BOOK REVIEWS
REVUE DES LIVRES

Channeling Technology Through Law. By LAURENCE H. TRIBE. Chicago: The Bracton Press, Ltd. 1973. Pp. 644. (No price given)

Extremists tell us our legal system is tottering on the precipice of a purge of historic proportions as traditional theories of the marketplace, of legislative oversight, of judicial law-making and even trendy revisionist polemics of jurisprudence are being snapped out of their conventional sockets by the forces of technology. The theory of the law's delay, once serenely inflated as an architectonic of justice, has erupted in the face of lawyers leaving festering wounds in the legal system, raw and susceptible to potent new antidotes. Yet, most palliatives that have been prescribed have neither quarantined nor arrested inherent weaknesses. Rather, this condition is often aggravated by well-intentioned but counterproductive treatment. Unhappily, causes for this disintegrating process, accelerated by the electronic swiftness of technology, are little understood, rarely perceived and, perhaps due more to the complexity of the semantics, only vaguely debated. Some say lawyers should specialize as if specialization would breed clarity of thought. Others flatly opt for heavier doses of public administration. Obviously a clear diagnosis of this malady has become critical.

Legalists frantically react to this troublesome, amorphous state of affairs with a plethora of remedies within a backdrop of dissolving institutions, disorienting tactics and "crazy state" mentality. Read recent Bar Association Convention agendas as guides to the perplexed! Legal structures, infected by sudden world-wide viruses carrying bizarre symptoms, continue to shift for more stable foundations upon which to erect anew predictable models of law and workable legal sanctions. Lawyers, in the words of Sartre, are "in search of a method".

This nervous exploration for a tuned-up legal system gropes about for new and different legal techniques to encompass and ultimately absorb these convulsive changes in our society. Stress has infiltrated each joint and fibre of our system. Recognition

of the pervasive impact of technology has uncovered cracks and fissures in the skeleton of our economic—political—legal decision-making. The veins of this surrealist condition are flooded by technology which leaves a destructive course over our institutions, mindless of its consequences. The heedless, mindless effects *per se* have become more devastating than the benefits wrought by the promoters and guardians of "laissez-faire" technology.

Paradoxically, the legal scramble for fresh legal containers—new benchmarks for our vibrating, swirling society—has seemingly failed to pierce the crust covering geriatric principles deeply embedded in our legal infrastructure. We know that our society will not reduce the speed of technological change, save for catastrophic causes. A stable state demands a no-growth mentality. We know that the ethics and psychology of "go-go" technological growth are now so ingrained in ourselves and our value system that only a concerted effort that treats these normative elements will bear any worthwhile results. Clearly, the need for lawyers to participate in a wide ranging "technological assessment" armed with a coherent legal—economic strategy has become a priority for the survival of our western civilization.

Laurence Tribe, a gifted Professor of Law at Harvard University, has been painstakingly surveying new directions toward the development of a new legal infrastructure that digs below the skin and exposes some of the roots of technology. In this cogently assembled casebook of text and materials on technology and "technological assessment", Tribe has enclosed this new expanding field of study which covers so many disciplines, allowing closer legal inspection. "Naderists" have grasped for reforms that attempt to make our existing system work better. Now Tribe has asked us to move beyond Nader. By compiling under one umbrella closely audited material, all concerned with the impact of technology against the decision-making structure, he has facilitated with surprising legal precision, the task of curious and concerned law students, lawyers, judges and hopefully legislators. The imperative to analyze the awesome consequences of technology on our way of life has been made easier by Tribe's medicine all well labelled and in digestible form.

If one of the lawyers' functions in society is to stitch, then restructure, in a non-violent fashion, rips and tears in our social—legal fabric, Professor Tribe has done the legal profession a great service. In this seminal work, *Channeling Technology Through Law*, Tribe quickly assays the major problem of legal remedial action which starts to work, if at all, too late in the technological decision-making process. Traditional legal remedies have had, as Tribe confirms, minimal or superficial consequences on shaping

the effects—the unforeseen effects—of technology. He points out the need for much earlier legal intervention in this decision-making process for three reasons. First, technology tends to develop a "momentum of its own" becoming surrounded by a "protective and ever thickening layer of vested interests, making early intervention crucial". Secondly, certain technologies, for instance, "in the biomedical sphere threaten to reduce the meaning of man . . . long before . . . widespread use has been reached". Thirdly, he points to a growing acceptance of man's inability to "assert intelligent social control" over "technological development". Consequently, there is a tendency to overreact in a "desperate and unreasoned" fashion "against all scientific inquiry and all technological innovation". Systematically and clearly, Tribe has made a contribution of the first order to legal theory by putting walls around the concept of "technological assessment" so that it can be isolated for more acute political—legal analyses. Only by a broad conceptual approach can decision-makers hope to come to grips with what is undoubtedly one of the dominant problems of the last quarter of the twentieth century. Since so many powerful forces are at work on the technological process, the process itself is difficult to chart. Yet common factors do re-occur giving lawyers an opportunity to prescribe cures that can revitalize the body politic.

