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BOOK REVIEW

Cases and Other Materials on Modern Procedure and Judicial Administration. By Arthur T. Vanderbilt. New York: Washington Square Publishing Corporation, 1952. Pp. 1390. $8.50.

In this volume on procedure, Chief Justice Vanderbilt, in fact or by implication, makes certain assumptions, among which are the following: Procedure is an important and necessary part of the law. A person with a law degree should be able to go to court and try a case. Pleading is an essential part of the law school curriculum. The study of pleading should be an interesting, dynamic experience. A course in pleading should give more than the bare bones of what the rules *are;* it should also deal with what the rules and principles *should be.*

Not everyone will agree with all of these assumptions, but I believe that all of them are sound and that they should underlie any course in procedure. With this belief as a point of departure, I should wish to make three observations regarding the book and the subject.

First.—Dean Vanderbilt writes in the preface: "In the overcrowded law school curriculum there is no time or place—nor should there be—for the study of any system of procedure but the best." In the abstract, this is a commanding thought and forcefully phrased. But if the sentence is taken literally, as the author probably did not intend, it is not only misleading but is completely fallacious. In training Ph.D.'s to teach, it may be advantageous to discuss only what ought to be—what the ideal is; but in training lawyers to represent clients in actual controversies, you have got to discuss the existing procedures, methods, devices, and rules—and not just in passing, but as a major project. This means giving the law student a knowledge of and some proficiency in *existing* procedures in state as well as federal courts.

In the dozen or so states which follow or approximate the federal rules, this objective may be accomplished by a study of the Federal Rules of Civil and Criminal Procedure. But in the other states, such a study leaves a wide gap, for it can only serve the purposes of preparing the student for federal court practice and of pointing up the need for improvements in state procedures. In such states, considerable emphasis ought also to be placed on existing state practices. Since there are few "national" law schools, most institutions being either regional or state as to student-body, this will not create undue burdens.[1]

[1] The practice of blindly copying the "national" law schools in choice of cases to be used and approaches in matters of curriculum is difficult to justify, and is, I hope, being abandoned. On the other hand, the practice of placing major emphasis on local "bread and butter" law is even more difficult to justify.

Dean Vanderbilt faces this problem in his preface when he suggests that each student be "encouraged" to ascertain the procedure of his particular state and to keep a notebook thereon. But in states with non-federal rules, such a plan will not be adequate. In many such states the federal rules are kindergarten stuff as compared to the complex local practices, and active teaching of and class discussion on local procedures are necessary if the student is to be prepared to go to court. Not actively to emphasize local procedures in orderly class periods may produce political scientists of the highest type, but it will not turn out adequately prepared lawyers.

In Dean Vanderbilt's hands, such a misfortune would not occur, since he has a sound knowledge of local procedural matters and understands the importance of such knowledge to the lawyer. The danger is that lesser men, in a pattern all too familiar among followers of great leaders, will fasten on to the isolated sentence quoted and construe it literally, without reading it in the true context as a part of the philosophy of procedural courses. The average law teacher teaches the book; the good law teacher goes beyond the book in minor ways from time to time; the great law teacher uses the book as one of several devices, methods, and techniques to train lawyers. Here, the book, or the book with minor additions, will not be sufficient in a nonfederal-rule state.

Second.—The old "medley" approach in teaching pleading, with a little of this system and a little of that, leaves much to be desired. The "majority rule" is worthless on demurrer. In my opinion, a student can best be prepared by stressing the methods of a specific jurisdiction, and where practicable this should be the jurisdiction in which the student probably will practice. Following such a theory is easier for the "local" school than for the "national" one, of course, and this constitutes a primary justification for such local institution. It is true that rules in a particular state may be altered, or that a graduate may practice in a different state. But in this eventuality, the lawyer is still better prepared by knowing a specific system, and if he has had a sound legal education, he will be able to adjust readily to the change.

The practical result of the suggested approach, in those states not following the federal rules, is that two systems must be taught. One means for accomplishing this is by two courses, but one course to include both is probably preferable. The latter technique provides the needed opportunity for valuable comparison and analysis. The present book and one on state procedure would be required, and where no state

All schools should be "national" in the sense that they aim to create artists in the law as contrasted with mere craftsmen, and this cannot be done with an overemphasis on "bread and butter" matters or on so-called practical skills.

volume is available, carefully organized mimeographed materials which are keyed to Dean Vanderbilt's book, or vice versa, might be used.

In advocating that the two systems be taught in one course, it would be folly not to take cognizance of the fact that the teacher, in such case, runs the risk of ending up like the farmer who tried to raise Johnson grass and cotton in the same field. To teach federal and state procedures in the same course, and to achieve the provocative effects which Dean Vanderbilt has in mind will require energy, discipline, imagination, and enthusiasm. But in the hands of a superior teacher the old tinny "medley" will become a melody.

Three.—Coming now in conclusion to more general matters, I want to emphasize a fact that many have already recognized, namely, that reading this book is a liberal education. The approach and materials are such that, in the hands of a teacher who is an artist rather than a mere craftsman, the course in procedure will become a stimulating, practical experience for the student. Further, I suggest the volume as good reading for every law professor, whatever his field, for it will be a liberal education for *him* as well as for the student. The average professor probably does not need to be an expert in procedure in order to handle his subject, but a broad grasp of the fundamentals and purpose thereof is essential to a full understanding of the cases and law of any area.

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