. Smith v. Baldi*.⁵

Judge Biggs finds a "grotesque" gap existing between the law and psychiatry which he seeks to narrow with a historical sketch, which covers about half the book, of both law and psychiatry from their "magico-religious" beginnings to Freud who has revolutionized psychology. "We now know that people are neither good nor bad in the empirical sense of being all black or all white, and we are becoming aware that our penal systems and our policies respecting criminals in many ways represent the vestigial remains of barbarism, and are based to some degree at least on retaliation and revenge for crimes that offend the public consciousness" (p. 76).

The difficulty with the historical approach, as I perceive it, is that the gap which separates the law and psychiatry is not due to a mutual distrust based upon ignorance of historical background but rather to a fundamental difference of philosophic opinion. Anglo-American criminal jurisprudence is based upon the philosophic premise that man is a responsible agent with a free will capable of determining and selecting good and avoiding evil. If man consciously performs an act

1. 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843).

2. *State v. Pike*, 49 N.H. 399, 6 Am. Rep. 533 (1870).

3. N.Y. Penal Law § 1120.

4. 214 F. 2d 862 (D.C. Cir. 1954).

5. 192 F. 2d 540 (3d Cir. 1951).

proscribed by the state with the requisite intent (*mens rea*) he has committed a crime and will be punished for his transgression. If he is so mentally disturbed as not to be aware of the physical act he is committing or as to be unable to determine that it is morally wrong, he is exculpated by the traditional view. Modern psychiatry on the other hand, admittedly dominated by Freud and his disciples, views human conduct as largely the result of subconscious or unconscious drives about which the criminal is completely ignorant. The psychotherapist is not concerned with guilt or fault or punishment. He seeks to ascertain and expose to the patient the origin of his anti-social behaviour and work a cure. One of the tremendously difficult problems in the law today is the formulation of a test of liability which will preserve the concept of personal responsibility and yet take into account the findings of modern psychiatry. Judge Biggs' solution in my opinion bridges no gap at all and in effect constitutes a complete abandonment by the law of its obligation to determine in full concert with our colleagues in psychiatry a proper norm of criminal responsibility.

Judge Biggs champions the rule of *Durham v. United States*, which simply provided that a defendant should be acquitted if "his unlawful act was the product of mental disease or defect". On its face this approach offers no test of responsibility at all. Mental disease or defect is *per se* exculpatory if it produced the criminal act in question. What constitutes mental defect or disease is not defined and will vary with the personal opinions of testifying psychiatrists.⁶ No norm whatever is provided for the jury and the law is compelled to take the opinion of practitioners in this infant science which in many cases, is purely deterministic in its approach. The proper task of the psychiatrist, it is submitted, is to report to the legal profession all that can be determined about the operation of the mind healthy or unhealthy⁷ so that the legal profession can then determine at what point the responsibility of man for his behaviour should cease. The *Durham* "test" eliminates completely the responsibility of the law and would if adopted, place us completely in the hands of the psychiatrist who is not yet ready to make such findings. Unquestionably the task is difficult and no precise calibration of the progressive forms of mental disorder is presently possible. However in view of the tremendous advances which we are told have been made in this branch of learning in the past fifty years, far outweighing all of the progress made in the past five hundred years, is it too much to expect that substantial achievement in this area will be forthcoming? In the meantime, instead of scrapping M'Naghten why not supplement it to the extent that progress has been made in the study of human behaviour. This is the course which the Model Penal Code is taking which is disappointing to Judge Biggs but which it is submitted is the only practical path to follow. The American Law Institute which is comprised of not only lawyers and judges but eminent psychologists and psychiatrists as well has expressly repudiated the *Dur-*

6. See Guttmacher, *The Psychiatrist as an Expert Witness*, 22 U. Chi. L. Rev. 325 (1955).

7. The distinction between murder in the first and second degrees in New York is verbally clear but difficult to comprehend and apply. In 1928, Mr. Justice Benjamin Cardozo found the distinction "much too vague to be continued in our law." He called upon the New York Academy of Medicine to study the problem in cooperation with the bar since the distinction literally meant the difference between life and death. The statute remains unchanged. It must be applied in every first degree murder case whether the defendant is sane or insane. See Hall & Glueck, *Cases on Criminal Law and Its Enforcement* 71 (1951).

