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Water Resources Management and Public Policy, by Thoma Campbell and Robert Sylvester

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BOOK REVIEWS

WATER RESOURCES MANAGEMENT AND PUBLIC POLICY. Edited by Thomas Campbell and Robert Sylvester. Seattle: University of Washington Press. 1968. Pp. xvi, 253. $9.50.

This book has little to say about either resource management or public policy. It does deal with water, for it is a collection of articles by writers representing diverse intellectual disciplines who explore a variety of water resource problems primarily as they relate to Washington State.

Two chapters deal with water law. Professor Ralph Johnson discusses the changing role of the courts in water-quality management. This is a very short chapter aimed at giving the non-lawyer some idea of the present trend away from court created water law toward a legal system created and operated by the comprehensive water management agencies. Mr. William Van Ness follows this chapter with a survey of Washington water law which comprises one-fifth of the book.

Washington along with Oregon and California are three political entities that each have a fascinating and complex body of water law. These states recognize both of the two major theories of water rights, appropriation and riparian rights. They also have a modern administrative permit system for both surface and subsurface waters. The dry eastern part of Washington provides the problems endemic to arid lands as well as irrigation and other agricultural water problems. The industrialized western part of the state presents the difficult problems of pollution control and management of water for multiple uses. The result is that an analysis of Washington problems is a very good survey of modern water law.

Most of the other articles are well done. The chapter on the economics of agricultural water use is very informative, the chapter on benefit-cost analysis is more technical but is also well done. The chapter on Water Resource Development in California, however, is a good example of the specialist substituting jargon for communication. This type of writing is all too common in the academic world and there is no reason for it. Fortunately most articles in this book are quite readable. Because the flood of information thrust before us is unrelenting, information that is not well written is ignored. If unrelated disciplines are to cooperate in solving common problems then communication is vital.

To put together a book written by 16 men is not easy, but the inherent complexity of assembling the work of writers from a plethora of specialties — law, engineering, economics, biology, and hydrology — does not justify the book's aimless meandering through these various disciplines. Unfortunately, because of the diverse interests of the writers and the inability of the editors to construct and retain a central theme, the bulk of the book is of interest to the reader seeking an insight into related disciplines that touch on resources management and public policy, but it is not helpful from the standpoint of focusing the reader's attention to the central problem of *management* and its need to bring together all disciplines. The narrow scope of some articles precludes treatment of, and deludes the reader into the assumption that broader inquest is not necessary for other equally important but ignored problems. Topics such as ground-water hydrology of the Pullman-Moscow Basin, the eutrophication of Lake Washington, water resource development in California, and economics of water use represent a collection of papers on water resources by specialists not really bent on interrelating their particular problem to the whole of resources management.

This book could then be analogized to a stew made from the contents of yesterday's conference. As such it can be sampled as a totality or the more discriminating partaker can select the meat, perhaps some of the starch, and reject the gristle and other inedibles. If the reader needs basic nutrition this text can supply valuable nourishment though many essential nutrients are missing. For the well fed — picking the meat can be satisfying.

ARNOLD W. REITZE, JR.*

WOMEN AND THE LAW: THE UNFINISHED REVOLUTION. By Leo Kanowitz. Albuquerque: University of New Mexico Press. 1969. Pp. ix, 302. $8.95.

If the 1960's was the decade of concern for the rights of underprivileged minorities, the 1970's may become the era when the nation focuses on discrimination against that not-so-silent majority,[1] American women. Despite great changes in the subservient

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position occupied by women at common law, women are still relegated to "second-sex"[2] citizenship by law and lore.

Sexual discrimination by the law has continued to win the tolerance, if not the approval, of the United States Supreme Court, long after the Court has invalidated legal differentials based on race[3] and other innate characteristics.[4] In 1948 a state ban on women bartenders was ruled valid against an equal protection challenge.[5] As recently as 1961 the Court upheld a Florida statute which provided that a woman could be called for jury duty only if she registered with the clerk of the court — a procedure which resulted in less than one-half of one percent of potential female jurors actually being placed on the jury rolls.[6]

Women and the Law by Leo Kanowitz, a University of New Mexico law professor, is a speedy survey of the myriad areas in which the law treats men and women differently. His theme is simple: When the law stops differentiating between the sexes on the basis of "irrelevant and artificially created distinctions," men and women will come to see each other primarily as fellow human beings and only secondarily as representatives of the other sex.[7] To this end, Kanowitz attacks not only those legal distinctions, such as the contractual incapacity of married women, based on "old-fashioned male supremacist notions,"[8] but also those laws which extend special protections to women because of their purported physical and emotional fragility.

