

Arthur T. Vanderbilt: A Retrospective*

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Arthur T. Vanderbilt was the nation's leading judicial reformer during the middle decades of the twentieth century. As chairman of the New Jersey Judicial Council from 1930-1947, he advocated fundamental changes in the New Jersey court system, ultimately succeeding when New Jersey adopted a new constitution with a revised judicial article in 1947. As President of the American Bar Association from 1937-1938, he made reform of the administration of justice his top priority. In 1939 he helped draft the statute creating the nation's first body dedicated to judicial administration, the U.S. Administrative Office of the Courts. Two years later, he helped draft the Federal Rules of Criminal Procedure, which were designed to "secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." Appointed chief justice of the newly created New Jersey Supreme Court in 1948, he used his position to establish the state's court system on a firm foundation, to transform what had been regarded as the nation's worst court system into one of its best. While serving as chief justice, he founded the Institute of Judicial Administration, which was dedicated to the task of promoting judicial reform nationwide, and he remained president of the Institute until his death. Thus, one can view Arthur Vanderbilt's service as chief justice (1948-1957) as the culmination of a lifelong commitment to improving the administration of justice.

Arthur Vanderbilt was born in Newark, New Jersey, on July 7, 1888. After graduating from Wesleyan University in 1910 and Columbia University School of Law three years later, he returned to Newark and entered private practice. Until he became a judge, Vanderbilt maintained a highly successful law practice. But he was far more than a distinguished attorney. In 1914, as his law practice was getting established, Vanderbilt began teaching evening classes at New York University Law School, and he continued teaching on a part-time basis for 29 years. Appointed Dean of New York University Law School in 1943, he dramatically enhanced the school's flagging reputation by creating the NYU Law Center, now housed in a building that bears his name. In 1921 Vanderbilt was appointed county counsel for Essex County (New Jersey), an office that he held for 26 years. He was appointed to Wesleyan University's Board of Trustees in 1934 and continued in that position until his death in 1957. Finally, as noted, Vanderbilt actively campaigned for judicial reform in New Jersey and nationwide.

Vanderbilt was also a major political figure in New Jersey. Following his graduation from law school, Vanderbilt became identified with the Republican reformers advocating "clean government" in Essex County. Ironically, given his opposition to Democratic political machines and in particular to Mayor Frank Hague of Jersey City, the boss of the Hudson County machine, Vanderbilt

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developed into something of a political boss himself. He served as president of the Essex County Republican League, and his leadership of the Essex County Clean Government organization gave him a power base that enabled him to play a role as "kingmaker" in the state. In 1946 he endorsed Alfred Driscoll as the Republican candidate for governor, and Clean Government's strong support for Driscoll was decisive in securing him the Republican nomination and a victory in the general election in November.

Ever eager to promote judicial reform, Vanderbilt had extracted from Driscoll as the price of his support a promise to make constitutional reform the centerpiece of his administration. Governor Driscoll called for a constitutional convention in his inaugural address, and one was convened in June, 1947. Because he was recuperating from a stroke suffered in May of that year, Vanderbilt did not attend the 1947 constitutional convention. However, he avidly followed the proceedings, especially the activities of the Committee on the Judiciary. Governor Driscoll had consulted Vanderbilt about who should serve on the committee, and the committee's leadership shared Vanderbilt's commitment to modernization of the New Jersey judiciary. The committee endorsed, and the convention adopted many of the recommendations that Vanderbilt had initially proposed through the New Jersey Judicial Council. Among these was the creation of a new court, the New Jersey Supreme Court, to replace the state's antiquated Court of Errors and Appeals.

When Governor Driscoll appointed Vanderbilt as the first chief justice of the New Jersey Supreme Court, Vanderbilt recognized that this was a unique opportunity to implement his reform agenda. The 1947 Constitution designated the chief justice as "the administrative head of all the courts in the State," and Vanderbilt likened his position "to that of chairman of the board and president of a business concern." (Vanderbilt, 1955, p. 98) He devoted his energies to asserting managerial control over New Jersey's courts and making them more efficient. Prior to 1947, each of New Jersey's various courts had operated autonomously, developing its own rules and procedures and managing its own caseloads. With Vanderbilt this changed. As chief justice, his first priority was to introduce a "simplification 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." (Vanderbilt, 1955, p. 10) In 1948 he took the first step toward that end by standardizing judicial procedure throughout the state, promulgating rules of procedure based on the Federal Rules of Civil Procedure. However, the rules of practice and procedure remained a concern for Chief Justice Vanderbilt, who insisted that they be continually reassessed to determine how effectively they promoted justice. In fact, he completely revised New Jersey's rules of procedure only five years after their initial adoption.