ham solution. It is interesting to note that other psychiatrists have been equally unenthusiastic.⁸ One of the conceded deficiencies of the M'Naghten rule is that it stresses only man's cognitive faculty (his ability to distinguish right and wrong) and disregards his emotive aspects (his ability to control conduct). This defect is sought to be supplied by the Model Penal Code and the substitute rule proposed recently by Professor Jerome Hall in the May 1956 issue of the *Yale Law Journal*. Professor Hall is fully conscious of the practical role of the law and is much more realistic than Judge Biggs with respect to the progress of psychiatry. His work on this area provides an excellent antidote to the volume reviewed.⁹

Judge Biggs writes entertainingly about M'Naghten and successor cases. He recounts cases of obvious injustice where madmen were executed by reason of adherence to M'Naghten's rule. Although the rule does work justice in most cases it would seem beyond cavil that even a few cases of miscarriage would demand reappraisal of the test. Execution is rather final and insanity is not a popular plea to lesser crimes.

The author is much less successful in his historical survey. He supplies a Freudian interpretation to historical events. For example, he finds that primitive man had no concept of sin or crime affecting the individual. This is a complete negation of the Natural Law. He surmises that there was little murder among primitive peoples, most homicides being lawful or manslaughter (pp. 8, 9). When the caveman struck down his colleague with a club he may fully have intended his rapid demise. This is all that *mens rea* means in the case of murder and the suggestion that it was probably completely unrecognized by primitive peoples seems unsupported. His finding that the throwing of stones at criminals mentioned in the Bible and other ancient writings manifested a transference of sin to stone (p. 10), might be equally explainable to the unsophisticated as an indication of revulsion at the conduct of the criminal and what is more suitable for throwing at any age of history than a stone. The period between the fall of Rome and the Fourteenth Century is termed by the author: "the Epoch of Retrogression". He finds that the Church hindered or struck down scientific thinking and that there was an over-emphasis on churchly ideas of moral virtues. As the result of the threat of hell fire by the Church the public naturally released its inhibitions in brutal punishment for crime sadistically enjoyed by the populace (p. 56). This enjoyment would seem to have lasted a couple of centuries after the Reformation when presumably the inhibitions of the public had been at least to some extent released.

Judge Biggs throughout his book is appalled by the limited view which the law has taken with respect to crime and punishment. He finds that we are obsessed with the so-called guilty mind. He takes to task the law schools which he finds emphasize the punishment of the criminal rather than the prevention of crime. Actually the usual undergraduate course in criminal law disregards both. This "island of technicality in a sea of discretion" is properly concerned with the elements of substantive crime and the process of bringing the criminal to justice.

8. See criticisms reported in Roche, Durham and the Problem of Communication, 29 Temple L.Q. 264-67 (1956).

9. Hall, Psychiatry and Criminal Responsibility, 65 Yale L.J. 761, 781 (1956). See also Hall, Principles of Criminal Law c. 14 (1947). Professor Hall adds the ability to control conduct as a test and retains the norms of capacity to understand physical nature and consequences of the act plus the capacity to realize that it was "morally" wrong. The Model Penal Code, Tentative Draft No. 4 § 4.01 unfortunately substitutes "criminality" for morality among other differences.

Obviously the motivation of the criminal is far more interesting than the commonplaces of caption and asportation as for example in a larceny case. However, it is properly peripheral in the limited time available for the education of the law student. The prevention of crime is no more appropriate in such a course than the prevention of fire in a course of Insurance or the prevention of insolvency in a course in Bankruptcy. Law students can hardly be expected to become expert in determining subconscious motivation, its treatment and cure. A more startling solution might be the institution of a course in Jurisprudence in law schools.

