March 1953

**Cases and Other Materials on Modern Procedure and Judicial Administration (Arthur T. Vanderbilt, 1952)**

Elwyn Thomas

Follow this and additional works at: [https://scholarship.law.ufl.edu/flr](https://scholarship.law.ufl.edu/flr)

**Recommended Citation**


Available at: [https://scholarship.law.ufl.edu/flr/vol6/iss1/13](https://scholarship.law.ufl.edu/flr/vol6/iss1/13)

This Book Review is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact rachel@law.ufl.edu.
to develop American federalism. Again, the new nations emerging in Asia and Africa show a disposition to join and cooperate inside an international organization — the United Nations — in a way in which the older nations never did. This growing tendency of groups and nations to cooperate on an international level is an indisputable fact and in the long run may survive and surmount the grim national and ideological conflicts of our day.

William G. Carleton
Professor of Social Science
University of Florida


At last a profound student of the law with vast experience as practitioner, educator and judge has gathered in a single volume a history of the development of the law in sufficient amount to form a background for an erudite and practical exposition of both the true purpose of judicial procedure and the devotion to the cause of justice to be expected of lawyer and judge if the courts are to keep abreast of progress and retain the public confidence and respect so necessary to the full performance of their functions. Despite its title the treatise is not just a casebook for law students in the classroom.

The author, now Chief Justice of the Supreme Court of New Jersey and in former years president of the American Bar Association and dean of New York University Law School, deplores the disproportionate emphasis placed in our colleges upon courses dealing with "fundamental rights" while the student learns relatively little about the science of procedure, which he calls "the prime bread-and-butter subject of the practitioner" (p. 4). Anyone who has undertaken to acquaint himself with law will appreciate the author's observations, for although the study of procedure for procedure's sake would be a dull experience one may not without ample knowledge of the subject safeguard to the full his clients' fundamental rights.

And yet procedure, important as it is, is shown not to be a fetish but simply a practical means of arriving at the truth, so that a difficulty that the disputing parties have been unable to resolve by them-
selves may be determined by skilled and utterly disinterested arbiters with some degree of expedition, accuracy and fairness. The author is careful to point out that the student should inform himself about procedure not only as it is but also as it should be, so that he may be better prepared as his experience accumulates to struggle more intelligently toward the elusive goal of perfection. The approach, in the judgment of the author, should therefore be critical; and the law school, because in it research and study can be less hurried and more nearly objective, is the place where systematic development of procedure may ultimately be achieved.

The author's discussions are firmly anchored to the federal rules of civil and criminal procedure, which he considers criteria for the improvement and standardization of procedure in the courts of the various states — a movement that has already gained great momentum. To illustrate his points he draws generously on the decided cases.

Having established the character and importance of procedure, its relationship to substantive rights, its purpose as a means of protecting and enforcing those rights, and its characteristic of flexibility so that it may be molded in keeping with the progress of passing time, the author then brings lawyer, judge and student to the ever-present problem of what may be done to improve the administration of justice.

The genuine effort in this direction on the part of the organized bar during the present century is introduced to the reader by an address of another famed educator, Roscoe Pound, entitled Popular Dissatisfaction with Justice. That address, made nearly half a century ago, constituted a distinct jolt to the members of a profession so inclined to accept whatever procedure they find upon their admission to the bar and to fend off any attempted innovations, with the result that pleading and practice become static, fixed, frozen. The quakes set off by this exposure had their definite effect upon a system that in many respects was archaic, and the rumblings are still registering on the seismographs of those legal organisms in various communities in which the new procedure has not yet replaced the old. Plainer and plainer it becomes even to the most reluctant that, unless the judge and lawyer put their house in order and render the administration of justice simpler and surer, public confidence in the courts will lag and bureaucrats and administrators will inherit the field.

The votary of the law who studies this treatise — it must be studied, for it certainly cannot be read casually or hurriedly — will find much comfort in the recorded progress of the profession toward improve-
ment of the administration of justice. At the same time he will become impressed with the challenge to him and his fellows to take up the gauntlet themselves and to devote a part of their talents, their time, and their purse to the common effort. In the author's words, "The attorney whose professional thoughts begin and end with his own private clients is a pitiable mockery of what a great lawyer really is" (p. 1227). To stress the point, he quotes with approval the observation of President Theodore Roosevelt that "Every man owes some of his time to the upbuilding of the profession to which he belongs" (p. 1226), and goes on to demonstrate the unselfish contributions already made by members of the profession toward betterment of administration and the stimulation of cooperation between bench and bar to further such improvement.