Arranging his materials so they easily speak for themselves, Tribe commences by delineating a "conceptual framework" for technological assessment. He then moves to develop methods of analogies to "translate the general conceptual notions" into "specific legal strategies". To illustrate, he chooses four intriguing areas of technology—supersonic transport, biomedical technology and asexual reproduction, electronic monitoring and neurological manipulation and, finally computerized information systems. By an up-dated use of the "case method" he scrutinizes, with these definitive examples, the finely inter-related philosophic, economic, social, legal and jurisdictional considerations. He posits the underlying need for intervention by the public sector in fields heretofore considered the almost exclusive preserve of the "private domain". As Tribe points out, this provides only a jump-off point for debate on the infinite variety of the viable legal steps which, of necessity, must be married to regulatory and institutional changes made by government. Throughout, the author suggests the importance of changes in the legal process, which are as vital as any institutional or legislative changes. Various threads of his analysis are then knitted together by scrutinizing the conclusions of the National Academy of Sciences in the United States which recommended a

systematic approach to technological decision-making including sweeping legislative recommendations.

Professor Tribe declares, at the outset, that this book "is obviously something of an experiment". The fascinating spectrum of materials he draws on ranges from judicial opinions to excerpts from legal and other periodicals, to texts and government reports. He has chosen to slash across traditional sectors of the law from torts to contracts to property law by his presentation and treatment of these materials. Thus, he stimulates legally trained minds to explore, from different points of departure, fresh perceptions of the complex task of harnessing and channelling technology in an acceptable framework of legal and social sanctions. Tribe molds questions that reveal the elusive nature and delicate nuances of "technological assessment". He declares that any system of technological assessment cannot be monolithic or "unitary in approach". In short, he supplies no easy romantic answers for reform. Instead he stresses the importance of improving the "pluralistic or fragmented process" at each place where the process touches the existing pattern of technological development. He stimulates us to think of the many small but vital renovations in our decision-making process, that in the aggregate, would transform our entire approach to implement desirable social goals and political policies. The logical conclusion of these new directions augurs for a radical departure in the very way we conceive of our policy-making process.

Part I and Part II of this book should be required reading for all lawyers. In Chapter V of Part II, called "The Role of the Law: An Overview"[1] the author confronts a basic difficulty all lawyers have in analyzing the impact of technology: the absence of, as he puts it, "the neat one-to-one correspondence between acts and consequences which . . . make[s] it impossible for us to . . . attach [sanctions] to . . . restrain demonstrable, undesirable consequences". Parameters must be established for research monitoring with the law operating "not merely to impose precise constraints but to elicit a rich pattern of affirmative responses".

In an unique analysis for measuring proposed legal administrative and legislative reforms through the use of carefully crafted models to which I referred in my recent article,[2] Tribe allows us to accurately test the practicality of our own ideas and then reshape different legal techniques. He shows the validity of this ap-

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[1] This part originally appeared as an article by L. Tribe in (1971), 9 Minerva 243 called Legal Frameworks for the Assessment and Control of Technology.

[2] Law and Technology. A Technological Bill of Rights (1973), 51 Can. Bar Rev. 221, at p. 231.

proach as he filters hypothetical reforms through three "models of legal control". These models he titles:

(1) Issuing specific directives
(2) Modifying market incentives
(3) Changing decision-making structures

After succinct definitions of these models, Tribe shows how the legal process can be mobilized within the technological process itself to shape the "decision-making environment" by divining principles which tend to characterize technology. He goes on to suggest measurements, the comparative effectiveness of the various legal options and the utility of different standards available. With refreshing and almost mathematical precision, he compares his legal models where the social objective is, and is not, "optimal resource allocation". He raises tantalizing questions for comparative analysis. Premising the problem of pollution, he deploys his three legal models. Is it possible to frame "legal directives" without a careful inventory of facts and information which is available only to the object of such directives? Is it better to utilize his second model by establishing rights and allowing compensation for damages to such rights? Is it preferable to force beneficiaries of any new technological process to enter into legal arrangements with those affected by the application of this technology by prior compensation? He then tests these assumptions against his third model which requires amending the nature of the decision-making structure. To illustrate further, he suggests the idea of causing a stream polluter to merge with a downstream user thereby, "internalizing automatically a number of formerly external costs". Another example he explores by this technique is the recent campaign calling for public interest representatives and special committees to report to shareholders of major corporations such as General Motors management on public interest questions such as safety, pollution, social welfare. This tightly argued chapter is a veritable gold-mine of provocative perceptions and unique insights for a lawyer concerned with the reformation of our decision-making process to soften the onslaught of technology.

By dissecting the nature of legal functions in the technological process and measuring the relative strengths and weaknesses by these three major models for controlling rather than inhibiting technology, Tribe brings to light the infinite variations, options as well as the inherent limitations in our legal methodology and our legal goals. His own methodology enables us to select and measure different legal sanctions. While we may wish to modify or adapt these models for our purposes, his approach bears the essence of originality and thus takes on major legal significance.

In Part III, the author turns to the supersonic transport affair as a precedent for measuring the interplay of legal control techniques when powerful social and political interests are at work. From this "case", invaluable insights are gained into the dynamics of business and international competition. In Canada, where technological research is very heavily government subsidised, this discussion has particular relevance. Canadian policy makers now involved in developing a new scientific—technological study should consider carefully lessons to be learned here.

Professor Tribe pinpoints the nature and value of information, experts and expertise in the settlement of technological disputes. The monopoly of information, carefully guarded by high technology firms, is examined by reference to a judicial decision whereby citizens sought relief to restrain the activities of such firms under the Freedom of Information Act.[3] Any intervention in the technological process requires access to this information monopoly. This case touches the nerve endings between the technological monopolist and the "public interest" intervenor who is compelled to challenge such closely held technological information in order to make a useful assessment of any secondary or tertiary consequences.

