

## BOOK REVIEWS

### REGULATING BUSINESS BY INDEPENDENT COMMISSION.

By Marver H. Bernstein. Princeton: Princeton University Press, 1955. Pp. xi, 306. \$5.00.

"The independent regulatory commission," says Mr. Bernstein in his Introduction, "is now commonly regarded as an adequate, satisfactory, and even ideal instrument of governmental control. Political progressives have relied upon it as an agent of reform, and the regulated interests have accepted it as the appropriate governmental instrument of regulation." (p. 3). Numbered among its staunch defenders, as the author points out from time to time in his text, have been such distinguished names as Louis D. Brandeis, Joseph Eastman, James M. Landis and Sam Rayburn, to name only a few.

Mr. Bernstein, who studied the independent regulatory commissions for the Bureau of the Budget a few years ago, does not agree, and has collected an array of opinions from others who share his point of view. In their view an independent commission, precisely because it is independent, is far too much insulated from the political forces which originally brought it into being and which alone can maintain it as a vigorous expositor and guardian of the public interest. The "judicializing" of procedures, following the lead of the ICC under Judge Cooley, its first Chairman, and latterly the mandate of the Administrative Procedure Act, buries commissioners and staff alike in myriad details in which affirmative regulatory aims are lost. Fragmentation of regulation, particularly in the area of transportation, leads to inconsistency and inefficiency. "Expertise" is not what it might appear to be, and experts, who may be regarded as those "who know more and more about less and less," are in any event far from ideal guardians of the public interest. Mr. Bernstein makes these and other points by examining seven commissions—the ICC and CAB in the field of transportation, the FCC and FPC in the field of other utility regulation, and the FTC, NLRB and SEC in the field of regulation of special business practices.

The author prefaces his more specific topics with two illuminating chapters on the intellectual development of the regulatory movement from 1887 to the present time. During almost all of that period the dominant opinion held to the view that the independent commission is the best organizational device for business regulation. Proponents of that view sought to insulate the process of government regulation from partisan political forces and to provide expert, rational and unbiased solutions to controversial regulatory problems. Nonetheless there have always been skeptics, who have questioned the tendency of the commissions to assume a judicial character, and who increasingly have doubted that commissions can perform effective regulatory functions. Their point of view gains support, no doubt,

from the fact that in periods when intensive and comprehensive business regulation was made necessary by economic or military emergencies, independent commissions have been relegated to minor roles.

The varieties of opinion on these basic matters are elaborated in the remaining chapters. A study of the "Life Cycle of Regulatory Commissions" epitomizes the author's point of view. As he sees it:

"The life cycle of an independent commission can be divided into four periods: gestation, youth, maturity, and old age. The length of each phase varies from one commission to another, and sometimes a whole period seems to be skipped. Some commissions maintain their youthfulness for a fairly long time, while others seem to age rapidly and apparently never pass through a period of optimistic adolescence. Some are adventurous, while others are bound more closely to the pattern established by the oldest commission, the ICC." (p. 74).

In old age, as he describes it, procedural patterns become sanctified, the primary mission becomes the maintenance of the *status quo*, and decreasing public and political support intensifies the reliance of the commission on the industry which it regulates. Indeed, somewhat the same conclusion has been reached by a recent congressional committee:

"A subtle malady which is apparently institutional rather than personal in its incidence is the tendency of the independent regulatory commissions not to die, but to fade away; with advancing age they tend to become the servants rather than the governors of the industries which they regulate, and attain a sort of dignified stability far from the objectives which they originally sought."<sup>1</sup>

Chapters follow on such topics as "Commissions and the Problem of Expertness" and the "Politics of Adjudication." On the first of these topics the author not only shares Laski's and Lord Lindsay's distrust of the expert,<sup>2</sup> but concludes, from a somewhat abbreviated evaluation of the persons who have served as commissioners on the seven agencies under study, that all of the limitations on the value of experts apply with special force to their service on the staffs of independent commissions. He says of such commissions: "[T]he staff experts are rarely balanced by commissioners who possess not the detailed knowledge of the experts but the aptitude for gauging the public mind and for integrating the points of view and proposals of the experts into a policy in the public interest." (pp. 124-25). On the matter of politics, the author, with John M. Clark, deplores not the extent to which commissions are political, but the extent to which they are not: "One disquieting symptom," says Clark, "is the fre-

1. SUBCOMMITTEE OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, REPORT ON ETHICAL STANDARDS IN GOVERNMENT 82d Cong., 1st Sess. 60 (comm. print 1951).

