

## BOOK REVIEWS REVUE DES LIVRES

*A Practical Guide to Bills of Lading.* By C. F. POWERS. Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1966. Pp. ix, 283. (\$12.50)

Although lawyers are unlikely to find a great deal that is directly of value to them in Mr. Powers' discussion of clauses found in bills of lading, which forms the main body of this book, as a practical guide it will fulfil its purpose well. The centre of gravity of the book's explanations is America, some of the cases are presented and some reference is made to practice outside the United States. The book is least successful when dealing with case law, and notably some cases are very sketchily expounded.<sup>1</sup>

The basic method adopted is to set out the clauses of a bill of lading in turn, discussing the practical import of each before setting out the next. The method perhaps sacrifices an overall view of the bill, but this is partly made up for by eight pages of introductory material and some observations in the discussion of the Preamble in which the author ranges beyond the interpretation of the actual text. There is a very useful and well selected group of Acts and Rules making up the Appendices to the volume.

K. N. S. COUNTER\*

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*International Law Chiefly as Interpreted and Applied in Canada.* By J.-G. CASTEL. Toronto: University of Toronto Press. 1965. Pp. xxii, 1402. (\$30.00; students \$22.50)

As a volume "designed for use by Canadian law students in an introductory course" on international law" Dr. Castel's book will prove immensely useful. It deals with the increasingly broad range

<sup>1</sup> E.g. *Adler v. Dickson*, [1955] 1 Q.B. 158, [1954] 3 All E.R. 397, a particularly glaring instance of poor explanation of a fairly straightforward point. See p. 32.

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of problems of concern to Canadian lawyers, in private practice or in government service or in academic life, in the field of public international law.

This is not a learned treatise by the author himself. Rather, it is typical of the best of the modern wide-ranging "casebooks" produced in North America primarily for undergraduate courses in professional law schools. The volume includes excerpts from a great variety of published but not always readily obtainable materials, interspersed with explanatory or editorial notes and with selected bibliographies and references to other sources omitted. In effect, Dr. Castel has produced a "portable library", organized on traditional lines, which will permit students and teachers to select portions to meet their primary interests.

Materials in the volume come from many sources. Many are Canadian, leading judicial decisions of the nation's courts, federal statutes, and occasionally provincial ones too, and regulations, articles on Canadian problems and practices from legal and other journals including official publications of the Department of External Affairs, and statements of responsible Ministers in or out of Parliament. There are excerpts from standard, mostly English, treatises on international law. To round out the collection there are decisions of international courts and arbitral tribunals, there is a good deal of treaty material or draft proposals for international agreements, and decisions of other national courts, particularly in English-speaking countries.

The range of materials, international and national in origin, of a legislative, judicial or executive nature, and of writing, bearing on problems of international law is exposed by the book. While most of this material might be obtained independently, such is the state of libraries in Canada, even in most law schools, that much material on the burgeoning field of international law is not readily available. With increasing numbers of students to be served, Dr. Castel's work will be doubly welcomed by anyone anxious to expose students to original source materials, the basis of teaching in Canadian law schools. Further, his inclusion of materials on Canadian practice, from *Hansard*, from speeches, from government publications will readily fill gaps in the available materials on problems dealt with by the executive, a vast portion of the area of international law. Finally, the appendices include Canadian legislation on citizenship, nationalization and immigration, a table of federal statutes and regulations bearing upon international questions, and a list of multilateral conventions to which Canada is a party. Not only law students but others, including lawyers concerned with particular problems that have

international aspects, indeed anyone anxious to understand the position and problems of interest in Canada in international law, will find the book useful for the source materials that are included.

These materials are organized in six parts. The first is an introduction to the nature of international law and its relation to municipal law, particularly in Canada. The second, on international personality, deals with the accepted criteria for traditional subjects of international law (States), the positions of international institutions and the matter of recognition, with emphasis on Canadian positions in relation to these. The third, on jurisdiction, is general in scope but contains much useful material on Canadian problems related to land and maritime frontiers, the Arctic region, international rivers and boundary waters, nationality and the position of individuals under the law as evolved and applied in Canada and elsewhere, and the reach of jurisdiction by Canada over transactions, events and individuals inside and outside the country. Part four, dealing with international agreements, again emphasizes Canadian practices and problems, stressing constitutional problems of implementing treaties in this country. The fifth, on international responsibility, is less specifically Canadian in emphasis, reflecting the experience Canada has had in the past with few claims made against or by other States when compared with other nations with longer traditions of international relations and transactions. The final part, on disputes and hostile relations between States, emphasizes international practices in the maintenance of order in inter-State dealings and Canadian treatment of the effects of disrupted relations.

