BOOK REVIEWS
REVUE DES LIVRES

Studies in Canadian Company Law. Edited by JACOB S. ZIEGEL. Toronto: Butterworths. 1967. Pp. xii, 717. ($22.50)

Teachers of company law at the rapidly growing Canadian law schools have hitherto been gravely handicapped by the absence of a text, suitable for students' use, on the company law, or perhaps one should say laws, of Canada. In Wegenast's[1] scholarly monograph Canada once possessed what, in the opinion of many of us, was at the time the best textbook on company law in the common-law world. But Wegenast was apparently ahead of his time; no new edition of his work has appeared since 1931 and in most aspects of the subject it is now so hopelessly out-of-date as to be virtually useless. Hence the new generation of teachers wishing to recommend further reading to their students have had to fall back on books written for the English reader. As this has benefited your reviewer his praise of Professor Ziegel's symposium may carry weight as a declaration against interest—just as any reservations he expressed might be discounted as self-serving. For Professor Ziegel and his colleagues have sought to fill the gap and to render it unnecessary to rely on alien texts.

What they have done is to gather together a series of essays on various aspects of Canadian company law, written in the main by the many competent young teachers of this subject in Canada. Though the resulting volume does not pretend to be exhaustive, it covers a remarkably broad spectrum. All but three chapters are in English. They relate to: The Nature of Corporate Personality (Professors Bonham and Soberman), Pre-Confederation History of Corporations in Canada (Professors Labrie and Palmer), Letters Patent and Memorandum Companies (Mr. Melville Neuman), Constitutional Aspects (Professor Ziegel), Pre-Incorporation Contracts (Mr. Francis J. Nugan), Ultra Vires (Professor Mockler), Dividends (Professor Bryden), The Indoor Management Rule (Professor Prentice), Tax Considerations (Mr. Vineberg, Q.C.), Directors' Powers and Duties (Professor Palmer), Recent Developments in Securities Administration in Ontario (Mr. Harry S.

[1] The Law of Canadian Companies (1931).

Bray, Q.C.—the Director of the Securities Commission), Mutual Funds (Professor Williamson), Access to Corporate Information (Professor Harris), The Protection of Dissenting Shareholders (Professor Mackinnon), An Analysis of *Foss* v. *Harbottle*[2] (Professor Beck), Corporate Acquisitions—General Considerations and Tax Factors (both by Professor English), and The Social Implications of Incorporation (Professor J. E. Smyth). In addition there are three admirable chapters in French on the law of Quebec and on comparative law aspects—De l'action reciproque du droit civil et du common law dans le droit des compagnies de la Province de Québec (Professor Yves Caron), La capacité, les objets et les pouvoirs des corporations dans le Québec (Maître Roger L. Beaulieu, C.R.), and Le contrôle de la gestion par l'assemblée générale (Professor Marc Giguère).

To collect such a wealth of material and to publish it within about eighteen months of the original conception of the idea is a tour de force for which all concerned deserve the utmost credit. Only those who have been concerned to produce a symposium of this sort can have any idea of how difficult it is to keep all members of the team running at the same pace and to weld together their diverse effects if and when they are forthcoming. One suspects that in an earlier era Professor Ziegel would have made a fortune as a slave-driver. He was, of course, assisted by the present wave of interest in company law reform in Canada and, in particular, by the work of the (Lawrence) Select Committee on Company Law of the Ontario Legislative Assembly. A number of chapters, and some of the most interesting ones, are based on studies originally prepared for that Committee.

It was also a remarkable effort to obtain such a uniformally high standard of contributions. It is not suggested, of course, that all display equal scholarship; naturally they do not. But there is none which is not interesting and instructive. Considering the speed with which the volume was produced (a tribute to the publishers as well as the editor) it appears to be unusually free from misprints and similar errors. Such as were noticed were unimportant—the occasional misplacing of figures[3] and the consistent omission of the final 'e' from Greene M. R. throughout chapter 12. Inevitably there is a certain amount of overlapping between the various contributions—but remarkably little.

The result is a volume which should be an invaluable auxiliary in the teaching of company law in Canada. It would not be suitable as the basic teaching tool—for one thing it does not pretend to map out the whole field, for another, most of the contributions pre-

[2] (1843), 2 Hare 461.
[3] *E.g.* 1946 instead of 1964 in footnote 114, p. 86.

suppose a not inconsiderable amount of prior knowledge. But if used, as it is clearly intended to be used, to supplement the basic instruction through the case-book system or lectures, it can confidently be expected to minimise the need any longer to rely on English textbooks for further reading. Many of the chapters, too, would repay careful study by practitioners faced with knotty problems on such subjects as frauds on the minority or the *Turquand* rule.[4]

It is to be hoped that it does not sound patronising to suggest that the book should mark the coming of age of company law studies in Canada. Hitherto these studies and the law itself seem to have been tied too tightly to the apron strings of their British parent —or foster-parent so far as Quebec is concerned. Though influenced by the rich uncle—the United States of America—particularly as regards securities regulations, they seem to have been timorous in striking out on their own. But at last Canadian company lawyers seem to be asserting their independence—as the Australians have for many years to the enrichment of the jurisprudence of the Anglo-American world. This book makes it clear that there are now many able and willing workers in the field. It will be disappointing if they do not follow up this maiden effort—individually as well as collectively—with original research leading to imaginative solutions to many pressing problems in corporate law and practice. Meanwhile this book is a good start.

L. C. B. GOWER*

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The Forensic Lottery: A Critique on Tort Liability as a System of Personal Injury Compensation. By TERENCE G. ISON. London: Staples Press. 1967. Pp. xi, 226. (63/-)

At long last someone has gone all the way! For over thirty years now, tort scholars without number have pointed out the inadequacy of tort law as an injury compensation scheme, and have proposed a wide variety of remedies. Almost to a man, however, they have eschewed advocating complete abolition of tort law, preferring instead to tinker and patch, on the theory that a "responsible" stance is more likely to attract legislative attention than a radical one. Finally, a law professor from the University of British Columbia has shown that the logical thrust of these familiar criticisms is toward complete replacement of tort law in the personal injury field with a comprehensive social welfare scheme.

[4] *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327, 25 L.J.Q.B. 317.

*L. C. B. Gower, Law Commission, London.