The first portion of *Women and the Law* is devoted to legal distinctions which apply to all women, whether married or single. Such laws are harmful, according to Kanowitz, because they help to perpetuate a double standard in sexual and social expectations.

[1] In 1969, according to the Bureau of the Census, there were nearly 103 million females in the United States, compared with 99 million males. N.Y. TIMES, ENCYCLOPEDIA ALMANAC 1970, at 205 (1969).

[2] S. DEBEAUVOIR, THE SECOND SEX (Bantam ed. 1961).

[3] *E.g.*, Brown v. Board of Educ., 347 U.S. 294 (1954).

[4] *E.g.*, Levy v. Louisiana, 391 U.S. 68 (1968); Glona v. American Guar. & Liab. Ins. Co., 391 U.S. 73 (1968).

[5] Goesaert v. Cleary, 335 U.S. 464 (1948).

[6] Hoyt v. Florida, 368 U.S. 57 (1961). *But see* United States v. Dege, 364 U.S. 51 (1960), overturning the common law rule that a husband and wife cannot be guilty of criminal conspiracy if they conspire only between themselves. If the doctrine is based on the assumption that a wife must be presumed to act under her husband's coercive influence, and therefore involuntarily, wrote Justice Frankfurter for the majority, this implies "a view of American womanhood offensive to the ethos of our society." *Id.* at 53.

[7] L. KANOWITZ, WOMEN AND THE LAW 4 (1969).

[8] *Id.* at 53.

Thus the prostitution laws punish the female prostitute but not her male customer. Even the younger marriage age for women, Kanowitz believes, tends to discourage young women from seeking further education or employment and to wed them early to the kitchen and the cradle. The result, says Kanowitz, is to confirm traditional stereotypes concerning the "proper" roles of women and men.

In the area of political rights as well, the law treats women as creatures to be specially pampered. Although women have been voting equally with men for 50 years, fewer than half the states require women jurors to serve equally with men. As of 1961, only 21 states made women eligible on the same basis as men; eight states excused women if family responsibilities would make service a hardship; 18 accorded an absolute exemption to all women whether married or single; and three excluded female jurors altogether,[9] a practice recently held unconstitutional by a three-judge federal district court in Alabama.[10]

Kanowitz devotes the second part of his book to the legal treatment of married women, a field still clouded by the medieval fiction of the unity of husband and wife, which gave the husband control over his wife's person and property. Although the most extreme aspects of this doctrine have been ameliorated by the Married Women's Acts,[11] Kanowitz singles out the pockets of legal resistance which remain to the full emancipation of married women. Thus while nearly all states allow a husband to recover for loss of consortium when his wife is negligently injured, only about 17 jurisdictions grant a similar cause of action to a wife whose husband has been hurt.[12] In a handful of states, married women are still limited in their capacity to make contracts, convey real property, or otherwise engage in business.[13] In Florida, for example, a married woman must get court approval before she can manage her own property. Her petition must state her age, "her character, habits, education and mental capacity for business and briefly set out the reasons why the disabilities [to manage her estate] should be removed."[14] The woman must obtain her husband's consent or serve him with a copy of the petition.[15]

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[9] Hoyt v. Florida, 368 U.S. 57, 62-63 & nn.6-8 (1961).

[10] White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1966).

[11] *See* L. KANOWITZ, *supra* note 7, at 40.

[12] *Id.* at 84-85.

[13] *Id.* at 55-59.

[14] FLA. STAT. ANN. § 62.021(3) (1969).

[15] FLA. STAT. ANN. § 62.021(4) (1969).

The criminal law, Kanowitz shows, has also clung tenaciously to the feudal fiction of the unity of husband and wife. Most states still retain the rule that since husband and wife are one, they cannot be convicted of criminal conspiracy if they plot only between themselves. The absurdity of this principle was pointed out by Chief Justice Traynor of the California Supreme Court in one of the few decisions to reject the rule, when he wrote that the fiction of the unity of husband and wife "has been substantially vitiated by the overwhelming evidence that one plus one adds up to two, even in twogetherness."[16]

While such legal fossils are still preserved in law books, the area where anti-female discrimination actively flourishes is employment. For example, although women comprise approximately 40 percent of the work force, in 1966 less than 1 percent earned salaries of $10,000 or more; the proportion for men was almost 20 times greater.[17] In the past few years, Congress has passed two laws aimed at ending such discrimination, the Equal Pay Act of 1963[18] and Title VII of the 1964 Civil Rights Act,[19] which bars discrimination based on sex in hiring and conditions of employment. The chapters which Kanowitz devotes to analysis of these statutes are the most creative in his book.

