

1969

Book Reviews

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Recommended Citation

(1969) "Book Reviews," *South Carolina Law Review*. Vol. 21 : Iss. 1 , Article 11.
Available at: <https://scholarcommons.sc.edu/sclr/vol21/iss1/11>

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BOOK REVIEWS

AMERICAN CONFLICTS LAW, by Robert A. Leflar (Bobbs-Merrill Co., Inc., 1968. Pp. lxxvi, 677. \$12.50).

When Dean Leflar's *The Law of Conflict of Laws* was published in 1959, its value for law students and practitioners was widely recognized by the reviewers.¹ His experience as law teacher and as appellate judge, his practical turn of mind and faculty for simple and clear expression, his service as survey editor of Conflict of Laws for the New York University *Annual Survey of American Law*, all combined to give him unusual qualifications as intermediary for the less experienced reader approaching a controversial and highly theoretical subject. As a result the 1959 product, although concededly neither a detailed practice manual nor an in-depth analytical treatise, was a work which delineated the outlines of the subject while to a considerable extent furnishing documentation which enabled the reader to explore further the literature on any point in issue.

In the nine years since publication of *The Law of Conflict of Laws*, both jurists and theorists have been active. Seen from the perspective of today it is hard to conceive of a pre-*Babcock, Clay, Bernkrant* era,² to mention but several of the cases which since have become landmarks. In the preface to his 1968 work Dean Leflar thus states the new developments:

The last decade has produced much new conflicts law in other areas as well as in choice of law. Within that period the long-arm statutes have become routine, though their ultimate reach remains uncertain. Federal-State law relationships have been slightly clarified. The full faith and credit clause is a bit nearer to being awakened from almost two centuries of sleep. A dozen other conflicts tools and "rules" have been re-examined by courts and scholars

1. *E.g.*, Book Reviews, 14 ARK. L. REV. 183 (1960); 45 CORNELL L.Q. 611 (1960); 35 N.Y.U.L. REV. 1105 (1960); 13 S.C.L.Q. 138 (1960).

2. *Clay v. Sun Ins. Office, Ltd.* 377 U.S. 179 (1964); *Bernkrant v. Fowler*, 55 Cal. 2d 588, 12 Cal. Rptr. 266, 360 P.2d 906 (1961); *Babcock v. Jackson*, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

Viewed solely as an updating of his earlier work, the new Leflar is valuable for the author's own comments on the later cases and for his collation of critical opinion on developments of the last decade. In length the text of the revision is almost half-again longer than its predecessor and the citation of cases and law reviews has been greatly expanded.

Reading the new book, however, one is immediately struck with the fact that it is more than a revision and supplementation of the earlier work. Indeed, the preface thus states the author's more challenging goal:

The title of this book abandons the traditional term Conflict of Laws and uses the vernacular "Conflicts." The new title is intended to be characteristic of the book, representing a mild break with the past, a recognition that the law requires both new language and new analysis if it is to be described, or explained, in realistic fashion In this work, I have not tried to frame a formula [for choice of law]. Rather, my attempt has been to identify the choice-influencing considerations themselves and seek to understand, as well as to predict, results in the light of these considerations. The purpose is to bring the judicial process out into the open.

Evidence of this new dimension of Dean Leflar's book is found principally in Chapters 10 and 11, entitled respectively "Choice of Law Theories" and "Choice Influencing Considerations." Of particular interest is the latter chapter, which, after reviewing the Cheatham and Reese summary of policy factors affecting choice of law solutions, the "objectives" of Professor Yntema, and the Cavers "principles of preference," then states and summarizes the content of the author's own "choice-influencing considerations." Representing as they do the insights and opinions of a perceptive and long time observer of the changing trends and fashions in choice of law theory, they are of interest to scholar as well as of value to practitioner and judge. In fact, their value to the bench and bar is well attested by their use by the courts in the decision of recent cases.³

3. See *Clark v. Clark*, 107 N.H. 351, 222 A.2d 205 (1966); *Heath v. Zellmer*, 35 Wis. 2d 578, 151 N.W.2d 664 (1967).

By reason of the author's increased attention to underlying postulates, Dean Leflar's revision of his book is for law student, practitioner and judge an even more valuable *vade mecum* than was its predecessor. For his fellow academicians the book is of interest as the considered judgments of a contemporary master of the subject of Conflicts of Laws.

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THE TROUBLE WITH LAWYERS, by Murray Teigh Bloom
(Simon and Schuster, 1968. Pp. 346. \$6.50).

Many people think that laws—with the exception of the Ten Commandments and the particular rule that benefits their case if they happen to be litigating—are not really necessary. Since laws, so goes the common belief, are man-made and therefore “unnatural,” there is no reason why people should have to put up with them. I like to think that those holding to this innocent view of the workings of society could be convinced that some sort of rules beyond the simple injunctions against killing one’s fellows or stealing their property are not only necessary but desirable. And if sweet reason could not persuade one holding out for a non-law society, perhaps a neighbor putting up a tanning factory next door would do the trick. As easy as it is to topple the non-law argument, there lies behind it a subtler and more firmly entrenched belief—the one that if we must have laws, we should nonetheless not have lawyers. This idea was current in the early colonies and still persists today. Laws, it is thought, should be simple and unambiguous; they should be clear enough for a man of average intelligence to read and understand and apply to his own problem. Those holding this view take it as self-evident that laws can be written that will command universal agreement as to their meaning and that people will be guided in their dealings with their fellow men by whatever the laws provide; however, this ideal, which is almost an article of faith, has seldom if ever been exemplified in the past. More to the point is the obvious fact that the legal profession has not developed in a vacuum but in response to a real and continuing need.