2. LASKI, THE LIMITATIONS OF THE EXPERT (Fabian Tract No. 235, 1931); 1 LINDSAY, THE MODERN DEMOCRATIC STATE 267-81 (1943).

quency with which, when a new reform is suggested, ways are sought to 'keep it out of politics.' Politics is the democratic way of governing; is it becoming necessary, then, to keep government itself out of politics?"<sup>3</sup>

The author's method of evaluation, as well as the sweeping nature of his conclusions, seriously weakens his arguments. There is no examination of any commission in detail; rather, the author contents himself with what others have said of this or that or all commissions over the past half century. Only in discussing the political and economic forces which led to the establishment of several of the seven commissions on which he concentrates does the author make substantial use of what might be called primary materials, and even then he plows little ground which has not already been well turned by others.

Moreover, the very content of the book might have suggested to the author that he was dealing with at least two separate problems when he undertook to evaluate a group of agencies with characteristics and functions as disparate as those of the ICC and the NLRB. The problems which he discusses are real in the case of the former—indeed the ICC forms the basis for perhaps half of his illustrative examples. The same problems are often insignificant, or even non-existent, for an agency such as the NLRB or the FTC which deals not with one industry, but with an aspect of all industries. These latter agencies appear in the book so rarely that the differences which they exhibit should have been apparent. Yet the sweeping conclusions of the author make no distinctions, and are presumably applicable in equal measure to all independent commissions of whatever character.

The same failure to recognize a difference between types of independent commissions is at the root of another matter that should be noted, the curious inconsistency between the dominant theme—that "independence" is an enervating political concept which can lead only to decay—and the recognition that the same "independence" attaches to the old-line bureaus in the executive departments whenever one of them is charged with the regulation of a particular economic group. The author notes that "single-headed departments and agencies or their subdivisions . . . may in fact be substantially independent of presidential direction when a highly organized group exercises strong clientele influence over the agency or bureau." (p. 146). He does not suggest how this can be reconciled with his basic plea for more political contact between the commissions and the executive branch.

Perhaps more politics—or at least closer relationship to the executive branch—is not precisely what Mr. Bernstein wants. His objective seems rather to be more regulation, in more fields. "The real difficulty," he concedes, "lies not in fitting the programs of independent commissions into national economic policy but rather in developing national economic policy itself." (p. 163). The finding of the Hoover Commission—that coordina-

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3. CLARK, *SOCIAL CONTROL OF BUSINESS* 490 (2d ed. 1939).

tion of the regulatory commissions with the executive has not been a serious problem—in his view “merely illustrates the planlessness of the economy and the general disorder of which the independence of regulatory commissions is merely a part.” (p. 3).

Charles A. Horsky †

**THE GUILTY MIND: PSYCHIATRY AND THE LAW OF HOMICIDE.** By Judge John Biggs, Jr. New York: Harcourt, Brace & Co., 1955. Pp. xii, 236. \$4.50.

On January 15, 1948, James C. Smith wantonly killed a taxicab driver in Philadelphia. He pleaded guilty. From the age of nine, when he was committed to a reformatory as a juvenile delinquent, to the time of the slaying, Smith's history shows continual arrests, convictions, and imprisonments for criminal offenses. At least twice he was hospitalized for mental disorders. His intelligence was subnormal. During his army service there is a record of three separate occasions on which “nervous condition” was noted. In 1945 three doctors diagnosed him as “insane.” Nevertheless, he was discharged on the testimony of one doctor who stated that Smith “. . . was capable of understanding the charges pending against him and of conferring with counsel in the making of his defense.” Later Smith was voluntarily committed to Philadelphia General Hospital. It was noted on his record that he was “homicidal.” Again, Smith was dismissed from the hospital. He committed more crimes and was imprisoned in Philadelphia County Prison and again released shortly before the slaying of the taxi driver.

At the murder trial a psychiatrist<sup>1</sup> testified that Smith was sane because “he knew the difference between right and wrong.” This is the classical test of criminal sanity established by the House of Lords in 1843 in the *M'Naghten* case.<sup>2</sup> The Supreme Court of Pennsylvania<sup>3</sup> affirmed the conviction.

Smith then sought a writ of habeas corpus in the federal court alleging that he had been denied due process. The petition was dismissed for lack of jurisdiction<sup>4</sup> and on appeal the dismissal was affirmed.<sup>5</sup> A second petition for a writ of habeas corpus was denied by the district court en banc.<sup>6</sup> From this decision an appeal was taken to the Court of Appeals which

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† Member of the District of Columbia Bar.