Dr. Castel's editorial notes are particularly useful. Of course, some merely provide a brief introduction to a topic or a transitional passage between materials from other sources. But some provide most useful summaries, at least for the beginning student, on developments in a particular field, and others elaborate Canadian practice. These, the bibliographies and the references to a great variety of writers on international law and to many United Nations documents and proceedings attest to the work done by the author in providing the first comprehensive collection of materials on international law compiled in Canada.

Undoubtedly, some lawyers or others concerned with international law may suggest that the thorough emphasis on problems and practices of interest primarily to Canada is somewhat parochial. Moreover, problems or approaches of significance elsewhere are inevitably treated briefly. Others might object to what seem in the bulk of the volume to be mere passing references to

matters of concern in very recent years. For example, the position of the individual is dealt with largely in conjunction with State jurisdiction, neglecting the more positive position emerging of individual rights, even though derived through States, in international law. And there is comparatively little emphasis upon the legal aspects of international economic transactions. Yet these are not neglected entirely and the notes and bibliographies do lead one on to other materials concerned with more specialized matters. Selection of materials was undoubtedly based on the range of problems of significance for Canada and the reflection of these in published sources, a justifiable approach in view of Dr. Castel's objective in compiling the volume.

A reviewer content to describe in general terms the contents of a book is open to comment that he has not read it critically. Yet it is not easy to criticize an immense book, largely of materials not written by the author though knit together by his textual notes, without running the risk of appearing picayune in one's comments. For example, the suggestion that "government-owned vessels engaged in commercial pursuits . . . should be subject to the obligations and restrictions of trade if they are to enjoy its benefits and profits"<sup>1</sup> obscures the philosophic differences between State controlled economies and those permitting private enterprise, differences that would be resolved solely on the basis of the philosophy prevailing in the national forum for decision. Admittedly this may often happen, but the choice of values might be more rationally approached, especially in a country with a mixed economy, like Canada, where traditionally government controlled enterprise has had advantages over its private competitors. But enough said, Dr. Castel does include sufficient matter on which discussion can be provoked about any of the positions he adopts.

This book does create difficulties for the reader because of the way it is printed. There is much fine type, perhaps too much for conscientious students who read many hours a day. Moreover, the type is set with inadequate variety and spacing, so that it is difficult, at least in places, to know where a quoted excerpt ends and the editorial note of the author begins. One has to retrace one's reading to find the source of many passages. The rationale of including some excerpts in the main text and some, equally long, in the fine type of the notes is not always readily apparent. Yet these are flaws to be repaired in any subsequent printing and they do not detract from the substantive value of the book.

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<sup>1</sup> P. 686.

By his emphasis on matters of national interest, Dr. Castel has provided the kind of survey that is important, not only in Canada, but in any comparison of principles and practices here with those prevailing elsewhere. The expanding collection of works such as this, concerned with particular countries, is a comparatively new but important trend. Someday it may permit the more complete identification of general principles of law recognized by the nations of the world and more widespread acceptance of legal settlement of international problems. In the meantime this book and others of its nature will prove useful to those studying or engaged in research or international law wherever they be located. And for many Canadian lawyers this book will be an eye-opener, revealing as it does the wide spectrum of problems dealt with in day to day practice that have international implications.

W. A. MacKay\*

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*The Legal Effects of War.* Fourth Edition. By LORD McNAIR and A. D. WATTS. Cambridge: Cambridge University Press. 1966. Pp. 1, 469. (\$27.50)

That Lord McNair and Mr. Watts should have found it necessary to bring out a fourth edition of this book is matter to give the international lawyer pause. The first edition came out in 1920 and was therefore presumably written before the Covenant of the League of Nations (by which the members of the League agreed "not to go to war" in certain circumstances) came into force. The second was published in 1944 before the United Nations Charter but after the Briand-Kellogg Pact by which the High Contracting Parties renounced war as an instrument of national policy. The third edition was published in 1948 after the adoption of the Charter by which the members of the United Nations undertook to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State",<sup>1</sup> a far wider undertaking than the one assumed by the Briand-Kellogg Pact in that it covers conflicts short of war. These successive editions attest to the excellence of the scholarship which has gone into the work. They also go to show, unfortunately, that, notwithstanding the solemn renunciation of war or indeed the threat or use of force in all these instruments, war is still part of the lawyer's vocabulary.

