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Book Review

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BOOK REVIEW

DESKBOOK OF ART LAW. By Leonard D. DuBoff. Washington, D.C.: Federal Publications, Inc.. 1977. Pp. 1345. \$100.00.†

*Reviewed by Albert P. Blaustein**

For a book review to be labeled scholarly (*circa* 1978) it should be critical. That means that it should be replete with fault-finding. The reviewer, as scholar, is required to display his erudition by pointing out what is missing, and how the book *could* have “made it” if *only* it had been reorganized in this-or-that way. The review that makes it to Cooperstown is the one which convinces the reader that the reviewer could have done a much better job than the author.

But such a review is not forthcoming — not from this corner at any rate. And I hereby challenge any and all reviewers of DuBoff’s magnificent *Deskbook of Art Law* to come up with such a review. Never. Fault-finding here is just plain quibbling.

Not that this reviewer didn’t want to find fault. I tried. Honestly. As these words are being written I find myself surrounded (or is it “inundated”) by virtually everything which had been written in the field, seeking clues on how to damn DuBoff. But I just cannot do it.

Further (I hope confession is good for the soul), I *wanted* to point out DuBoff’s shortcomings as an excuse to regale my audience with a recital of what I did during my summer vacation. Alas, you will be disappointed. I did go to London, Paris and Geneva and I did speak to “everybody” (or at least “tout Londres, tout Paris et tout Geneve”) with an interest in art and the law. And I did learn a great deal. As it now turns out, I could have done just as well by sitting home studying the DuBoff tome.

In some cases DuBoff had beaten me to the punch. The top man in art law in Britain, Henry Lydiate, was in the process of getting materials from a DuBoff disciple in San Francisco. The people “in the know” at the United Nations Education, Scientific and Cultural Organization (Paris) and the World Intellectual Property Organization (Geneva) did indeed know a great deal. And they told it well, providing me with much material on the subject. But everything was (to put it kindly) uncoordinated. They wanted to know what we were doing about it in the U.S. and I was able to brag that I knew DuBoff. And so it went.

DuBoff has indeed authored the work which everyone (especially this

† Professors may make special arrangements with the publisher (Federal Publications, Inc.) to obtain the text for their students at a special education discount.

* A.B., 1941, Univ. of Michigan; L.L.B., 1948, Columbia Univ.; Member, New York and New Jersey Bars; Professor of Law, Rutgers, The State University School of Law, Camden. Professor Blaustein is author of CONSTITUTIONS OF THE WORLD (A.P. Blaustein and C.H. Flanz, eds.).

copyright teacher) has been looking for in the field of art law. He has put it all together. I now have the book I needed and wanted to teach my own course in the field. I don't have to write one myself. Neither does anyone else. As I place this work in a prominent place on my workshelves, I can now relegate all of the other books on the subject to cellar storage. So can everyone else.

As new fields develop in the law, we law teachers set the multilith machines a'running in a quest to provide our own teaching materials. But we are always looking for the break-through effort — our own or someone else's — that will really do the job. For example, there were many of us struggling to teach copyright law prior to 1960, and this was certainly a field filled with cases, materials and commentary in overabundance. Yet it was not until the pioneer work by Harvard's Benjamin Kaplan (now on the Supreme Judicial Court of Massachusetts) and Yale's Ralph S. Brown, Jr., that we all had the *solid* book making it convenient and expedient to offer a course in the field.¹ What Kaplan and Brown did for the teaching of copyright law, DuBoff has done for teaching in the field of art law. As one looks at other newly-developing fields of law study, one seeks in vain for DuBoff equivalents. There are courses that must be taught in social legislation and in income maintenance; there are courses to be taught in age discrimination; there are courses to be taught in environmental law, etc. Would that the professors of such subjects (and their students) had the equivalent of DuBoff's *Deskbook of Art Law*.

With this overlong introduction behind us, now (belatedly) to the book itself. This 1345 page compendium is aptly described as "the first coffee-table law book." (Another confession: this was not a description I invented, but one which appears on page 4, where we are first told that the volume is filled with numerous illustrations.) This is a handsome book, with a most attractive binding and attractive layout to house and frame the handsome illustrations.

There are 953 pages of cases and materials, divided into twenty chapters, plus 290 pages of appendix materials, and a final 100 pages devoted to tables and a subject index. It has chapters on the nature of art, its international movement, the problems of censorship, governmental and other assistance to the arts, art as an investment, authentication, auctions, tax problems, copyright issues, moral and economic rights, museum problems, and other topics making up the twenty chapter headings.

Comprehensive is the word. But comprehensive also is *Art Works: Law, Policy, Practice*,² authored and edited by Franklin Feldman and Stephen E. Weil. This is a work of 1240 pages, likewise packed with valuable information in the field. But its organization is poor, certainly far below the DuBoff standard. It would be difficult indeed to teach from this book or turn to it as a handy, one-volume reference on the subject. Lengthy also are the multilith teaching materials prepared by John H. Merryman for his course in Art and the Law. Here the organization is good for teaching purposes but does not meet the test of a reference-deskbook. Nor are the teaching materials

¹ B. KAPLAN & R. BROWN, JR., *CASES ON COPYRIGHT* (3d ed., 1978).