1. This psychiatrist was shortly thereafter found to be insane. See *United States ex rel. Elliott v. Hendricks*, 213 F.2d 922 (3d Cir.), *cert. denied*, 348 U.S. 851 (1954).

2. 10 Cl. & Fin. 200, 210, 8 Eng. Rep. 718, 722 (H.L. 1843).

3. *Commonwealth v. Smith*, 362 Pa. 222 (1949), 364 Pa. 93, *cert. denied*, 340 U.S. 812 (1950).

4. *United States ex rel. Smith v. Warden*, 87 F. Supp. 339 (E.D. Pa. 1949).

5. *United States ex rel. Smith v. Warden*, 181 F.2d 847 (3d Cir. 1950).

6. *United States v. Baldi*, 96 F. Supp. 100 (E.D. Pa. 1951).

affirmed,<sup>7</sup> three judges dissenting.<sup>8</sup> The United States Supreme Court affirmed, three justices dissenting.<sup>9</sup> The statement of facts in the dissenting opinion of the Court of Appeals makes it abundantly clear that the unfortunate defendant was, and for many years had been, the victim of severe mental illness. He had been before the courts and in hospitals many times. Yet he was released each time because of a totally unscientific and patently unworkable rule of law—namely the legal test of insanity.

The short and easy answer to the petition for habeas corpus was a denial of the writ on the ground that the Pennsylvania courts had committed no error in following the well established law of the Commonwealth. Chief Judge John Biggs, Jr., in his dissenting opinion cogently observed that, "The court below did not grasp the nettle which this case presents, nor do we think it is seized by the majority of this court."<sup>10</sup> The bare-handed seizure by the courts of thorny problems is required if the rank weeds of legal error and outmoded rules are to be cleared away so that there can be a flowering of just legal doctrine. There must be a sensitivity to the rights of the individual which compels a searching examination of the facts of each case in order to discern the affect of the application of established rules of law. *Stare decisis* does not require blind adherence to judicial precedent when the results are incompatible with basic principles.<sup>11</sup> A wise and compassionate court<sup>12</sup> will permit the dynamic growth of the law in accordance with increased scientific knowledge and changed social conditions.<sup>13</sup> Judge Biggs analyzed the facts and the law of the *Smith* case in a dissenting opinion which cannot be ignored in any discussion of criminal intent and *mens rea*.<sup>14</sup>

7. *United States v. Baldi*, 192 F.2d 540 (3d Cir. 1951).

8. *Id.* at 549. Opinion of Chief Judge John Biggs, Jr., joined in by McLaughlen, J., and Staley, J.

9. *Smith v. Baldi*, 344 U.S. 561 (1953). Note that the dissenting opinions premise the discussion of constitutional problems upon the careful analysis of fact and resulting legal issues found only in the dissenting opinion of Judge Biggs.

10. *United States v. Baldi*, 192 F.2d 549 (3d Cir. 1951).

11. In other fields of law, Judge Biggs has, when occasion demanded, changed the course of the law. For example, see *Scott Paper Co. v. Marcalus Mfg. Co.*, 147 F.2d 608 (3d Cir.), *aff'd*, 326 U.S. 811 (1945). See also the following cases in which the Supreme Court adopted the dissent or partial dissent and partial concurrence of Judge Biggs involving a departure in the law. *Hartford Empire Co. v. Hazel Atlas Glass Co.*, 322 U.S. 238 (1944), *reversing* 137 F.2d 764 (3d Cir. 1943); *Mahnick v. Southern Steamship Co.*, 321 U.S. 96 (1944), *reversing* 135 F.2d 602 (3d Cir. 1942); *United States v. Landani*, 320 U.S. 543, *reversing* 134 F.2d 847 (3d Cir. 1943); *Atlantic Refining Co. v. Moller*, 320 U.S. 462 (1943), *reversing* 134 F.2d 1000 (3d Cir. 1942).

12. See review of *THE GUILTY MIND* in 43 *NEWSWEEK* 113 (1955) in which the reviewer characterizes the book as a "wise and compassionate treatise."

13. Such a concept of the judicial function in no way departs from a positive view of the law, as exemplified by Judge Learned Hand, nor does it establish a free right of substitution of the court's moral or sociological views as is oftentimes urged in the guise of "natural law."

