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**FORMATION OF CONTRACTS: A STUDY OF THE COMMON CORE OF LEGAL SYSTEMS.** General Editor, Rudolf B. Schlesinger. Dobbs Ferry, New York: Oceana Publications, Inc. and Stevens & Sons, 1968. Pp. 1727 (two volumes). Cloth: \$35.00.

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## Book Reviews

FORMATION OF CONTRACTS: A STUDY OF THE COMMON CORE OF LEGAL SYSTEMS. General Editor, Rudolf B. Schlesinger. Dobbs Ferry, New York: Oceana Publications, Inc. and Stevens & Sons, 1968. Pp. 1727 (two volumes). Cloth: \$35.00.

These two red volumes represent the first publication of the General Principles of Law Project of the Cornell Law School. The Ford Foundation has supported the Cornell Project for the past ten years. Individual scholars, inspired by the Project, have also written some forty law review articles dating back to Schlesinger's 1957 announcement<sup>1</sup> of the Project. Thus, the Cornell Project has caused considerable discussion in the professional literature even before its first official output appeared. Undoubtedly the Project has already staked out a permanent place in the literature, and these first two volumes may even constitute a landmark study. Hopefully, it is not the last effort of the Cornell Project.

The most important aspect of the study may not be its substantive contribution to the understanding of the formation of contracts, a subject perhaps of little importance anyway.<sup>2</sup> The important aspect of the study may be its development of a method for comparative study and this review will focus on that method. Indeed, a scrutiny of the substantive conclusions would require this reviewer to apply for a ten year grant from a foundation and the help of nine foreign law experts.

The objective of these two volumes and of the Cornell Project is to develop knowledge<sup>3</sup> and teaching materials for the teaching of law courses in the future. It is thought that in the future the average practitioner will have to have a familiarity not just with the common law of the United States but with a common core of law of the world. "[T]he clients of the future . . . will need lawyers who will have outgrown the parochialism of today. Mere ability to communicate with colleagues in other lands will no longer be enough. At least in certain fields, the lawyer of the future will have to be truly familiar with a broad spectrum of legal systems." (p. 6) The Ohio client

1. Schlesinger, *Research on the General Principles of Law Recognized by Civilized Nations*, 51 AM. J. INT'L L. 734 (1957).

2. See discussion in Friedman & Macaulay, *Contract Law and Contract Teaching: Past, Present, and Future*, 1967 WIS. L. REV. 805; Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOCIOLOGICAL REV. 55 (1963); L. Friedman, *CONTRACT LAW IN AMERICA* 198-202 (1965).

3. A knowledge of the common core *as such* is needed under Article 38(1)(c) of the Statute of the International Court of Justice, where one of the sources of public international law is defined as "the general principles of law recognized by civilized nations." Other treaties also make reference to these general principles as a source of law. In addition, if the conflict of law rules of a forum permit, general principles can be a source of law upon stipulation by parties to a contract.

whose business may result in New York litigation will require his Ohio lawyer to keep New York law in mind to avoid litigation or to preserve the kind of evidence which will stand up in New York. And the Ohio lawyer will have to know enough New York law to employ an appropriate New York lawyer, communicate with him, and pay him. This reasoning applies with even more force to an international transaction involving a very different legal system.<sup>4</sup>

It is thought that this familiarity with a common core can be developed in the same way it is done today in the national law schools.<sup>5</sup> Instead of comparing the laws of fifty states and coming out with an understanding of American common law, one could compare the laws of the world to come out with an understanding of the common core of the law of the world. There may be a built-in assumption that the casebook approach to legal education will be used in the future. In any case, there will have to be knowledge of the common core, and this knowledge will have to be developed through comparisons.

The authors hope that their Study "can serve as a building block to be used in the construction of the multinational teaching tools of the future . . ." (p. 7) It is not clear whether the two volumes were partly intended as examples of preliminary teaching materials or whether they were intended to be contributions to the professional literature. As most of the collaborators in the Project come from systems where the casebook approach is not used, they probably had in mind a synthesizing textbook such as Corbin's or Williston's works on contracts, which could be classified as both teaching tools and original contributions.<sup>6</sup> The common core discovered is reported in 120 pages of General Reports. Other than the 65 page introduction by Schlesinger, the more than 1500 pages remaining consist of National Reports. If the quantity of pages is a valid index, it can readily be seen that the bulk of effort went into differences. This Study is thus in line with the traditional literature,<sup>7</sup> although it is implied that there was going to be a departure from this tradition.

