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Book Review - Supreme Ambitions: A Novel, by Peter Conti-Brown

JREG Notice and Comment - Friday, December 12, 2014

SPOILER ALERT: This post will discuss some of the late-breaking developments of David Lat's new novel, *Supreme Ambitions: A Novel*

Forgive the diversion from financial regulation/central banking, but I've read David Lat's [Supreme Ambitions](#), a consuming thriller about—I'm not kidding—judicial law clerks. Since I imagine our readership and Lat's readership overlap to some extent, I thought I'd share a few scattered thoughts. There are some spoilers, though, so tread carefully.

This is a very readable book, an unsurprising feat from a very readable blogger. As a historian, I wish there were more books like it. It reminds me of Picketty's extensive and profitable use of Balzac and Austen in *Capital in the 21st Century*—it provides color for a curious historical phenomenon that one

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wouldn't get from other kinds of sources. When the history of judicial law clerks in the early 21st century is written—not a mundane topic, in my view—the historian will benefit from reading Lat's book (and, of course, his two blogs that frequently cover(ed) the comings and goings of law clerks). Also, if you clerked for a federal judge in the last twenty or so years—and, especially, if you clerked in the Ninth Circuit in the last ten years—you will almost certainly enjoy reading this book for its barely-veiled caricatures of prominent jurists, including their foibles (Judge “Polanski’s” constant and creepy attention to the beauty of female law clerks is, I hope, Lat’s odd use of creative license). To be clear: Lat is no Balzac—there is some tedious repetition of some flashpoints of the 2012 election (specifically, Mitt Romney’s “severely conservative” label), some subplots that didn’t pace well (the discovery of the author of a blog covering the federal judiciary), and plenty of strained caricatures (almost all of Audrey’s friends, frankly). But this is a book one finishes in one or two sittings; for the most part, it reads quickly and well.

The main appeal is its realism. [It has been described](#) as a book by a former clerk about law clerks. It is surely that—readers who fit the profile will find themselves nodding along as horror clerkship experiences as similar experiences are described in compelling detail. Of course, some details play better than others. I’m not sure which sounds more incredible, that the *Stanford Law Review* would publish “a linguistic analysis of ERISA preemption” (maybe a student note?) or that a law clerk was reading the article recreationally (it is central to the plot that this particular law clerk has a preternatural and sincere love of all things legal, so I guess?). But these were very minor. For the most part, Lat has set himself a task realism and accomplished it admirably.

Until, I think, the end. Here is where Lat and I part ways and why, ultimately, I don’t love *Supreme Ambitions*. The problem is the book’s crowning drama (and here come the spoilers, so stop reading if you haven’t read it yet and want to be surprised): a clerk’s moral crisis in following a judge’s instructions and decision to betray the judge’s confidence by going to another chambers to seek vindication. More specifically, the main protagonist, law clerk Audrey Coyne, discovers a jurisdictional defect in a case whose opinion on the merits her judge very much wants to issue, purely for her titular “Supreme Ambitions,” that is, desire to be appointed to the Supreme Court. The jurisdictional problem is that appellants’ failed to file their notice of appeal within the thirty days required by the Federal Rules of Appellate Procedure (in the case of the decade, I might add), a fact no one else spotted (did I mention this was the case of the decade?). Audrey is a very dutiful clerk, though, and notices this error when she does her final, post-circulation fact check, and immediately brings it to the judge’s attention. In a dramatic move, the judge takes her to the roof (a detail I loved; I imagined the judge’s fear of wiretaps or spies in chambers or something) and tells her to file the opinion anyway, the lack of appellate jurisdiction be damned. Audrey has a crisis of conscience, leaks the jurisdictional defect to another clerk in another chambers, and the opinion gets tossed.

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This denouement—which, by the way, Lat wants us to celebrate and admire—turned my stomach. Here’s why: while Lat has chosen his jurisdictional problem carefully, I can’t get behind the celebration of a 22-year-old barely lawyer concluding that her judgment is superior to her boss’s—with decades of experience and, much more importantly, a presidential commission—to the point of seeking to achieve the desired result from another chambers. Again, Lat wants us to conclude that Judge Stinson is very baldly careerist and has violated her own judicial commission (and her own plainly stated views in the importance of jurisdiction and judicial restraint). I’m on board: Judge Stinson acts abominably. But it’s not easy for me to conclude that a law clerk is the one to police the jurisdiction-bending careerism of her judge, for two independent reasons. First, in the eyes of a law clerk less than a year out of law school, some very plain errors of law may be much more complicated than they seem, even in questions of easy jurisdictional dispositions. Second, no one in the democracy vetted, appointed, or confirmed Audrey Coyne to exercise this kind of judgment. They did, however, do this for her judge. If the President and Senate made a mistake—and [they’ve made some whoppers](#) over the years—that’s on them. If you want to expose them as frauds, or imbeciles, or both, fine. But making appointments an election issue and make loud arguments about the merits of judges on the bench and the kind of people you don’t. That makes great sense to me. The clerk judge from the inside strikes me as an ugly and unethical arrogation of authority.

Now, admittedly, as Lat wants us to do, I kept thinking of my own experiences as an appellate law clerk. I think I was a good law clerk. But it was painfully obvious that I simply didn’t know as much as I thought I did. More times than I would like to admit, a legal principle seemed plain, ironclad, and dispositive. And then one of my bosses would ask a penetrating question, mention a line of cases not cited in the briefs, reflect on a similar problem in a case from ten years before, or—just as important—simply disagree with my conclusion on the basis of the same information I had just reviewed. That was the end. They were the deciders, whether I agreed or didn’t.

Now, my bosses are two of the most eminent jurists in the land, in my immodest and admittedly biased opinion, and neither ever exhibited a hint of the naked ambition or politicking of Judge Stinson—I’m really not sure if there are many or any judges that would have a “let’s go to the roof so I can tell you how I am going to use this case to further my career ultra vires” kind of moment we see in *Supreme Ambitions*. I’m not exactly sure how I would have felt in Audrey’s situation. But I hope I would have swallowed my pride (and my admiration for my boss) and done as instructed in that case. As a generalizable principle, then, I think the violation of a the timeliness of notice of appeal that no one else—no other clerk, judge, even the party’s adversary—had spotted falls closer to the side of the line that requires the clerk to follow the judge’s exercise of constitutional judgment. On the other side of the line might be facilitating bribes or running drugs. I’m not exactly sure what lies in the murky middle.

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Will Baude [at the Volokh Conspiracy](#) couldn't decide "whether this is a ridiculous book or an insightful one. It might be both." I think of it more as appellate court fan fiction that is fun to read and in many ways quite realistic, but that ends in a celebration of what, in my mind, amounts to self-aggrandizing, unethical behavior. I'd be interested to know if others agree or disagree.

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