The issue of onus and the burden of proof becomes of crucial importance in this sort of adversarial area. This, of course, begs questions directly related to the adversarial process in the resolution of technological disputes.

Tort lawyers will be interested in the questions raised about the nature of damages relating to sonic boom which would emanate from a supersonic aircraft. Tribe concludes this part by dealing with the idea of compensation by "internalizing the cost of the negative consequences" of supersonic technology. Again and again, we are confronted by the complex questions that lawyers must expose to make even a superficial analysis of alternate compensatory proposals.

In Part IV called "Biomedical Technology and Asexual Reproduction", the author shifts gears from common or collective to individual rights. He directs our attention to "a family of emerging technologies that operate directly on man himself . . . . These technologies have been selected . . . because they furnish a particularly useful setting for the exploration of several of the deepest and most abiding issues of law and morality". Permissible boundaries for state intervention in deeply valued religious concepts are probed. "Cloning", the process of reproducing similar species by asexual means, opens new political vistas for dialogue about our thesis of "freedom". Does "scientific freedom" include

[3] 5 U.S.C. 552(a) (3) (Supp. V, 1970).

the unlimited pursuit of genetic engineering for and by human beings? Tribe's materials convoke a different dimension in this emotion-ridden discussion. Here, he experiments with another model to map new legal parameters. The creative tension between the freedom to explore uncharted scientific frontiers collides with theological assumptions of complete non-interference in procreative acts. This part of his book opens to a much wider audience questions that have been the preserve of theologians, scientists and science fiction writers.

As the materials debate for us the issue of who has the proper status to represent the interest of an unborn child and weigh the rights of the various players—from the medical institutions—to the state—to the parents, the reader is jolted by the reality that we are now, today, confronted by issues of 1984, only a decade away.

In Part V entitled, "Electronic Monitoring and Neurological Manipulation", Professor Tribe unfolds materials which question the right of the state to intervene by the use of technology where "consent" is not at issue. Does the government have a right to mobilize this technology to amend the physical and mental make-up of a criminal for "therapeutic" purposes? What is the nature of "consent" even if granted? Does the state have a right to monitor individual privacy of a prison inmate? What are society's options, utilizing different technological techniques with respect to criminals? Tribe's materials, followed by incisive questions, probes the traditional limits of acceptable intervention of biomedical technology within the confines of our historic and unadulterated concepts of individual liberty.

In Part VI, the author turns to the question of computer technology and the extension of the concept of the computer as a utility. What is meant by an information utility is considered. What is a balanced relationship between man to this machine? To what useful new and innovative roles in politics and economics can computer technology be extended? Is it possible to develop a new cluster of rights that would allow us to extend the benefits of computer technology without infringing on personal liberties? What guidelines are possible to permit increased computer power to be switched on with no spill-over effects on individual freedom?

In Part VII, Professor Tribe concludes by examining the steps government must consider if we are to develop a viable concept for "technological assessment". Guidelines for new structures within the government, both in the executive and legislative branches, are considered. The final chapter deals with a critique of the Technology Assessment Act of 1972.[4] While this last part is

[4] Public Law 92-484, 92nd Congress, H.R. 10243, October 13th, 1972.

based primarily on American experience and the different governmental relationships between the executive and the legislative branches, much of the discussion can be easily shaped to the contours of the Canadian experience.

Many law schools have developed new courses touching various facets of the technological process. *Channeling Technology Through Law* would provide a useful basic text for courses in law schools on "technological assessment". The intrinsic value of Professor Tribe's book is that he has chosen to collect important issues for scrutiny by one of the most important groups of decision-makers in our society—the lawyers! The legal profession's disinterest in technology may stem from the fact that many lawyers chose the practice of law as a refuge from mathematical quandaries of the pure sciences or from a distaste for "hands on" careers, such as engineering. The flood of technology has washed away any lingering psychological reluctance that lawyers may still retain. When one is able to cut through this lawyer's psychosis which shuns technology, we will be surprised to find we are dealing with the lawyer's main business after all—power relationships in our pluralistic society. If, by tradition, lawyers have always fought to balance and restrain runaway power in our society, Professor Tribe provides us with easy first steps in self-education. We anxiously await his next guidebook.

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Community Law Through the Cases. By NEIL ELLES. London: Stevens and Sons. Toronto: The Carswell Company Ltd. 1973. Pp. xxviii, 411. ($18.50)

Despite the election of a Labour Government in Britain and the possibility of an alteration in the relations between the United Kingdom and the European Community, including perhaps British withdrawal, problems concerning the legal situation within the Community will continue to be of interest to the international and the commercial lawyer. Moreover, they may well serve as a model for similar arrangements elsewhere, while the non-Community trader and his legal adviser may find it useful to be warned of any legal pitfalls that may be encountered concerning the freedom of action of any producer within the Community with whom he wishes to trade.

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Before Britain's accession to the Community, the judgments of the European Court were not—despite the *Common Market Law Reports*—available in any official English text, while it is probable that most practitioners would have found that series of *Reports* somewhat too expensive for the occasional recourse that they might have to them. Moreover, the court has delivered a very large number of judgments on a variety of issues, many of them highly technical relating to the interpretation not only of articles of the Community Treaty, but also of regulations of the Community's Council.