Judge Biggs argues that one of the colossal stupidities of our time is that the disposition which society makes of the criminal depends upon his form of mind. I do not believe he would eliminate *mens rea* as a test of guilt but his argument is that in determining what to do *with* rather than *to* the criminal we must seek further and determine what motivated his anti-social behaviour and cure the criminal rather than punish him.

Ideally this would be a fine solution. Practically it meets with difficulty. Granted that punishment has not prevented recidivism and granted further *arguendo* that deterrence is the only purpose of punishment, does it follow that psychotherapy would be any more successful? It is time consuming, expensive and not always or even usually successful. Moreover it might take a lifetime of treatment to cure a petty offender—I assume the degree of crime does not equate with the degree of illness. Moreover, can we assume that all criminal behavior is abnormal in the sense that it is motivated by some mental blank or inhibition? There must still be some old fashioned, red blooded villains among us who steal for the joy of larceny and whose only urge is the acquisition of assets without toil or taxes. Beginnings have been made in treating rather than punishing the criminal. My concern is again that Judge Biggs is more optimistic about the results than the present level of the knowledge of the psychiatrist warrants. Implementation of the ideal can never be a cure-all, and to be a workable supplement to our present system of punishment, practical obstacles of adequate financing and staffing must be overcome.¹⁰

While jail punishment has not prevented recidivism, one must reflect that psychotherapy has not reduced mental disorder. I suppose that if the ideal is crime prevention for the lawyer, then the prevention of mental illness is equally desirable for the psychiatrist. Perhaps an aid to both would be a return to religious and ethical values in the home, the school and the community. Cooperation among the lawyer and the psychiatrist and the moral theologian would be far more fruitful than an exchange simply between lawyer and psychiatrist. The "grotesque" separation which Judge Biggs finds between law and psychiatry is overshadowed by the possible separation of both from morality. The American Law Institute whose panel on the Model Penal Code includes lawyers, judges, sociologists, psychologists and psychiatrists, fails to include a single moral theologian, Catholic, Protestant or Jewish. This may account for the aberration committed in eliminating homosexual relations between consenting adults as a crime under the Model Penal Code, an attitude reflected in Judge Learned Hand's remark that: Sodomy "is a matter very largely of taste, and is not a matter that people should be put in prison about".¹¹ While immorality and criminality are not coextensive, the conclusion expressed by Judge Hand is based upon a moral view which is repugnant and revolting to any religious group in America.

10. See Symposium on Criminal Responsibility, 4 Kan. L. Rev. 350-95 (1956).

11. Quoted in 8 J. Legal Ed. 139 (1955); that he was not misquoted see 8 J. Legal Ed. 470-71 (1956).

The problems of crime and punishment touched by Judge Biggs are formidable but not unsolvable. We must agree with him that lawyers cannot continue to look upon skilled and conscientious psychiatrists as practitioners of some disreputable black art. By the same token, since Man has an eternal end and an obligation to achieve his destiny pursuant to a moral plan neither the lawyer nor the psychiatrist should continue to look upon the moral theologian as a divertisement for Sunday mornings. All three should work in harmony to achieve the good and the true.

WILLIAM HUGHES MULLIGAN†

EDMUND BURKE, NEW YORK AGENT. By Ross J. S. Hoffman. The American Philosophical Society, Philadelphia, Pennsylvania: 1956. Pp. 632.

This important and unique volume of historical scholarship and editorial work consists of two books in one; the history of Burke's relationship with the New York Assembly, as agent for that colony, from May 1771 until the American Revolution, and the intimate correspondence from 1761 to 1776 between Burke and his close friend Charles O'Hara. Each section contains a wealth of original documents, published here for the first time.

Burke's *New York Letter-Book*, containing his official and personal letters to the New York Assembly, is the basis for Professor Hoffman's excellent account of Burke's activities and reflections as New York agent. This manuscript was found several years ago among the voluminous unpublished Wentworth-Fitzwilliam papers in Sheffield, England. Professor Hoffman has wisely included the original source for his study of Burke's activities and convictions concerning American affairs.