Writing with a spare, stiletto-like style uncommon to either lawyers or academics, Professor Ison has punctured many water wings, including both the aged, oft-attacked variety like the "fault" principle:[1]

> . . . we have left it to the judges to tackle the problem of compensation by a pseudo-ecclesiastical process of moral condemnation instead of taking a pragmatic look at income security for the sick and injured as a task of social cost accounting.

and some of the more up-to-date models, such as the "enterprise liability" theory:[2]

> . . . enterprise liability can never form the basis of an efficient or comprehensive system of personal injury compensation. . . . The truth of the matter may well be that much of the attractiveness of enterprise liability lies in its acceptability as a palliative in any country in which the iniquities of liability for fault are recognized, but where the political situation precludes the adoption of more radical change.

and the "specialized compensation fund" approach:[3]

> The defects of the system are too basic to be remedied by anything less than its total replacement.

Professor Ison has chosen to tailor his proposed compensation plan to circumstances prevailing in Great Britain. In outline it is startlingly simple:

—abolish all tort liability for personal injuries (except where a mere injunction is sought);

—create a government-administered compensation fund, integrated with National Insurance, from levies made against various risk-ridden activities (such as motoring, and manufacturing) and other public revenues;

—pay to all persons who suffer loss of income due to sickness or injury a subsistence living allowance for the first month, and an allowance equal to two-thirds of their regular income thereafter until they are pensionable (with proportional benefits paid for partial disability, and conventional sums for injured housewives);

—make lump-sum payments to persons whose injuries result in dismemberment, disfigurement, and so on;

—restrict death benefits to existing schemes, trusting life insurance to fill the gap; and

—abolish tort liability for property damage (excepting where an injunction is sought), leaving property owners to rely on loss insurance.[4]

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[1] P. 107. [2] P. 41. [3] P. 78.

[4] This is not an essential feature, however: "It is in the nature of an optional extra. Reform of personal injury compensation is obviously more vital, and the proposed plan could be adopted either with or without this suggestion extending to property damage." P. 100.

There is much more to Professor Ison's plan than this, of course, but he is generally content to acquaint the reader with the broad principles involved, rather than confuse matters with masses of detail. This has the great advantage that the reader is much more likely to finish the book, and to understand and remember what he has read, than in the case of labyrinthine books like the Keeton-O'Connell study.[5] On the other hand, this approach leaves many important questions unanswered—some of them crucial to the success of the scheme.

How much would the scheme cost, for example? Professor Ison estimates that it could be put into effect "without any increase being required in National Insurance revenues, apart from the diversion into National Insurance of the funds attributable to personal injury compensation now flowing into tort liability",[6] but he acknowledges that his calculations are very rough, and that an enormous amount of work remains to be done before a really accurate statistical description of compensation needs and the effectiveness of existing means of meeting them can be obtained.[7] Would not the complete abolition of tort liability deprive plaintiffs of compensation for many injuries not reflected in earning power,[8] and frustrate the undeniable, if base, human urge to exact personal retribution (or "justice") from a wrong-doer?[9] Would there be no limit on the right to compensation—would Lord Thomson of Fleet, if injured, be entitled to receive two-thirds of his normal income from the fund?

Could this scheme, designed for Great Britain, be successfully transplanted to Canada? There would be very substantial difficul-

[5] Basic Protection for the Traffic Victim (1965). Remarkably, Professor Ison makes no reference to this monumental study. This may be due to the long delays that appear to have occurred during publication of Professor Ison's book. His preface was written in November, 1966, but, although it is dated 1967, the book was not in fact published until March, 1968.

[6] P. 78. Messrs Keeton and O'Connell, *op. cit., ibid.*, claim that implementation of their scheme of traffic victim compensation might actually be cheaper than the existing system, but Professor Ison's proposal is subject to fewer limitations than that of Messrs Keeton and O'Connell.

[7] A small study by Professor Ison is reported in Appendices C to G, but although they reveal some very useful information, the need for a more thorough survey is obvious.

[8] Some of these would be included in the lump-sum payments, but Professor Ison is quite vague about the scope of such payments, and indicates that many of the losses that are presently compensated would not be included: p. 65. As to financial losses not resulting from personal injury, or not forming income, he dismisses them with the comment that "they are a separate social problem and a separate insurance category": p. 102.

[9] He does preserve the right to seek an injunction, and further proposes that it should be a criminal offence to engage in reckless conduct likely to cause personal injury, illness, or property damage. Ordinary negligence would, however, lose its present legal stigma.

ties. Although we enjoy a high standard of social welfare, we lack the National Insurance administrative structure of which Professor Ison proposes to make use. Constitutionally, the division of legislative jurisdiction over social welfare between national and provincial authorities would create problems. And if the plan were adopted by a single province, Professor Ison's proposal that non-residents should be deprived of tort rights without being granted compensation rights could produce unfair results.

Obstacles like these and a hundred others that could be listed, together with fierce opposition from the insurance industry and other influential vested interests, will undoubtedly prevent immediate implementation of the wholesale changes which Professor Ison advocates. Only the patch-work approach to law reform stands any real chance of success. But Professor Ison's visionary study can be of great assistance to those who apply the patches over the years, by indicating the goal towards which they should be working.

DALE GIBSON*

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Private International Law: General Part. By ALBERT A. EHRENZWEIG. Leyden: A. W. Sijthoff. Dobbs Ferry, N.Y.: Oceana Publications. 1967. Pp. 293. ($10.50 U.S.)

Dicey and Morris on The Conflict of Laws. Eighth Edition. Under the General Editorship of J. H. C. MORRIS, with specialist editors. London: Stevens and Sons Limited. Toronto: The Carswell Company Limited. 1967. Pp. cxxv, 1289. ($29.30)

Private International Law, a comparative treatise on American international conflicts law including the law of admiralty is another major book written by Professor Ehrenzweig, one of the most prominent and learned writers in this field of the law. For the first time an attempt has been made to deal with United States international conflicts law as distinguished from interstate conflicts law pursuant to the author's thesis that:

"Through at least a century American conflicts law has been decisively affected by the demands peculiar to the quickly tightening relations between the states of the Union. But American doctrine has failed to take account of the cleavage thus caused between the resulting body of interstate rules and remaining tradition of international conflicts law."[1]

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*Dale Gibson, of the Faculty of Law, University of Manitoba, Winnipeg.

[1] Preface, p. 7.

As Professor Ehrenzweig indicates on the cover, this work is designed "on the one hand, to familiarize American courts, lawyers, and scholars with the results achieved by five hundred years of continental doctrine, and, on the other hand, to make accessible to readers in the commonwealth and the civil law orbits of East and West the unique laboratory of American experience and experiments".

There is a unique affinity between the world's legal systems in the field of conflict of laws which cannot be ignored.

