BOOK REVIEWS
REVUE DES LIVRES

Cripps on Compulsory Acquisition of Land. Eleventh Edition. By HAROLD PARRISH, LL.B. London: Stevens & Sons Ltd. 1962. Pp. cvi, 1247. ($35.00)

The first edition of *Cripps* was published in 1881. The law of this eleventh edition is stated to be January 1st, 1962. This, therefore, is a review of an octogenarian and one whose name is synonymous with the law of compulsory purchase or expropriation wherever the seeds of the English common law have found fertile soil.

Cripps was to the law of expropriation and compensation what *Byles* was to Bills of Exchange, *Pollock* to Partnership, and *Benjamin* to Sale. These great legal authors of the nineteenth century left as their memorials scholarly and clear expositions of those branches of the law which they had made their specialties. They wrote at a time when society was much less complex and when its laws were correspondingly less complicated. Moreover those laws were based primarily on cases, even where, as for example in the case of the law of bills, partnership and sale of goods, the case law principles were later codified in statutory form.

During that simpler era and until the turn of the century, the power of expropriation was most frequently exercised in England by railway and utility companies acting pursuant to statutory powers obtained by private or special Acts of Parliament. Holdsworth records in his *History of English Law*[1] that in the period 1845-1847, five hundred and seventy-eight new railway projects were authorized by Parliament. This spate of parliamentary activity resulted in the legislative device of "Clauses Acts" whereby standard provisions usually inserted in private bills were consolidated in one public Act. Thereafter private bills incorporated by a single reference all, or any, of the provisions of the general Act. The Lands Clauses Consolidation Act[2] and Railway Clauses Consolidation Act[3] of 1845 provided the procedure for the expropriation of land and the method of determining compensation in the absence of agreement between the parties. The provisions of these Acts, which were often adopted *verbatim* in Canada[4] were

[1] Vol. XI (1938), p. 626. [2] 8 & 9 Vict., c. 18. [3] 8 & 9 Vict., c. 20.
[4] For example, the Lands Clauses Act, R.S.B.C., 1960, c. 209.

mainly procedural. They contained very few matters of substantive law, and, more particularly, they did not attempt to spell out the measure of compensation. That measure, both before and after the 1845 Acts, was the judicially devised concept of "value to the owner". In 1914 the Judicial Committee held in *Cedars Rapids Manufacturing and Power Company* v. *Lacoste*[5] that the law of Canada as regards the principles upon which compensation for land taken was to be awarded was the same as the law of England. Lord Dunedin stated that these principles, value to the owner, and so on had been explained with great precision by Vaughan Williams and Fletcher Moulton L.J.J. in *Re Lucas and Chesterfield Gas and Water Board.*[6] The value to the owner concept has been reaffirmed emphatically by the Supreme Court of Canada in *Woods Manufacturing Co. Ltd.* v. *The King.*[7]

During World War I, a parliamentary committee under the chairmanship of Mr. Leslie Scott (later Lord Justice Scott) considered the English law of expropriation and issued three reports. The second report recommended fundamental changes in the basis of compensation, including, *inter alia*, the substitution of "market value" for "value to the owner" and the abolition of the ten per cent bonus allowance for compulsory taking. These recommendations were implemented by the Acquisition of Land (Assessment of Compensation) Act, 1919.[8]

In the twenty years between the Wars, government activity at every level increased dramatically. Public works, highways, slum clearance projects, (or "urban renewal schemes" to use the current euphemism), and the like, resulted in the use of expropriation powers by public authorities to an ever-increasing degree. The power of expropriation became an adjunct of government rather than of private enterprise. The law of expropriation broke out of its traditional private law cocoon and was drawn into closer affinity with public law—municipal and administrative. Many of the leading administrative law cases in the 1930's arose in the context of projects involving the compulsory purchase of land by municipalities.

The latest period of development in the English law of expropriation and compensation embraces the years following World War II, when the United Kingdom embarked on a revolutionary, and not wholly successful, experiment in zoning and development control. The Town and Country Planning Acts, 1947-1959,[9] first introduced and later abandoned the concepts of "betterment" and the "nationalization" of development rights. These concepts, *inter*

[5] [1914] A.C. 569.
[6] [1909] 1 K.B. 16.
[7] [1951] S.C.R. 504.
[8] 9 & 10 Geo. 5, c. 57.
[9] 10 & 11 Geo. 6, c. 51, as am. in 1951, 14 & 15 Geo. 6., c. 19; 1953, 1 & 2 Eliz. 2, c. 16; 1954, 2 & 3 Eliz. 2, c. 72; 1959, 7 & 8 Eliz. 2, c. 53.

alia, led to the establishment of a Lands Tribunal in 1949 to determine questions of compensation. The attempts of later governments to unscramble the 1947 experiment have produced a maze of legislation comparable only with that in the fields of income tax and rent restriction.

It is against this background that this edition of *Cripps* and the work of Mr. Parrish must be evaluated. The above sketch and the following comments may assist the Canadian reader to determine how useful this edition of *Cripps* may be to him.

The text is divided into six parts, namely, (1) the power to acquire land (chapters 1-6); (2) procedure of acquisition (chapters 7-11); (3) the right to compensation (chapters 12-17); (4) principles of assessment of compensation (chapters 18-24(a)); (5) compensation of third parties injured by execution of the works (chapter 25); and (6) payment for values excluded under Town and Country Planning Act, 1947 (chapters 26-31).

Chapter one opens with an introduction which sketches out the expropriation process and upon which subsequent chapters elaborate in detail. This is followed by a second section headed "Powers and Purposes" which might be described as the "yellow pages" of the book. From "Admiralty" to "Water Supply".

> . . . ninety-odd powers of compulsory purchase in public general Acts . . . are set out, under a number of descriptive headings, in alphabetical order. The relationship of each power to the general procedure for acquisition of land and to the compensation therefor is then shown so as to indicate any special provisions or modifications.[10]

This catalogue consumes some 151 pages of text and involves a considerable amount of repetition. For example we are told over and over again that: "A compulsory acquisition of land by (highway authority, and so on) must be authorized by the Minister by a compulsory purchase order made by the acquiring authority and submitted to and confirmed by the Minister . . . in accordance with the Acquisition of Land (Authorisation Procedure) Act, 1946;"

If this catalogue is useful to English lawyers, the learned editor might consider presenting it, in his next edition, as a series of tables in an appendix.

The third section of the chapter outlines the circumstances in which a land owner can require a public authority to expropriate his land under the provisions of the Town and Country Planning Act, 1959.[11] For example, if in a development plan, land is shown for future use for public purposes or highways, and so on, the owner of such land in essence can compel the planning authority either to expropriate the land or remove it from the threat of future expropriation. Some similar procedure might be salutary in this

[10] Preface, p. ix.

[11] See *supra*, footnote 9.

country in the light of the sometimes irresponsible "planning" activities of some Canadian municipalities.

Chapter 2 deals with the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946.[12] This Act, as its name implies, sets forth the procedure whereby municipalities and a considerable number of other bodies with expropriation powers, get authority to exercise that power in a particular instance. The 1946 Act provides, in effect, a code of procedure. As the text indicates[13] there is another code under the Housing Act of 1957 which is dealt with in Chapter 3. The interest of these procedures to the Canadian lawyer is that his system has nothing comparable. In the vast majority of cases, the smallest municipality or school board can decide to expropriate John Doe's property without even informing a higher authority, let alone getting its permission. Whether the scheme for which the land is expropriated is sound and whether that particular land rather than some other available piece should be taken are questions that are considered to be entirely within the competence of the expropriating authority itself. Those, including the reviewer, who advocate the adoption in Canada of something on the lines of the English procedure, as set out in chapter 2, are met with objections which stem largely from ignorance of the English system and how it works in practice. It is to be hoped that more Canadian lawyers will study the English procedure and exert an informed pressure for similar legislation in Canada.

Chapter 4 deals with the Lands Clauses Acts and their relationship to other Acts. This and the following chapter which describe what interests in land may be acquired under statutory powers of expropriation should be of interest to Canadian practitioners in interpreting Canadian legislation based on the English Lands Clauses Acts. For example,[14] there is a very interesting account of the meaning of "land" or "lands". If the enabling Act authorizes the expropriation of "land" or "lands" but does not define these words, does this authorize the taking of a stratum of the land, or the subsoil or an easement over the land?