The scope of the book is by no means limited to the subject of the student's familiarizing himself with the tools, so to speak, that he must use when he becomes an advocate, or to the modernization of those tools. The author caps these discussions by giving the reader a clear analytical look at the factory where final judgments are forged.

Methods of selecting members of the judiciary are carefully analyzed and the defects in these methods are laid bare. The reader is reminded of the indispensability of an independent judiciary to fair, impartial determination of causes and of the almost superhuman task encountered by the judge in attempting to retain the characteristic of independence while required to face the electorate periodically. The latter task is rendered unusually difficult by the fact that he can have no platform to present or policy to espouse and yet must stake the continuance of tenure on the outcome of a political struggle. The arbiters of such contests, in this case the voters, are too often possessed of so little information relative to the qualities and qualifications of the contestants that they are unable intelligently to express a choice. So, too, the candidate's fortune may well be disastrously affected by an unpopular decision, however just.

Too long the full significance and importance of the juror's part, not only in the dispensation of justice but in its improvement as well, have not received the consideration they deserve. Here we are informed of defects that may be cured with comparative ease, thereby making the whole judicial system stronger in the public estimation. And it may fairly be deduced from the author's discussion that, inasmuch as layman and lawyer complement each other, the whole pattern of the administration of justice will not attain symmetry while deficiencies obtain in the role of either.
The newly graduated lawyer — his training, his activities, his interest in the profession, and his attitude toward the law itself — comes in for an overhauling that suggests how, in his capacity as advocate and even as counselor, he may become more familiar with the responsibilities of his station and with his obligations as well to the courts as to his clients.

Finally the author examines the mechanics of judicial determination and the complexities resulting from numberless regulations, ordinances and statutes, ever increasing to the point at which no person can possibly know the effect of even a small portion of them or avoid violating a few, no matter how scrupulous he may be. We are reminded of the astronomical number of reported judicial decisions, which like a great inverted pyramid threaten to topple and engulf us. We are told that simplicity might fittingly become our watchword, for from simplicity would spring dispatch, and from dispatch a death-blow to the criticism of the law's delays, so ancient as to have been mentioned in Magna Carta, so poignant as to have been passed into Hamlet by Shakespeare, so persistent as to incite comment today.

There are many gems in the author's treasure chest. Throughout we find the admonition, which cannot be repeated too often, that courts are not intended as arenas where lawyers match wits, often while laymen, themselves participants when sworn as jurors, look on in amazement if not stupefaction while the rights of litigants are obscured by a maze of technicalities; rather, a trial is "an orderly search for truth" (p. 24), and the one primarily interested in the goings-on is the litigant, not the judge, lawyer, or juror. The reader is told that participation of the juror rescues the judge from isolation from the citizenry, that improvement of the jury system is a simple task compared to effectuation of the changes that should be wrought in procedural law. Lawyers are termed "ministers of justice" (p. 1223). The lawyer must know the part of the advocate if he is "... to evaluate his client's cause in terms of the realities of the courtroom" (p. 1226). The author convinces his readers that, generally, judicial councils calculated to improve the courts are more effective if the lay public is represented.

In this book the gamut is run by one well qualified by education, experience and talent to run it. Any student of the law, from freshman to battle-scarred veteran of the courtroom and seasoned jurist — for all in all stages are students — will do well to study this outstanding practical exposition. It is a compilation of facts and thoughts that
remind us of what we have done and of what we can do, on a basis of ethics and common sense, to strengthen the courts, foster public good will, buttress confidence and respect, and secure to the client sound counsel and to the litigant accurate and expeditious determination of his cause. Everyone interested in the law, especially in its development and improvement, should have this book at hand for both careful study as a whole and frequent reference.

ELWYN THOMAS
Justice of the Supreme Court of Florida

BOOKS NOTED


The aim of this book is to aid the average person and the student in an understanding of and clear thought about American experience in relation to the fluctuating role of government in economic life. A realistic treatment of such important and varied aspects and contributing factors as pressure groups, the setting of policy, administrative machinery, and the human factor involved is provided. It also presents underlying principles useful in guiding the evolution of policy and discusses major problems and issues associated with economic policy.


This volume lists French periodicals and books which are commonly consulted in France by members of the legal profession. A general commentary precedes the bibliography, describing the publications and explaining their usefulness from the point of view of an American lawyer. Obtainable free of charge upon request to the Cultural Division of the French Embassy, 972 Fifth Avenue, New York 21, New York.