Mr. Elles of the Inner Temple is to be congratulated, therefore, on making available his collection devoted to *Community Law Through the Cases,* in which he collates the mass of decisions under functional headings, such as free movement of goods and the elimination of customs duties, tax provisions, approximation of laws, contractual liabilities of the Community, property ownership, jurisdiction of the court, pricing policy of the Steel Community, and the like. In this way, it is possible for the interested lawyer (practitioner, academic or student) to find his way with comparative ease through the wilderness of the court's *jurisprudence.* In some instances, the note provided is fairly detailed. In addition to indicating which articles or regulations were involved, a short statement of the background of the case, a note of the points decided, together with a summary of the judgment and reasoning are provided. This is the case with, for example, *Bosch* v. *de Geus* (1962)[1] which turned on the meaning of the word "void" in the transition period before article 85, concerning the invalidity of a variety of agreements by undertakings, became fully effective. A large number of subsequent cases were decided on the basis of this judgment, but one might question whether it is very enlightening or helpful to read, for instance, *Grundig Nederland N.V.* v. *Ammerlam* "Article 85 EEC Treaty, Articles 88 and 89 EEC Treaty: *Point decided*—The Court held that where a restrictive agreement was entered into after the EEC Treaty came into force, but prior to the coming into force of Regulation 17, it was not void under Article 85 (1) of the Treaty, unless action has been taken by the Commission under Articles 88 and 89 of the Treaty. The Court purported to follow the decision in *Bosch* v. *de Geus.*"[2] In this particular instance, no attempt is made to indicate what the background of the issue was so that it is impossible to ascertain why the matter ever went to court.

Other cases are reported even more shortly. Thus, in the

[1] P. 134.
[2] P. 141.

same section of the volume we are informed that in *Sierverding and Futura Electronica* v. *Hemes* "it was held that any notification to the Commission of sole agency agreements subsequent to the date of the writ originating the action, should be disregarded by the Court".[3] While this type of reporting may not appeal to the normal practitioner and may even make the student wonder as to the basis on which the European Court reached its judgment, the compilation as such is of inestimable importance since it brings so many judgments together in a form that enables the reader to see how and to some extent why the Treaty has been interpreted as it has. As such, it constitutes a useful working tool and a compendium that practitioners and businessmen, anticipating that they might involve themselves in the European legal system, should consult in advance.

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La nouvelle profession d'avocat. By EMMANUEL BLANC. Paris: Librairie du Journal des Notaires et des Avocats. 1972. Pp. 463. (No price given)

Until 1971, the legal profession in France was comprised of several classes of lawyers whose functions were complementary and in many cases overlapped. The *avocats* did to a large extent the work of the barrister and solicitor in England, but were limited to representation of the client in court. The *avoués* prepared the procedural documents, in fact doing part of the English solicitor's work. They also had the exclusive right to prepare and lodge pleadings. *Notaires* had, and still do have as they are unaffected by the reform, the monopoly of preparing wills, property deeds, mortgages, leases and formal company documents. Most of the everyday legal work went to the *conseils juridiques,* who were not required to have a formal legal training or qualifications, and yet did most of the advising and administration done by solicitors in England. In some of the special commercial courts *agréés* pleaded, and in the *Cour de cassation* and *Conseil d'Etat,* France's high courts, certain *avocats* had an exclusive right of audience.

The law of December 31st, 1971,[1] *"portant réforme de certaines professions judiciaires et juridiques"* brought about a fundamental reform. It is, to quote the author of the present com-

[3] P. 142.

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[1] Loi nº 71-1130, du 31 décembre 1971, 5 janvier 1972, Journal Officiel de la République Française, p. 131, and Gazette du Palais (1971), (2e sem.), p. 236.

mentary, "*la plus extraordinaire équipée législative de ces dernières années*". This law and subsequent decrees have provoked much discussion among the many professional people upon whom it is to have a great effect, as well as the millions of citizens and potential users of the law in France.

In the parliamentary debate on the French legal profession, the primary intention was to bring the *conseils juridiques* into the re-organization. However, it was realized that this was impossible as there was no exact estimate of how many were practising in France (figures ranged from five thousand to fifteen thousand). Secondly, since there was no necessity for them to have a formal legal training, the diversity in educational standards was too difficult to rationalize. There was also the question of respect for acquired rights.

On this basis, the law of December 31st, 1971, which came into effect on September 16th, 1972, was not a major reform covering all aspects of the profession, but rather a mini-reform creating and defining the new profession of *avocat*.[2] The title of *avocat* is conferred on all who practice in the fused profession. This new profession is the result of the unification of *avocats, avoués,* and *agréés* in their practice before the lower and civil courts. Thus, their separate functions have been abolished. Dr. Blanc says that, "*Il s'agit donc d'une création et non d'une adaptation*".[3] This is undoubtedly correct as it is not the *avocat* of the old system who is absorbing the two other professions, neither is it the other two who are disappearing to the profit of the *avocat*. Rather it is the three professions who are being replaced by one which has been given the title of *avocat*. The *avocat* is now the only lawyer in the lower courts. *Avoués* attached to the appeal courts continue without being fused. The *avoués* brought into the profession have lost their "*charge*" and are to be indemnified by a levy collected by litigants, compensation from which is to be distributed by a fund set up for the purpose. Since unification, the rules of entrance into the profession have been assimilated. A candidate for advocacy must have a *licence* or *doctorat en droit*. He must have *a certificat d'aptitude à la profession d'avocat*[4] and enter into a *stage* for a minimum period of three years and maximum of five years.[5]