When Vanderbilt became chief justice, another problem demanding attention was delay in New Jersey's trial courts. Vanderbilt aggressively attacked the problem of case backlogs. He moved judges from their normal assignments to assist in courts plagued by heavy caseloads and congestion. He also demanded greater productivity from the state's judges. Court rules were adopted

prescribing the number of hours per week that a judge should sit on the bench. Vanderbilt required each judge to submit to the New Jersey Administrative Office of the Courts a weekly report listing the cases and motions heard and the cases still unresolved. Vanderbilt personally reviewed these reports, and judges who failed to dispose of cases expeditiously could expect to be contacted by the Administrative Office of the Courts or by Vanderbilt himself for an explanation. The Chief Justice also published these weekly reports, using publicity to put pressure on laggard judges to mend their ways. Many judges resented the loss of their traditional autonomy, but Vanderbilt's methods worked. By 1950 the case backlogs had disappeared, and New Jersey's courts were among the nation's most efficient.

Because these and other changes met with resistance from many New Jersey judges, Vanderbilt had to devote considerable effort to persuasion and arm-twisting. Indeed, he estimated that his administrative responsibilities consumed one-third of his time. He was also forced to fight a continuing battle with political forces in the state legislature that sought to limit the judiciary's independence by asserting legislative control over judicial rule-making. This battle culminated in Chief Justice Vanderbilt's most important and most controversial decision, Winberry v. Salisbury (74 A.2d 406 [NJ 1950]).

Winberry raised a question crucial to the autonomy of New Jersey's reconstituted judiciary: Did the supreme court or the state legislature have ultimate control over the rules of judicial procedure? The New Jersey legislature insisted that it had authority to revise by statute the procedural rules adopted by the supreme court, because the constitution of 1947 gave the supreme court its rule-making power "subject to law." Writing for a five-member majority, Vanderbilt disputed this interpretation, asserting that

The only interpretation of "subject to law" that will not defeat the objective of the people to establish an integrated judicial system and which will at the same time give rational significance to the phrase is to construe it as the equivalent of substantive law as distinguished from pleading and practice The phrase "subject to law" . . . serves as a continuous reminder that the rule-making power as to practice and procedure must not invade the field of the substantive law as such. While the courts necessarily make new substantive law through the decisions of specific cases coming before them, they are not to make substantive law wholesale through the exercise of the rule-making power. (74 A.2d 406, 410)

In sum, so long as the supreme court confined its rule-making to procedural matters, its exercise of this power could not be overridden by the legislature.

Vanderbilt's opinion was vehemently attacked. Justice Clarence Case refused to join the chief justice's opinion, insisting that it was not necessary to construe the constitutional provision in order to resolve the case. More important, Vanderbilt's opinion appeared to fly in the face of constitutional history. In its report to the convention, the Committee on the Judiciary had expressly indicated that it considered "subject to law" to mean subject to legislation. And

Vanderbilt himself, in a letter to the convention objecting to inclusion of the phrase, had interpreted it the same way. Thus, although Vanderbilt's position may have secured the independence of the judiciary and promoted better administration of the courts, it more closely resembled a usurpation than a faithful interpretation of the constitution.

Winberry reveals a great deal about Vanderbilt. It demonstrates his concern for the institutional position of the New Jersey Supreme Court and his willingness to take action to protect it. He later defended judicial rule-making by noting that it allowed for reassessment of court procedures "without waiting for stated legislative sessions and without burdening already overworked legislators."(Vanderbilt, 1963, p. 108) Yet it seems likely that a concern to protect the autonomy of the judicial branch, as well as a skepticism about legislative expertise in the area, were far more important in explaining his position. Winberry also shows Vanderbilt reaching out to address a politically explosive issue rather than deciding the case on narrow grounds. This willingness, even eagerness, to confront controversial questions is consistent with his more general understanding of the judicial role. In both judicial opinions and extrajudicial writings, Vanderbilt categorically rejected the canons of judicial restraint.(Vanderbilt, 1963, pp. 134-139) Finally, despite the dubious argument advanced in Winberry, the key point is that Vanderbilt prevailed. The reforms of 1947 that Vanderbilt had championed and Vanderbilt's own stature had created a reservoir of support on which he could draw in repelling what he perceived as an attack on the New Jersey Supreme Court. The press and bar unanimously supported Vanderbilt; and in the face of that sentiment, his opponents in the New Jersey Assembly were forced to shelve plans for a constitutional amendment and accept the decision.(Tarr & Porter, 1988, pp. 193-194)