Undoubtedly, *Edmund Burke, New York Agent* should dispel the most popularly cherished myth concerning Burke's position toward the American Revolution—that he applauded the event and rejoiced in the severance of the colonies from Britain. In 1790 Tom Paine, like other Jacobin democrats who loved popular emancipation in any form, expressed great surprise and moral indignation that Burke, in his *Reflections*, should have betrayed the revolutionary principles which he had supposedly held in common with all good patriot Whigs in 1775. As Professor Hoffman proves, anyone who had truly understood Burke's constitutional stand toward the American Revolution would have known, even without the *Reflections*, that he could not possibly have approved of the French Revolution. Burke always very rightly regarded himself as one of "the real well-wishers to the Colonies." Precisely for this reason, and because he had an elevated conception of the British Empire and of the sovereignty of Natural Law, Burke did everything in his power to prevent the outbreak of hostilities, and not until after he saw there could be no reconciliation did he approve the separation of the Colonies from Britain. If this appears as a paradox or comes as news to students of American history, nothing better could be recommended than this excellent book.

In a general but inconclusive way Randolph G. Adams, in his *Political Ideas of the American Revolution* (Durham, 1922), had surmised Burke's conception of empire and sovereignty. But as a Jeffersonian adherent of popular sovereignty, American style, Adams showed little appreciation of the constitutional foundation of "empire" and "sovereignty" in Burke's political philosophy. Thus, partly from conviction but mainly from a lack of adequate available evidence, Adams conceived Burke as

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differing only in degree from the Grenvilles, the Bedfords, and the Tory "King's friends" whom he opposed, a difference in policy but not in principle. It is indeed true that Burke and the Rockingham Whigs constantly opposed "the penal spirit" of the North ministry with practical appeals to the spirit of prudence, moderation and conciliation, particularly on the abstract "right" of taxation, and that this constituted a difference in policy. It is also true that like Townshend, Lord North and the King, Burke frequently affirmed the absolute sovereignty of Britain over the Colonies, and that this constituted a similarity in basic principle. Yet these facts together did not warrant Adams' strictures that Burke held common grounds of tyranny with the King. Indeed, once Burke's constitutional position is understood it becomes clear that George III and his ministers stood on the same grounds of arbitrary power with those Colonials who rebelled upon the abstract "right" of liberty, and that Burke was profoundly opposed to both. To appreciate fully the nature and extent of Burke's differences with Colonial and royalist revolutionaries, there is no more indispensable work than Professor Hoffman's book. It is more than a corrective of Adams' errors, because in philosophical outlook, in temperament, in intellectual perception and scholarly ability, no student of Burke is so perfectly fitted to the task of writing what may well be the definitive history of Burke's relationship to the Colonies.

Burke's profoundly constitutional position toward the American colonies is practically never stated as an abstract principle, but is clearly evident in his approach to concrete practical issues between Britain and the Colonies. He was convinced that the great ends of government in America—good order, liberty and justice—could be achieved under British rule. In a letter to the New York Committee of Correspondence, April 6, 1774, Burke insisted that the "real essential rights" of America were perfectly compatible with British sovereignty, and that both were grounded in mutual self-interest:

"Every good Englishman, as such, must be a friend to the Colonies; and all the true friends to the Colonies—the only true friends they have had or ever can have in England—have laid and will lay down the proper subordination of America as a fundamentally incontrovertible maxim in the government of this Empire. This idea . . . they are of opinion is nothing derogatory to the real essential rights of mankind, which tend to their peace and prosperity and without the enjoyment of which no honest man can wish the dependence of one country on another. Very unfortunately . . . the advice of that sort of temperate men has been little attended to on this side of the Atlantic, and rather less on the other. This has brought on misunderstandings and heats where nothing should exist but harmony and good correspondence, which ought naturally to arise from the entire agreement of their real interests." (p. 247).