Dr. Blanc has collected and analysed firstly, the basic law, and secondly, the subsequent decrees affecting the new profession of *avocat*. He has, however, deliberately omitted to discuss the

[2] P. 13.
[3] P. 27.
[4] *Supra*, footnote 1, art. 12.
[5] P. 185.

new role of the *conseil juridique* in the reformed system, and has thus not included title II of the December law entitled, *"Réglementation de l'usage du titre de conseil juridique"*[6] on the ground that it merits a separate study. This means that one of the main reasons for the reform is unexplained except for what is found in the book's historical introduction. The re-organization of the profession of the *conseils juridiques* is as the author admits, more spectacular that the reformation of the *avocats, avoués,* and *agréés.* The reasons for the enactment of the law were stated in the *avant-projet* as "profound, economic, social and legal changes".[7] Regulations were set out for the *conseils juridiques* in order to protect the layman from unqualified legal assistance,[8] as well as ending competition with the new *avocat.* Thus, it can be said that the law of 1971, broadly reformed the legal profession, resulting in the restructuring of the profession of *avocat,* and the regulation of the profession of the *conseil juridique* in France.

The new law contains provisions which apply to foreign lawyers currently practising or proposing to practise in France after the 15th of September 1972.[9] In this context, the author fails to deal with the whole question of the changed status of the foreign lawyer, which is of the utmost importance to practitioners in other countries. For this reason, it will be useful to briefly look at the position of the foreign lawyer in France.

The general rule is contained in article 55 of the new law which states that foreign lawyers may only practise in France if they deal primarily with foreign and international law, and if they are registered on the list of *conseils juridiques.* Article 54 provides the general conditions for practice as a *conseil juridique.* Persons other than those in regulated professions (for example, *avocats*) who give professional advice, may no longer use the title *conseil juridique,* unless they are registered on the roll of the *Procureur de la République,* and have satisfied certain requirements: the person must hold a doctorate or *licence,* or other certificates and diplomas generally recognized as the equivalent for exercising the type of legal function under consideration; he must practise as a full time professional, and must have the good moral character and fitness required of *avocats.* However, the general rules found in article 55 do not apply to nationals of Common Market countries or of another country which grants French nationals the right to act as legal advisors in such other

[6] *Supra,* footnote 1, arts 54-66.
[7] Recueil Dalloz Sirey 1971, 18ème cahier-supplément.
[8] *Ibid.,* Titre III, at v-vi.
[9] *Supra,* footnote 1, art. 55. See also décret 72-670 du 13 juillet 1972, Gazette du Palais (2e sem.), art. 102(1): Dispositions particulières aux conseils juridiques et groupements de conseils juridiques étrangers.

country, in such areas as the individuals desire to carry out in France; nor to foreign lawyers of any nationality if they have already practised in France prior to July 1971.[10] There is also exemption from the conditions of article 55, for foreign partnerships of any nationality practising in France prior to July 1st, 1971 if they act only as legal advisors, and if all partners practising in France are registered on the list and have power to represent the partnership.[11]

However, there is the important proviso that if the states of which the foreign members of the partnership are nationals have not, within five years from the date of publication of this Act[12] granted reciprocity to French lawyers then the individuals and their firms will be subject to the restrictions mentioned above by a decree of the *Conseil des Ministres*—that is restricted principally to foreign and international law.[13] A firm cannot register in a name other than under which it practised in France on September 1972, and then only on condition that it was practising in France prior to the 1st of July 1971. However, it is possible for such a firm to register as a *société civile professionelle,* which is a company with a separate legal entity under French law, having a share capital divided into "parts" but with unlimited liability of its members.

The firm must bear the name of one or more than one of its members, registered as *conseils juridiques.* Partners of the firm resident outside of France would not be able to be members of the *société civile professionnelle* because, as non-residents they could not register as *conseils juridiques.* Such a firm wishing to register must supply documentary proof of its activities in France prior to July 1973, for example the notice of assessment for the *patente* (business) tax;[14] a copy of the partnership agreement and of a certificate issued by the relevant foreign consulate showing the members and the objects of the partnership;[15] proof that each of the partners has the right to make contracts on behalf of the firm and otherwise act on its behalf;[16] a certificate from an insurance company to the effect that members are covered by a professional liability insurance policy of at least 500,000 francs; a certificate from a bank, insurance company or similar institution in France, confirming the guarantee that any misappropriation of money,

[10] *Supra,* footnote 1, art. 64.
[11] *Ibid.*
[12] Before January 1977.
[13] Wayne M. White, The Reform of the French Legal Profession: A Comment on the Changed Status of Foreign Lawyers (1972), III Col. J. of Trans. L. 435.
[14] *Supra,* footnote 9, Section III du décret 72-670, art. 102(1).
[15] *Ibid.,* art. 102(2).
[16] *Ibid.,* art. 102(3), (4), (5).