The General Reports represent the joint efforts of the nine legal scholars<sup>8</sup> collaborating on the Project. It does not read like a Williston or a Corbin or a Restate-

4. See R. SCHLESINGER, *COMPARATIVE LAW* 201-03 (2d ed. 1959).

5. Professor Schlesinger has used this analogy in lectures at Cornell to explain the purpose and method of comparative law. This reviewer could not find any direct reference to this analogy in the two volumes.

6. Some disciplines distinguish sharply between textbook writing and original research. Whenever a textbook becomes significantly synthesizing, however, rather than parasitically feeding on the work of others, then it becomes recognized by a discipline as a contribution to the literature. Comparative law, moreover, is a separate discipline; the objective is to synthesize in reference to its subject matter. The term "textbook" thus is misleading in reference to comparative law and the Cornell Project. Almost any "textbook" today in this field involves original research.

7. See p. 3 n.1. It is interestingly implied on page 39 that methodologically, differences are more important for the acquisition of knowledge: "it is quite impossible accurately to formulate an area of agreement without staking out its limits and thus demarcating an actual or potential area of disagreement." It can also be said that differences are more important to us as human beings; it is the differences "that make one precious and another hateful." R. DAHL, *MODERN POLITICAL ANALYSIS* 25 (1963).

8. Pierre G. Bonassies, Gino Gorla, Johannes Leyser, Werner Lorenz, Ian R. Macneil, Karl H. Neumayer, Ishwar Chandra Saxena, Rudolf B. Schlesinger, and W. J. Wagner.

Two of the authors, Macneil and Schlesinger, are former teachers of this reviewer at

ment. Each paragraph is prefaced by "in all legal systems under consideration" or some variation of this phrase. On occasion we are told that "most legal systems" or "some legal systems" agree to such and such. And occasionally an esoteric footnote as to an Egyptian exception is tossed in.<sup>9</sup> Perhaps it would have been better if they could have agreed on language demarcating explicit black-letter rules without the redundancies and conditionalizing statements. Some of the problem might be due to an over-zealousness to publish everything connected with the Project. There was thought at one time during the Project to publish the Working Papers. This would have been similar to a laboratory investigator publishing his laboratory apparatus along with his results. It takes energy to exclude, and more such energy should have been expended throughout these two volumes, especially as to the National Reports where much of the material had been previously published anyway.<sup>10</sup>

The Working Papers were statements of facts. Each of the participants was asked to respond to the set of facts in reference to his legal system, stating decision, remedies, and legal rationale. The participants then engaged in intensive discussions until a consensus as to common ground was hammered out. It is difficult to reconstruct the logic of this research method; however, it seemed to work. This, indeed, is the method of classroom pursuit of knowledge through use of the casebook method, except that the teacher already knows the answers and can efficiently lead the struggling class toward its attainment. Through this inductive approach in law school, one becomes sensitized to issues and retains a basic understanding of the common law, but is the method of training a lawyer a very efficient approach for developing knowledge? The participants in this Project undoubtedly have discovered much knowledge of the common core and have retained it as masters of a mysterious art,<sup>11</sup> but they have not reported it in terms of cumulative knowledge. They have left behind telephone books of facts that have to be plowed through to perceive some glimpse of the common core. Perhaps they should have even published transcripts of their discussions so their steps could be retraced in gaining a feeling for the common core.

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Cornell. This imposes an obligation to be especially critical. It is interesting to note some of the minor points that occur when reviewing the work of former teachers. Professor Macneil in his Insurance Law course lectured us not to take out trip insurance when getting on a flight; it is just gambling and not a part of rational estate planning. And yet Macneil confesses on page 339 that he has indulged in such gambling. Professor Schlesinger used to tell us not to cite a "cookbook," his term for law encyclopedias, when addressing a sophisticated court or audience. At page 1632 we find Schlesinger citing *American Jurisprudence*.

