BOOK REVIEW *

MEN AND MEASURES IN THE LAW. By Justice Arthur T. Vanderbilt, Alfred A. Knopf, Inc., New York, 1949, Pp. xxii, 156. ₱4.80.

This work of Justice Vanderbilt is a lucid exposition of the ills, defects, and shortcomings of the administration of justice in the United States. As an outstanding member of the legal profession it is inevitable that he should express his views from the standpoint of a lawyer and this is a happy circumstance for, in the words of Mr. E. Blythe Stason who wrote the introduction to the book, "we are fortunate that Justice Vanderbilt has undertaken to present the viewpoint of the legal profession."

In his own modest way, the author has warned us that the treatment of the subject-matter is only "partial, superficial descriptions that are far from hitting the mark." Actually, however, the author has endeavored to present his views as comprehensively as possible. Bowing to the pressing demands of the times the learned jurist almost involuntarily echoed the universal chorus for an intelligent, united, and determined action on the part of the members of the legal profession to assume their collective responsibility in the face of the world-wide problems created by what is now popularly known as the atomic age.

The pace that the present era of highly developed technology and atomic energy has set for every phase of human activities has, according to the author, forced the administration of justice to enter upon another revolutionary period just as the Anglo-American law has in the past passed through a series of re volutionary periods. Mention is made of the Glorious Revolution of 1688 during the reign of the Stuarts which, unfortunately, had no resounding repercussions in the other parts of the civilized world, although it had exerted a certain amount of influence upon the course of the progress of the law. The author's concern with the historical background of the advance of the Anglo-American law is such that he believes the American Revolution of 1776 and the French Revolution of 1779 were responsible in a large measure in the determination of the course that law and liberty had taken during those troubled periods. As a matter of fact, even the political debacles of the mighty British and Dutch Empires in Asia are but the physical manifestations of the inexorable law of progress which the legal order must show as a part of history in the making. Indeed, the various political, social, and economic upheavals which characterized the fate of practically all European countries during the last five centuries are but the concomittant symptoms of a universal body politic suffering from the malady of maladjusted legal order. The author recalls, not without a sense of disillusionment, that freedom, as Americans have known it, "has existed for less than two hundred years out of the five thousand years of recorded history and in but a relatively small part of the inhabited globe." It is a revelation whose dazzling light throws in bold relief the magnitude of the sacrifice of those who have pioneered in the development and modernization of law and the great stature of those legal colossus since the time of Edward I who disregarded the staunch opposition of the reactionaries.

* Not originally intended as a book review, this article is much longer than what book reviews ordinarily are. This is a paper presented and discussed by Miss Amelia R. Custodio (a third year law student, and formerly secretary of the Order of the Purple Feather, U.P. Law Honor Society) at one of the Law and Literature sessions of the Order of the Purple Feather. —*Editor's note.*

Justice Vanderbilt, of course, agrees with all his predecessors when he stated that the fundamental problem that confronts the civilized world is age-old: "The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license." The author propounded this somewhat perplexing question: What, then of our law today?

The author makes a careful distinction between (1) law in the books, (2) law in action, and, (3) law in the law schools. The statistical efforts exerted by the author reveal that, speaking of cases alone, in the time of Coke and Bacon in England there were only five thousand reported cases. In 1940 in the United States the number of reported cases reached the astronomical figure of 1,750,000. These cases have found their way in law books side by side with judicial decisions, constitutions and statutes, administrative rules and rulings, and the mass of secondary authorities such as digests, encyclopedias, annotated cases, volumes of citations, treatises, restatements, and law reviews, not to mention the plethora of materials in the related social sciences—that we must turn if we are to understand the law. Fortunately, not every reported case involves a new doctrine. Likewise, the number of principles of law as well as the number of rules of law with all their corollaries and exceptions are definitely limited. This huge mass of assembled reported cases is only true in America where there are 49 jurisdictions. It is not true in either England or Canada. The tremendous bulk of casebooks is almost duplicated by the size which the accummulation of legislation and administrative law has attained, notwithstanding the fact that the bulk of state administrative law, both regulations and decisions, is largely unpublished. The burden of criticism, according to the author, is not only heaped upon mere bulk but also upon the "unknowability of its vast wilderness of statutes and of its jungle of administrative law." The ever-mounting tide of legislation, according to the author, has been condemned by both Blackstone and Coke as responsible for the havoc wrought upon the otherwise perfect common law. Even the government, charged the author, had been a victim of ignorance resulting from lack of publication of legislative measures as classically illustrated in the famous case of *Panama Refining Company v. Ryan*,[1] where the government had instituted an action, among other things, for violation of a section of the Petroleum Code, which had actually been repealed. The author has clearly implied that, if it had not been for too much legislation, the publication of all legislative measures would have been easy and the embarrassing omission or oversight of the repealed section of an Act could have been avoided.