negotiable instruments, securities and other valuables held on behalf of the clients will be made good. The liability of the guarantor shall have a ceiling which should be at least equal to the maximum amount of monies held by the firm at any time during the previous twelve months. This particular certificate can be supplied within a period of three months from the date of application to register on the list.[17] Also a complete list of the partners of the firm indicating their full names, addresses and positions in the firm and the share of profits of partners practising in France,[18] and an application for registration on the list by each of the partners of the firm practising in France are required.[19]

Each individual application must include the following: proof of date and place of birth, names of parents and nationality;[20] proof of the applicant's admission to practise law in his own country; documents evidencing paid active professional legal practice[21] for a period of at least three years in France without having been interrupted for more than three months (there is a proviso whereby up to one half of the three-year period may have been spent in legal practice outside France); indication that the insurance and guarantee of the firm will apply to and adequately cover the partner or employed lawyer;[22] a *curriculum vitae* in which is set forth all prior professional activities of the candidate indicating dates and places of the service of these activities and mentioning any penal, disciplinary, administrative or fiscal penalties to which the candidate was subject to.[23]

It is up to the *Procureur de la République* to verify that the individual applicant and the firm possess the requisite qualifications and to simultaneously notify both the applicant and firm of his decision. This decision will also state whether the firm is considered to be exempt from the limitations of article 55 of the 1971 law.[24]

Any lawyer who is not registered on the roll, may not use the title of *conseil juridique* or any other title that may be confused with it, but there is no objection to a foreign lawyer describing himself by his own national title, such as solicitor, barrister, or *Rechtsanwalt*.[25] No-one who is registered as a *conseil juridique* may be a partner of, or may be employed by someone who is not so registered.

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[17] R. Derek Wise, The Reform of the French Legal Profession, [1972] L. Gaz. 1173.
[18] *Supra*, footnote 9, art. 97(4), du décret 72-670.
[19] *Ibid.*, art. 22(1).
[20] *Ibid.*, art. 22(2).
[21] *Ibid.*, art. 22(3).
[22] *Ibid.*, art. 22(5).
[23] *Ibid.*, art. 22(6).
[24] *Ibid.*, art. 23.
[25] *Supra*, footnote 1, art. 54.

The *conseil juridique,* including a foreign lawyer who is registered on the list, is also governed by various miscellaneous provisions. He must keep all clients' monies in one separate bank account. He must give a receipt for all monies including fees, securities, valuables, received from or on behalf of a client. He must not deal with a case on a contingency basis. He must not be engaged in any occupation of a commercial nature.[26] "Commercial" is interpreted in a wide sense in French law and would probably cover certain occupations which may be considered as a profession in England. There is a tendency to consider as commercial anything which is not part of a "Liberal" profession. Article 48 of the main decree[27] specifically excludes a *conseil juridique* acting as an estate agent or insurance broker. He may continue as a director of a commercial company if he was already a director of that company prior to the 1st of July 1971. For all directorships, he must ask for an authorization from the *Procureur de la République* unless he has been practising as a *conseil juridique* for at least seven years. This period includes practice prior to registration on the list.[28]

The new law does not make it necessary for an English barrister or solicitor in France to register as a *conseil juridique,* irrespective of the United Kingdom joining the European Economic Community, as it is regarded as giving reciprocal rights to French lawyers.[29] However, it has been argued that non-registration might make a foreign lawyer liable to the French "value added tax" of twenty-three per cent on the greater part of his fees. Furthermore, it is doubtful whether a firm name can be used by foreign lawyers who do not register.[30]

The *conseils juridiques* must be registered on a roll kept by the *Procureur de la République,* who will exercise disciplinary powers over them. Title II of the law thus, ensures the honesty and competence of such persons. It regulates their out of court practice whereas before they were subject to no professional regulation.[31] Those who have practised for at least five years are admitted to the roll without legal training; those with three years practice qualify if they have a prescribed minimal degree. Those who have practised for less than three years require a *licence* or *doctorat en droit,* or an equivalent foreign diploma. Their activities are restricted to advising and drafting documents.

For the future, it is intended that a Commission be set up to

[26] *Ibid.,* art. 56.
[27] *Supra,* footnote 5.
[28] *Ibid.,* art. 49.
[29] *Supra,* footnote 1, art. 35.
[30] *Supra,* footnote 16.
[31] *Supra,* footnote 1, arts 54-57.

report to the Ministry of Justice prior to September 16th, 1977 as to the fusion of *avocats* and *conseils juridiques*. At least by that time the formal legal educational requirements of the *conseils juridiques* will be regulated.

In the second half of the book, Dr. Blanc deals with the decrees relative to the organization and administration of the bar, the admission to the *stage*, the constitution and function of the *sociétés civiles d'avocats* and other general regulations of concern to the *avocat* in the exercise of his profession.[32]

The profession of *avocat* should benefit the client by reason of promoting greater efficiency, in that the duplication of work with two types of lawyer will be eliminated. It is hoped that that procedure will be faster and that costs will decrease. The fusion should also ensure that responsibility is taken by the *avocat* for the case. This will remove the disadvantage of diffused responsibility, when litigation is shared.

La nouvelle profession d'avocat is a helpful guide to the new reform, as it collects into one volume the basic law and decrees. Dr. Blanc adequately explains the implications in his article by article analysis, and in the introduction to both parts of the book gives an ample historical background. The author realizes that the absence of any material on the subject of the *conseil juridique* is to leave a wide lacuna in his work, but it appears that a second volume on the *Statut du conseil juridique* is to be published in the near future. This will produce in two volumes a comprehensive guide to the post 1972 legal profession system in France, and should prove of interest to Canadian lawyers who seek to keep abreast of current trends in other jurisdictions.

