BOOK REVIEWS
REVUE DES LIVRES

Constitutions of Canada. Edited and annotated by CHRISTIAN L. WIKTOR and GUY TANGUAY. Dobbs Ferry, New York: Oceana Publications 1978. Loose-leaf service planned for four volumes two of which have been published. ($75.00 U.S. per volume.)

This work is planned as a four-volume, loose-leaf service on *Constitutions of Canada*, which is being compiled by Christian L. Wiktor and Guy Tanguay, who are the law librarians at Dalhousie University and the University of Sherbrooke. So far two volumes have been issued. The publisher has advised me that "it may still be quite a while until the remaining two binders are ready", and so it seems appropriate to review now the first two binders.

The purpose of the service is to collect in one place the "legislative sources" of Canadian constitutional law, both federal and provincial. The first two volumes cover general sources; the third and fourth volumes will cover provincial sources. The loose-leaf format will allow the service to be kept up-to-date by the issue of supplements when necessary. The collection is annotated by the editors in that each new section of material is introduced by a brief introductory commentary and a few "selected references" to other writings. The collection is bilingual in the sense that where material is available in both English and French both versions are reproduced. The editorial commentary is also in both English and French.

There is of course a serious difficulty in defining what constitutes the "constitution" of Canada, let alone the "constitutions" of Canada by which term the editors include the constitutions of the various provinces. This difficulty is faced by the editors in an introductory essay. So far as subject matter is concerned, the editors do not provide a criterion for selection other than citing various definitions referring to the "important" rules of government. So far as source is concerned, the editors confine themselves to "legislative" sources, thereby excluding case-law, conventions and the general patterns of governmental behaviour.

In the introductory essay, the editors justify their exclusion of non-legislative material by asserting that "the case law can be easily located through various reference tools",[1] and that the conventions "can be found in textbooks on government or constitutional law".[2] But the fact is, surely, that the legislative material is much easier of access than the case-law or conventions or non-legislative events and arrangements. It will be recalled that the last volume of the Revised Statutes of Canada, 1970 has an appendix which contains many of the important legislative sources of Canadian constitutional law, including the Royal Proclamation of 1763 and other important pre-confederation instruments, the British North America Act and all its amendments, the Statute of Westminster, the statutes and orders in council which admitted or created new provinces, the letters patent constituting the office of Governor General, and the Canadian Bill of Rights. For the lawyer this is a very convenient collection, and the widespread availability of the Revised Statutes of Canada in public libraries (if Toronto's libraries are typical of the rest of the country) makes the material accessible to the layperson as well. Of course, the material is not easy to understand in its raw form, but that is a difficulty which can only be resolved by much more extensive annotation and explanation than have been essayed by the editors of this service.

The scope of the work may be demonstrated by a description of the contents of volumes 1 and 2. The first document is the British North America Act which is a photographed reproduction of the consolidation by Elmer A. Driedger which consolidates all the amendments and "glosses" the result with many helpful footnotes. The Driedger consolidation has been an indispensable aid to those consulting the British North America Act, and the editors were very wise not to attempt to re-invent the wheel, especially as their own work is never as ambitious as Driedger's. No other statutes are footnoted, for example. The British North America Act is followed by the Statute of Westminster, 1931 (Imp.). The Colonial Laws Validity Act, 1865 (Imp.) is not included, despite the fact that it is the statute which protects the British North America Act from domestic alteration; moreover, it is one important statute which is not included in the Appendix to the Revised Statutes of Canada.

The next section of the work covers the topic of Admission into Confederation and includes the instruments by which each of the provinces (other than the four original provinces) joined the union or was created. These documents are all referred to in footnote 5 of the Driedger consolidation, and of course they are already conveniently collected in the Appendix to the Revised Statutes of Canada, 1970.

[1] P. xi.

[2] *Ibid.*

Then there is a section on Boundaries which does collect some genuinely fugitive material relating to national and provincial boundaries, including various treaties, as well as statutes and (in prudent violation of the general rule to exclude case-law) the decision of the Privy Council settling the Quebec-Labrador boundary. That completes volume 1.

The first topic treated in volume 2 is federal-provincial relations. Under this rubric are included the statutes and agreements by which natural resources were transferred to the western provinces. These resource transfers, so long ago executed, seem a curious inclusion under "federal-provincial relations". Surely, they are better regarded either as a second phase of the admission to confederation of the western provinces or as part of the constitutions of the provinces to which they apply. The only other instrument under the rubric "federal-provincial relations" is the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977. This statute is incomprehensible to all but a few specialists in federal-provincial finances; yet it is included without any explanatory commentary (apart from a single-page introduction explaining the taxing and spending powers). Nor are any details given of the various shared-cost programs and other arrangements which constitute the stuff of federal-provincial relations.

Other topics covered in volume 2 are executive power, legislative power, judicial power, fundamental rights, language rights, citizenship and allegiance, emergency measures, coat of arms, national flag, emblems of Canada, national anthem, and national capital. In each case the material included is confined to legislative material, so that we find such statutes as the Royal Style and Titles Act, the Ministries and Ministers of State Act, the Senate and House of Commons Act, the Canada Elections Act, the Supreme Court Act, the Federal Court Act, the Canadian Bill of Rights, the Official Languages Act, the Indian Act, and the War Measures Act. These statutes are of course all in the Revised Statutes of Canada. Indeed, it is the very typeface of the Revised Statutes of Canada which has been photocopied and reduced for inclusion in the service.