Actually, the book is primarily concerned with an analysis and criticism of the various doctrines that have been advanced throughout the centuries to explain why in cases involving a foreign element the courts will, when appropriate, apply a law other than their own to settle the issues presented to them. It also contains an exposé of Professor Ehrenzweig's views on the subject. When reading this book, one cannot help but think of Professor Battifol's *Aspects philosophiques du droit international privé*, another excellent work of the same nature written in 1956 by an equally competent scholar. Although Professor Ehrenzweig states that "This book will, I hope, be of some help to American courts and lawyers who, when faced with an international conflicts case, now must wade through texts and digests that call for the treatment of such cases in the context of interstate law",[2] it is probable that very few practising lawyers in the United States and Canada will find it of direct use in their daily practice unless they are especially interested in the law of admiralty. Inclusion of admiralty was intended by the author to fill a gap in the literature of both admiralty and conflicts law as court practice in admiralty, being increasingly concerned with conflicts problems, "is likely to strengthen the development of an independent international conflicts law in [the United States of America]".[3] This topic also enables him to find further support for his *lex fori* approach.

A reader not thoroughly familiar with conflicts terminology, current doctrines and American practice—and the French, German and Italian languages (as well as Latin), will find it extremely difficult to read and fully understand what Professor Ehrenzweig has to say. He will be ill at ease with words such as "neo-fundamentalism",[4] "new nationalist fundamentalism",[5] "latter-day statutist aperçus",[6] "realist revolution",[7] or foreign sentences or words such as "volkerrechtlichen Grundsätzen",[8] "freundliche Zulassung",[9] "pseudo-soggetto",[10] or "respect de la souveraineté la plus intéressée",[11] "si licet parvos componere magnis"[12] which are not translated by the author.

[2] *Ibid.*, p. 9. [3] Pp. 23-24. [4] P. 50. [5] P. 51. [6] P. 55.
[7] P. 60. [8] P. 54. [9] P. 57. [10] P. 113. [11] *Ibid.* [12] P. 65.

In other words this book is not recommended reading for the non-initiated, as it assumes too much knowledge on the part of ordinary readers and is too condensed in its form. It is first of all a scholar's book.

For those who have penetrated the inner sanctum of conflicts law the rewards to be derived from a careful reading of the book are great as we find here the quintescence of many years of serious thinking by a man with an excellent background both in European and American law. Of course one must not expect him always to be objective; his analysis of the historical and doctrinal development of conflicts law is somewhat biased as he is a man with a mission: "To offer new solutions . . . in order to enable judge, lawyer and scholar to predict and analyze judicial decisions"[13] and in the field of admiralty to "help the courts in resisting the onslaught of that new fundamentalism which, with its language of 'governmental interests' and 'significant' contacts is now threatening the ramparts of maritime jurisdiction".[14]

Throughout the book, he never misses an opportunity to criticize in very strong terms the original *Restatement of the Law of Conflict of Laws* as well as the *Restatement Second*.[15] He fights against fundamentalism in all its forms whether it be that of the *Restatements*[16] or that of Professor Currie.[17]

The present General Part will be followed by a Special Part to be devoted to choice of law as well as the law of international jurisdiction and procedure.

An extensive bibliography to be found at the end of the book adds to its value.

In the first chapter the author describes the scope and method of the book.

From the point of view of methodology, Professor Ehrenzweig is of the opinion that to consider interterritorial choice of law as a "legal subject", as a branch of law with its own principles has caused much difficulty. "In the absence of both formulated and nonformulated rules, *each* rule of our municipal law should be examined in its conflicts aspects."[18]

He also believes that one must distinguish between two broad areas that require distinct treatment by scholar, judge and student. "One area is primarily that of personal and proprietary relations. Here need for certainty and the results of frequent testing have produced many formulated rules of choice of law. . . . Concerning these rules academic speculation is limited to the *lex ferenda*. Discussion *de lege lata* as to the 'theory' or 'objects' and 'structure' will prove as remote and fruitless as in any other settled field of

[13] P. 26. [14] P. 228. [15] *E.g.* p. 26.
[16] Pp. 66 *et seq.*, 116, 142. [17] See p. 62 *et seq.* [18] P. 24.

the law. The other area includes particularly the law of contractual and delictual obligations. Here formulated rules are scarce. . . . Here indeed, there is much room and need for re-examination of inveterate doctrine in the light of new insights and experience, and thus for new 'theory', not only in proposals *de lege ferenda,* but also in the understanding *de lege lata* of yet nonformulated rules."[19] And he adds:

"In ascertaining and stating these rules in a manner acceptable to both common law lawyers and civilians, the greatest difficulty is one that pervades all comparative endeavors, but is particularly crucial in conflicts law with its virtual absence of legislation. Here the varying priorities of judicial and scholarly doctrine become all-important. In this book a compromise will be sought between the techniques and ideologies prevailing in the two legal orbits: In view of the superior practical experience of American case law and the superior theoretical acumen of continental doctrine, fact situations adjudicated in the United States will be examined in the light of both American judicial language and continental conceptions, in both the General and the Special Part."[20]

Chapter two deals with the sources of international conflicts in the United States of America.

The most important chapter of the book is no doubt chapter three entitled "Theory". It is also the most difficult to read due to its abstract and condensed style. The part dealing with current doctrine should be of particular interest to the reader as it is there that Professor Ehrenzweig analyses and criticises the late Professor Currie's government interests theory to the effect that a court should apply its own law whenever the forum government can claim a legitimate governmental interest that is "a reasonable basis for the application of [its] law in order to effectuate the specific policies that it embodies".[21] "A competing foreign governmental interest is to be disregarded, since only the legislator is capable of properly weighing and deciding conflicting interests."[22] "A disinterested forum is to apply the law of that state which has a reasonable interest. If more than one state can claim such an interest, the disinterested court may either apply its own law or that foreign law which it considers superior."[23] Professor Ehrenzweig points out and I believe rightly so that: "Currie's theory

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[19] P. 25.

[20] *Ibid.*

[21] Currie and Schreter, Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities (1960), 69 Yale L.J. 1323, at p. 1361.

[22] Currie, Selected Essays in the Conflict of Laws (1963), pp. 357-358.

