



1954

The Social Impact of the Warsaw Convention by Harold J. Sherman

Amry Vandebosch
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Vandebosch, Amry (1954) "The Social Impact of the Warsaw Convention by Harold J. Sherman," *Kentucky Law Journal*: Vol. 42 : Iss. 3, Article 14.

Available at: <https://uknowledge.uky.edu/klj/vol42/iss3/14>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

the absence of state decision, has created a notable achievement in a work which will be of service of the bar of this state for years to come.

ALFRED B. MCEWEN

University of Kentucky
College of Law

THE SOCIAL IMPACT OF THE WARSAW CONVENTION. By Harold J. Sherman. New York: Exposition Press, 1952. Pp. 156.

The main title of this book is misleading; the actual subject matter of the book is covered accurately by the subtitle, "A Critique of the Lee Decisions on the Warsaw Convention and a Plea for Early Rectification." The author is much disturbed by the decision of the New York Courts in the Lee case¹ and the denial by the United States Supreme Court of an appeal by the Lees for a judicial review on the merits of the final judgments.² Since Pan American Airways invoked in its defense the provisions of the Warsaw Convention of 1929, Mr. Sherman argues that the courts permitted the provisions of a treaty to nullify a right guaranteed in the Seventh Amendment of the Federal Constitution, namely, the right of trial by jury "in suits at common law, where the value in controversy shall exceed twenty dollars. . . ."

In view of the proposed amendment to the Constitution sponsored by Senator Bricker, this ought to be a very timely, significant and provocative book. If the author had succeeded in proving his thesis his book would indeed be an effective support of the contention of the Bricker amendment supporters, but in the opinion of the reviewer Mr. Sherman fails to establish the necessary connecting links to make his case valid. It is true that the Convention by limiting the liability of the carrier for each passenger did restrict the legislative power of the state of New York, but it did not thereby violate the provision of the Seventh Amendment, because the first nine amendments are restrictions on the Federal government and not on the states. While the courts in recent years have held that the basic provisions of the Bill of Rights are included under the Fourteenth Amendment there is no decision holding that a specific provision like that at issue in this case is covered by the broad restrictions on the states imposed by this amendment. If the New York courts properly had jurisdiction in this case the Seventh Amendment could not be invoked by the Lees. The Lees had no right to a jury trial in the courts of the state of New York

¹ Lee *et al* v. Pan American Airways, Inc., 118 N. Y. L. J. 1548 (1947); 275 App. Div. 855, 89 N. Y. S. 2d 888 (1949).

² 339 U. S. 920 (1950).

in the absence of the Warsaw Convention. The Warsaw Convention could not take away from the Lees a constitutional right they did not have. In the opinion of the reviewer the argument of this book is based upon faulty reasoning, and hence fails completely.

AMRY VANDENBOSCH

University of Kentucky

THE FEDERAL COURTS AND THE FEDERAL SYSTEM. By Henry M. Hart, Jr., and Herbert Wechsler. Brooklyn: The Foundation Press, Inc., 1953. Pp. lvii, 1445.

The editors of this fifteen-hundred-page volume state in their preface that the subject of the book is the legal problems resulting from our having dual judiciary systems. These problems are looked at from the viewpoint of the Federal courts. The aim is to identify the areas of Federal and state authority. They further point out that the book deals with the relationship of Federal and state law in everyday affairs as well as with the jurisdiction of the Federal courts.

It is also stated by the editors that the book is expected to be used in a course offered to students "who are grounded both in constitutional law and in conflicts of laws or, at least, are studying those subjects simultaneously." It seems that the course in Federal practice should also be included in the prerequisites. All this seems to bar the use of the book in the smaller law schools because of the limited number of men on the faculties and because of the time necessary for such an advanced course.

The first chapter is introductory matter, not intended for class work but designed to give a background for the course. The second and third chapters deal with "the nature of the Federal judiciary function" and the "Supreme Court's original jurisdiction." The succeeding five chapters contain the gist of the course. They cover "the main alternatives which are open to Congress under the Constitution in the exercise of these powers." Chapters nine to eleven, inclusive, examine criminal prosecutions, civil action by the government, actions against the government, *habeas corpus*, collateral attack on judgments of conviction, exhaustion of other remedies and review of Federal decisions.

The reader would be justified, possibly, in not calling this work a casebook, since the text matter and notes exceed by twenty-five or thirty pages the space given to cases. Almost any one of the notes to the cases might well demand a week of the student's time for working out and answering the questions propounded therein. These notes