Chapter 6 which concludes Part I deals with special statutory provisions concerning the acquisition of land by agreement. This may arise either where the acquiring authority has no power of expropriation or where, although it has such power, it has not been authorized to use it in the particular case.

Part II explains the procedure of expropriation under the English statutes and the Canadian practitioner must, of course, follow the procedure as laid down in the particular Canadian statute. Subject to this proviso, however, there are several useful portions

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[12] 9 & 10 Geo. 6, c. 49. [13] P. 196. [14] P. 276 *et seq.*

in these chapters. Where the expropriation statutes provide that notice must be served on all parties "interested" in the land, what amounts in law to an "interest"? *Cripps* deals with this question in some detail.[15] Again, while there are technical differences between the English "Notice to Treat" and the Canadian "Notice of Expropriation" they are similar in at least one respect. The notices normally determine the date at which every interest in the land shall be valued.[16] The effect of the notice on existing arrangements and future dealing with the property by the owner is considered.[17]

Part III, chapter 13, deals with the right to compensation for special interests in land. Of these, the account given to mortgages and leases will be of particular value to Canadian readers.

Chapter 14 opens with a discussion of the circumstances in which the owner is obliged to furnish particulars of his claim and the consequences of a failure so to do. It then considers, in some detail, the appropriate statutory tribunals for determining the compensation in the absence of agreement between the parties. Most of the chapter deals with the jurisdiction and operation of the English Lands Tribunal established in 1949, and which handles most compensation claims under the English legislation. The constitution, *modus operandi* and great success of this tribunal are not as widely known in Canada as they deserve to be. The chapter does devote seventeen pages to arbitrators and these provide a succinct and useful summary for those whose provincial legislation provides for the use of arbitrators in the determination of compensation.

Chapters 15 and 16 complete the treatment of the procedure of expropriation. They cover the question of the disposition of the compensation money in certain circumstances such as disability, and the completion of the transfer of the property from the owner to the expropriating authority.

Chapter 17 is entitled "Use and Disposal of Land." It comprises some eighty-seven pages of text, of which the first fifty-four pages, regardless of their quality, have no direct relevance to the title of the book. They cover, the powers of statutory corporations, the doctrine of ultra vires, the distinction between discretionary and mandatory powers, and that old English law school favourite, *Metropolitan Asylum District Managers* v. *Hill*.[18] Before long the text wades into the sea of negligence, the duty of care in exercising statutory powers, remoteness of damage,[19] *novus actus interveniens* and the measure of damages!

[15] Pp. 337-343. [16] Pp. 366, 679. [17] P. 366 *et seq.*

[18] (1881), 6 App. Cas. 193, 50 L.J.Q.B. 353 (H.L.).

[19] Re *Polemis Furness & Withy & Co., Ltd.*, [1921] 3 K.B. 560; *Overseas Tankship (U.K.)* v. *Morts Dock and Engineering Co. (The Wagon Mound)*, [1961] A.C. 388.

The second part of the chapter is more appropriate to a text on expropriation since it deals with land that has been acquired pursuant to statutory powers and which then is found to be superfluous to requirements. Can the land be sold? Has the previous owner got a first option against it? These and related questions are considered in the light of the statutory provisions. The Canadian reader will find much to ponder over in realizing how relatively unsophisticated Canadian law is in comparison with current English law. Is Canadian law wholly just in giving a dispossessed owner no rights to recover his property although he can show that the raison d'être of expropriation has disappeared and that the land is not required for any other purpose?

Part IV is concerned with the principles of assessing compensation under the various English statutes. Chapter 18 which deals with compensation principles under the Lands Clauses Acts is of particular value to Canadian readers since, as mentioned above, these Acts, or rather the principles devised by the English judiciary in interpreting them, have been accepted as the law of Canada. Accordingly with some obvious exceptions, chapter 18 is wholly relevant and useful. It is divided into sections which consider the nature of the right to compensation, what is to be valued, the measure of value, and a brief note on Disturbance, Severance and Injurious Affection, which are given full treatment in two later chapters.[20]

Surprisingly, the section on "Measure of Value" is quite new to the text and the learned editor is to be congratulated for introducing it. To the uninitiated, however, one particular aspect of Mr. Parrish's text may prove to be misleading. On p. 688, par. 4-025, it is stated that under the Lands Clauses Acts "The value to be ascertained is the value to the owner of the land . . ." whereas para. 4-026 states "The measure of value is the market value of the land to the owner, except in special cases where such values would not be fair and reinstatement value applies". My complaint is not that this is inaccurate, but that it is unnecessarily obscure.

However, in a subsequent chapter on disturbance Mr. Parrish refers to the provisions of the Land Compensation Act, 1961,[21] which replaces the Acquisition of Land (Assessment of Compensation) Act, 1919.[22] As mentioned above the 1919 Act replaced the "value to the owner" concept by the "market value" concept. Mr. Parrish asserts that this change "only states what had been the true measure of value of the land but which had not always been properly applied and was confused by the former inclusion of views attributable to special suitability or adaptability and now

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[20] Chs. 22-23. [21] 9 & 10 Eliz. 2, c. 33. [22] *Supra*, footnote 8.

excluded".[23] The text then cites from the judgment of Green M.R. in *Horn* v. *Sunderland Corporation*,[24] namely:

> It will be seen at once that this principle of valuation differs from that adopted under the Lands Clauses Acts since the test adopted is that of a willing seller in the open market.

The text then contradicts this passage in a footnote,[25] namely:

> It would seem that the valuation of the land was always properly on the basis of market value.

It is respectfully submitted that this suggestion that the 1919 statutory change was not really a change at all is inaccurate. The second report of the Scott Committee itself refutes this:

> The Lands Clauses Acts do not in terms define the basis of valuation for the purposes of assessing the price to be paid for land, but judicial decisions interpreting the Acts have adopted the criterion of "the value to the owner" . . . We think it desirable that it should be definitely provided that the standard of the value to be paid to the owner is to be the market value as between a willing seller and a willing buyer . . . .[26]

Chapter 19 and especially chapter 20 deal with post-war English statutory provisions which are wholly irrelevant in Canada, but chapter 21, which returns to the measure of value, and, in particular, the determination of market and reinstatement value, is helpful to the Canadian practitioner.

Chapter 22 is devoted to the topic of disturbance which is likely to play a much more significant role in the Canadian law of expropriation in the future than hitherto. It will be recalled that the great conflict between President Thorson of the Exchequer Court and the Supreme Court of Canada turned on the question whether an owner was entitled to compensation for such disturbance as did not constitute an element of value in the land itself. The Supreme Court rejected the Thorson view and allowed a substantial disturbance claim in *Woods Manufacturing Co. Ltd.* v. *The King*[27] even though a willing purchaser would not have been prepared to pay such a sum in order to acquire the property.

Almost contemporaneously with the disturbance "problem" President Thorson carried on a long campaign against the ten percent allowance for compulsory taking. In this area he was upheld by the Supreme Court in *Drew* v. *The Queen*[28] where the nine members of the court emasculated the allowance out of existence.

In short, the Supreme Court has affirmed the disturbance allowance and denied the ten per cent bonus. Consequently it is reasonable to suppose that since dispossessed owners can no longer

[23] Para. 4-218, p. 918.
[24] [1941] 2 K.B. 26, [1941] 1 All E.R. 480.
[25] No. 28. [26] (1918) Cmd. 9229, p. 8.
[27] [1951] S.C.R. 504, [1951] 2 D.L.R. 465, rev. [1949] Ex. C.R. 9.
[28] [1961] S.C.R. 614, (1961), 29 D.L.R. (2d) 114.

rely on a flat ten per cent to cover contingent items of damage arising out of expropriation, claims for compensation will more frequently include specific items of disturbance losses. Moreover the Ontario Court of Appeal in *Re Samuel, Son & Co. Ltd. and the Municipality of Metro Toronto* [29] reversed a long line of cases which had denied claims for business losses in expropriations under the Ontario Municipal Act. It is significant that the unanimous judgment of the court refers extensively to the judgment of Locke J. in *Drew* v. *The Queen.*

Canadian authorities on the law of disturbance contain some curious gaps and anomalies. As Canadian practitioners begin to utilize more frequently this area of the law of compensation and Canadian courts are asked to fill these gaps and correct the anomalies, the extensive case law of the English courts and the Lands Tribunal will prove invaluable. For example the decision of the English Court of Appeal in *Harvey* v. *Crawley Development Corporation,* [30] confirmed an award by the Lands Tribunal of surveyors' fees, legal costs and travelling expenses incurred by the dispossessed owner in an abortive proposed purchase of one new house and in the completed purchase of another.