[23] Currie, The Disinterested Third State (1963), 28 Law & Contemp. Prob. 754, at pp. 778, 788-789.

remains vulnerable on several grounds. At least in terms, it ignores the all-important fact that 'governments' are, outside the law of admiralty, 'interested' in the solution of conflicts problems only in such exceptional cases as tax or currency matters. Secondly, Currie's distinction between the governmental interests existing in the 'effectuation' of policies, and these policies themselves, is quite obscure. And the selection of foreign interests, even if relevant, even if identified with policies, and even if based on forum policy, would face courts with an impossible task. To determine policy 'even in connection with one's own legal system . . . is often very difficult to do; how much the more so with respect to foreign law'. Moreover, any choice-of-law rule based on the 'legitimacy' or 'reasonableness' of interests is as wrong or circular as any theory based on legislative jurisdiction, vested rights, or the 'significance' of contacts. Such a rule is wrong if legitimacy and reasonableness, like 'vesting', 'jurisdiction' and 'significance', are deduced from a nonexisting superlaw. And such a rule is circular in so far as it must, in recognition of the nonexistence of such a superlaw, be based on rules of choice, a need for which it is designed to avoid. The same circularity, as we shall see, affects Currie's non-choice disposition of 'false problems'.

Most important for present purposes: Currie's theory was not devised for international conflicts cases. Its very ancestor, the 'governmental interests' language of the United State Supreme Court, was merely used in interstate cases to deny a constitutional compulsion to apply the *lex contractus* or *delicti* of a sister state. Never was a 'governmental interest' held or said to be capable of constitutionally compelling or excluding application of any law, let alone an extranational law. Decisive, however, in this respect is the fact that Currie's theory stands and falls with the availability of a legislative body able and willing to find, if not to resolve, the conflict. Only because Currie feels that Congress could and should declare its preference for one state's interest over that of another, does he call for the application of the forum's law in the absence of such a declaration. Since no legislative body is available on the international scene outside the treaty area, courts of all countries must look, and have in fact looked, for solutions other than one that calls for the application of the *lex fori* whenever the forum has an 'interest' in such application.

As we shall see, all courts and writers who have adopted Currie's language, have therefore rejected his basic message. They have insisted on weighing competing interests and given effect to what they have held to be the prevailing one. And since such holdings are always based on the forum's own policies, courts have in effect abandoned the concept of an 'interest' distinguishable

from that of policy. With this transformation, Currie had lost not merely a battle, but his war."[24]

"In its final form, Currie's theory permits and expects courts to apply foreign laws even in the presence of a legitimate forum interest. They must do so, we now learn, if that interest can be construed in 'restraint and moderation', as a long-range 'enlightened self-interest', 'altruistically' inducing regard for another state's competing interests. Not only did Currie with these formulas return to statutist tradition with its 'side-glance' at the foreign law's intent, but, contrary to his earlier crucial distrust of judicial discretion, he now entrusted the courts 'with an exacting task for which instructions have not been furnished'. He thus destroyed that one value of his analysis, that of relative certainty, in favor of an uncharted regime of those very rules of choice whose abolition he had demanded. The best that can be said, I fear, for a governmental-interest terminology, is that 'it does not harm to say that . . . policy analysis is a continuing search for governmental interests, provided we recognize that what we ought to do in any event is to analyse the problem in terms of all the relevant choice-of-law considerations, of which the interest behind the forum's internal rule is only one'."[25]

The *Restatement's Second* "most significant relationship and legislative jurisdiction" does not escape Professor Ehrenzweig's acerb but nevertheless constructive criticism:

"At first glance, the *Second Restatement* appears to join the revolution. For its predecessor's right formulas, the *leges contractus, delicti,* and *domicilii,* it has substituted a near-general reference to the law of the 'most significant relationship', based on 'contacts' and 'interests', not only in the ever changing laws of contracts and torts, but even in such a stable field as that of the law of trusts. But such tests are mere 'catch-words representing at best not methods or bases of decision but considerations to be employed in setting up new rules or laws required by changing times. Counting up "contacts" or locating the "centre of gravity" or weighing the respective "interests" of two states can never be a satisfactory way of deciding actual lawsuits. . .'. The Institute's new formula thus entails serious danger for the administration of justice, since it is all-too-easily used by busy courts which, were it not for that formula, would articulate the policy grounds of their decisions for the guidance of other courts and parties."[26]

The last part of this chapter contains an exposition of Professor Ehrenzweig's theory, the so called "*lex fori* approach".[27] After stating that conflicts rules refer or should refer to individual

[24] Pp. 63-64. [25] P. 65.
[26] P. 67. [27] P. 90 *et seq.*

foreign rules rather than foreign legal systems or "jurisdictions"[28] he points out that:

"Unless application of a foreign rule is required by a settled (formulated or nonformulated) rule of choice, all choice of law should be based on a conscious interpretation *de lege lata* of that 'domestic rule' which either party seeks to displace. If that interpretation does not lead either to the dismissal of the suit or to the application of a foreign rule, the forum rule, in a proper forum applies as the 'basic', or as I now prefer to call it, the 'residuary' rule, as a matter of 'nonchoice'. In this sense, any rule applied as a matter of choice or nonchoice is a 'règle d'application immédiate', 'räumlich bedingte Sachnorm', 'direct rule', and thus tied to municipal institutions 'comme l'ombre ou corps parce qu'elles ne sont pas autre chose que le projection de ces institutions elles-mêmes sur le plan du droit international'. In this sense, then, there is no conflicts law because there can never be a conflict, true or false, between the rule of a forum and any other rule invoked by it. As Dicey has it: 'The only "conflict" possible is . . . that in the mind of the judge who has to decide which system of law to apply to the facts before him'."[29] "Assume that, in the absence of both formulated and nonformulated (true) conflicts rules, interpretation of the domestic rule and its policy has neither referred us to that rule as applicable to foreign facts nor to a foreign rule, and that this interpretation does not require the court to dismiss the case. On this (unrealistic) assumption, the court will apply its own rule as the residuary rule",[30] or as the author calls it "a trend to stay at home", and he adds "the recognition here proposed of the domestic rule as that both basic for the application of foreign rules and residuary in case of their nonapplication, would compel and permit articulation of those forum policies which call for the application of a foreign rule and would thus avoid overgeneralization of both rules and exceptions".[31]

As for the foreign rule, in the absence of a settled formulated or nonformulated rule of choice, it is applied by virtue of an interpretation of the domestic rule in the light of its policy.[32]

Chapter four is devoted to an analysis of the structure of conflicts rules. The author when discussing characterization points out that, "The controversy between the adherents of the *lex fori* and the *lex causae* disappears if we realize that characterization, unless contained in a formulated rule, is just another phase in that process of interpretation which is common to all legal reasoning. For, all interpretation, unless regulated by rules of construction, be it of instruments or of laws, is always that of the interpreter, the

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[28] P. 75. [29] P. 93. [30] P. 103. [31] P. 105. [32] P. 99.

forum. It should, therefore, not have been necessary for modern legislation expressly to subject characterization to the *lex fori*".[33]