14. Note that the Court of Appeals for the District of Columbia in a subsequent case, *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954), has departed from the rule in *M'Naghten's* case. However, the substitute rule of the *Durham* case may engender even more difficulties. It fails to treat mental illness as a disease affecting the entire personality. Contrary to *gestalt* psychology, it establishes a requirement of proof of causal relationship between the illness and the criminal act. The pro-

Judge Biggs was asked to deliver the 1955 Isaac Ray lectures dealing with law and psychiatry which form the basis of *The Guilty Mind: Psychiatry and the Law of Homicide*. This volume is the third in that distinguished series,<sup>15</sup> the first written by a lawyer. *The Guilty Mind* is, of course, of signal importance to both the legal and psychiatric professions. In its approach to a problem fraught with emotional connotations and requiring a reexamination of concepts unthinkingly and quiescently accepted for a century, this book is a model for the historian and anthropologist.

Although in recent years a number of lawyers and psychologists, singly and in collaboration, have written in the field of law and psychiatry, most of these works have attempted too much and achieved too little.<sup>16</sup> Psychiatry and the law are not two disparate and self-contained disciplines which have but a single point of contact. The law, in its practical resolution of problems of social and political organization and of anti-social behavior, must in all its phases deal with instances of mental illness. Psychiatry can, it is hoped, be of inestimable value to society in treating the legal status of the mentally ill and the allegedly mentally ill as well as in caring for the afflicted individuals.

Judge Biggs wisely has not attempted an encyclopaedic discussion of this entire enormous problem. Instead, he has confined his study to the rule in *M'Naghten's* case. This problem is of signal importance since, with the exception of New Hampshire, the rule is followed in all of the states.<sup>17</sup> The mental status of the accused is frequently in issue.

Following the method of Toynbee, Judge Biggs examines the practices of other civilizations and other eras. But, unlike Toynbee, he is not seeking to promulgate a thesis or to document a theory. He holds no parochial brief for our society or our laws. The Brehon Laws of early Ireland, the laws of ancient Sumer, as well as colonial America's judicial decisions dealing with witchcraft are studied with a dispassionate honesty

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posals of the American Law Institute likewise fail to recognize the social problem of mental illness itself and instead merely establish a new formula to determine when criminal penalties may be imposed. The sound and satisfactory procedures of the Pennsylvania Mental Health Act, PA. STAT. ANN. tit. 50, § 1223 (Purdon Supp. 1952), which permits the hospitalization of the mentally ill and the postponement of criminal trial until the illness is cured, is ignored. See Note, *The Greenstein Act: The Need for a New Approach to the Treatment of Psychopathic Criminals*, 102 U. PA. L. REV. 224 (1953). This procedure does not, of course, affect the problem of the defendant who is admittedly "sane" at the time of the trial but pleads insanity at the time of the commission of the act.

15. OVERHOLSER, *THE PSYCHIATRIST AND THE LAW* (1953); ZILBOORG, *THE PSYCHIATRY OF THE CRIMINAL ACT AND PUNISHMENT* (1954).

16. See, e.g., GLUECK, *STUDIES IN FORENSIC PSYCHIATRY* (1916); GUTTMACHER & WEIHOFEN, *PSYCHIATRY AND THE LAW* (1952); SMITH, *THE PSYCHOLOGY OF THE CRIMINAL* (1922).

17. *But cf.* Anderson v. Grasberg, 25 U.S.L. WEEK 2018 (Minn. Sup. Ct., June 29, 1956), adopting the rule of Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954) in a civil proceeding to determine responsibility of a joint tenant for uxoricide. The irresistible impulse exception to the *M'Naghten* rule is allowed in many states. E.g., People v. Lowhone, 292 Ill. 32, 126 N.E. 620 (1920); State v. McGruder, 125 Iowa 741, 101 N.W. 645 (1904).

and a scholarly breadth of knowledge. The treatment of the mentally afflicted criminal throughout history is a fascinating study. It must be pursued by reading shards of clay tablets and analyzing sacred scriptures, ancient poetry, and myth.

In the history of Anglo-American law, Judge Biggs deals not only with the reported judicial decisions but also with the political realities which, in large measure, shaped those decisions. The *M'Naghten* case, itself, affords an example of Judge Biggs' treatment of legal history. He points out the persuasive effect which Isaac Ray's *Medical Jurisprudence of Insanity*<sup>18</sup> had upon the trial court. The trial judge charged the jury on *M'Naghten's* soundness of mind. The verdict was: "Not guilty, on the ground of insanity." Then describing the economic and political ferment in Victorian England, the threat to the crown which this slaying presented, Judge Biggs comments, "I think the Queen and the lords put a hot fire to the feet of the judges of England." (p. 107).