9. P. 113, n.9; see also, *e.g.*, p. 143 nn. 7, 9.

10. Republishing material already in the professional literature seems to indicate that this Study was intended to be exemplary of preliminary teaching materials. Some of the National Reports were not worth publishing even once in the literature; they are simply restatements of the law of a country. There is no need to restate the Restatement or to restate the foreign Corbins and Willistons. Wherever a particular National Report approaches publishable quality, it is because of its critical nature and discussion of reform. However, what the law ought to be was beyond the scope of the Study. See p. 3.

11. See pp. 2, 33 for implied admissions of an art or ideographic approach. See also pp. 38 and 256 for statements on preferring an inductive factual approach rather than a deductive approach. Would it not have been more efficient for these legal scholars who have some ideas about comparative law besides knowledge of their own legal systems to propose hypotheses and proceed deductively?

The common core as it appears in the General Reports is organized around the traditional issues of any American contracts casebook. Perhaps Schlesinger and Macneil could have done much of the research themselves with student assistants. Correspondence with their friends in other parts of the world would have been less expensive than bringing them to Ithaca. Were the in-depth discussions among legal scholars necessary to come up with the common core? Could not one trained in questionnaire research techniques and equipped with the table of contents of an American contracts casebook have come up with this common core at a cost of about a thousand dollars or less?<sup>12</sup>

Does the common core have to be represented in the language of the lawyer?<sup>13</sup> Such language is called for in the case of most teaching materials, but in the case of the literature it need not be in the language of the attorney and judge; it could be represented in graphs, tabulations, matrices, charts, logically manipulatable symbols. Moreover, the common core is not a supra-national body of law as is public international law so it need not be accumulated in the language of the lawyer. Surely there are other bodies of knowledge the lawyer has to have in his repertoire besides legal discourse.

In reading through the National Reports the reader finds himself doing the comparing. He has to turn from each National Report to the General Report to see what the difference or similarity is, and then he has to compare among the National Reports. There is a great need to look at it all at one glance, to put it all on one page symbolically in Venn diagrams or put it all into a computer.

Schlesinger has indicated that there is a possible objective in comparing laws to obtain knowledge about society.<sup>14</sup> He has advocated to this reviewer that there be more intercourse between legal scholars and social scientists interested in law and comparative research. As long as the Ford Foundation was being so generous, why not invite a sociologist, a political scientist,<sup>15</sup> and an anthropologist to join the discussions in Ithaca?<sup>16</sup> The social scientist has an interest here.

12. For examples of the very inexpensive social science research technique of using "well-placed judges," see Fitzgibbon & Johnson, *Measurement of Latin American Political Change*, 55 AM. POL. SCI. REV. 515 (1961); A. Somit & J. Tanenhaus, *AMERICAN POLITICAL SCIENCE: A PROFILE OF A DISCIPLINE* (1964). This reviewer sees no reason why such a research technique could not be adapted to determine the reaction to standardized fact situations of a sampling of legal systems. The data could be quantified and a more explicit common core could be charted.

13. It is admitted, however, that the data has to be translated into a higher level of abstraction. Pp. 35, 40. But with the inductive approach utilized, one has to retrace the steps of the researchers to understand this higher level of abstraction.

14. R. SCHLESINGER, *supra* note 4, at 28.

15. Political scientists are becoming increasingly more interested in comparative law. See, e.g., Discussions of the Round Table on Research in Public Law (American Political Science Association, Washington, D.C., Sept. 6, 1968), where it is indicated that comparative research is being undertaken involving legal scholars and social scientists from several countries. Walter Murphy of Princeton University, for example, is taking part in such a project. It was suggested by several persons during the discussions that the wave of the future in public law is comparative research.

16. If such consultants have been included in the Project, Schlesinger would not have made such an erroneous statement as he makes on page 5: "social scientists rarely refer to the notion of basic research."

Is the Ford Foundation's financing a ten year project wise? Does it take ten years to test a research method? Would it be a better strategy to finance smaller projects of a year's duration? This is the strategy of the American Bar Foundation's Program under Geoffrey C. Hazard, Jr., for assisting law review research. The A.B.F. program is stressing empirical research, where it is thought a gap exists.<sup>17</sup>