He recognizes that although characterization under the *lex causae*, be it primary or secondary, must be rejected, it may be necessary to adjust characterization under the *lex fori* to different concepts of the *lex causae* by what he calls recharacterization.[34]

Renvoi, although perhaps the most fertile and futile source of learned discussion in conflict of laws, has hardly produced a proportionate interest in judicial practice in the United States or Canada[35] and should be rejected. The solutions arrived at by resort to this doctrine can be reached by other methods such as common sense interpretation of the forum policies involved in the particular situation.[36]

After reviewing all the arguments pro and con the renvoi, Professor Ehrenzweig comes to the conclusion that renvoi statutes and conventions can be successful only if limited to such narrow fact situations as the nationality-domicile conflict.[37]

The author acknowledges that reliance on public policy for application of the *lex fori* has always been the last resort of any court faced with an overgeneralized rule of choice of law.[38] However he points out that in the absence of rigid conflicts rules it is unnecessary to resort to public policy in order to achieve justice in cases involving foreign elements. This explains why in Canada, England and in the United States of America as opposed to countries where conflicts rules are codified, very few cases have been decided on the basis of public policy.

Actually, the present structure of choice of law "is largely the result of an overgeneralization of formulated conflicts rules, following the replacement of the statutist choice of rules by universalist schemes of chosen 'laws', based on partly publicist, party conceptualist theories. With the progressive reduction of this overgeneralization and return to a choice of rules, resort to the several phases of the structure becomes ordinarily dispensable".[39]

Chapter five devoted to the "Application of the foreign rule" contains valuable suggestions based on comparative law. The author examines in turn situations involving, a failure to *plead* a foreign rule as applicable, and a failure to *prove* the applicable foreign rule.

Whenever the *lex fori* is applied, it is not through a presumption of identity but by virtue of a residuary rule.

In the process of ascertainment of the foreign law, Professor Ehrenzweig, after examining the defects of the present system, comes to the conclusion that "perhaps court-appointed advisors

[33] P. 115. [34] P. 118. [35] P. 141. [36] See p. 143.
[37] Pp. 152-153. [38] P. 153. [39] P. 177.

who would be subject to both parties' and the judge's questioning and whose fees would be collected from the losing party, might come closest to a satisfactory solution".[40]

The last chapter is entitled "Choice of Law in Admiralty: Epitome of Conflicts Law".

The author is of the opinion that general conflicts doctrine may draw a needed lesson from admiralty law "whose development has been compressed in a short century, unburdened by ancient doctrine and assisted by common-sense considerations freely expressed".[41] Thus ". . . we shall see that the initial and primary role of the law of the forum, which is so controversial for conflicts law in general appears overtly in the past and current practice of admiralty. This fact has so far protected admiralty from that disorderly growth of 'imperative' conflicts rules which has disturbed general conflicts law ever since the decline of imperial superlaws".[42]

Professor Ehrenzweig then proceeds to analyse the various techniques by which admiralty courts have justified the application of their own law. He recognizes that "In admiralty, too, it is true, there are unmistakable signs of danger. 'Statutist' advocacy for a ubiquitous law of the flag, on the one hand, and a, fortunately yet isolated, inclination toward the nonrule of the most significant relationship, on the other hand, threaten to do to the conflicts law of admiralty what fundamentalist and nihilist doctrine has done to conflicts law in general".[43]

Fortunately "courts, in admiralty have so far largely avoided this danger by adhering to their unilateral interpretation of both doctrine and statutes, and by limiting choice of law to specific rules based on treaty, custom, statute, and precedent. And they will, we may hope, be enabled to continue to do so by a wise and fair limitation of their jurisdiction".[44]

Although one may not agree with all the theses advanced by the author, one must recognize that he has been true to his objectives. New solutions are offered that are based on comparative experience, learning, and deep comprehension of the subject matter.

To many the *lex fori* approach represents a reasonable and to some extent logical philosophical basis for conflicts law which at the present time is caught between revolution and counter revolution. To others it is only one explanation which like many others constitutes merely one step in the process of evolution of the law throughout the ages.

The eighth edition of *Dicey and Morris on the Conflict of Laws* prepared by Dr. Morris and other specialists[45] does not differ sub-

[40] P. 192. [41] P. 196. [42] *Ibid.* [43] P. 197. [44] *Ibid.*

[45] Messrs Leonard Hoffmann and G. H. Treitel, Drs O. Kahn Freund, K. Lipstein and M. Mann.

stantially from the previous edition. Although it is primarily designed for practitioners, it is interesting to note that the authors have given more space to theory and structural analysis.[46] No change has been made in the general arrangement of the book. However, the editor has abandoned the practice originated by Dicey, of stating positive rules of law in the form of exceptions to negative propositions. For instance the rule in *Armitage* v. *Att.-Gen.*[47] and the rule in *Travers* v. *Holley*[48] are no longer exceptions to a rule that foreign divorces will not be recognized in England if the parties were not domiciled in the foreign country.[49] The effect of this change of policy is that the number of Rules and Exceptions has been substantially reduced. "This does not mean that we have lost faith in the mode of exposition by Rule, Comment and Illustration that has always been a characteristic feature of Dicey."[50] The editor recognizes, however, "that the Illustratives form the most debatable element in the trilogy and that opinions may differ on the wisdom of retaining them".[51] Even though care has been taken to indicate whether each Illustration is intended to be a summarized statement of a reported case, a variant on a reported case or is purely hypothetical, I would prefer to see the summary of reported cases transferred to the Comment, which could also contain some indications as to what the courts might be expected to decide in cases that have not yet come before them. To incorporate the facts of decided cases in the Comment would not necessarily make it less readable. This, it seems to me, would make the Comment easier to understand and less abstract. Also one may not always agree with the choice of Illustrations. Of course the Illustrations facilitate the work of students who have not read the assigned cases, they also help law professors to prepare examination questions!

The eighth edition contains a very important new chapter entitled The Time Factor[52] that deals with changes in the content of the conflict rule of the forum, or in the content of the connecting factor, or in the content of the foreign law to which the connecting factor refers.[53]

Many passages are entirely new.[54] Of particular interest are: Rule 47 on jurisdiction to make declarations as to status;[55] Rules

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[46] See for instance Ch. 5 (The Time Factor) and Ch. 30 (Torts), especially pp. 916-918, 937-939.

[47] [1906] P. 135. [48] [1953] P. 246 (C.A.).

[49] See (7th ed., 1958), pp. 310-324, rule 43, now see rule 40(2) and (3), pp. 308-324.

[50] Preface, pp. ix-x. [51] *Ibid.*, p. x. [52] Ch. 5, p. 40 *et seq.*

[53] In Canada see Castel (1961), 39 Can. Bar Rev. 604.