Contemporary treatment of the problem of criminal intent is also discussed on a global basis. Judge Biggs describes the recidivist rate among Pennsylvania prisoners, the progressive corrective and rehabilitative centers for youthful and adult offenders in California, and the enlightened laws of Denmark, Egypt, and Luxembourg. Since publication of this book, the English government has expressed its willingness to accept the Scottish doctrine of "diminished responsibility" and repudiate the rule in *M'Naghten's* case.<sup>19</sup> Both moves indicate a more humane as well as a more practical approach to the problems of criminal penalties as a deterrent and as a protection to society. The present volume should foster a similar point of view in the United States.

In postulating a more scientific test of mental incompetency in criminal cases, the author recognizes the psychological blocks in the attitude of the public. As an experienced judge he is also well aware of the difficulties of obtaining satisfactory and qualified expert witnesses. In the encouraging conclusion to this study, Judge Biggs refers to the many research and teaching projects recently initiated in the field of law and psychiatry.

In recent years, there have been numerous criticisms of the rule in *M'Naghten's* case. None has so cogently explained the moral and social evils of this rule as has Judge Biggs.

"First: why is the *M'Naghten* formula unrealistic and erroneous? Hadfield's case will serve as an example. You will recall that Hadfield believed that a duty had been imposed on him by God to be the savior of mankind. It was his belief that he had to be sacrificed to save humanity, precisely as Jesus Christ had been. He desired to be hanged by the Crown just as Christ had been executed by a mandate of the Roman state. Hadfield thought that the best way to achieve immolation was by assassinating King George III. He

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18. RAY, TREATISE ON THE MEDICAL JURISPRUDENCE OF INSANITY (1938).

19. New York Times, Feb. 17, 1956, p. 1, col. 4.

would then be convicted of high treason and hanged. He knew that killing the King was wrong. Had the M'Naghten formula been applied to Hadfield he would have been found guilty of high treason and executed. Yet can anyone doubt that Hadfield was a madman?

"So much for the error and unreality of the Rules. Why does their application constitute a danger to the public? Because the mental competency of recidivists should be questioned by realistic means at the earliest possible stage. So long as the courts judge criminal responsibility by the test of knowledge of right and wrong, psychotics who have served prison terms or are granted probation are released to commit increasingly serious crimes, repeating crime and incarceration and release until murder is committed. Instead of being treated as are ordinary criminals, they should be confined to institutions for the insane at the first offense and not be released until or unless cured." (Pp. 144-45).

Such clarity and precision of expression are greatly to be desired in legal literature. The judge, in particular, must wend a difficult verbal way between the Scylla of obscurantist or technical jargon and the Charybdis of a dull, pedestrian style. Judge Biggs writes a colorful, swift moving, and pellucid prose. The sure pen of a distinguished novelist is evident.

The author's ability to deal competently with the vast range of disciplines comprehended in this book gives point to Dean Griswold's concern for maintaining the "legal profession as a learned profession."<sup>20</sup> The problem of criminal insanity cannot be solved by a narrow technician. The traditional function of the law as a social force is best served, as in this study, by the lawyer whose background and training are in the humanities. Perhaps this book will serve not only as a bold and provocative analysis of the doctrine of mens rea, but also as a harbinger of a new type of legal treatise. The technical and frequently unfruitful dissections of a statute or a rule of damages or procedure which clutter the legal journals might well be replaced by the seminal thinking and wide ranging research exemplified in this book.

*Lois G. Forer* †

**THE CHALLENGE OF LAW REFORM.** By Arthur T. Vanderbilt.  
Princeton: Princeton University Press, 1955. Pp. vi, 194. \$3.50.

This book issues a clear call to action on questions of law reform. No one in our time can speak from greater insight into this important subject than the author, Chief Justice Arthur T. Vanderbilt of the Supreme Court

20. GRISWOLD, ANNUAL REPORT OF THE HARVARD LAW SCHOOL (1955), expressing concern that the historical basis of the legal profession is threatened because many pre-law students take limited specialties in college.

† Member of the Philadelphia Bar. Deputy Attorney General of Pennsylvania; Lecturer, University of Pennsylvania Law School.

of New Jersey. His role is not that of a coach from the sidelines. He is and has been for years a leader in the midst of the conflict for law reform. A substantial part of the book is devoted to the need for improvement in the administration of justice. That is the immediate task and one that necessarily must precede what may yet be a greater undertaking, the clarification of and the bringing of order into our substantive law. The author makes some valuable suggestions in his final chapter on how that task might be accomplished. The work is a development of the William H. White Lectures delivered at the University of Virginia Law School.