It was the grand practical object of Burke and the Rockingham Whigs to maintain British sovereignty in America by cultivating the mutual natural affection and economic self-interests which existed between them. To do this Burke wished to avoid the growth of speculative controversies over theory, which always released rash, headstrong tempers on all sides, and to prevent and remove all grounds of legitimate complaint, particularly over taxes, by granting to the colonies the maxim of legislative self-determination consistent with British sovereignty. In short, Burke sought to preserve the union of Britain and America through moral prudence. It was precisely because he adhered *on principle* to the British constitution that *in policy* he resisted the tyrannical acts of George III and his ministers; he defended the civil rights of the Colonies not on abstract revolutionary grounds, but as a natural part of their inheritance under the constitution. Burke was, in his own

words, of "the party that resisted but would not revolt." The sweetness and light which infuses Burke's spirit of conciliation in American affairs is not merely a matter of political policy; it derives from a conception of government based on the principles of the British constitution, and ultimately on the Natural Law.

Burke perceived that the whole object of the king's ministers was to subordinate the Colonies not to the constitutional sovereignty of the Empire, but to the arbitrary will of the Crown. This policy was first tried with success against the East India Company. Burke wrote to the New York Assembly that even the dividends of the East India Company were brought "into an entire dependence upon the Crown". (p. 225). It was in the light of such policy that Burke interpreted the Mutiny Act, the Restraining Act, the Boston Port Bill, the revocation of the Massachusetts Bay Charter, the suspension of *habeas corpus*, and the priority given to claims by Quebec over land grants in northern New York. Without inflaming passions, he cautioned the New York Assembly to be vigilant against such trespasses of their legitimate interests and constitutional rights. In opposing the revolutionary policy of the Crown, Burke insisted that as agent for New York he was responsible *only* to the Assembly which had hired him, not to the Crown. He defined an agent as "a person appointed by" the colonial assembly "to take care of the interests of the *people* of the province as *contradistinguished from its executive government*". (p. 201). He vigorously opposed the desire of the Board of Trade, acting for the King, to make the nomination of an agent depend upon the royal governor, because such an agent "will be to all intents and purposes an officer of the Crown". (p. 202). On several occasions Burke wrote to the New York Assembly that should his appointment be made subject to the royal governor, he would resign. By such practical means Burke sought to preserve the principle of the balance of power within the state, and to keep royal prerogative within constitutional bounds.

Burke once remarked that when kings are tyrants in policy, subjects are rebels on principle. Whether the Colonists rebelled against British tyranny, or whether Britain was compelled to adopt harsh measures because the Colonies were naturally rebellious, is a subject for endless debate. Burke was aware there was a deep-seated spirit of dissent in many Colonies, particularly in New England and the South. But for Burke the burden of proof in civil strife lay with governors rather than subjects. From the *via media* of his constitutional position he lamented "the indiscretions on both sides." After the Boston Tea Party incident, he wrote to the New York Assembly: "I am sorry that the Ministers could be so ill advised as to order the persons guilty of the outrage on the King's vessel in America to England for trial". (p. 225). The antagonism provoked by repressive measures frequently led to unconstitutional acts which, in turn, provoked added restrictions. Burke noted that Colonial expressions of particular grievances were treated by Lord North as a denial of the entire legislative sovereignty of Britain, which led Parliament to reject real grievances, thus leaving the Colonies with the impression that "Parliament desired not peace but unconditional submission". (p. 179). Eventually it became nearly impossible to break through the ring of mutual suspicion created by initially rash measures and sustained by pride.