Chapters 23 and 25 on "Severance and Injurious Affection" and "Compensation to Third Parties by Execution of the Works" are again of particular interest to Canadian readers since it has been held by the Privy Council and the Canadian courts that cases interpreting the relevant sections of the English Lands Clauses Acts are of application in interpreting Canadian statutes which provide for consequential damages.

The distinctions between the recovery of compensation for consequential loss where some land has been taken and where no land has been taken are difficult to grasp and even more difficult, though not impossible, to justify. Unfortunately *Cripps'* treatment of these topics seems to make them even more difficult than they are. At the outset the chapters should surely define the "jargon". What is severance? What is injurious affection? Without definition the uninitiated may wonder whether he is still reading a book on compensation for land or whether he is now into a chapter on personal injuries in tort! Moreover it would lead to greater clarity if an attempt was made to introduce the juxtaposition of (a) land taken (b) no land taken. Actually the second situation, that is where no land is taken, is postponed to chapter 25 with a totally unrelated chapter sandwiched between.

Mr. Parrish has completed in this eleventh edition what he set out to do in the tenth, namely a complete revision and rearrangement of the whole text. He has accomplished this difficult

[29] (1962), 32 D.L.R. (2d) 620.
[30] Cripps, para. 4-230A; [1957] 1 Q.B. 485.

and delicate task with great skill. His careful work has rescued *Cripps* from the shelf of legal antiquities and brought it back to the working areas of every law library. *Cripps*, compensation, and compulsory acquisition of land, have once again become synonymous terms in the English speaking legal world.

ERIC C. E. TODD*

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Administrative Law. By J. F. GARNER. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1963. Pp. xxxiv, 408. ($14.50)

This is the most recent in a series of books on administrative law which have appeared in the past few years, including such works as Yardley's *Source Book of Administrative Law* and de Smith's *Judicial Review of Administrative Action*. The fact that books are being written about administrative law is evidence that this relatively new and developing branch of law is finally coming into its own. Unfortunately Garner's book is not a substantial contribution to the field because it would appear that he attempted too much with it and actually accomplishes too little.

In his preface, Mr. Garner states his aim in writing this book. In addition to covering the standard areas of administrative law (about which I will comment later) he announces an intention to integrate the law relating to local authorities and public corporations, which have heretofore "been dealt with as though they formed separate and somewhat esoteric parts of our legal system". In fact, Mr. Garner devotes one hundred pages to local government law, organization and procedure (about one quarter of the book) and one chapter to public corporations. In so doing, the author has, in my opinion, created a complete imbalance in his field of coverage, at least insofar as he purports to have written a work on administrative law. While it is true that local government law might be said to be a part of the broader field of administrative law, Mr. Garner has attempted to cover a myriad of subject matters that we in Canada, at least, would tend to expect to find in a work on municipal law, where it is also hoped they would have been given greater treatment in depth.

The foregoing criticism directed to the depth of coverage and treatment relating to local government law might be said to characterize my reaction to the entire book. This work is a canvass of a number of areas in the field of administrative law providing

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only surface coverage and little treatment in depth. It cannot compare with the scholarly and learned treatment of de Smith in his excellent work *Judicial Review of Administrative Action.*

The introductory chapter (Chapter I), deals with such matters as the purpose and functions of government, the doctrine of separation of powers, the rule of law, sovereignty, and the like. While there are better and more extensive statements of these concepts, this chapter does provide a brief and readable introduction for those persons not already acquainted with them and who desire a quickly acquired background knowledge. I would go further and say that I could recommend this chapter as an introductory reading for law school students studying administrative law.

Chapters II and III which deal with the English central government and the legislative process are too basic and too simple and presume a complete lack of knowledge on the part of the reader of the workings of government.

Chapter IV on Subordinate Legislation provides a useful canvass of such matters as the arguments for and against, the classification of, and the controls over subordinate legislation. The material on the procedure for making and publishing subordinate legislation must be read in light of such Canadian Statutes as the federal Regulation Act[1] and the various provincial statutes on point.

Chapters V, VI and VII purport to cover the matter of the "Redress of Grievances", through the courts (Chapter VI), and through tribunals and inquiries generally (Chapter VII). This material constitutes the very heart and soul of administrative law as a subject of study. Chapter V provides a brief introduction to the immediately following chapters. Chapter VI provides coverage of such matters as the scope of and grounds for judicial review, including consideration of the principles of natural justice, the *audi alteram partem* rule, exclusion of judicial review and a brief summary of available remedies. Again, the coverage is only surface-deep rather than scholarly and analytical. The law is stated rather than analyzed and little new has been added by way of comment.

Chapter VIII is devoted to a treatment of the redress of grievances by particular tribunals and inquiries. The material here is almost totally inapplicable to the Canadian scene though the coverage on domestic tribunals[2] is well handled and useful.

In conclusion, the first 177 pages of this book provide the opportunity for a quickly acquired "introduction" to administrative law. An examination in depth of the subjects covered in Mr. Garner's book will require reference to other works. The balance of the book is devoted to specialized areas that are not likely to be

[1] R.S.C., 1952, c. 235.

[2] Pp. 208-213.

of general interest to the Canadian reader except from a comparative point of view.

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Four-Year Digest of Income Tax Cases 1959-1962. Edited by PHILIP K. SKOTTOWE, LL.B. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1963. Pp. 103. ($3.75)

This is a four-year supplement to bring Butterworths' *Income Tax Digest* up to date. It follows the arrangement of the *Digest*, which is much the same as the *English and Empire Digest*—English cases summarized in large type under various index numbers, and Scottish, Irish and Commonwealth cases collected in smaller print at the end of each section. Of this last group, the great majority are Canadian cases. Unfortunately for the Canadian reader, the coverage of the Canadian cases is very limited; there are no Tax Appeal Board decisions and by no means all of the important Exchequer and Supreme Court of Canada decisions are noted. Except as a necessary supplement to the main Butterworths' *Income Tax Digest*, its use for the Canadian reader is slight. It does, however, give him references to a few cases from Scotland, Ceylon, Ireland, the West Indies, East Africa and Tanganyika, which he would never see otherwise.

JAMES M. MACINTYRE*

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The Elements of Estate Duty. By C. N. BEATTIE, LL.B., Q.C., of Lincoln's Inn, Barrister-at-Law. Fourth Edition. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1963. Pp. xxix, 180. ($7.25)

The third edition (1961) of this text was reviewed only recently in these pages [1] and it is a tribute to its popularity that the fourth edition is now in print. The book is intended primarily for students in the United Kingdom, but has come to have a wider acceptance as a general encapsulation of the Finance Acts. The fourth edition

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[1] (1963), 41 Can. Bar Rev. 159.

is almost a carbon copy of the third, by page and paragraph. However, the few but significant changes in case law and statute have been included. Chief among these is the taxation of foreign immovable property passing on death.[2] Perhaps this provision was borrowed from our Estate Tax Act,[3] which has taxed foreign real estate from its inception in 1959. Another sweeping change is the wide relief given by Great Britain for death duties payable in any other country. Prior to this change, limited relief was granted under certain double-tax conventions, and also under certain surprisingly liberal decisions.[4] The Finance Act, 1962, now allows foreign death duties as credits against the United Kingdom duty[5]—so long as the foreign property is situate in the foreign taxing jurisdiction according to British law.

As stated in the previous review, this is an excellent introductory text for United Kingdom students, but is of limited usefulness to the Canadian practitioner or student because of the differences in legislation. Even for the latter group, the book is the best quick summary of the English law of estate taxation.