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<sup>1</sup> Article 2(4).

The book is concerned primarily with English law although to say this is not to suggest that it is not also useful to Canadian lawyers. The first chapter, however, on "War and Other Armed Conflicts" is of more general interest. In this chapter, the authors discuss, *inter alia*, article 2(4) of the United Nations Charter which prohibits the threat or use of force and which has been quoted above. Notwithstanding the clear language of the rule, the authors say that "one cannot, however, conclude that the provisions of the Charter have effectively put an end to the legitimate occurrence of armed conflicts between States . . .".<sup>2</sup> One is tempted to ask why one cannot so conclude? It is, it will be noted, not a question of the Charter having put an end to armed conflict; it is painfully obvious that it has not; the question is rather whether the Charter has put an end to the "legitimate" occurrence of such conflicts. It is respectfully submitted that this is precisely what the Charter has done, because, unlike the prohibition of war contained in the League Covenant and the Briand-Kellogg Pact, article 2(4), which does not mention war but the much wider concept of armed conflict, admits no exception apart from the one case of self-defence envisaged by article 51; and article 51 only applies in the case of "an armed attack on a member of the United Nations". One is disappointed to find that, although the edition came out in 1966, there is no mention of Vietnam in this context.

A useful feature of the book is the discussion of the effects of peace-keeping and collective security operations undertaken by or under the authority of the United Nations.

JOHN P. HUMPHREY\*

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*Law in Society.* By GEOFFREY SAWER. Oxford: Oxford University Press. 1965. Pp. 215. (\$4.25)

*Man and Law.* By A. GY. SZABO. Budapest: Akadémiai Kiadó. 1965. Pp. 206. (\$5.00)

The binding link between these two works is that they both adopt a sociological approach to the nature and function of law. At the same time they bring out well the difference in approach between the common lawyer and the Marxist.

Professor Sawer makes no mention of Lenin in his Index, although there is<sup>1</sup> a reference to the fact that Lenin re-established

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<sup>1</sup> P. 125.

<sup>2</sup> P. 18.

the *Advokatura*, and "its subsequent reorganizations, especially that of 1939, and the 'return to legality' of 1956, have created a possibility, no more, that a co-operative and collegiate profession with some independence of spirit will be reborn there in spite of the restrictions of bureaucratic administration". Similarly there is but a brief reference to Marxist concepts of law which "have a resemblance to those of Sumner and Ehrlich, because Marxists too assert the primacy of social forces independent of law, the 'substratum', and the relative dependence and lack of causative significance of the legal system, which is with religion and art treated as part of the social 'superstructure'".<sup>2</sup> He then points out that "in a crude Leninist form" this leads to the conclusion that law exists only in capitalist society, and as a weapon of the rulers, so that "the development of a legal system in the U.S.S.R. created theoretical difficulties for Communist Party apologists",<sup>3</sup> for the results of which he refers readers to Schlesinger's *Soviet Legal Theory*,<sup>4</sup> and to the writings of Renner<sup>5</sup> for the Marxist view.

Dr. Szabo makes no reference to either Renner or Schlesinger, and most of his citations are from Marx, Engels, Lenin, Hegel and even Stalin. Nevertheless, if one discards the jargon one tends to find that the concept of law is not so very different. Thus: "The relation of law and man is ultimately determined by the mode of production; whether man is sub- or super-ordinate to natural and social laws depends on the state of productive forces and the relations of production. The socialist mode of production provides incomparably more favourable circumstances for the transformation of nature than previous societies—not even mentioning the purport of the fundamental changes taking place in man's relation to social laws. The progress of the relation of law and man does not only have its social but also its epistemological aspects. The historical and logical unity of cognizance is expressed in the developmental process of particular laws and of the philosophical concept of law . . . . Social laws will have an objective nature even at the highest stage of communism because reality based on human activity will again arise in a lawful way from the objective determinatenesses, of activities, but social consciousness deprives these determinatenesses of their natural character, harmonizes them and leads them constantly along a path of development. In other words, it makes the separation of historical results from human will impossible. Thus communism abolishes the dualism of goal and result, that is to say, laws will exist in the