A study can be useful without revealing surprising new knowledge if it merely systematically formulates what is already known. Furthermore, a demonstration of something that has been thought of as true can be useful if it was only a surmise and never before demonstrated.<sup>18</sup> However, this Study cannot rest on having *systematically* demonstrated the obvious. What novelties were found by the Cornell Project? Almost the only novelty "that will come as a surprise to many" is one that was actually reported by Nussbaum in 1936.<sup>19</sup> Any asserted findings are undercut by Macneil, who states as a criticism of Llewellyn: "No empirical evidence of the foregoing usages is offered, and one is accordingly entitled to weigh one's own intuition and general knowledge in the scales in support of or against Professor Llewellyn's conclusions." (p. 1419)

Despite the denunciations against mere juxtaposition,<sup>20</sup> the Study is little more than "all do," "some do," "some don't," "we do," "we don't." Perhaps the participants came away with an intuitive general theory of the "functional and systematic inter-relationship" of legal systems, but they have not reported such theory to the reader. Can the reader nevertheless use the data reported to some advantage? Some readers might use the volumes for looking up information on the formation of contracts, but it will be difficult to do so, for the National Reports have not followed the organization of the General Reports. There is no cross reference table to cases and statutes. Perhaps the Working Papers, mostly American and English cases from casebooks, should have been identified in an index. The contracts teacher could then have drawn more readily upon the Study as a reference work while preparing for class. Comparative law could then filter down to the profession as part of the traditional law school courses. At the law school where this reviewer teaches there is no course on legal ethics, but each teacher has the obligation to teach ethics in each course. This is labeled the "pervasive method." Perhaps this approach is the proper one for comparative law. If so, *Formation of Contracts* could be an important building block for the development of appropriate teaching tools.

JOHN ALLEN WINTERS\*

17. For a discussion of gaps in empirical knowledge about contract behavior, see Macaulay, *Contract Law and Contract Research* (Part 11), 20 J. LEGAL ED. 466 (1968).

18. For an interesting reaction to the criticism that research has only demonstrated the obvious, see Easton & Dennis, *Communications to the Editor*, 61 AM. POL. SCI. REV. 759 (1967).

19. See pp. 41-42, 162; Nussbaum, *Comparative Aspects of the Anglo-American Offer-and-Acceptance Doctrine*, 36 COLUM. L. REV. 920-29 (1936).

20. See p. 2.

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LAW IN A CHANGING AMERICA. Edited by Geoffrey C. Hazard, Jr. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1968. Pp. xiii, 207. Cloth: \$5.95; paper: \$2.45.

This book is a collection of essays by law professors and lawyers who have achieved some prominence in their respective fields. The essays purport to describe the problems the law will face in the next generation, but in fact they describe the problems the authors have faced in the past generation. The book provides revealing insights on the difficulties that men of good will have faced in producing change and growth in the law, but as a description of where the law is going next it is at best irrelevant. The editor should have solicited essays from younger lawyers if he was serious in projecting into the future, because in law as in other fields a rather wide generation gap has formed.

Perhaps the most disturbing essay in the collection is that by Adam Yarmolinsky, professor of law at Harvard and formerly special assistant to the Secretary of Defense. Professor Yarmolinsky begins with the assumption that in our technologically complex society the public can never know enough to make important decisions—such as which corporation should build the F-111 swing-wing supersonic plane—and therefore that decision-making power must be delegated, to a degree greater than ever before, to the best men in our society. He then implies that the best men in our society will frequently be lawyers, because they have learned how to express themselves to the public and to persuade effectively. This thesis indicates that Professor Yarmolinsky has missed the whole point of Senator McCarthy's, and to a lesser extent Senator Kennedy's, presidential campaign. Both men were arguing for a return to participatory democracy in reaction against the Johnson-McNamara era, when the public was rarely consulted on important issues. Although Senator McCarthy was denied the Democratic nomination, his candidacy allowed concerned citizens to voice their discontent, and it is unlikely that any administration will in the near future ignore public sentiment to as great an extent as did the administration about to leave office.

Richard W. Nahstoll's article on admission to the bar is equally disturbing. Mr. Nahstoll, an attorney in Portland, Oregon, begins by admitting that present admission procedures are absurd, that bar exams do not test the qualifications lawyers really need and that the moral tests are poor. To correct these errors, however, he advocates making the requirements, particularly the moral requirements, more strict. Specifically, he suggests making every lawyer go through a probationary licensing period, so that the eccentricities of potential lawyers will be spotted before they are formally admitted to the bar. Mr. Nahstoll seems totally oblivious of the dangers of allowing a committee to judge the moral character of all applicants to the bar; he does not seem to recognize the need to have persons of all backgrounds, political leanings, and ideals as lawyers if there is to be a vigorous bar which can serve all segments of society. Less rather than more concern with a lawyer's "moral" qualifications is needed if the bar is going to keep pace with the changes of society. A three-judge panel has been formed in New York State to consider this very question, because some recent law school graduates who have passed the bar examination but refuse to allow

a committee to review their moral background, have challenged the whole idea of moral qualifications. If a change is to occur, it will undoubtedly be in favor of fewer restrictions.

