Vanderbilt: Judges and Jurors: Their Functions, Qualifications and Selection

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JUDGES AND JURORS: THEIR FUNCTIONS, QUALIFICATIONS AND SELECTION.

This little book contains the three lectures given by the author at Boston University. The lectures were given to a general audience and, hence, are not directed specifically to members of the legal profession. They present, nonetheless, a close and thoughtful study of the two subjects discussed, judges and jurors.

The discussion begins with a brief analysis of the important role entrusted to judges and courts and of the functions performed by judges, appellate and trial. To describe all that judges do, would, of course, encompass the entire field of law. The author has no such pretensions. He does emphasize that justice is rendered in accordance with law and that it is law which the courts apply. He traces the judicial history of England through which this fundamental tenet of our judicial system emerged.

Three essentials of judicial office are listed for the proper discharge of
the judge's duties: "impartiality, independence and immunity." The last two are primarily means of achieving the first. "They should be answerable to no one and immune from liability for judicial acts to the end that justice may be administered without favor." Without these essential conditions of operation, even the judge's character, courage, honesty, wisdom and learning cannot count for much.

These conditions necessarily lead the author to the conclusion that judges must have security of tenure and should not be selected by election for limited periods. On the contrary, as exemplified by the federal judiciary, appointment with life tenure is called for. This removes the judges from the political fortunes of popular election by which judges may win or lose their office without regard to their qualifications or the adequacy with which they have discharged their duties.

The personal qualifications or attributes of a good judge discussed by the author are encompassed in "character, intellect, knowledge, and human relations." Knowledge includes both professional competence and general learning. Human relations refers to the ability to understand and deal with other men effectively. A judge with character is one who is courageous, is able "to withstand external influences," has humility and is willing to hear the other side of the question. The author recognizes the subjective character of many of these qualifications and the difficulties attendant upon identifying them in any particular individual.

This leads back to the method of selection best calculated to secure the judge having these attributes. Again appointment, with appropriate limitations minimizing the political factors inevitably coming into play, is preferred to the elective system for voters cannot "know and judge the qualifications of many practitioners of law" and "judges are not essentially representatives of the people as are legislators and the executives." In addition, repeated elections necessitated by the short term of office lessen the independence of the judge and increase his dependence on politics and political bosses for selection and continuance in office. The author has no panacea applicable to all states. What particular system is best for any given state depends upon its traditions and history, but in any event appointment on a bi-partisan basis should be the aim.

The arguments in favor of appointment and against election of judges have been made many times, though not often with the persuasiveness, erudition and historical perspective appearing in this book. The author, an example of the best in the judiciary of this country, was himself a product of an appointment method. Nevertheless, selection of judges by election seems entrenched in the large majority of states. Efforts to introduce substantial deviations from it have repeatedly met with defeat at the hands of the voters. Witness, for example, the defeats in recent years in Michigan, Ohio and New Mexico. Even the compromise known as the Missouri Plan (incidentally, given little notice by the author) has made little headway. New Jersey, however, in 1947, under the leadership of the author, re-asserted its belief in appointment of judges by the governor
with confirmation by the senate, a method of selection traditional to the state.

A third of the book discusses the jury. Its history both in England and the United States is canvassed. As do most students of the subject, the author deplores the restricted function assigned to the judge in American practice in assisting and guiding the jury, some states even permitting juries to pass on questions of law. Beyond noting the conflicting views as to the role of the jury between those who would confine it to bare fact-finding and those who would recognize its right, or at least power, to apply its own concepts of justice when at variance with the law, the author takes no particular stand on what precisely the jury should be expected to do. This leads also to a rather imprecise analysis of the qualifications jurors should have. Random selection is criticized as impossible since its logic would lead to the inclusion of "convicts, the illiterate, or persons mentally or physically unfit." The views expressed in the report of Judge Knox's committee to the United States Judicial Conference are preferred. "'Those chosen should possess as high a degree of intelligence, morality, integrity, and common sense as can be found by those who make the selection.'"

The problems which have arisen in connection with the New York blue ribbon jury [see *Fay v. People of State of New York*, 332 U.S. 261 (1947)] are not discussed. Selection of jurors under the supervision of the judges, divorced from politics and with the use of questionnaires and personal interviews, is recommended.

The almost complete elimination of the use of juries in civil cases in England is noted, but the author considers the prospect of a similar reduction in use in this country as quite remote. He emphasizes, however, that reform in the direction of increased efficiency in their use is essential.

The book, both in text and in documentation, reflects a lifetime of active participation in and study of the administration of justice by a man exceptionally qualified by vision and experience for the task. Any lawyer interested in a careful and readable examination of judges and juries will profit from its reading. Much of it will profit also the layman. Of necessity, a considerable portion of the discussion is in technical legal terms and deals with judicial methods and procedures, unfamiliarity with which will limit the full grasp by the ordinary layman of the significance of the discussion.

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