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Book-Keeping and Accountancy for Solicitors. By P. HARRISON and A. G. HILLMAN. Second Edition. London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1962. Pp. xi, 279, 14. ($10.00)

The first thing that impressed me when opening this book was that it was, in format, like no other I had ever seen. The book is unusually bound. In a sense it is really comprised of two bound books joined together so as to enable the reader to keep both parts open at the same time. The portion to the left contains the "text". The portion to the right (or, as the authors choose to refer to it, the "right-hand bit") contains the working examples and index. This style of book-binding is admirably suited to the subject at hand and commends itself at once to the delighted reader, even one who may not be a connoisseur of book bindings.

Having disposed of the matter of the technicalities of the binding I shall move on to a consideration of the substantive merits of the work.

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[2] Finance Act, 1962, 10 & 11 Eliz. 2, c. 44, s. 28(1).
[3] S.C., 1958, c. 29, as am. 1960, c. 29, 1962-63, c. 5.
[4] See *Re Sebba*, [1958] 3 All E.R. 393.
[5] *Supra*, footnote 1, s. 29.
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This being the second edition of a work the original of which I have not had the opportunity of examining, I am at once grateful that the preface to the first edition was reprinted in this edition. Prefaces, I find, are a useful statement of the author's intent with which to compare one's own assessment of the degree of success with which the authors have accomplished their desired end.

The avowed objects of the authors in writing this book were (1) to present simply the fundamentals of double-entry bookkeeping, given the realization that their anticipated readers were almost totally unfamiliar with and fearful of this "foreign field"; (2) to provide the solicitor with some basic principles as to the interpretation of financial statements; and (3) to show the flexibility of double-entry bookkeeping and its adaptability with reference to various types of business situations.

The introductory chapters are devoted to such matters as the theory of double-entry bookkeeping and an introduction to the basic books of account. In addition, the reader is introduced to the basic terms of accounting, such as debit, credit, goodwill, fixed and circulating assets, and so on.

The reader is given a survey of the system by which books are kept and he is provided with some of the basic principles behind the preparation of "final accounts" (for instance, profit and loss statement, balance sheet) and the analysis of financial statements. The authors are careful to point out not only what these financial statements disclose but also what they fail to disclose.

Then, turning from the general to the specific, the reader is introduced to the systems whereby books of account are kept for partnerships and limited companies. Consideration is also given to such important matters as a company's published financial statements, share yield and share valuation.

While this small book purports to cover basic bookkeeping principles and rules, the authors have not forgotten that their anticipated readers would be "legally orientated". To this end, a separate chapter has been included on the law relating to the keeping of accounts, with particular reference to sole proprietors, partners, trustees, executors and limited companies. In addition, where useful, reference has been made to relevant case law (for example, in defining "goodwill").[1]

Some material has also been included on the keeping of solicitor's accounts, though it should be pointed out that some of the terms used, (such as "stakeholder") are rather foreign and that the procedure is in many cases different from ours, especially so in the view of the provisions of the various Legal Professions Acts and Law Societies' rules.

[1] P. 8.

Assuming that one can overcome the recurring difficulty of dealing with pounds, shillings and pence (a most gripping challenge indeed) it is soon apparent that the authors have fulfilled their objective with reasonable success. The book does not profess to be a scholarly treatment of auditing and accounting rules and procedures, but rather to be a "primer" and to convey to the reader the "fundamentals" of double-entry bookkeeping and the analysis of financial statements. In this, it succeeds admirably. The material is presented in a simple and meaningful way and can be fairly easily followed. In addition, the examples shown in the "right-hand bit" are easily related to the text material, assuming again that one is not overcome by the "currency" problem.

This book was presumably designed as a basic primer for those students taking the English Law Society's examinations. It is almost certain to be a valuable aid for this purpose. Unfortunately, its use in Canada is limited, if indeed it is of general use at all. This is so because of the inherent difficulty of working through the examples which are stated in terms of sterling currency, because of the different terms used in some instances and because of some of the seemingly unusual (to us) transactions recorded as examples. The great pity is that there is (to my knowledge) no comparable Canadian work available.

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Comparative Federalism: State's Rights and National Power. By EDWARD MCWHINNEY. Toronto: University of Toronto Press. 1962. Pp. vii, 103. ($5.00)

This little volume grew out of series of lectures given by the author to European audiences between 1959 and 1961, in response to the post-war revival of interest in federalism. He does not—as indeed he could not in 100 pages—work his way systematically through comparisons of leading federal constitutions. Instead, he analyzes a select group of predicaments faced by the United States, West Germany and Canada which raised federal-state tension or conflict. His intent is to bring considerations of experience to bear on the viability of federalism in today's world.

Mr. McWhinney knows that the older notions of "water-tight compartments" of federal-provincial power, and of "insulated chambers of the states" are outdated, that the logic of social and economic planning on a national scale runs against the grain of

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decentralized federal structures, and that the workability of federalism at all depends on the meshing of federal-provincial programmes and policies, and on co-operative give-and-take by the governments involved. Effective co-operation in turn depends on a spirit of moderation and mutual restraint, on "federal comity", as he translates the concept of *Bundestreue* which is much emphasized by the federal court of West Germany.

This comity must be mutually tendered and accorded by politicians, parties, and peoples locked in tense situations in particular states. It cannot be imposed on them, in the long run at any rate, by the courts. However, the courts, as arbiters of the federal system, can remind politicians of the condition on which their system will work. Also, when occasion offers, the courts can interpret the relevant constitutional provisions in a flexible way favourable to co-operative ventures, keeping their eyes on the "problem-situation" rather than on the hard outlines of exclusive spheres of power.

Most of the discussion in the book is about "problem-situations" that have arisen in the federal states under review, and the answer given by the courts to them, such as the federal distribution of power over the making and implementing of international treaties, over the provision of internal security (the checking of subversive elements) over the limiting of civil liberties in Canada, and over claims of minority right (Jehovah's Witnesses in Canada and racial de-segregation in the United States).

Courts are important for keeping federal constitutions loose-jointed and hospitable to the various expedients of co-operative federalism. These expedients are political and administrative in nature, and are successful, for the most part, insofar as they keep issues from exploding in the courts. A comparison of federal systems today is very partial indeed if it does not deal with the practices of political and administrative accommodation. This volume because of its brevity had to leave these matters aside.

Assessment of decisions of courts on issues of this kind gets back to questions of the legitimacy of the interests to be balanced and to the values that the judges honour, in short, to the basic philosophy of federalism. For the author, "the ultimate philosophic foundation of federalism" is "the desirability and practical utility of territorial decentralization of the formulation of policy and . . . of local participation in the practical administration of policy".

To this reviewer, the above epitome of the philosophy of federalism is unsatisfactory. It seems to him merely to state the liberal prejudice (which he shares fully) against concentration of power. A genuinely liberal society can provide for territorial decentralization of policy and administration without resorting to federal

constitutional structure, witness the long history of the autonomy of local government in England.

Surely the basic drive for federal political structure comes from a more primordial desire than that of securing individuals against the potential tyranny of concentrated power. It arises from the urgent passion of living, vital communities to keep some control over their own destinies so that they can maintain cherished cultural identities of their own. Where this passion is engaged, we may well find scant regard for individual freedom. To protect a cultural identity, a community must try for a secure economic base and a pretty free hand within its territorial borders. So it will want from courts less lecturing about comity and more respect for the letter of exclusive spheres of legislative power.

The integrated national economy which emerges in a mature federal state under present conditions puts in serious peril such distinctive cultural communities as exist within the federation. Co-operative federalism, as it is called, focuses attention on the devices needed to mediate between integrated national economy and the constitutional distribution of legislative power. That it squares well with "the ultimate philosophy of federalism" is not something we can easily take for granted.

J. A. CORRY*

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An Introduction to International Law. Fifth Edition. By J. G. STARKE, Q.C., B.C.L. (Oxon). London: Butterworth (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1963. Pp. xxvi, 524, 31. ($11.25)

Perhaps the best indication of the value and popularity of Starke's *Introduction to International Law* is that it has now reached its fifth edition.