Many of the other articles are equally insensitive to the pressures for change being exerted by the young and by the black community. Even if the authors disagree with the need for change—and such a position might be perfectly rational—they should at least acknowledge the pressures and, in a book devoted to change, analyze the issues involved. Louis H. Pollak, Dean of the Yale Law School, reviews some of the constitutional issues facing the Supreme Court, but makes no mention at all of the Selective Service system. This is particularly surprising because on other occasions Dean Pollak has shown great sensitivity to this issue. Furthermore, Dean Pollak implies that the U.S. Supreme Court and the N.A.A.C.P. Legal Defense Fund have been working rather closely to break down the barriers of discrimination, but does not mention that the Legal Defense Fund is totally at odds with the Supreme Court on whether the Court can or should try to root out the ingrained practices which have allowed white supremacy to survive.<sup>1</sup>

William T. Gossett, president-elect of the American Bar Association, and formerly general counsel for Bendix Aviation Corporation and Ford Motor Company, describes in his article the dangers of our enormous corporations and proposes rather cautious checks on their growth, but shows very little sensitivity to or sympathy for the needs of labor unions. The articles by Murray L. Schwartz, associate dean at U.C.L.A. Law School (on group legal services); Abraham S. Goldstein, professor of law at Yale (on legal education); and Harry Kalven Jr., professor of law at Chicago (on using empirical data in the law), are perceptive in explaining the faults of the status quo, but provide very few guidelines for future action.

The one refreshing exception to the rule of cautious conservatism followed by most of these articles is David F. Cavers' article. Mr. Cavers, professor of law at Harvard, titles his article "Legal Education in Forward-Looking Perspective," but he does not confine his comments to the law school. Among the changes in the law and the law schools that Professor Cavers foresees are: (1) more and more group legal services will be made available to those segments of the public that have heretofore had to struggle without legal assistance; (2) big law firms will allocate a percentage of their billable hours to community service in law; (3) lawyers will take a leading role in finding solutions to America's urban crisis; (4) law schools will introduce more and more courses dealing with our cities' troubles; (5) "para-lawyers"—persons with some legal training who can perform routine operations under the supervision of a trained lawyer—will come into being to extend legal services to people with low and middle incomes; and (6) law schools will lower their student-teacher ratio, thus freeing law professors to devote more of their time to research. Unlike many of the other writers who seemed to recognize change only after having been bludgeoned into acknowledging it, Professor Cavers desires change and offers constructive suggestions as to the direction in which the law should move.

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1. Steel, *Nine Men in Black Who Think White*, N.Y. Times, Oct. 13, 1968, § 6 (Magazine), at 56.

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SELECTED READINGS: JUDICIAL SELECTION AND TENURE. Edited by Glenn R. Winters. Chicago: American Judicature Society, 1967. Pp. 196. Paper: \$2.00.

In reviewing this book, the emotions scream, "Tell it like it is," while the intellect responds, "Your sample of life and of courtrooms is too small; review the book, and leave the parables to Kafka." Thus like the protagonist of Platonic dialogue who knew justice when he saw it but could not define it, I retire from stage center and review this collection from the wings.

*Judicial Selection and Tenure* consists of twenty-three articles and four appendices. With the recurrent theme of a symphony, its authors articulate the evils of Jacksonian popular elections of judges and present the virtues of the merit plan. The latter, known to most as the "Missouri Plan," the "Niles Plan" or simply the "Merit Plan" consists of a non-partisan commission of lawyers, judges, and laymen who present the executive with a list of nominees from which the judicial office must be filled. Later, the appointee will run against his judicial record without an opposing candidate. The writings make no attempt to present an in-depth analysis of judicial function. They do present a variety of highly persuasive arguments. Unfortunately, the book presents little in the way of an opposing brief, and one is struck by the imbalance. As a reading of the collection can be accomplished in one sitting, no summarization is necessary. However, some of the more interesting observations in the collection are:

1. Under the present system, despite the pressures of possible competition at the next election, it is still interesting that:

"[O]nce we have named a man as a judge, the quality of his performance as a judge passes almost completely outside our effective surveillance and control, unless his performance is extremely bad.