[54] See for instance, pp. 76-77 on judicial residual discretion to refuse to recognize a foreign status conferred or imposed upon a person by the law of his domicile, pp. 88-89 on ordinary residence.

[55] P. 379.

100 and 106 on the formal validity of wills[56] which present and analyse the Wills Act, 1963,[57] that gives effect to the *Fourth Report of Private International Law Committee*[58] and to a Draft Convention on the Formal Validity of Wills made at the Hague in 1961;[59] and the analysis of recent American developments on the choice of law for torts.[60] It should be noted that Dr. Morris' prophetic words that "there are somewhat faint indications that it may not be entirely impossible for an English court to adopt this more flexible approach, [social environment test, law of the state having the 'greatest concern' in the case] at any rate in a situation in which the nationality or the residence or place of business of all the parties concerned indicates their social environment at the time when the tort was committed"[61] were approved by Lord Denning in *Boys* v. *Chaplin*.[62] In Chapter 14 devoted to matrimonial causes, the reader will regret that the book was published just before the House of Lords gave its decision in *Indyka* v. *Indyka*, a case that revolutionizes the law with respect to the recognition of foreign divorce decrees.[63] Several passages of the book have been almost entirely rewritten.[64]

Finally the definition of the proper law of a contract has been altered "to make it conform with the more recent judicial formulations".[65]

The eighth edition of this classic work will continue to prove most helpful to all those who are interested in the development of English conflict of laws. Although a few Canadian cases and statutes are cited in the book, I do not believe that this is sufficient material to satisfy Canadian practitioners as it can no longer be assumed that Canadian conflict of laws, is the same as English conflict of laws. In the last twenty years, Canadian courts and legislatures have often adopted rules that differ materially from those followed in England.[66] Furthermore, some of the English conflicts rules are of no use in Canada as they fail to take into consideration the

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[56] Pp. 596 and 618. [57] 1963, c. 44. [58] (1958), Cmnd 491.

[59] (1961), 10 Int. & Comp. L.Q. 45. In Canada, see Castel, Conflict of Laws (2nd ed., 1968), p. 770 *et seq.*

[60] Pp. 916-918, 937-939. [61] Pp. 917-918.

[62] [1968] 1 All E.R. 283 (C.A.), now before the House of Lords. See also the pioneer article by Dr. Morris, The Proper Law of a Tort (1951), 64 Harv. L. Rev. 881.

[63] [1967] 2 All E.R. 689, [1967] 3 W.L.R. 510 and Bale (1968), 46 Can. Bar Rev. 113.

[64] See for instance, pp. 374-377 on the recognition of foreign nullity decrees, pp. 461-478 on the recognition of foreign adoptions and the right of adopted children to succeed to property.

[65] Preface, p. xi. See Rule 127, p. 691.

[66] See for instance new Divorce Act, 1968, S.C., c. 24. D. Mendes da Costa, Some Comments on the Conflict of Laws Provisions of the Divorce Act, 1968 (1968), 46 Can. Bar Rev. 252. Castel, *op. cit.*, footnote 59, p. 442 *et seq.*

special demands of the members of the Canadian federation. Thus Canadian sources and textbooks must be consulted. Of course, this does not mean that inspiration cannot be found in this excellent, although perhaps overly conceptualized,[67] eighth edition of Dr. Morris' work.

J.-G. CASTEL*

* * *

Tribunals of Inquiry. By SIR CYRIL SALMON. London: Oxford University Press. 1967. Pp. 5, 23. (8/6 d.)

This short book is a printed address given by Sir Cyril Salmon in Jerusalem in 1967. His topic is an analysis of how tribunals of inquiry may allay the public fears caused by disquieting rumours. Such rumours and allegations may occur in any country in which the people enjoy free speech, and therefore Sir Cyril's arguments may be pertinent throughout the Western world.

It is clearly desirable for any tribunal of inquiry to be free of political influence. Any tribunal whose members proportionately represent the government of the day and the opposition is heir to this defect. It should always be possible for the general public to unreservedly accept the report of a tribunal of inquiry because otherwise such a tribunal has not served its purpose even if its report has reached the right conclusion. From various examples Sir Cyril draws the conclusion that the tribunal should not seem to be hostile to those appearing before it. However, the tribunal should be to some extent inquisitorial because the purpose is to elicit truth, something which the adversary system employed by the common law courts is not equipped to do.

Sir Cyril conceives the two main functions of the inquiry to be to establish the truth and to protect those appearing before it from "injustice and unnecessary hardship". With respect to the establishment of the truth Sir Cyril emphasizes the importance of the members of the tribunal devoting all their attention to the tribunal. This may seem axiomatic but the startling fact is revealed that only three of the seven Members of the Warren Commission heard more than half the testimony. The Warren Commission could have done more to prevent the uneasiness that subsequent writers and the general public have felt about their findings of fact concerning President Kennedy's assassination. Sir Cyril also mentions the

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[67] Note that though the editor purported to abandon Dicey's foreign vested rights theory, p. 8, Rule 2 states that "The court will not enforce or recognize a right, power, capacity, disability or legal relationship arising under the law of a foreign country . . .", p. 72.

*J.-G. Castel, of Osgoode Hall Law School, York University, Toronto.

difficulties of the Profumo Inquiry which resulted from that inquiry not being constituted under the English Act of 1921.[1]

The author has several considered suggestions of guideline rules which would, if observed, facilitate public acceptance of the reports of inquiries. One of these suggestions is that England should provide, as has been done already in Canada, Australia and India, an extension of the immunity of witnesses appearing before the tribunal.

This book is a concise comparison of selected inquiries in the common law world. It is executed with a view to reform of the English system so that there would be a greater likelihood of acceptance of the reports of these inquiries. It is a very important contribution to the learning on this topic.

JEREMY S. WILLIAMS*

* * *

Basic Documents in International Law. Edited by IAN BROWNLIE. Oxford: Clarendon Press. 1967. Pp. viii, 243. ($4.25)

This is an invaluable collection of material which should be at the hand of every student of international law and affairs. Here, in one very neat and easy-to-read volume, are the multilateral conventions and various other international documents which are referred to time and again. The size of the book makes it possible to be carried always to the classroom, library or office. More than just a work for reference purposes, this book will be a constant companion of its owners.