The work is still intended as a basic introduction containing the essential features of international law for those who may be called upon to practise in the field or who require a working knowledge of the subject. In fact, the reviewer finds it a most useful and lucid first text-book to recommend to his students in Singapore.

The speed of development in modern international law is illustrated by some of the topics that the author has had to examine since the publication of the fourth edition in 1958. In that year there were the four Geneva Conventions on the Law of the Sea and Mr. Starke comments that "the title 'Convention on the Con-

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tinental Shelf' is a misnomer, since the Convention applies not only to the continental shelf, but as well to considerable areas of non-shelf offshore waters, including submarine areas beyond shelf limits".[1] It is indeed regrettable that the Conference used a technical geographical term for completely different technical purposes. 1959 saw the Antarctica Treaty and 1961 the Vienna Convention on Diplomatic Relations and the reader will find both of these discussed together with an Addendum on the 1963 Vienna Convention on Consular Relations, in which full cross-references are made to the relevant pages in the text. In addition, there is for the first time a short but useful chapter on international economic law.

Among the specific matters discussed by Mr. Starke are good-neighbourliness—"It is believed that there is no liability for damages caused to other States . . . [by] a State devaluating (sic) or 'freezing' currency; in other words, this is a true case of an international *damnum sine injuria*"[2]—and peaceful co-existence, the true value of which he sees as "stressing the precise application of the rules in the Charter and in [the] Constitutions [of other international organisations] to an international community divided, as it is at present, into hostile blocs".[3]

Two issues, which are the direct result of this division are U-2 overflights and the Cuban "quarantine". As regards the former, Mr. Starke maintains that it is an over-simplification merely to state that peacetime espionage is permitted: "Under normal circumstances, it is a violation of international law for the Government aircraft of one State to enter the airspace of another without that State's consent. If, then, these flights be legal, the intensity of the cold war has wrought a fundamental change in the rules of international law."[4] (Unfortunately, it is impossible to find this question listed in the index). The learned author similarly avoids a specific declaration as to the illegality or otherwise of the American measures against Cuba—"assuming that such a blockade is, in all the circumstances, permitted by the United Nations Charter, nevertheless because of the very special geographical and other conditions, no general conclusions can be drawn from it as a precedent".[5]

Recent developments in the Commonwealth have led writers on international and constitutional law to re-examine their views as to the legal status of that "institution". Mr. Starke is no exception. He points out that the constituents are independent sovereign States in every sense. Although *Sayce* v. *Ameer of Bahawalpur*[6] figures under recognition to indicate that an executive

[1] P. 191.
[2] P. 102.
[3] P. 103.
[4] Pp. 399-400.
[5] P. 392.
[6] [1952] 2 All E.R. 64 (C.A.).

statement cannot be questioned, and *Kahan* v. *Pakistan Federation*[7] is cited to show that a clause in a contract, however positive, is not sufficient to waive immunity from suit, neither is mentioned as illustrative of the status of a Dominion. "As for the Commonwealth itself, it is of course neither a Super-State nor a Federation, but simply a multi-racial association of free and equal states, who value their friendship with each other, who recognise for the purpose of their association, although some of them be republics, that the British Sovereign is head of the Commonwealth, and who, subject to exceptions, have somewhat similar institutions and traditions of government."[8]

From the illustrations given, it is clear that Starke's *Introduction to International Law* is not only a useful first book for students, particularly if they seek a specific account of the law without philosophical overlayings, but illustrates the point that international law is as vital, topical and as much a "problem" subject as any part of the law. While some may regret Mr. Starke's apparent unwillingness to commit himself on some recent issues, it should be borne in mind that textbooks are, after all, mere guides as to what the law is, or, in the words of the Statute of the International Court of Justice, "subsidiary means for the determination of rules of law".

L. C. GREEN*

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Law and Public Order in Space. By MYRES S. MCDOUGAL, HAROLD D. LASSWELL AND IVAN A. VLASIC. New Haven and London: Yale University Press. 1963. Pp. xxv, 1147. ($15.00)

The recent film "Dr. Strangelove" bore the alternate title "Or how I learned to stop worrying and love the Bomb". Counsel of despair is nothing new, whether in jest or in earnest. The trilogy of public order books which have emerged from the creative thinking of Professors Lasswell and McDougal of the Yale Law School might well be collectively dubbed "Or how we learned to stop worrying and debating about the possibility of world community and started building one".

The public order school of international law is not interested in abstruse debate about theories of law. What kind of world do we want to build, they ask, and how can we best use all available skill and knowledge to build it? Here the authors take their stand. They prefer a world public order of human dignity, which means

[7] [1951] 2 K.B. 1003. [8] P. 106.

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maximum production and widest sharing of all human values—power, wealth, well-being, respect, enlightenment, skill, affection, rectitude. To achieve it, they propose a policy-oriented analysis which uses scientific inquiry to collect and organize all relevant knowledge, then applies scientific skills of analysis to formulate policies which relate the facts to the goals. Scholars, lawyers, and others who share their goal are invited to join in the undertaking. Those who want to go on debating whether law is possible without specific sanctions or whether particular questions are "legal" or "political" are invited to retire to a quiet corner where they will not get in the way.

The challenge is a friendly one. The authors are themselves genial men. They seek to conquer despair and common disaster, not other men and their theories of law. The failure of international law to prevent two world wars and to remove the threat of a third can support two conclusions: either we are doomed or our concept of international law is inadequate. The authors draw the latter conclusion without hesitation. Nor do they accept the thesis that law is helpless in a world of power politics, for they offer lawyers a higher role than that of tradesmen working with mechanical tools within a rigid scheme of policy designed by politicians. Law must be creative, they assert, and lawyers must inquire for themselves into the hopes and realities with which law must come to terms.

In the first public order volume, *Law and Minimum World Public Order*, authors McDougal and Feliciano offered policies to minimize the risk of major war. Survival comes first. In the second volume, *The Public Order of the Oceans*, McDougal and Burke gave a fresh interpretation to the law of the sea in which policies replace rules. In the latest book the authors project their policies into space, which may hold the key to a common future for mankind.

Mr. Justice Holmes once remarked that general principles do not decide concrete cases. He might have added that the men who do decide concrete cases are nevertheless guided by general principles in seeking outcomes that are both realistic and responsive to community goals. Unfortunately, lawyers often resort to hocus-pocus to deal with difficult questions they do not really understand. The public order school is trying to lift the veil of mystique so that the lawyers themselves can see more clearly what they are doing. While Mr. Justice Holmes may have been right about general principles not deciding concrete cases, he may not have been relevant in the long run. In the end we are left with only human judgment to bridge the gap between the questions facing us today and the world we seek to build for tomorrow. Anything we can do to reduce the gap is a help.

Law and Public Order in Space offers no final answers to specific questions. Instead it combs all fields of human activity for facts which may be relevant to those questions and organizes them into a map of the whole context of man's activities in space. Against such a background the scientific pursuit of our common interests in space becomes possible. This technique is the product of the twenty-year association of political scientist Lasswell and lawyer McDougal, during which they have brought the analytical tools of the social sciences to bear on the inbred problems of law. The inquiring mind must shift through all phases of the social process, sweeping them like a radar scanner—who is doing what, in what situations, with what objectives, employing what strategies, using what bases of power, achieving what outcomes and causing what effects? This exhaustive search for facts is made first in the process of interaction, then in the claims arising from interactions, and finally in the decisions disposing of those claims. The gathering of facts is tedious, to be sure, but the returns justify the effort, for the authors now have laid out before them, in an ordered structure, as many of the relevant facts as human ingenuity and scientific analysis can provide.

The reader may be tempted to ask "So what?" The answer is that the lesson of history is clear—the human disasters of the past were avoidable through a knowledge of the real causes of conflict and an articulated plan of action prepared and accepted in time. We must probe, question, consider, probe some more, anticipate. Above all, we must anticipate, for failure to do so is the road to Munich.