. . . Any notion that the public or the bar may have any genuine control over the quality of judicial performance by judges already on the bench is simply not realistic." (p. 2)<sup>1</sup>

2. A large number of voters simply leave the judicial sections of their ballot blank. Of the few who do vote, surveys show that in both metropolitan and rural areas only 5 to 25% can name a single judicial candidate for whom they voted.

3. Surveys among newly appointed judges and seasoned judges reveal a remarkable concurrence in the qualities most valued in a judge. All of the important qualities listed were ones capable of evaluation by non-lawyers. The top six in the order of ranking were: (1) moral courage, (2) decisiveness, (3) reputation for fairness and uprightness, (4) patience, (5) good health, physical and mental, and (6) consideration of others. Not one of these qualities relate uniquely to the law, its study, or its practice, and are not peculiar to lawyers and judges. Further, they are qualities which do not lend themselves to objective measurement, but require subjective evaluation.

4. A surprising number of distinguished Americans have harsh words to say concerning our present judiciary: Judge Samuel Rosenman, a former judge of the New

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1. Quoting from Leflar, *The Quality of Judges*, 35 IND. L.J. 289, 299 (1960).

York Supreme Court and special counsel to Presidents Roosevelt and Truman, told the American Judicature Society in 1964,

Let us face this sad fact: That in many—in far too many—instances, the benches of our courts in the United States are occupied by mediocrities—men of small talent, undistinguished in performance, technically deficient and inept. (p. 102)

Herbert Brownell, Attorney General of the United States under President Eisenhower, author of the article entitled "Too Many Judges Are Political Hacks" (p. 97), also had this to say:

[Judges] look on judicial appointment as the reward for their loyalty and devotion to the party, and they look forward to judicial service as socially and financially rewarding. To them the court house is a cozy rest home. . . .

It is perhaps no exaggeration to say that over the long haul, mediocrity in the courts is more corrosive than corruption. (p. 98)

5. When Grover Cleveland became President in 1884 the federal judiciary was better than 95% Republican. Since Cleveland, only four Presidents have failed to appoint more than 90% of the federal judiciary from their own party: Harrison 87.9% Republican; Taft 82.2% Republican; Hoover 85.7% Republican; and Kennedy 88.9% Democratic.

6. Apart from considerations of party, and the role of "senatorial courtesy," the most dominant role in federal judicial appointments is played by the Department of Justice, which also happens to be the chief litigant before the Federal Courts.

7. The first three quarters of a century in this country was marked by a completely appointive judiciary. The Jacksonian movement to responsiveness in government and exaltation of the common man led to the ascendancy of an elective judiciary, which still dominates the selection of state judges.

With the wide variety of compelling arguments for scuttling judicial selection by popular election, one asks why the move toward the merit plan has made such slow progress? Is it purely ignorance compounded by cynicism and self interest? Or does it result from the fundamentally conflicting goals of independence and responsiveness? All recognize the need for a judiciary independent from pressure which can decide impartially and without fear. Few recognize that the popular election is largely an illusory method of removing unfit judges. The unspoken argument in favor of elective office finds its roots in the corrosive nature of power and the human inability of too many judges to maintain a proper perspective in the face of constant adulation and flattery. Laziness, impatience, prejudice and injustice too often are aggravated if not caused by this human weakness. Does the threat of the ballot box help? Many think it does, and oppose the reform movement for this reason.

A major criticism of the position advocated by this book is its excessive concentration on selection methods. One may certainly be persuaded that a better method of selection should be adopted. However, no selection method will eliminate the problems of judges who become unfit to sit at a later time because of age, health, or personality change. The latter is particularly significant as the most sophisticated prediction of future judicial behavior in office is likely to enjoy a high margin of error.

A more critical evaluation of the kind of pressures from which the judicial office should be isolated is needed. There appears no reason why some device for successfully monitoring judicial behavior in office cannot be created. Until this occurs the reform movement in judicial selection is unlikely to win approval as rapidly as it should.

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