SHARON A. WILLIAMS*

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Law and Politics in Outer Space: A Bibliography. By IRVIN L. WHITE. Tuscon: University of Arizona Press. 1972. Pp. vii, 176. ($6.95)

Selected and acquired over a period of six years with the support of both the University of Arizona and NASA, the materials presented in Professor White's work are arranged in a manner which follows more or less the way in which they were catalogued and classified at the University. Only those which represent the most significant works out of the staggering output of the legal and political literature pertinent to space flight are included.

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Prefaced by a bibliographical essay authored by Professor White and addressed to those unacquainted with the law and politics of outer space, the main body of the work is divided into nine chapters by types of materials: 1) Books and Monographs, 2) Bibliographies, 3) Theses, 4) Reports, Conferences and Yearbooks, 5) Associations and Institutes, 6) Articles, 7) United Nations Materials, 8) United States Government Documents, and 9) Multilateral Agreements on Space Activities.

By categorizing the materials into these types, each of which requires its own acquisition procedure and each of which demands individual attention, this bibliography undoubtedly simplifies considerably the work of an acquisition librarian. The book and article sections are said to be divided by English and foreign language entries. While the article section, with few exceptions, may appear to be so, the book section is rather a grouping of materials by the nationality of authors, or by the origin of publications.

Obviously, the most useful part of this work for students doing research in the field of space law is the article section which is divided into several major topics. Curiously enough, after scanning the topics selected, the subject headings chosen, and the articles indexed, any one, with even a minimum knowledge of the literature on space law, readily notices its incompleteness, its ambiguity, and its lack of accuracy.

Great care must be employed when dividing the subject matter of space law. While it is naturally impossible within the limited scope of the work to provide a complete subject coverage of space law literature, an effort nevertheless should be made to avoid partial presentation. No compact presentation or size-reducing of the tremendous quantity of space law materials through topical listing should be considered acceptable if it is not a miniature of the subject contents of the materials.

Having a certain basic knowledge of space law and also being reasonably aware of the current literature, one is supposedly familiar with the extent to which the subject matter of space law and politics have been developing. It is difficult to explain the omission on the part of the editors of the various other important subjects, such as, for example, the legal status of outer space, jurisdiction and control, the exploitation and use of natural resources, and the legal problems of direct broadcasting satellites. The so-called major topics chosen do not even comply with those given in Professor White's introductory essay. While one's personal interest in the various topics of space law may vary and the attribution of importance thereto may differ, the division of the subject matter of a discipline should more or less follow the subject

content of the materials available. Random selection of space law terminologies and arbitrary division of its subject matter are hardly acceptable.

The choice of subject headings requires both care and study. Apart from the synonymous problems normally involved in this task, the terms or words used must be precise and meaningful. Any headings which are easily subject to or susceptible to diversified understanding or interpretation are unsatisfactory. Headings chosen should at least cover if not match the subject matters of the subjects listed.

While, with little reservation, the majority of the subject headings used in the work may be acceptable, there are certainly those which, standing by themselves, lack completeness and precision. For example, the term "satellites" may be regarded as both a lay and a scientific term, but when used alone in the field of space law, its meaning is insignificant. It would be much clearer and meaningful if it were changed to "legal status of satellites or space objects". "Appropriation of celestial bodies" denotes only the national claims to sovereignty or sovereign rights on celestial bodies, including perhaps the modalities of appropriation. It cannot possibly include any discussion on the legal status of celestial bodies or the exploitation and use of celestial bodies and their natural resources, which have become increasingly important.

Judged both from the terminologies widely used in space law literature and from the viewpoint of the establishment of a more rational legal regime in outer space, the terms "legal controls and regulation" and "legal regime" are generally considered broad in scope and similar in content. To use them side by side in indexing of space law articles is quite debatable. One simply cannot imagine that under Professor White's editorship, space law articles could possibly be allowed to be indexed so literally by their titles, to say nothing of the fact that many items listed under one heading should very well be indexed under another. For example, Cohen's "Who makes the traffic law . . ." could be moved from "legal controls and regulation" to "satellites" after this is changed to "legal status of space objects" and Smirnoff's "Legal status of celestial bodies" could be moved from "legal regime" to "legal status of celestial bodies".

Moreover, to categorize space law and its materials by the heading "law" which is again divided into "international" and "general" is totally beyond this reviewer's understanding. Scanning through the articles listed produces equal shock and confusion. First of all, the term "law" of outer space is broad enough to encompass almost everything written in this field. In the second place, given the propriety of using "law" as a topic in indexing

space law materials, it is generally recognized that excepting the minimal amount of original national legislation on space matters and the insignificant amount of enabling laws of states incorporating treaty provisions in the field, the laws of space flight are typically international in nature and simply cannot be classified otherwise. Therefore, there are no reasonable grounds for dividing the "law" of outer space into "international" and "general".

The section on United Nations publications suffers a shortcoming in the fact that the tremendous amount of valuable materials relating to the development of space law and the promotion of international programmes in the practical application of space technology within the framework of United Nations is presented by not using the authoritatively established and widely cited document numbers. The omission of some of the most important mimeographed document series in this field, such as the General series, the Limited series, the Verbatim records, and even the Working papers, of the Committee on the Peaceful Uses of Outer Space and its Legal Sub-committee as well as its Scientific and Technical Subcommittee is also disappointing.