The contents are broken into eight parts. Part One deals with International Organizations—here we have the Charter of the United Nations and the multilateral conventions which established the International Labour Organization and Organization of African Unity. Part Two on the Law of the Sea covers the four conventions adopted in 1958 at Geneva. Part Three contains the adopted treaty on outer space; Part Four, the Vienna Convention on Diplomatic Relations; Part Five, the 1962 General Assembly Resolution on Permanent Sovereignty over Natural Resources. A good deal of space is devoted to Part Six on Human Rights and Self-Determination, covering such things as the Universal Declaration of Human Rights, the European Convention on Human Rights and its protocols. In Part Seven we find the Statute of the International Law Commission and the Statute of the International Court of Justice constitutes the concluding Part Eight.

[1] 11 & 12 Geo. 5, c. 7.

*Jeremy S. Williams, of the Faculty of Law, University of Alberta, Edmonton.

Each document is preceded by an introductory note leading the reader to various texts and articles which deal with the document. The notes also contain brief comments on the background of the documents.

Of course, there are omissions which any reader would like filled. For instance, this reviewer would like to have seen included the European Economic Community Treaty, the General Agreement on Tariffs and Trade, and the 1944 Chicago Convention on International Civil Aviation. As Professor Brownlie points out in his Preface:[1]

> The collection now offered was made on empirical grounds. . . . Considerations of economy in presentation have determined the size of the collection: utility, rather than completeness according to some formal model, has been the main object.

Indeed, the usefulness of the collection offered makes up well for documents that have been omitted.

It would have been valuable, however, to provide some form of index which would lead the researcher to the provisions in the documents which deal with the matter in which he is interested. For instance, the student interested in immunities of personnel would find it helpful to have an index that not only refers him to the Vienna Convention on Diplomatic Relations, but also articles 100(2) and 105(2) of the United Nations Charter, articles 9(5) and 40(2) of the Constitution of the International Labour Organization, and so on. Such an index would have added much value in little space. Economy could have been preserved and, at the same time, the utility of the collection would have been enhanced.

J. W. SAMUELS*

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Legal Fictions. By LON L. FULLER. Stanford: Stanford University Press. 1967. Pp. xiii, 142. ($4.50 U.S.)

Professor Fuller gives a good, eclectic account of what philosophers, scientists and lawyers have thought about the use of the fiction in the many situations in which the device occurs. His own treatment of the subject is a worthwhile contribution to the literature on the subject. There are many references and footnotes of an explanatory and helpful nature. The three chapters of this book first appeared as a series of articles in the *Illinois Law Review* in 1930 and 1931.

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[1] P. v.

*J. W. Samuels, of the Faculty of Law, University of Alberta, Edmonton.

The book leaves one with the impression that metaphorical speech is very common. Having read it, one feels an obligation to reform one's ordinary speech and expunge from common parlance words used in an extraordinary sense or to make compensation for their use in such a sense. This, as Professor Fuller mentions, is the same sort of feeling that some critics had about Vaihinger's treatise *Die Philosophie des Als Ob*.[1] Indeed, Professor Fuller sums up by exhorting us to use fictions with discretion.

The text of the book indicates the many situations in which fictions appear and the different effects which they may have. We find fictions used not only in court proceedings but also in the works of the analyst. Legal relations may then be described metaphorically or inadequately. Thus the statement that "husband and wife are one" may lead us into obvious errors. When the judge acts under the guise of a fiction he does so in order that it may not be discovered what he is really doing.

The author examines the different ways in which fictions may be categorized. Pound's distinction between general and special fictions and Ihering's term "dogmatic" fiction are analysed. The traditional distinction between "historic" and "dogmatic" fictions is discarded because of its lack of precision. Professor Fuller substitutes the distinction between "live" and "dead" fictions. He points out that the term "fiction" ought sometimes to be applied to legal constructions (and not only to matters of pure fact). This inevitably brings him into complicated questions of the difference between matters of law and matters of fact.

A legal fiction may be used as a persuasive device. If it is recognized when it performs such a function the fiction will not distort conclusions. Professor Fuller states: "In truth we may say, a fiction is dead when the majority of persons have learned to make the necessary correction intuitively".[2] The author sets out Vaihinger's view[3] that human thought must always proceed by analogy and shows how this is illustrated by man's dependence upon fictions. But this reasoning by analogy may lead one into errors. One need not be misled by the use of a fiction, but Professor Fuller concludes that in practice we usually are so misled. He gives examples and concludes with the prophetic statement, "a metaphorical element taints all our concepts".[4] This last factual statement surely overstates the case and contradicts the author's previous fair statement.

The author makes a comparison (based on that of J. C. Gray[5]) between the part played by the fiction in Roman law and that played by the fiction in the developing English law at an early stage.

[1] 4th ed., 1920. [2] P. 118. [3] *Supra*, footnote 1. [4] P. 115.
[5] The Nature and Sources of Law (2nd ed., 1921).

He then warns the reader not to regard fictions as a thing of the past.[6] The reader may think modern fictions are different in the sense that they do not obscure the truth to quite the same degree as the early fictions did. However, a slight distortion or a small untruth is more dangerous than an obvious departure from the facts. The value of Professor Fuller's book is that it assists us in discovering these modern deviations from the truth. One might be excused for wishing that the price were fictitious.

JEREMY S. WILLIAMS*

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The Sociology of Law. Edited by RITA JAMES SIMON. San Francisco: Chandler Publishing Company. 1968. Pp. xi, 704. ($8.50 U.S. clothbound)

There is something irresistible in the title of this book. While it occupied a place on the reviewer's desk, not one colleague entered my office without picking up the book and thumbing through it. Had they had time to read as well as thumb, their time would have been well spent.

Perhaps the irresistibility of the title stems from the fascination of the topic. What does the law really do? It is one of the fundamental elements in the system of social control and yet its operation in society has received very little scrutiny. "It ought to be someone's duty to advise the people of the progress of juridical science and to make its results public property",[1] said Roscoe Pound in 1907. Lawyers and sociologists took up the challenge and began to probe the operation of the law in society. This book is, in a sense, a report on their progress.

There are two parts in the book. In the first part, we have a taste of the pioneering efforts in the sociology of law—the new groping jurisprudence and the preliminary empirical surveys. Here are Pound, Holmes and Llewellyn of the legal world, and Weber, Timasheff and Angell from the fields of social science. Theirs is the call to action. Little was said of method. Only the need was stressed. It was time that we find out just how effectively the law was operating as a means of social organization. This had to be done in some scientific fashion. And so we had the first responses, of which Mrs. Simon gives us four. Perhaps the most interesting of these early empirical attemps is that of Messrs. Weld

[6] P. 93.

*Jeremy S. Williams, of the Faculty of Law, University of Alberta, Edmonton.