Another contentious case was Tudor v. Board of Education of Rutherford (100 A.2d 857 [1953]). The Gideons International received permission from the Board of Education of Rutherford to distribute copies of the "Gideon Bible" to students in the borough's public schools, over the objection of Catholic and Jewish parents who complained that it was a sectarian book inconsistent with their beliefs. Speaking for the New Jersey Supreme Court, Chief Justice Vanderbilt agreed. In a scholarly opinion, Vanderbilt reviewed the history of religious conflict within Christianity and the growth of religious toleration. He noted, without attempting to resolve, the continuing controversy over whether the First Amendment was meant to erect a "wall of separation" between church and state. What was indisputable, Vanderbilt emphasized, was that neither the state nor its instrumentalities could show a preference for one religion over another. Reviewing the testimony at trial, Vanderbilt concluded that the Gideon Bible was a sectarian book. Drawing upon a wealth of precedent and testimony, he demonstrated that its distribution by the school amounted to an endorsement of a particular creed and would be perceived as such by students and their parents. Vanderbilt's thoughtful analysis convinced his colleagues on the court and averted political repercussions.

Vanderbilt was, however, less successful in persuading his fellow justices to subject long-established common law doctrines to critical scrutiny. A case in

point is Fox v. Snow (76 A.2d 877 [1950]), in which Vanderbilt wrote one of his most eloquent opinions. Relying on *stare decisis*, the majority in Fox adhered to a technical rule of law in interpreting a will, despite (in Vanderbilt's words) "the deleterious effects of the rule and the lack of any sound principle to support it." In dissent, Vanderbilt refused to "put the common law in a self-imposed straitjacket." Quoting Justices Oliver Wendell Holmes and Benjamin Cardozo in support of his position, he argued that judges should not hesitate to repudiate doctrines that lacked support in reason or public policy and should "adapt the law to the needs of the living present." Thus, Vanderbilt was as willing to jettison outmoded legal doctrines as he was to replace ineffective rules of procedure. He concluded:

We should not permit the dead hand of the past to weigh so heavily upon the law that it perpetuates rules of law without reason. Unless rules of law are created, revised, or rejected as conditions change and as past errors become apparent, the common law will soon become antiquated and ineffective in an age of rapid economic and social change. It will be on its way to the grave.(76 A.2d 877, 885)

How does one measure the greatness of a judge? One measure might be the recognition and honors bestowed upon the judge by his contemporaries. Vanderbilt scores well on that measure. His leadership in judicial reform earned him honorary degrees from thirty-two universities, as well as awards from (among others) the American Bar Association, the American Judicature Society, and the New Jersey and New York State Bar Associations.(Vanderbilt, 1976, pp. 216-217) Vanderbilt was avidly sought out as a lecturer: his two books, The Challenge of Legal Reform and The Doctrine of the Separation of Powers and Its Present-Day Significance, were based on lecture series given at the University of Virginia and at the University of Nebraska. The Eisenhower administration seriously considered him for a position on the U.S. Supreme Court, but Vanderbilt's advancing age and his commitment to implementing reform in New Jersey led him to demur.

Another measure of judicial greatness is the legacy that a judge leaves behind. On this measure too, Chief Justice Vanderbilt scores well. Vanderbilt catapulted the New Jersey courts to an unaccustomed position of prominence and respect, and his national reputation helped shield them from political attack. He also furnished the New Jersey Supreme Court with an example and an implicit challenge: namely, how to live up to the tradition of judicial excellence that he had founded and personified. This legacy continues long after Vanderbilt's death: the national prominence of the current New Jersey Supreme Court can be seen as vindicating his efforts. As Chief Justice Robert Wilentz observed in 1982: "the experience of that reform is so strong, and its meaning so clear, that it still moves us substantially in New Jersey."(Quoted in Buchsbaum, 1982, p. 13)

Vanderbilt's legacy extended beyond the borders of New Jersey. His agenda for judicial modernization was adopted by reformers throughout the nation, as well as in several foreign countries.(Vanderbilt, 1976, p. 217) For

example, he created the first state Administrative Office of the Courts, and every state has followed his lead. Indeed, when the National Center for State Courts was established, its first director was Edward McConnell, who had headed New Jersey's Administrative Office of the Courts under Vanderbilt. The Institute for Judicial Administration that he founded has become known nationally and internationally for its services to the administration of justice. Perhaps Justice William J. Brennan, Jr., who had served with Vanderbilt before his elevation to the U.S. Supreme Court, put it best: "He is one of the very great judges of our time. His contribution toward the improvement of judicial administration and substantive law are an imperishable monument to this legacy." (Quoted in Gerhart, 1980, p. 296)

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