And so these three creative scholars seek to light a small candle of anticipation in the darkness of despair by applying to the factual analysis laid out before them the five key intellectual skills borrowed from the social sciences:

1. *Clarify the goals.* The authors start from the major goal of a public order of human dignity, then proceed to give this goal more explicit meaning with respect to the problems of space. They deal in facts, not abstract statements of principle, for they have learned from science the importance of working from basic observations of human existence in order to find policies which will work in practice over the long haul. Peace and progress, like motherhood and love, provide popular slogans but by themselves advance us little along the road to achieving the realities they stand for.
2. *Describe the trends.* What have been the trends of claim and decision in the space arena to date? Also, what patterns of claim and decision in the world arena are likely to be projected into space? Here the authors are able to draw on our experience on the high seas, in airspace, and in polar

regions. Space is simply a new kind of common domain.

3. *Analyse conditioning factors.* The attempt to analyse scientifically the factors which condition interaction, claim, and decision is a difficult one, with risk of miscalculation and omission. Nevertheless, the attempt must be made. Such factors as the cold war, the rapid emergence of new nations, the pressure for economic growth, and the population explosion are obvious to the most casual observer. However, more subtle factors challenge the most imaginative and experienced minds. The authors tap all possible sources of information and keep their minds open for new insights. We cannot be omniscient, but the more thorough our analysis the better our chances of finding effective policies.
4. *Project trends.* The idea here is to peer into the future as it is likely to be if no new policies are formulated to alter past trends. The results are sobering and calculated to stimulate action. No doubt an astute analyst could in 1935 have projected the coming world war with its terrible devastation. Indeed, some did. Unfortunately, the warnings came too late. Man had failed to anticipate and act in time. The authors' main theme is that we cannot afford to repeat that failure, and the fifth intellectual skill provides the follow-up necessary to avoid such a disastrous repetition.
5. *Invent, evaluate and select from alternative policies.* This final task is the creative climax of the whole work, the *raison d'être* of all that has gone before. This final part is what distinguishes the book from a hundred others that offer a critique of the present world order with a patchwork, dike-plugging solution to one or two particular problems. Here is a flexible pattern of policy, not for dealing with one or two problems in isolation from the rest, but for building a public order of human dignity in space.

The authors may not be right in all they say, but there is no doubt that in the broad design of their work they are totally relevant. Their relevance speaks eloquently in the final paragraph of this long, long book:

> The statesmen of the contemporary earth-space community can have an unprecedented impact upon history. They can take the risks involved in peaceful transition to an inclusive system of minimum public order, and thus smooth the way to an optimum order of undreamed-of abundance and benevolence. In default, they can fail to take the risks required: by their timidities and their mistakes they can end history —as man records it.

It is only fair to warn the prospective reader that *Law and Public Order in Space* is not light, bedside reading. Its substance is intel-

lectually demanding, and its form is heavy with the factually-oriented language of the social sciences which the authors have concluded is essential if we are to avoid weaving fact and assumption into a common fabric of confusion. Those who like their law served up Hemingway-style should look elsewhere. Those who are prepared to accept the authors' contention that a standard, factual terminology is not only useful but essential will find in this book a wealth of relevant information and constructive thought.

J. NOEL LYON*

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Law and Politics in Space. Edited by MAXWELL COHEN. Leicester: Leicester University Press. 1964. Pp. 221. (42s.)

Law and Politics in Space is the edited version of the first McGill Conference on the Law of Outer Space which was held at the McGill Institute of Air and Space Law in April 1963. Its purpose was to consider certain specific and urgent problems in the law of outer space and papers were read on communications, pollution, arms control, observation, and on a regime for outer space. In addition to these papers, there is a summary of the discussion that took place on each of them, together with a number of relevant documents, particular General Assembly Resolutions, and a lengthy bibliography.

In his Introduction Professor Cohen pointed out that there is constant reference to the similarities between space and the sea and air. He reminds us that sea law is primarily customary, while air law, save in the matter of jurisdiction, has little that is customary.[1] In his view outer space will require regulation by both customary and treaty law. As to the former, he considers that there is already a customary rule which permits movement into and out of space, and denying any right of expropriation,[2] while the Test Ban Treaty shows the significance of conventional law. One of his comments has a significance that is far beyond the scope of space law: "Arms control concepts envisage a kind of regulated stalemate in weapons systems that would perpetuate deterrence and the fear that gives a tenuous security to this generation. Yet while the language of arms control is sometimes objectionable for its inhumanly cold evaluation of the probabilities, it is perhaps a necessary and realistic employment of intelligence in defence

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[1] P. 12. [2] P. 13.

of its own destructive powers while powerful States stand armed and poised, too often at the brink."[3]

The subject of arms control in space was introduced by one of the general counsel of the Department of Defense. Mr. McNaughton drew attention to the general realisation of the dangers of nuclear war and expressed his belief that "the decision-making process of each government—sensible non-negotiated self-restraints—can represent a meaningful kind of arms control".[4] He also expressed doubt whether the weapon-carrying satellite is militarily worth while, and questioned whether it really represented a "new form of military power; it would offer nothing more, nor less, than a new technique for deploying and delivering the nuclear weapon. . . . [While] the introduction of any new technique for delivering nuclear weapons will certainly complicate the problems of the opposing side, basic strategic relationships will probably remain essentially unchanged".[5]

Many of the participants in the Conference were aware that the line between peaceful and military activities in space was narrow in the extreme. This realisation was particularly important in the discussion on Mr. Meeker's paper on Observation. Mr. Meeker is a deputy legal adviser in the Department of State and his comments showed a definite bias in favour of United States activities, without always appearing to realize that his comments would equally apply to the Soviet Union in its estimate of American policies. This was a point that was brought home in the discussion by Professor Fisher.[6] Mr. Meeker does not regard observation from outer space as working or threatening any danger to persons or things on earth.[7] Nor does he regard espionage from beyond the atmosphere as being in any way unlawful: "The fact that observation satellites clearly have military as well as scientific and commercial applications can provide no basis for objection to observation satellites. International law imposes no restrictions on observation from outside the limits of national jurisdiction. Observation from outer space, like observation from the high seas or from airspace above the high seas, is consistent with international law."[8] Professor McDougal had some doubts whether this was in fact so, and drew attention to the importance of self defence and the contiguous zone.[9] Most of the participants, however, seemed to be of the opinion that it would be unlawful to shoot down such a satellite, apparently even if it were passing over one's territory.[10] In fact, Mr. Meeker suggests that "another important potential use of observation in space is the possibility of acquiring information about military preparations, and thus help to maintain international peace and security. One of the great

[3] P. 17. [4] P. 67. [5] Pp. 65, 71. [6] P. 85.
[7] P. 76. [8] P. 82. [9] P. 116. [10] P. 128.

problems in today's world is the uncertainty generated by the secret development, testing, and deployment of national armaments and by the lack of information on military preparations within closed societies. If in fact a nation is not preparing surprise attack, observations from space could help us to know this and thereby increase confidence in world security which might otherwise be subject to added and unnecessary doubts. We in the United States believe that openness serves the cause of peace. . . . The Soviet Union has so far seemed to place a higher premium on maintaining the policy of secrecy that it does on reaching agreements on steps to ensure a peaceful world".[11] This passage would not require much amendment before it could be used as part of a statement by a member of the legal department of the Soviet Foreign Office.

One of the most important practical peaceful applications of outer space is satellite communication, a matter which in the United States is regulated by the Communications Satellite Act under which a Corporation has been established, while bilateral international co-operation is permitted. The Director of the Satellite Communications Corporation heard the authority of his Corporation referred to as an "unprecedented delegation of authority to a private organisation in the international field".[12] He himself did not favour the establishment of any supranational body in this field, whether under the authority of the United Nations or not, "because its consideration could substantially delay the establishment of an operational system. It would also raise many novel and difficult questions and could lead to profound political, economic, and other consequences which cannot yet be foreseen".[13] Similar objections may, of course, be put forward to oppose any proposal for international development.