² F. FELDMAN & S. WEIL, *ART WORKS: LAW, POLICY, PRACTICE* (1974).

complete. There is far more in the DuBoff book and far more and better notes and questions for professor and student.

There are some items appearing in the Feldman-Weil and Merryman efforts that I would have liked to have seen in the DuBoff book. There are also some items in the other works which DuBoff cut to the bone which I would have liked to have seen at greater length as they were published in the other works. But it could not be. And the answer is not in DuBoff's semi-apologia on page four where he speaks of having edited out "irrelevant portions" of important opinions. The real answer is that there was not room enough within the covers of a single volume.

Because the idea of teaching art law is an idea whose time has come, this is a timely book indeed. Because there is so much current interest in art and artists (who hasn't been reading about art as an investment?), this work, is doubly timely. And it is timely in the third sense because its publication follows at the heels of recent changes in the copyright and tax laws, both of which are relevant to art law and both of which are comprehensively treated by DuBoff. As a matter of fact, Professor DuBoff is properly proud of this timeliness. His "With Thanks" pages acknowledge his indebtedness for invaluable assistance provided by copyright and tax experts who reviewed and commented upon the chapters devoted to those subjects.

Alas, this is the timeliness that is overrated by the author. For these are the parts of the book which will be first subject to obsolescence. But one cannot be too critical. There is no room for a pocket part. All that DuBoff could have done would be to insert a caveat warning the teacher and researcher about proposed and prospective changes and cautioning them to annotate the book themselves. There is some of this indicated by the appendix materials, but there should be more (according to the publisher, an annual supplement will be available in January, 1979).

One other aspect of timeliness must be noted and praised. This is the subject matter of Chapter IX on "Aid To The Arts." This reviews federal and state governmental assistance from the days of the WPA to the present National Foundation For The Arts And Humanities, together with a comprehensive discussion of the "proper" role of government. Appendix 41 reproduces S. 1800 of May 21, 1975,³ designed to amend and extend the NFA Act of 1965,⁴ which is under so much conflict. Nothing could be more timely. That same chapter also instructs the reader in (1) the types of grants and fellowships available to artists from governmental sources, (2) the nuances of applying for such aid, and (3) the methods employed in selected successful applicants.

Chapter XVII, entitled "The Working Artist," reviews the problems facing the aspiring artist in producing and marketing his "product." This discussion is supplemented by a variety of relevant Appendices — in this case (1) an evaluation of gallery "duties," (2) a code of fair practices, and (3) a variety of artist/dealer and artist/gallery arrangements.

Another feature of the work follows Professor DuBoff's conclusion that art

³ S. 1800, 94th Cong., 1st Sess. (1975).

⁴ National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. § 951 (1965).

law cannot be studied unless the student can see and examine the art works at issue. Two dozen plates are included at logical intervals throughout the text. For example, when protest art is examined, a police photograph of the Marc Morrel exhibit central to *United States ex rel Radich v. Criminal Court of the City of New York*⁵ is included for reader referral. And how much more meaningful is *Brancusi v. United States*⁶ when one can look at a picture of "Bird in Space" while reading the court's opinion!

The cases are also extensively annotated for the convenience of those lacking knowledge about the factual background or previous history; a good feature. One wishes that other casebook editors would take similar trouble. In addition, there are marginal notations which enable the reader to locate subtopics more easily, notations which also provide a simple thumbnail outline for the student.

One evidence of the comprehensiveness of this work has been conclusively established by my research assistant, Robert Pickus. He has painstakingly checked an assortment of bibliographies against the sources, references, etc., in DuBoff's deskbook and has pronounced judgment for DuBoff. There is the omission of Edward DeGrazia's *Censorship Landmarks*.⁷ But this collection of judicial opinions in censorship cases is no great loss and is only noted here to show how truly comprehensive is the DuBoff work. The only other omissions are the two works on this subject by Scott Hodes.⁸ Both of them are awful and they are better left unmentioned.

Of course there are bound to be criticisms. The only way to avoid an unfavorable book review is not to write a book. But criticisms of this comprehensive, well-written work are designed to be in the nit-picking category. My final word on the book will be echoed by every other reviewer: "I wish I had written it."

⁵ 385 F. Supp. 165 (S.D.N.Y. 1974).

⁶ 54 Treas. Dec. 428 (Cust. Ct. 1928).

⁷ E. DEGRAZIA, *CENSORSHIP LANDMARKS* (1969).

⁸ S. HODES, *THE LAW OF ART AND ANTIQUES* (1969); S. HODES, *WHAT EVERY ARTIST AND COLLECTOR SHOULD KNOW ABOUT THE LAW* (1974).