To Burke there seemed to be a close relationship between the spirit of dissent among certain Colonials and the authoritative temperament of certain ministers of George III. Indeed, the uncompromising spirit of the King, Charles Townshend and Lord North had much in common with the temper of such doctrinaire radicals as Samuel Adams, Henry Cruger, Tom Paine and even that most ardent champion of the Colonies, William Pitt. In one way or another all of these men lacked that

sense of balance and good order which results from the subordination of private will to constitutional law. King's ministers and Colonial dissenters alike exalted men and measures above principles. The one loved arbitrary power, the other arbitrary liberty; the one advocated absolute monarchical sovereignty, the other exalted an equally arbitrary popular sovereignty. Neither George III nor Tom Paine had any historical sense or philosophical understanding of constitutional authority and liberty. Indeed, it is not surprising that George III preferred Pitt to Lord Rockingham and Burke. From the pages of Burke, Pitt emerges as an austere and vain calculator, a haughty and petulant popular demagogue who put himself above both party honor and constitutional principle, and in effect betrayed the American cause he presumed to serve. It was almost inevitable that Burke's constitutional position should be equally misunderstood by partisan-minded supporters of royal prerogative and their popular counterpart in America, the doctrinaire revolutionists.

Professor Hoffman presents Burke's constitutional position toward America not by defining its abstract philosophical qualities, but dramatically and historically, as they appeared in the unfolding pattern of daily events, enacted by colonial legislators and ministers of the Crown, as Burke experienced the men and the acts during his role as New York agent. With complete scientific objectivity, yet with human warmth, Professor Hoffman holds up a fleckless mirror to the Delanceys, the Livingstons, Pitt, Franklin, Lord North, the Mutiny Act, the Quebec claims, etc., all the persons and events which concerned Burke from June 1771 until October 1775. He has an unerring sense of the historically significant event; he perceives the connections between related matters, so that his transitions are flawless, there is a graceful disposition of parts to the whole, and his narrative contains the dramatic interest of a well-constructed novel. The clarity and power of this presentation is reminiscent of the characteristic literary strength of Burke himself. A wealth of detailed materials is infused by a deep sense of history, and the whole is dramatically interwoven and transmuted until, out of the raw materials of history, an intellectual and moral revelation is established. As a work at once scientifically descriptive and humanistically prescriptive, *Edmund Burke, New York Agent* is a model of historical scholarship.

The second section of this book, consisting of the letters exchanged between the Burkes and Charles O'Hara during the fifteen years before the American Revolution, contains the most vital primary material on Burke's early public life in over a century. Burke's informal letters to O'Hara, an Irish politician from County Sligo, are particularly valuable for fresh insights into the private life and public character of the great Whig statesman. O'Hara was totally unknown, apparently, to any of Burke's biographers and to the editors of his works. Yet their correspondence reveals that they were the closest of friends for about sixteen years. Their candid comments upon the political intrigue in English and Irish politics, upon changes in administration and motives in policies concerning domestic, Indian and American affairs, fill in many obscure areas of Burke's life and present a fascinating account of eighteenth century Britain. But Burke was not always "tagging at the heels of factions." He emerges, finally, as a warm-hearted man devoted to his family and friends, public-spirited, and with a higher regard for party honor and duty than for success in high place. Both Will and Richard Burke appear as men of far greater personal integrity than Dixon Wecter or Sir Philip Magnus imagined.

The importance of these letters to scholarship on Burke can hardly be overstated. In covering the apprenticeship period of Burke's public life, just before and during the decade after he entered Parliament, these letters at once supple-

ment the work of Samuels and clarify many portions of his life left obscure by the long standard but grossly inadequate editions of his correspondence and speeches. These letters correct several misconceptions put forth by Burke's biographers and establish the facts necessary for any future biographer. What is more important, they constitute the first step toward making available the enormous manuscript sources on Burke now known to exist. About eighty per cent of the total number of Burke's letters discovered in the Watson-Wentworth-Fitzwilliam archives, and elsewhere, have yet to be published. In the careful and detailed notes and transition comments on the Burke-O'Hara correspondence, Professor Hoffman has established a standard of excellence which future editors may strive to equal, but dare not hope to exceed.

PETER J. STANLIS†

THE CHALLENGE OF LAW REFORM. By Arthur T. Vanderbilt. Princeton University Press, New Jersey: 1955. Pp. 194.