[1] P. 9. Reprinted from The Need of a Sociological Jurisprudence (1907), 19 The Green Bag 607.

and Danzig in "A Study of the Way in Which a Verdict Is Reached by a Jury".[2]

In the second part of the book, we are given some contemporary material. Again there is a section on the jurisprudence and a section on empirical research. By now, we have begun to tackle more specific problems of method and particular legal fields. In Mr. Philip Selznick's terms, which Mrs. Simon adopts, we are in stage two of the Sociology of Law.[3] In stage one, writers were concerned to develop an approach to law as a social science. Now in this second stage, jurisprudential thinkers and researchers are beginning to develop specific sociological techniques for studying the operation of the law. They are applying these techniques to selected areas of the law—the legal profession, the jury system, the courts, the effect of public opinion and mass media on the operation of the legal system, and so on. We have yet to move on to stage three, when scholars will apply the sociological techniques practiced on particular areas of the law in stage two to the broad questions posed at the very beginning—the legality of justice and the very function of Law.

The empirical research of this second stage is exciting indeed. Mrs. Simon gives us much, far too much to mention it all here. Perhaps the prospective reader's appetite can be whetted with an allusion to several of the pieces: "Pleading Guilty for Considerations: A Study of Bargain Justice" by Mr. Newman,[4] "Professional Ethics Among Criminal Lawyers" by Mr. Wood,[5] and "The Effects of Newspapers on the Verdicts of Potential Jurors" by Mrs. Simon.[6]

There is great need for an assessment of the operation of the law in society. Self-understanding cannot but help the law to do its job properly. We have only scratched the surface and this book is a progress report. If it serves to stimulate further research, it serves well.

J. W. SAMUELS*

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Challenge to the Court—Social Scientists and the Defence of Segregation, 1954-1966. By I. A. NEWBY. Baton Rouge:

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[2] P. 83. Reprinted from (1940), 53 Am. J. of Psychology 518.

[3] Selznick, The Sociology of Law, which is Ch. 4, p. 115 of Sociology Today (1959). Reprinted in the present book, p. 190.

[4] P. 392. Reprinted from (1956), 46 J. of Crim. L., Crim. and Pol. Sc. 780.

[5] P. 553. Reprinted from (1959), 7 Soc. Prob. 70.

[6] P. 617. Published as Murder, Juries, and the Press (1966), 3 Transaction 40.

*J. W. Samuels, of the Faculty of Law, University of Alberta, Edmonton.

Louisianna State University Press. 1967. Pp. xii, 239. ($6.50 U.S.)

It is idiomatic for students of the United State Supreme Court to state that the court is no ordinary tribunal, but is in fact a political institution. This view gains credence from an observation of the profound impact the power of judicial review has had upon the American political system. The high court has been considered a political body because its construction of the Constitution has often been synonymous with judicial legislation. No legislative body, of course, operates independently of the beguilements of lobby-like groups, and in a general sense this is particularly true of the Supreme Court. The ultimate achievement then of Mr. Newby's book is the unmasking of a very special judicial lobby—racist orientated social scientists—whose main goal is to preserve segregation, and who have therefore engaged in research designed to refute the court's anti-segregationist ruling in the historic case of *Brown* v. *Board of Education of Topeka*[1] decided in 1954.

When the Supreme Court rendered this decision which invalidated public school segregation, it relied conspicuously upon the testimony and writings of environmentalist social scientists, to substantiate its finding that "separate-but-equal" school facilities were in fact inherently unequal and therefore in violation of the equal protection clause of the Fourteenth Amendment. Mr. Newby's first three chapters deal with the social science testimony presented in the cases which were appealed and later heard in consolidation as the *Brown* case. An underlying irony which this book documents, of special interest to those concerned with the relationship of social science to law, is the bitter criticism segregationists heaped upon the judicial use of social science. For example, the former Associate Justice James F. Byrnes charged:[2]

> Loyal Americans of the North, East, South and West should be outraged that the Supreme Court would reverse the law of the land upon no authority other than some books written by a group of psychologists about whose qualifications we know little and about whose loyalty to the United States there is great doubt.

The opponents of the *Brown* decision claimed that the court blatantly substituted dubious sociological hypotheses for legal precedents. But the initial resistance of segregationists to the judicial use of social science soon melted, and they themselves decided to borrow from the National Association for the Advancement of the Coloured People the tactic of presenting social science evidence. The remainder of Mr. Newby's book is concerned with the

[1] (1954), 347 U.S. 483.

[2] James F. Byrnes, The Supreme Court Must Be Curbed (1956), 40 United States News and World Report 50, at p. 54.

work of social scientists who are preparing racist hypotheses for segregationists in their rear guard legal defence of the Southern way of life.

The recent deluge of behavioural studies of the Supreme Court has partially obscured the fact that jurisprudence is more than the behaviour of judges, but has been and remains a rational art. This is not to contend that the study of judicial behaviour is an irrelevant aspect of jurisprudence, but that the behaviour of some social scientists as Mr. Newby demonstrates may be of equal interest to those concerned with the general problem of the judicial use of the social sciences. To be sure, Mr. Newby is not overly concerned with the behaviour of racist social scientists, although he has biographically introduced each one. Instead this book is a general critique of the mental gymnastics racist social scientists have performed in order to confound their environmentalists colleagues.

That the author should conclude that scientific racism is scientifically untenable is not surprising, especially in view of the fact that the egalitarian social science employed by the Supreme Court in 1954 is also scientifically unconvincing. Of interest to the competing factions who would like to add or substract "science" from social science and jurisprudence, is Mr. Newby's finding that the subsequent research of both racist and egalitarian social scientists has only served to scientifically confirm their prior personal predilections in the area of race relations. This is why the author emphasizes in his preface that "A philosophy of race relations based exclusively upon science is clearly inadequate".[3]

Science, however, cannot be ignored by anyone interested in law as an abstract set of principles or in law as a latent effect of the legal process. Since the Supreme Court has accepted social science as being legally germane in the segregation suit, racists, as Mr. Newby ably demonstrates, have endeavoured to employ social service in order to gain a reversal. The expectation that the court might be prevailed upon to accept a bio-genetic justification of segregation is unwarranted, not because as this work shows, that the scientific foundation of racism is unsound; but for the more fundamental reason that the *Brown* case is not as closely wedded to social science as it has been supposed. A divorce of social science from constitutional law will still leave intact the marriage of the principles of law and equality. That racist social science is an unprincipled suitor, is Mr. Newby's inescapable conclusion.

PAUL L. ROSEN*

[3] P. xi.

*Paul L. Rosen, of the Department of Political Science, Carleton University, Ottawa.