Happily, in his book, *The Trouble with Lawyers*, Murray Teigh Bloom at the outset recognizes that lawyers are necessary to our way of life and that “the utopian idea of doing away with lawyers is not for our time—or for our children’s time.” But having thus legitimized the profession in general, Mr. Bloom then attempts to show that in their everyday dealings with clients most individual lawyers behave rather badly. The author is not primarily concerned with the small number of lawyers who actually cheat and steal from their clients, although he does recount incidents of alleged dishonesty with some gusto. What really irks him is his conception of the majority of lawyers, “fairly honest, more or less upright and, in the main, quite decent men,”

who victimize their clients with excessive fees and, at times, with incompetence.

The author, who is a professional news and magazine writer, has done a considerable amount of research into the attorney-client relationship. His sources included lawyers, judges, bar committees, law professors, news reporters, and disgruntled clients.

After detailing the experiences of several persons who had entrusted funds to their attorneys and had them stolen, or of insurance settlements that never reached the clients' pockets, Mr. Bloom advocates the establishment of client security funds by local bar associations. Although such funds have been proposed fairly often, they are rarely set up because lawyers, of course, resent the implication that the public needs to be protected from members of the profession. A further problem is that where client security funds do exist, no one, including many lawyers, knows about them. Publicity would invite frivolous charges and claims and reduce public confidence in the bar.

In one biting chapter the author berates the excessive contingent fee in personal injury cases—50 percent, the prevailing fee in Kansas City, Missouri—which he thinks is excessive. He is also very critical of the use of minimum fee schedules by many bars; he declares that minimum fee agreements by lawyers represent price fixing and are against the public interest. Especially are minimum fees unfair in probate matters, according to the author. A 1966 survey is quoted which shows that the highest average probate fee is charged in New Mexico—\$5,150—while South Carolina's \$1900 is the second lowest.

There is a rather detailed account of abuses in the New York Surrogate Court system which has jurisdiction over estates and guardianships. Fees here are very handsome, according to Bloom, and the prize appointments as special guardians and estate appraisers go to political cronies. Much of the material for the best-seller, *How to Avoid Probate*, is based on the practices in the New York court.

In another chapter the author discusses and apparently adopts the view that it should be as easy to get a divorce as it is to marry. He envisions an agency to investigate the marriage and authorize a divorce if appropriate. Fault as the principle of divorce should be abolished. Lawyers of course would not be

needed. The author's main argument here is with the law rather than with the lawyers—as it is many times throughout the book—but he does object strenuously to basing the fee on the wealth of the husband. He thinks a flat hourly fee would be better, the effect being to prevent the lawyer from becoming a “partner.” Of course what is missing from this argument is the fact that when a husband is involved in divorce proceedings his whole wealth is put in jeopardy from property division or alimony payments lurking in the background. It is not unreasonable for the fee to bear some relationship to the magnitude of the peril from which the husband escapes with his attorney's assistance.

There is an instructive chapter on the working of bar grievance committees. With the exception of the disciplinary procedure now operating in Manhattan and the Bronx, the author concludes that nowhere in the United States has a state bar association done an outstanding job in lawyer discipline. Inadequate personnel, lack of funds, endless delays, and the reluctance of lawyers to punish their fellow lawyers account for the failure, as the author sees it, of the Bar to live up to its obligation of self-regulation. In addition to tolerating unethical conduct by lawyers, the Bar also encourages incompetence among its members by making it almost impossible to succeed in a malpractice suit against a lawyer. The judiciary also bears the blame for this situation, in the author's opinion.

In the chapter entitled “Why We Don't Like Lawyers” the author assembles a veritable chamber of horrors of anti-lawyer quotations, the type lawyers like to repeat at professional dinners. This chapter, which contains everything from Shakespeare's “First we kill all the lawyers” to a modern psychoanalytic judgment on the temperament of the profession, certainly proves the observation of a Texas bar official that “by its very nature, the legal profession is the most abused and least understood profession in the world.”

When he reads this book the practicing lawyer will be constantly frustrated at his inability to answer some of its more gratuitous charges and implications about the profession he knows better than anyone else. A little cross-examination would certainly be in order for many of the quoted sources of information and misinformation. But, on the other hand, there is much serious matter in the book which all lawyers and judges should

read and ponder. The public view of the nature of the profession and of lawyers, even if it is not accurate, is nevertheless the effective attitude which the practitioner must meet daily. This book suggests that there is a great task of explanation and education to be undertaken by each individual lawyer in dealing with his clients and the public. Hopefully, it will serve as a beginning of greater understanding, if not love.

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