The lectures contained in this volume were originally delivered as the William H. White Lectures at the University of Virginia Law School. Their subject is most appropriate for lectures delivered by a jurist who has done perhaps more for reform of the law than anyone else, on or off the bench, in this country. The challenge of law reform (as Judge Vanderbilt so aptly terms it) is without a doubt the greatest challenge faced by our law today. It is fitting that one who has been in the forefront of meeting it should now give us this work on the subject.

Judge Vanderbilt divides his book into the four sectors of the battlefield of law reform. The first of these is the improvement of judicial personnel, including jurors as well as judges. As he stresses, the caliber of its personnel is the basic consideration in every judicial establishment. "The law as administered cannot be better than the judge who expounds it, the jurors who find the facts under the instructions of the judge as to the law, and the lawyers who try the case". (p. 11). It is indeed almost a truism that the quality of justice depends more upon the quality of the men who administer the law than on the content of the law they administer. Despite this, it is common knowledge that the method of appointing judicial personnel in this country is far from adequate. In at least thirty-six states, all judges are elected to office, a system which, both in theory and practice, appears to be the worst possible way of selecting proper judicial personnel. Actually, as Judge Vanderbilt informs us, judges elected by the people are unknown except in this country and in the Soviet Union and her satellites—"a dubious distinction of which we cannot be proud". (p. 17). If there is one element of justice upon which all would agree it is that it should be above politics. Yet, as this book amply demonstrates, the elective system all too often drives the judges into active politics with the commitments politics entails.

The second sector of law reform to which Judge Vanderbilt devotes his attention is that of the simplification of the judicial structure and procedure, so that technicalities and surprise may be avoided, and procedure may become a means of achieving justice rather than an end in itself. The complicated judicial structure that still exists in many states is astounding. As Judge Vanderbilt well puts it, in these states there is reason to doubt that even many lawyers could enumerate all the courts and describe their jurisdiction. Yet it is (or should be) clear by now

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that all that is needed for the modern administration of justice is a trial court of general jurisdiction; a court to hear appeals (with intermediate courts of appeal, if the volume of judicial business requires it); and a local court to hear petty civil and criminal matters. This is the model followed by the English courts, the federal courts, and a few states, and there is no valid reason why it cannot be followed as well by other jurisdictions in this country. Related to the matter of archaic organization is that of archaic procedure. Arid formalism to delight the heart of a Baron Parke is still all too often the outstanding characteristic of American legal procedure. Yet, here too, courageous pioneers have pointed the way, notably in the Federal Rules of Civil and Criminal Procedure, as well as the procedural rules adopted by New Jersey and a few other states.

The third sector of law reform with which Judge Vanderbilt deals is the elimination of the law's delays by modern management methods and effective leadership. This is a subject on which he, almost better than anyone else, is equipped to speak, for it is he more than anyone, who has been responsible for the effective administration that has transformed the court system of his state from one of the nation's worst to one of its best. His description of the working of the Administrative Office of the Courts in New Jersey is particularly useful and presents a blueprint for those who seek improvement in this direction. Not everyone may agree entirely with his criticism of states like New York, which have taken only halting steps in the direction of the New Jersey system. But few will read his searching analysis of the recently enacted New York act for "court administration" without feeling some doubts about its effectiveness in practice.

The fourth sector of law reform treated in this book is the modernization and simplification of the substantive law—which is termed the most difficult task of all and one whose achievement must necessarily await victory on the other three sectors of the battlefield. As Judge Vanderbilt sees it, the really great task of jurisprudence in the second half of the twentieth century is to reform our substantive law to meet the needs of the times. To perform this task, we must turn to our great law centers. Each of them should have a special responsibility for improving the law of its own state. This is, indeed, a great challenge to our law faculties; but it must be met if our law, born out of wholly different conditions, is to be made adequate to meet the needs of an atomic age.

It has well been said that the one factor most likely to provoke revolution is a feeling of injustice in the mass of the people. In this primer of law reform, Judge Vanderbilt has given us the means of ensuring that no such feeling will ever develop among the people of this country.

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