In view of the continuing proliferation of space law literature and its relatively broad subject coverage, that which is probably most needed to adequately satisfy the search for detailed and specific scientific and legal information is not the conventional method of listing materials either alphabetically or by topical categorization but a comprehensive and systematic subject indexing of the literature under an organic framework complemented by an alphabetical topical index. This index should be both inclusive enough to cover valuable and significant information and open-ended to cover future problems of a legal and political nature arising from the continuing progress of space activities.

As limited and defective as Professor White's bibliography may be, it still remains the most up-to-date bibliography available. Knowledgeable users hopefully can circumvent its defects and use it to its full limits. The editors of this work have made a contribution of considerable value to the acquisition of space law materials and especially to those planning to build a new collection on this subject.

KUO-LEE LI*

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La Documentation Juridique, Références et abréviations. By ERNEST CAPARROS and JEAN GOULET. Québec: Presses de l'Université Laval. 1973. Pp. x, 182. ($5.95)

During the latter half of the year 1970 and during all of 1971

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I had the good fortune to be an Assistant Professor of Law at Laval University in Quebec. Not only was this a very enjoyable experience, but it was also a very valuable one. It permitted me to recapture and relive the French-Canadian traditions which my grandparents left behind when they migrated to the United States during the latter half of the nineteenth century. It also enabled me to improve the French that I learned from my parents and grandparents as I grew up in a small New England town in the State of Maine. But much more important, it gave me the opportunity to study the law, the language and the legal traditions of a civil law jurisdiction. I did this from the point of view of one who knew only the legal terminology and the traditions of the common law as they exist in the United States and England. Had I had at my disposal *La documentation juridique,* written by M. Ernest Caparros and M. Jean Goulet, both Professors of law at Laval, my task would have been much easier. I could have avoided many of the pitfalls in which I frequently found myself as I expounded on the common law and its history and traditions in a French that must often have seemed somewhat "fractured" to the students who, each year, were adventurous enough to enroll in one course that I taught which was called *Introduction à la common law.* The same must have been true to those students who did their best to follow me in another course that I taught in which I gingerly traced my steps through what I considered to be *le droit comparé.*

La documentation juridique is more than just another manual of legal citation that can be found for almost any jurisdiction. It is a handbook that bridges the gaps which exist between the common law and the civil law. It explains clearly the proper methods of citation for both types of jurisdiction. Particularly helpful are the many examples that accompany the explanations and the comparisons of the methods of citation which exist in the various legal systems. If *La documentation juridique* were limited to that alone, it would still be a valuable tool for the lawyer as well as the legal scholar. But there is much more to it than that.

Particularly interesting are the discussions of rules of punctuation which appear in an introductory chapter.[1] At first glance, one would perhaps be tempted to dismiss this as elementary. But on further examination, it is soon discovered that these few pages contain valuable information which is too often taken for granted by many who know much less about punctuation that should be used in citations than they think they do. For instance, for as simple a thing as the period (.), there are different rules that

[1] Chapitre préliminaire: les notions essentielles, pp. 7-20.

apply to *la documentation anglo-saxonne* and *la documentation européenne continentale,* all of which are explained by the authors. Suggestions are made and rules explained for the use of the semi-colon, the comma, the parenthesis, the bracket, and *les guillemets* which are known to us as quotation marks. Far too many have paid too little attention to such matters which, on occasion, may seem of little consequence, but which can very often mean the difference between a brief, a publication, or a manuscript that is "sloppy" and one that is not.

Following this introductory chapter, the book is divided into two parts. Part one is devoted to Anglo-Saxon systems of documentation (*Instruments de documentation juridique de tradition anglo-saxonne*), part two to continental European systems (*Instruments de documentation juridique de tradition européenne continentale*). Both cover very much the same subjects: legislation, case law, and secondary sources such as legal periodicals, encyclopaedias, texts, treatises, and reference works. As one might well expect, the section on case law for the Anglo-Saxon system is much longer than that for the European systems because of the heavy reliance of the common law on case law as legal precedent. The differences between the two systems are explained, and in both parts of the book there are what appear to be complete lists of court reports, official and unofficial compilations, and legal periodicals, together with the manner in which they should be cited and can be abbreviated. The Anglo-Saxon part is complete for England and Canada. Unfortunately, the only thing said about the American system is to advise the reader to follow the general rule that it is better to give too much information than not enough, and to direct him to the major American works on methods of research and citation.[2] Perhaps this will be changed and more information given on the American system in a later edition of *La documentation juridique.* If this does happen, then Professors Caparros and Goulet will have prepared what could well be the most complete handbook of its kind.

The book is very readable, well arranged, and attractively bound. It has a short bibliography of carefully selected works of a similar nature for both civil law and common law jurisdictions. Although the book is not indexed, it has an excellent table of contents which provides a very effective substitute.

Clearly, Professors Caparros and Goulet are to be complimented for the excellent work that they did in the preparation of *La documentation juridique, Références et abréviations.* They have presented to the legal profession, law professors and

[2] P. 36.

legal scholars, whether they are of civil law or common law jurisdictions, a valuable publication that will be of immense help to all who will consult it. They can be justly proud of the result of their endeavors.

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