

Book Notes: Seeking Civility: Common Courtesy and the Common Law, by George W. Jarecke and Nancy K. Plant

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SEEKING CIVILITY: COMMON COURTESY AND THE COMMON LAW, BY GEORGE W. JARECKE & NANCY K. PLANT. BOSTON: NORTHEASTERN UNIVERSITY PRESS, 2006. Pp. x + 200. Notes, index. USD \$19.95 cloth.

BY ZOHAR LEVY

George Jarecke and Nancy Plant use this accessible and well-written book to consider the efficacy of litigation in resolving disputes caused by uncivil behaviour. Through a survey of cases from various jurisdictions in the United States, the authors ultimately conclude that the legal system does not provide a remedy for breaches of basic common courtesy. While they acknowledge that there is a perceived need for law to regulate behaviour when it is particularly egregious, the majority of the decisions considered emphasize that other values are more important to American society than civility.

The authors begin by telling the story of Carrie Nickerson, who was misled to believe that she had found a pot of gold on a deceased relative's property. When she discovered that the pot was filled with rocks instead of the anticipated fortune, she flew into a rage. The embarrassing story spread through the area, and may, in part, have been responsible for her death two years later. Using this and other examples, this book sets out to explore the degree to which civility is protected by the common law through civil actions. In the case of Nickerson, her estate was eventually awarded some money for the emotional trauma she suffered. However, in some cases, not only does the law not sanction uncivil behaviour, but implicitly encourages it instead.

The law surrounding assault and battery illustrates this point. In Illinois, a defendant trying to preclude recovery or reduce damages in a battery action cannot use insults or offensive words uttered by the plaintiff to show provocation or as a defence. The authors think that this law effectively allows Americans to insult one another without legal recourse. Later, in a discussion on badgering, obscenity, and defamation, they develop this argument in the context of freedom of speech. Americans place such a high premium on individual rights that courts are unwilling to assist in the development of a civil society by restricting any speech, even if it is offensive or harassing.

The role of individual liberties in creating American reliance on litigation is underscored by the authors in their conclusions. Because the

majority of parties in the cases surveyed are willing to go to considerable expense to defend their rights in court, even for little to no financial gain, the authors conclude that mediation might not be an effective alternative, as these people are far too committed to the defence of their own rights to allow a rational third party to help them see the other perspective. In the end, the authors advocate building on the sense of community that Americans felt after 9/11, and simply urge their peers to be more civil and have a greater respect for one another.