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# Legal Ethics, by Henry S. Drinker

Verner F. Chaffin  
*University of Alabama*

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# BOOK REVIEW

LEGAL ETHICS. By Henry S. Drinker.\* New York: Columbia University Press, 1953. Pp. xxii, 448. \$4.00.

Few would contest that lawyers are among the most influential of the policy-makers in our society. Certainly, it would be difficult to over-emphasize either the direct or indirect influence that members of the legal profession exert on the public life of this nation. The lawyer, as a member of a learned group which makes a profession of rendering advice to others, can assert leadership in virtually every area of society, and most professional teachers would agree that the indispensable function of our law schools is to see that he is adequately trained for responsible leadership. A mastery of the traditional skills and knowledge of the lawyer is, of course, an essential part of this training, but we do not fully accomplish our objective by merely exposing the student to a rigorous three year diet of legal doctrines and terminology from the lawyer's traditional storehouse of learning. What is also vitally needed is a sense of social responsibility and an awareness of the policy-making potential of the lawyer in a free society. No one will deny that numerous instances exist where the lawyer has been remiss both in his opportunities and his obligations in this respect.

How can the lawyer be awakened to fulfill his social role? How can the law student be trained to seek and obtain results that are compatible with the professed ends of our democracy? The fact is that most law schools, either from considerations of convenience or of deference to tradition, employ legal doctrine and technicality as the basis around which the curriculum is organized. There is no immediate trend toward re-orienting the entire framework of courses so as to come to grips with causes and conditions of contemporary society.<sup>1</sup> How, then, can we give the student an intelligent understanding of the ultimate ethical and moral values involved in his professional conduct so that he can make a deliberate choice of policies? It is questionable whether the typical course in legal ethics, alone and unaided, may be safely relied upon to do this job.

As Mr. Drinker states, the various bar associations in this country,

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\* Member of the Philadelphia Bar; Chairman of the Standing Committee on Professional Ethics and Grievances of the American Bar Association.

1. Lasswell and McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943), urge a complete revamping of the traditional curriculum in terms of a policy-oriented approach.

beginning with Alabama's in 1887 and followed by the American Bar Association twenty-one years later, have set up norms of right and wrong to govern the lawyer's conduct in his relations with the public, the courts, his client, and with fellow members of the bar. Minimal adherence to these standards of conduct is sanctioned by disciplinary action resulting in disbarment, suspension, or censure.

Every lawyer knows that the difficulty with any set of rules designed to govern conduct lies in the application of the rule to the concrete situation. The rules are not self-defining; because of their very nature they are necessarily composed of generalities without operational principles applicable to specific instances of professional conduct. Without interpretation, their value as behavior guides would be illusory and meaningless. Eleven years after adoption of the Canons of Professional Ethics, the American Bar Association Committee was authorized to commence its work on interpretation and construction of the canons in response to specific questions asked by lawyers and bar associations. Many state and local associations soon followed suit and appointed committees to render a similar service on their own levels.

The author has accumulated all the obtainable opinions of these committees rendered during the past thirty years. He states that the primary aim of his book is to summarize these decisions. Though not purporting to be exhaustive, Mr. Drinker has undoubtedly accomplished this goal. Material which was previously beyond reach of the average lawyer has been conveniently assembled from many scattered sources in one volume and classified under the canon to which it relates. The presentation is in text form, with footnote citations to the committee opinions relied upon.<sup>2</sup> The profession is indebted to Mr. Drinker for his painstaking and accurate compilation.

But it might well have been hoped that the distinguished author, with his years of experience as Chairman of the American Bar Association's Committee on Professional Ethics and Grievances, would not have contented himself with such a modest objective. It is not particularly helpful in understanding how well these rules are serving their purpose to be told that the American Bar Committee has interpreted a particular canon in a certain manner, and that California, Missouri, and New York have arrived at similar or different results. The various committees, before

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2. Appendices comprising 83 pages contain (A) Decisions by the American Bar Association Ethics Committee Hitherto Unreported; (B) Digest of Representative Court Decisions Specifying Grounds for Disbarment, Suspension, or Censure; (C) Canons of Professional Ethics; (D) Canons of Judicial Ethics; (E) Hoffman's Fifty Resolutions in Regard to Professional Department; (F) Code of Ethics of Alabama State Bar Association; (G) Rules and Standards as to Law Lists.

rendering an opinion, must inevitably make policy choices in the light of their own standards of moral values and social goals. The rules cannot in themselves dictate decisions. A collection of isolated opinions, impersonally presented and devoid of expressed policy preferences, is apt to be as confusing as it is helpful. The reader is left where he began, thrown back ultimately on his own intuitive sense of right and wrong. His attempts to relate the rules or opinions to each other are frustrated by the failure to make clear the standards and social goals which the rules were designed to promote.

Specifically, what are these ends which these rules should serve and how well have they been achieved by these decisions?<sup>3</sup> What alternatives are available? Can more effective forms of organization or sanction be utilized so that our social goals can be more fully reached? We sorely need an analysis of the canons in terms of their philosophy and function before we can hope to give creative consideration to methods of improvement. The failure of Mr. Drinker's book to do this constitutes a definite limitation upon its usefulness.

The reviewer feels that the traditional course in legal ethics is subject to the same shortcomings. Too often it is taught as though it belonged in a separate compartment, divorced from the rest of the curriculum. To expect such a course, treated diffidently by both student and instructor, to perform the task assigned it is to be falsely optimistic. It is not surprising that such an offering frequently generates an attitude of complacency toward appellate decisions and committee opinions. Consideration of social goals is dragged in purely incidentally and is frequently obscured by preoccupation with the technicalities of "interpretation" and "construction." The fact is that we have not yet devised efficient techniques for the investigation, collection, and presentation of such materials. Mr. Drinker's work should not be criticized unduly for following the beaten path; its only fault lies in its orthodoxy. The book does fill a vacuum which had existed for almost three decades<sup>4</sup> and is a major contribution to the literature on this subject.

VERNER F. CHAFFIN†

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3. That the self-critic is not likely to be a disinterested observer, witness the self-congratulatory conclusions drawn from the American Bar Association's survey of the legal profession as reported by McCracken, *Report on Observance by the Bar of Stated Professional Standards*, 37 VA. L. REV. 399, 425 (1951).

4. Several casebooks have been produced, beginning with Costigan (1917), and followed by Hicks (1932), Arant (1933), Cheatham (1938), Fryer and Benson (1949), and Pirsig (1949). But not since the appearance of BOLTE, *ETHICS FOR SUCCESS AT THE BAR* (1928) has a text been published until the present work.

† Associate Professor of Law, University of Alabama.