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<sup>2</sup> P. 177<sup>3</sup> Pp. 177-178.<sup>4</sup> (1951).<sup>5</sup> *Institutions of Private Law and their Social Functions* (1904).

lawful realization of goals by men. They will be governed by men.”<sup>6</sup>

While Professor Sawyer may not place the same emphasis on the means of production, he also recognises environmental significance, introducing some positive purpose or idealism: “It would not be surprising if legal norms are a specialised form of moral norms and not merely of ‘customs’. That is, mere usage and tradition, and a negative fear of non-conformity are not sufficient; some element of active moral approval is required, so that observance helps to qualify a man as ‘good’.”<sup>7</sup> At the same time, he reminds us that if we are to speak of sociological approaches to law, we must remember that “the sociology implicitly expressed in legal reasoning is apt to exhibit wide differences between individual lawyers and judges, between one decade and another in the same country, and between comparable countries . . . Lawyers and judges also have and cannot do without general views about the structure of society and of particular social groups”.<sup>8</sup> Again, “the operational significance of statements about the relation between laws and social phenomena varies with the person making them. To the sociologist, concerned with understanding and perhaps altering the social structure as a whole or distinct substructures, such relations are always important, at least if the law is an integral feature of the total situation under study. But for the lawyer the significance of such statements varies much from case to case, time to time, and country to country. The legal system as it exists for the time being can be considered by the lawyer as itself constituting so much of the system of social relations as he is concerned to deal with”.<sup>9</sup> In view of these varying interpretations of the relationship between law and society and of the role of law in society, it is perhaps not surprising that the Marxist, either for ideological reasons or because of his background training, sees law as does Dr. Szabo.

Both books are interesting and their approaches are inter-related. It is to be hoped that other works of a jurisprudential and legal-sociological character will come from behind the “iron curtain” to enable us to make our comparisons and our analyses on the basis of original sources.

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<sup>6</sup> Pp. 12, 206.

<sup>7</sup> P. 38.

<sup>8</sup> P. 15.

<sup>9</sup> P. 168.

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*Union List of West European Legal Literature.* By K. HEDBERG.  
London: Institute of Advanced Legal Studies. 1966. Pp. viii,  
426. (\$6.75)

The *Union List of West European Legal Literature*, prepared and compiled by Miss K. Hedberg, is the fifth in the series of bibliographical publications of the Institute of Advanced Legal Studies. Although this catalogue has a primary function of assisting readers in England to locate materials required in their research, it can be used to advantage by Canadians who have an interest in the laws of West European countries and the work of European international organisations. The catalogue will acquaint the reader with the particular legal material available within the scope of the book's coverage. Persons interested in comparative law can easily find out the recent legal source materials and secondary works on various subjects of eighteen West European countries. Readers are provided with a helpful source of reference to the efforts of European international organisations and their institutions. Lastly, persons intending to go to England for legal research in an area of law dealt with in this bibliography will be given a good indication as to where the relevant materials will be found.

References in this *Union List* refer to holdings in London's British Museum, Foreign Office Library, Institute of Advanced Legal Studies, British Library of Political and Economic Science, Patent Office and Royal Institute of International Affairs, Cambridge's Squire Law Library and Oxford's Bodleian Law Library. Abbreviations have been employed sparingly and an effort has been made to assure precision and accuracy of entries.

The first part of the catalogue is concerned with legal materials of Andorra, Austria, Belgium, Denmark, Finland, France, West Germany, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden and Switzerland. For the most part, each country has its own subject index, guidance notes and list of legal periodicals published in the country. There is also a brief section of general legal reference material of Western Europe.

The second part of the *Union List* deals with materials on some of the legal aspects of Western European integration and co-operation. Here one finds references to the international organisations and institutions of the Benelux Economic Union, the Council of Europe, the European Commission for Europe, the European Communities, European Free Trade Association, the Nordic Council, the Organization of Economic Co-operation and Development and the Western European Union. There are four

indexes in this part, each stressing its own approach to the materials.

In addition to the guidance notes for readers and table of contents, there are a general author index, a serial index and a general subject index to periodicals. Holdings referred to in the catalogue do not usually date prior to 1945 except in the case of serial publications. The closing date of entries in the first part is October 1964 while the second part extends to September 1965.

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