Those are only a few of the fundamental problems which a student of law, the legal practitioner and officers of the government must have to contend with in his dealing with law in the books.

The author is simply voicing a common observation when he states that there is a great gap between the law in books and the law in action. The law in action involves all known human elements that is why the life of law according to Justice Holmes, "has not been logic; it has been experience." The categories of the clients, the standing of the opposing counsels, the character and qualifications of the judge, his manner of appointment and tenure of his office are potent facts that spelled the difference between the law in books and the law in action. All the defects inherent in, or attributable to, these factors may be minimized, in the opinion of the author, if the administration of justice could be had under a simplified procedure free from technicalities. Whether justice

[1] 293 U.S. 388 (1935).

is being sought in the courts or in the administrative agencies the monstrosity of cumbersome and outmoded procedures and the tyranny of technicalities will have to hold sway.

The law in the schools, in the opinion of the author, must shoulder great part of the responsibility in the task of understanding the law. He voiced the general observation that the curriculum in many of the law schools and the prelegal preparation of many law students are far from being perfect. The author has advanced some suggestions, chief among which is the amplification of studies in social sciences in the prelegal education.

The author has amply discussed the growth of substantive law. He is inclined to believe that this growth has revolved around the personalities and influence of such progressive minds as Edward I, Theodore Roosevelt, Woodrow Wilson and Franklin D. Roosevelt, among the political leaders, and Coke, Mansfield, and Stowell, among judges. Much of the social reform, political advances, and economic development of England and America had been due to the patriotism, labor and thinking of those men. The recognition and preservation of many of the civil and political rights of the citizens of England and America had been brought about by the progressive growth of the substantive law of those two countries. The author, however, admits that much remains to be done along this particular line of the legal system.

Justice Vanderbilt has not forgotten to call our attention to the main stumbling block in the proper administration of justice. Procedural law, with all its severe technicalities, affects the citizens' substantive rights and even his personal liberty. It is futile, according to the author, to remind a citizen of his rights as stated in the law books if such rights remain unattainable because of procedural obstacles. Justice Vanderbilt, however, is happy to observe that procedural law has been blessed with more improvements than substantive law. He blames selfish interests or mere inertia for this unhappy situation. The author has recalled many of the battles fought by some outstanding members of the bar for the improvement of the procedural system in the courts of justice. He has noted with considerable pride the mighty contribution by Roscoe Pound when he delivered his famous address at the annual meeting of the American Bar Association at St. Paul in 1906. As far as the American procedural system is concerned, the author was happy to note the great contribution made by Attorney General Homer S. Cummings. This man was responsible for the enactment into law of the draft of the bill prepared by Thomas W. Shelton of Norfolk, Virginia, and which had been defeated twenty years earlier, giving to the United States Supreme Court the rule-making power.

Justice Vanderbilt, in driving home his point, has resorted to the use of judicial statistics. He has supported his observations with pertinent references to a multitude of documents, publications, and books. He has approached his self-imposed assignment with an open mind but with an eye single to the purpose of informing the public of the ills that plagued the administration of justice in the United States of America. His analytical power, which must have been sharpened by many years of service in the Bench, has served him in good stead in his efforts to present in detail the historical processes through which our system of laws has passed until it reaches its present state of progress and development. Although he has advanted many concrete suggestions designed to cure the evils and defects he has pointed out, the manner of his suggestion lacks the vehemence of a clarion call. Instead, he appeals to the intelligence and understanding of the members of the bar to reexamine the judicial facts

he has narrated in order that they may be able to study and evaluate them for what they are worth.

The author, it seems, has discussed the theme of his subject-matter admirably. His use of statistical data, historical facts, and comparisons has served well his purpose of emphasizing the need for more judicial reforms to the end that modern society, with all its complexities brought about by two warring political ideologies, may be able to weather the impending storm which is threatening to engulf the whole world and obliterate all traces of freedom and democracy which we hold dear to ourselves.

Amelia R. Custodio

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