The placing of satellites in outer space presupposes the right of free use of that area, a right recognized in General Assembly Resolution 721,[14] but as Mr. Johnson, General Counsel of the National Aeronautics and Space Administration, states this freedom would have but little meaning if any State indulged in acts polluting outer space.[15] Perhaps the chief source of pollution is nuclear testing, but, as he points out, there is not much point in banning tests in outer space if atmospheric tests continue unchecked.[16] One of the contributors to the discussion goes so far as to suggest that since atmospheric testing is more dangerous for humanity, it might be wise to restrict such testing to outer space.[17] Mr. Johnson, however, suggests that this is an area which calls for co-operation with scientists and suggests that a body might be set

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[11] Pp. 82-83. [12] P. 33. [13] P. 28. [14] P. 133.
[15] P. 38. [16] P. 48. [17] P. 59.

up to report on the danger potential of proposed experiments, with governments agreeing to accept its findings.[18]

In the discussion on this paper a general point was made: "we should not be thinking about non-enforceable existing rules but about what kind of a regime the world wanted; then efforts to influence the powerful States to adopt such a regime should be made".[19] On the other hand, "the kind of law the two space powers wanted might not be what the other States of the world would like, or be necessarily in the interests of mankind".[20] This problem of what established States might regard as law, and what others, particularly the new States, would like to see as law has become of major significance since 1945 because of the large number of States that have been created. Many of the "developing" States pursue a policy which implies that they reject the "old" international law and propose in its place a new "Afro-Asian' approach to that system. This controversy is relevant to some of the points made in the discussion on the papers by Messrs. McNaughton and Meeker: "Open and notorious unilateral action without complaint could lead to some new rules of international law. The action had to be sufficiently open and respectable that everyone knew what you were doing, but at the same time sufficiently acceptable, so as not to incite general adverse reaction. . . . A controversial unilateral claim could not possibly be considered, in the view of other responsible governments, as formulating a customary rule of international law."[21]

Whenever new developments appear on the international scene attention must be paid to establishing a workable legal regime. Since the creation of the United Nations the tendency has been to suggest that the Organisation and the Charter are the obvious answer to the quest. Mr. Schachter, Director of the General Legal Division of the United Nations, does not go as far as this, although he believes that there is ample scope for the United Nations to play a larger and constructive function in this area. In his view, the United Nations "could perform a variety of functions that would clarify the common interests and project policies for long range developments",[22] and suggests, for example, that while observation satellites might still be launched by individual States, after their launching they might be handed over to United Nations control.[23] Of more general significance is his belief that General Assembly Resolutions "which purport to set in terms of legal authority standards of conduct for States, can be regarded as an expression of 'law' which is regarded as authoritative by governments and peoples throughout the world".[24] Professor McDougal

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[18] P. 56. [19] P. 56. [20] P. 58. [21] Pp. 91-92.
[22] P. 102. [23] P. 100. [24] P. 98.

also refers to the authority of such Resolutions. "When we have a resolution of the General Assembly saying that access to space is free and open to all without discrimination, no country can act to the contrary in the future without resorting to naked force, as contrasted with authority."[25] It may be questioned whether the situation would have been any different in the absence of such a resolution.

The type of regime for outer space which Professor McDougal would like to see is one based on interdependence and oneness, in which it is possible "to secure the inclusive interests of all peoples, while at the same time safeguarding genuine exclusive interests compatible with the common interest. Law would not be imposed upon any peoples without their having opportunity to participate in its making and application. With respect to the particular public order decisions taken by this constitutive process, we would certainly demand, in most general formulation, that all decisions be calculated to promote and protect the greatest production and widest possible sharing of all the basic dignity values—including respect, enlightenment, wealth, health, skill, rectitude, and congenial personal relations".[26]

The McGill symposium on *Law and Politics in Space* clearly illustrates the complexities involved in this dimension. It also points out that in this sphere, no less than in any other, problems of international law tend to be inextricably bound up with politics.

L. C. GREEN*

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The Language of the Law. By DAVID MELLINKOFF. Toronto: Little Brown and Company. 1963. Pp. xiv, 526. ($12.50 U.S.)

Long before Swift's biting sarcasm defined lawyers as: ". . . a race of men brought up from their youth to prove the use of words, multiplied for the purpose, that black is white and white is black, according as they are paid", the lawyer's ability to use language has been regarded by the laity as a part of his witchcraft.

This book sheds light on the most important weapon in the lawyer's arsenal, the language of the law. Mr. Mellinkoff has brought forth a compendium of excellent matter in his contribution to the legal profession. The subject-matter is arranged under three main parts: What Is The Language Of The Law?; History Of The Language Of The Law; Using The Language Of The Law.

[25] P. 115. [26] P. 109.

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Part One, which is relatively brief,[1] arms the reader with a definition of legal language, indicates its characteristics and introduces its mannerisms.

In Part Two, the reader strolls along the long corridor of time to examine the genealogy of numerous law words. Illustrative of the author's scholarly excursion are: *law*, from the Old Norse; *steal*, from Old English; *suborn*, from Latin; *whereabouts*, from Middle English; *devise*, from Old French. Influences of the Celtic "nomads", the Angles, the Teutonic Saxons and Jutes, the Vikings and the Normans are presented with their contributions to legal language.

The metamorphosis of legal words and the inter-action of merging languages have all contributed to give us a legal language, such as: *breaking and entering*[2]; *goods and chattels*[3]; *will and testament*[4]. In tracing the evolution of words, Mr. Mellinkoff avoids a cyclopic view as to their derivation. A sampling of the effort involves *fee*.

> . . . the first letter of the Hebrew alphabet, the *aleph* means *ox*. In the runic alphabet which the Anglo-Saxons brought to England the letter *F*, called a *feh*, or *feoh*, meant *cattle*, money, and property. This Old English *fee* was the wealth of the Anglo-Saxon as was the aleph of the ancient Jews. You were paid in cattle, and the property was movable. Since the O.E. *fee* was movable, the *Oxford English Dictionary* (though not Skeat) rejects a Germanic origin for *fee*, when it means a feudal estate or the absolute ownership of land. But the mobility of cattle (*chatel* in Old French) did not prevent *chattel* from originally referring to all property, movable or fixed . . . .

The innovation of punctuation into law and its subsequent history are capably presented. Both in Parts Two and Three, the author indicates that punctuation cannot be relegated to *de minimis*. Part Two of this work goes far beyond being just an etymological history of legal words and phrases. As the reader uncovers many of the riddles inherent in the everyday basic legal lexicon, he soon comes to notice the numerous bits of legal history with which the entire book is studded.

The author employs an attractive way of expressing himself. It makes what could be dry, wet! His sense of humour is obvious. An example is exhibited in section 89—the expanding law, where in reference to land law, he relates:

> The land law too was on the move, spurred by violent, revolutionary changes in the ownership of property. The land law was on the move—in a solemn progression of rules and technical evasions. This was the day of the ingenious conveyancer: the computers of the infinite, logical word slicers, dealers in metaphysical wraiths—remainders and

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[1] Twenty-eight pages.
[2] O.E. :F.
[3] O.E. :O.F.
[4] O.E. :L.

> reversions, shifting and springing uses, trustees for possibilities yet unborn. This is the period of the blue-ribbon cases of the law of future interests: *Shelley's Case*, *Archer's Case*, *Pells* v. *Brown*, *The Duke of Norfolk's Case*, *Perrin* v. *Blake*, etc.

Also, to describe the proponents of the rules in these cases, he says:

> The stars in this drama of word mongering were learned conveyancers of the bar—and Sir Orlando Bridgman led all the rest.

Although Mr. Mellinkoff's literary shelf is well stocked with an abundance of inventory, his style as to the division of data into 136 sections detracts from the over-all quality of the work. I feel that the strand of continuity in related sections is severed due to the author's desire to commence another section. The result is almost irritating.

One minor point with which I take exception. The author relates[5] that at the time of Augustine's arrival into Kent in 597, "Aethelbert had just published the earliest written code of Anglo-Saxon law". On the authority of Plucknett,[6] Pollock and Maitland,[7] and Liebermann,[8] the code ascribed to Aethelbert would have been published after he was converted to Christianity by Augustine. The references to the Church in the opening lines of the code suggest that Aethelbert was a Christian at the time of publication.

The theme of Part Three is found in the questions—Do lawyers hide their ideas under bushels of words? Is the lawyer's language as precise as he would have others believe?