We in America take pride in saying that ours is a government of law. And what a truly great conception that is! In the fitful evolution of ideas about government, the concept of the rule of law projects the most promising culture for nurturing and developing human freedom and welfare. But the rule of law does not function in the abstract. It deals with human frictions—with human problems. To operate well law must adapt itself to the emerging needs of a society which is ever in process of change. It follows that, as laws become obsolete and other laws are added and multiplied without systematic evaluation of the over-all structure, confusion arises. This in turn tends to lead to popular dissatisfaction with and distrust of law. The result is, law no longer governs well.

Justice Vanderbilt believes that there is growing interest on the part of judges and lawyers in putting the legal house in order, but that this group is yet pitifully small. The rank and file of the profession either is apathetic on the question of reform or is openly or covertly opposed. Most lawyers appear to be quite unaware of the mood of the public toward courts, legal procedures and lawyers, and unapprised of the rising tide of criticism that is being directed against the profession and the law. There is one ray of optimism that may burst into brightness: Whereas the public, with the bench and bar in almost solid opposition, carried on a campaign for law reform in England for approximately a century, which campaign resulted in 1873 in the enactment of the Judicature Act, there are today in the United States organized groups of lawyers—for example, the American Judicature Society, the American Law Institute, and the National Conference of Commissioners on Uniform State Laws—which are devoted to the cause of law improvement. And sparked by these organizations; there are lawyers, limited in number to be sure, in the organized national and state bars who unstintingly are carrying on the fight for law reform. In Delaware it was the bench and bar which modernized the legal procedures and judicial structure of that state. The writer of this review adds that in his state of Illinois, small but devoted groups of judges, lawyers, and law teachers are presently waging a strenuous battle for reform. In Illinois the lawyers are being aided in their fight by the public. Notwithstanding, the significant fact is that the leadership for reform is coming from the profession.

What are the main areas for attack in the battle for law reform? The author summarily defines them as follows: "1. *The improvement of judicial*

*personnel, including jurors as well as judges. . . . 2. The simplification of the judicial structure and of procedure, so that technicalities and surprise may be avoided, and so that procedure may become a means of achieving justice rather than an end in itself. 3. The elimination of the law's delays by modern management methods and effective leadership."* And finally, "the simplification and modernization of the corpus of our substantive law." (p. 10).

How are these tasks to be performed? The basic need of our time is to establish the law on the firm foundation of a system. The question is, Who can undertake this assignment? Who can bring order out of the chaos of judicial decisions and statutory law, and who can convert the jungle of administrative law into a system? "To whom," inquires the author, "shall we turn for help?" (p. 145). We cannot expect the judges, hard pressed as they are with ever-pending tasks, to assume this assignment. It is this lowering prospect that has prompted discerning judges and lawyers, both in this country and in England, to advocate the establishment of a ministry of justice—an agency consisting of a man or group of men whose responsibility it would be to view the law in action, to observe its administration, and to report needed changes. While there have been some moves toward the initiation of programs of this sort, little has been accomplished. The principal objection has been that if the ministry is to be an official one, it might develop into no more than a political appendage. To avoid this consequence, Chief Justice Vanderbilt proposes, and in this proposal he is joined by others,<sup>1</sup> that the law schools of America accept the responsibility of becoming ministries of justice for the states or areas in which they are located. This idea has great potentialities in solving the problem of the law. And what a prospect for constructive service it holds for the schools! The schools are today the recognized centers of legal scholarship. Law teachers long have devoted their time to legal research but their research has dealt primarily with finding out what the law is. This is essential and important work. The project that the Chief Justice now so eloquently outlines for them is one through which they might bring their scholarship and research to a rewarding fruition. He issues a magnificent challenge that they devote themselves to bringing system and order to the law. If the law schools will accept this undertaking, theirs would be the opportunity to assume a significant role in shaping the path of the law toward what the law ought to be—toward making the law a living instrument of justice. The task is immense but if undertaken and executed, no greater service can man perform for the welfare of his fellow-men.

*Albert J. Harno †*

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† Dean of the College of Law, University of Illinois; President, American Judicature Society.

1. *E.g.*, Pound, *A Ministry of Justice; A New Role for the Law School*, 38 A.B.A.J. 637 (1952).