Title VII, he points out, was aimed originally at racial prejudice in employment. The insertion of a ban on sex discrimination as well came just one day before the Act was passed, in an apparent attempt to defeat the entire bill, by Representative Howard Smith of Virginia, a staunch civil rights foe.[20] Because of this hasty history, Congress made no attempt to reconcile the new prohibition on sex discrimination with the long-standing state protective laws which provide for minimum wages and maximum hours for female employees. Kanowitz suggests several formulae for harmonizing the federal and state legislation, concluding that the best approach by which to preserve the social goals of the protective laws while granting equal opportunity to women is to extend the maximum hour-minimum wage standards to male employees, too. If the states

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[16] People v. Pierce, 61 Cal. 2d 879, 880, 395 P.2d 893, 894, 40 Cal. Rptr. 845, 846 (1964), *cited in* L. KANOWITZ, *supra* note 7, at 86.

[17] EQUAL OPPORTUNITY COMM., TOWARD JOB EQUALITY FOR WOMEN 2 (1969).

[18] 29 U.S.C. § 206 (d) (1964).

[19] 42 U.S.C. § 2000e-2 (1964).

[20] L. KANOWITZ, *supra* note 7, at 104-05.

fail to do this by legislation, Kanowitz suggests that the Supreme Court could properly do so under the equal protection clause.[21]

While *Women and the Law* is a conscientious project in legal research, as a book it is disappointing. First, Kanowitz's writing style is tedious. The book reads like a 200-page law review article (in fact several chapters have appeared in various legal journals), which makes up in footnotes what it lacks in readability. In terms of substance, too, the book is faulty. Too often Kanowitz develops a lengthy argument on the basis of assumptions which he fails to document. Thus he declares that women have been paid considerably less than men for the same work.[22] While this may well be true, the only support cited is a comparison of the median earnings of American men as a whole with those of women;[23] he gives no examples of unequal pay on identical jobs. Elsewhere he criticizes statutory rape laws for failing to extend their protection to young boys as well as girls. "If sexual intercourse is objectively harmful for persons of tender years, then it should be equally harmful for young males as well as young females," he writes.[24] This is a doubtful assumption at best, and Kanowitz offers no proof.

The statutory rape example illustrates another flaw in *Women and the Law*: Kanowitz fails to distinguish the molehills from the mountains. He devotes seven pages to discussing the impact of statutory rape laws, while discriminatory jury provisions rate only three pages. Too often he dwells at length on statutes which have long been abolished. Thus he spends two and one-half pages detailing health laws which required males, but not females, to prove their freedom from venereal disease before marrying; today, as Kanowitz himself notes,[25] only Washington retains this distinc-

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[21] Kanowitz argues that the Court would not be "legislating" by ruling that the equal protection clause requires coverage for men. He points out that:

> [The] 1905 decision in *Lochner v. New York*, invalidating hours limitation for both sexes and the 1908 decision in *Muller v. Oregon*, sustaining similar legislation for women only had much to do with influencing the states to enact such laws only for women, on the principle that half a loaf was better than none. In effect, it was the past conduct of the U.S. Supreme Court itself which largely, if not entirely, accounted for the proliferation of state protective laws applying to women only. L. KANOWITZ, *supra* note 7, at 184.

After the Court reversed *Lochner* in United States v. Darling, 312 U.S. 100 (1940), the states failed to extend the previous "women only" protections to men. By doing this under an equal protection rationale, Kanowitz contends, the Court would be simply "atoning" for its earlier error. *Id.* at 183-85.

[22] *Id.* at 101.

[23] *Id.* at 277 n.7.

[24] *Id.* at 23.

[25] *Id.* at 13-15.

tion. Criminal abortion laws, by contrast, receive only two pages, in which Kanowitz omits any mention of recent reforms.

Finally, and most significantly, Kanowitz's basic premise may be faulty. While law undoubtedly exercises a considerable influence on human relations, except for the employment and abortion laws most of the legal relics with which he is concerned have little real impact on the status of women. In fact, non-legal advances, such as modern birth control methods and the establishment of child care centers, will probably do a great deal more to change women's lives than would arresting prostitutes' customers or holding a husband and wife guilty of criminal conspiracy. In the final analysis, *Women and the Law*, while a useful reference work, contributes little beyond the compilation of raw legal information.

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