Many questions are posed for the reader as to the utility of certain legal words and expressions. Are the words *reasonable*, *substantial* or *satisfactory*, precise? Too flexible? Do they occupy definite limits or are they allowed to float in space? What caused the past Lord Chief Justice of England, Lord Goddard, to say:

> I have never yet heard any court give a real definition of what is a "reasonable doubt", and it would be much better if that expression was not used.[9]

Do the words "*and/or*" constitute an unfortunate phrase? Is "*forthwith*" an ambiguous relic of the past? Why preserve in law, tautologies such as "*to have and to hold*", and, "*part and parcel*"? Mr. Mellinkoff explores many of the respected words and expressions of to-day's legal profession in the United States. Anyone with an affinity to the common law will enjoy the author's sentiments on *The Language Of The Law*.

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[5] P. 49.
[6] A Concise History of the Common Law (5th ed., 1956), p. 726.
[7] The History of English Law, vol. I (2nd ed., 1952), p. 19.
[8] Die Gesetze Der Angelsachsen, vol. I (1903), p. 3.
[9] *R.* v. *Summers*, [1952] 1 All E.R. 1059, at p. 1060 (C.C.A.).

Readers will quickly notice the countless footnote references throughout the book. Although indicative of the amount of research undertaken, they are for reference only, as the author points out in the Preface. Most useful to the re-reader are the words and phrases index and general index. A selected bibliography that runs twenty-three pages lists materials to be found in the field.

Since words are the indispensable tools of the lawyer, and the ability to communicate in clear, effective English, the mark of a successful lawyer, it is regrettable that the cost for *The Language Of The Law* is beyond the means of those most in need of its guidance, our legal fledglings, the students.

DANIEL C. TURACK*

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Histoire des institutions et des faits sociaux. Edition refondue. Par GABRIEL LEPOINTE. Paris: Editions Montchrestien. 1963. Pp. 761. (Prix non indiqué)

C'est avec beaucoup de respect et non sans une certaine émotion que le critique se penche sur un ouvrage que son auteur a réalisé pendant les tout derniers moments de sa vie, auquel il a consacré les dernières heures d'une longue et fructueuse carrière. En effet, cette *Histoire des institutions et des faits sociaux* qui devait simplement continuer la liste déjà très longue des oeuvres de Gabriel Lepointe en marque, hélas, le point final. C'est le 24 mars 1963 que cet éminent professeur à la Faculté de Droit de Paris nous quittait en laissant à ses disciples la tâche de continuer l'oeuvre commencée il y a plus de trente ans auprès des étudiants de droit français.

Pourtant, ce n'est pas qu'aux étudiants des universités de France que s'adresse l'oeuvre de Gabriel Lepointe.

Sous le titre *Histoire des institutions et des faits sociaux*, le professeur Lepointe fait l'histoire des institutions publiques de la France d'Ancien Régime du Moyen Age à la Révolution française. Dans une première partie, il étudie brièvement le legs de l'Antiquité (la Grèce et Rome) ainsi que le Haut Moyen Age occidental.

L'importance de l'histoire du droit public français n'est plus à démontrer à un juriste de la Province de Québec. Comment aurait-il une vue très nette du droit civil québecois tout en ignorant le jeu des institutions publiques qui ont donné naissance à la seigneurie médiévale, à la coutume de Paris, au Code Napoléon? Certes, les institutions publiques françaises n'ont pas survécu

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comme telles dans le Québec mais leur imprégnation dans des institutions de droit privé encore bien vivantes rend leur étude essentielle même pour le juriste qui croit (et qui le peut impunément?) pouvoir ignorer la dimension historique de nos institutions. Oserai-je le dire, je crois que même pour un juriste de *common law*, l'histoire du droit public français offre une grande utilité, ne serait-ce que celle de mieux comprendre, à l'heure du bilinguisme et du fédéralisme coopératif, ce qui distingue l'esprit et la culture des Canadiens français?

Le livre du professeur Lepointe est un manuel à l'usage des étudiants de première année de droit. A ce titre, il offre au lecteur peu initié l'avantage de la clarté, de la précision que l'on devrait rencontrer partout mais qui ne peuvent faire défaut dans un manuel destiné a de jeunes étudiants. Après avoir étudié le legs de la civilisation ancienne a la civilisation occidentale, l'auteur étudie les institutions de la France médiévale: d'abord les sources du droit, puis la société, la seigneurie, la naissance des villes grâce au commerce et à l'industrie, les corporations, le rôle de l'Eglise et surtout de la Royauté se dégageant des institutions féodales qui avaient failli causer sa disparition; la reconstitution de l'autorité royale en France nous introduit dans la troisième partie qui étudie la France sous la Monarchie administrative, de François Ier à Louis XVI. Après une étude des sources, l'auteur expose les structures de la nation, les rouages du pouvoir et de l'administration de ce grand état, enfin les données économiques et sociales avant d' étudier le déclin de la France de l'Ancien Régime.

Voilà donc une vaste fresque de l'histoire du droit public de la France écrite dans un style agréable, publiée sous une forme qui rappelle le moins possible le manuel tout en cherchant à constituer un instrument de travail commode. Or, c'est précisément ici que les réserves les plus sérieuses doivent être faites. Je passe sur le fait que par désir de simplification, l'auteur ne donne parfois qu' un pâle reflet de l'état actuel des recherches. Je m'attacherai plutôt à deux questions qui amputent cet excellent ouvrage de la majeure partie de son importance pratique: le manque d'index et de bibliographie. Un manuel est un ouvrage de consultation rapide où l'étudiant doit retrouver facilement un état de question, un point de détail. Or, l'absence d'index rend si pénible une telle recherche qu'elle décourage souvent le chercheur. Plus grave encore est l'absence de bibliographie (je tiens pour négligeable la dizaine de titres que l'auteur nous livre au début de l'ouvrage). Un manuel est un point de départ, un prétexte à la réflexion et à la recherche personnelle; or comment passer à la phase active si l'auteur omet d'indiquer ses sources, les principaux auteurs qui ont approfondi la question que le maître sait si bien résumer en quelques paragraphes? Dans ces conditions, le plus précieux

ouvrage ne saurait livrer toute sa substance et nous ne pouvons que le déplorer.

JACQUES BOUCHER*

Books Received - Ouvrages Reçus

The mention of a book in the following list does not preclude a detailed review in a later issue.

Tout ouvrage mentionné dans la liste qui suit pourra faire l'objet d'une analyse détaillée dans un prochain numéro.

Archives de Philosophie du Droit. Droit et Histoire. Sous la direction de M. MICHEL VILLEY. Paris: Sirey. 1959. Pp. 230. (Prix non indiqué)

Archives de Philosophie du Droit. La Théologie Chrétienne et le Droit. Sous la direction de M. MICHEL VILLEY. Paris: Sirey. 1960. Pp. 248. (Prix non indiqué)

Archives de Philosophie du Droit. La Réforme des Etudes de Droit. Le Droit Naturel. Sous la direction de M. MICHEL VILLEY. Paris: Sirey. 1961. Pp. viii, 270. (Prix non indiqué)

Archives de Philosphie du Droit. Qu'est-ce Que La Philosophie Du Droit? Sous la direction de M. MICHEL VILLEY. Paris: Sirey. 1962. Pp. vi, 325. (Prix non indiqué)

Archives de Philosophie du Droit. Le Dépassement du Droit. Sous la direction de M. MICHEL VILLEY. Paris: Sirey. 1963. Pp. vi, 344. (Prix non indiqué)

Bitter Medicine. The Saskatchewan Medicare Feud. By EDWIN A. TOLLEFSON. Saskatoon: Modern Press. 1964. Pp. 236. ($4.50)

British Statutes in American Law (1776-1836). Michigan Legal Studies. By ELIZABETH GASPER BROWN, Research Associate in Law, University of Michigan; in consultation with WILLIAM W. BLUME, Professor Emeritus of Law, University of Michigan. Ann Arbor: University of Michigan Press. 1964. Pp. xii, 377. ($7.50 U.S.)

Changing Structure of International Law, The. By WOLFGANG FRIEDMANN, LL.D., DR.JUR., LL.M., Barrister-at-Law, Professor of International Law and Director of International Research, Columbia University. New York: Columbia University Press. 1964. Pp. xvi, 410. ($8.75 U.S.)

Civil Liberties in Canada. By D. A. SCHMEISER. Toronto: Oxford University Press. 1964. Pp. xviii, 302. ($7.50)

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