It will be obvious that a collection basically confined to legislative material presents a partial and misleading picture of the topics with which it deals. In some areas, notably those dealing with executive and legislative power, one would have to say that the language of the statutes is the least important of the material, since it conveys no hint of the true locations of power and how they are exercised. In other areas, the statute law, while not unimportant, is seriously misleading unless supplemented by non-statutory information (as with federal-provincial relations) or case-law (as with the British North America Act).

The editors attempt to meet this deficiency by a short textual introduction to each topic. But these introductions are so brief and general, typically occupying only one to three pages, that they necessarily give an oversimplified account of the background to the following material, and they hardly begin to fill the gaps in the statutory material or to prepare the reader for the complexity of the statutory material which follows. The editors also give a few selected references to secondary writing on each topic (where it exists), and those references are a valuable feature.

The service will be kept up-to-date by regular supplements. It is safe to assume that, unless the scope of the service is enlarged, little supplementation will prove necessary. Most of the changes in our constitutional arrangements occur outside the legislative process. I am afraid that this point underlines the relative lack of usefulness of the service. It will not alert the reader to new decisions of the Supreme Court of Canada, to new federal-provincial arrangements (unless embodied in statutory form), to changes of government, to standings in the House of Commons and provincial legislative assemblies, or to new procedures within government (an "inner cabinet", for example). I cannot help contrasting the service under review with the tax service to which I subscribe, which attempts to explain the terms of the Income Tax Act and Regulations, and which regularly informs its readers not only of changes in the Act and Regulations, but also of new cases, new departmental rulings and practices, all accompanied by editorial comment. A service of this kind on constitutional law would be exceedingly valuable.

I would certainly not say that the service as it stands is useless, and of course I have not yet seen volumes 3 and 4, which will cover provincial constitutions. It does bring together in one place a wide variety of legislative material with a constitutional aspect to it. This may be useful in a non-Canadian setting, or even in a Canadian setting where the Revised Statutes of Canada are not available. But I fear that the lay (or non-Canadian) reader will need more explanation to understand the material, and the expert reader will be disappointed with the absence of non-legislative material. The loose-leaf format makes it possible for the work to evolve. I would respectfully suggest that the supplementation be employed not merely to keep the service up-to-date, but to add some flesh, even some clothes, to the bare bones which are here collected.

P. W. HOGG*

* * *

---

* P. W. Hogg, of Osgoode Hall Law School, York University, Toronto.

Sale of Goods in Canada. Second Edition. By G. H. L. FRIDMAN. Toronto: The Carswell Company Limited. 1979. Pp. lxi, 564. ($55.00)

It is the good fortune of those interested in sales law in Canada—at least in all the common law provinces—to have seen the publication of two major studies in the area in 1979. First in time was the second edition of Professor Fridman's text. Later in the summer came the three volume *Report on Sale of Goods*[1] by the Ontario Law Reform Commission. *Both* deserve a place on the bookshelves of the Canadian practitioner or teacher—although not the law student—in this area. My concern here is to discuss Professor Fridman's book. But its strengths and its weaknesses, as well as the virtue of acquiring *both* it and the *Report*, emerge best when account is also taken of the latter.

Professor Fridman's target audiences for his second edition as for his first are the "student of law" and the practitioner.[2] For the *practitioner*, his second edition offers, as his first edition did, an admirable survey of the Sale of Goods Act and its encrustation of Canadian and, where relevant, other Commonwealth caselaw. What is somewhat less admirable for the "practitioner value" of his book is his account of *other* statutory sources of sales law, most of which have arisen since his first edition. What reduces the book's value as a *teaching*—as opposed to a reference tool is its comparative lack of descriptive material about the modern North American commercial context of sales law. This is a feature the second edition shares with the first: we do not yet have a Canadian equivalent to Professor Robert Nordstrom's superb *Law of Sales*[3] in the United States. This feature makes it hard for the inexperienced student to see as clearly as Professor Fridman the degree to which existing sales law renders, as he puts it, "further reform [to that accomplished judicially] otiose".[4]

It is precisely on this point that the *Report* most clearly complements Professor Fridman's text. Perhaps no text could be expected to do the sort of survey of business practices and attitudes which the Ontario Law Reform Commission was able to have done. It was fascinating to see the results on such matters as businesspeople's involvement in sales litigation;[5] their use of

---

[1] Ontario Law Reform Commission, Report on Sale of Goods (1979). The Commission's Report on Products Liability (1979) appeared later in December 1979, completing the first phase of the Commission's Programme on Commercial Law.

[2] P. ix; 1st ed., p. vii (where mention is also made of "others").

[3] R. Nordstrom, Law of Sales (1970).

[4] P. 8.

[5] Report, Vol. 1, p. 25, n.4.

conflicting purchase order and acknowledgement forms;[6] the importance attached by sellers to receiving pre-shipment written confirmation of buyers' oral orders;[7] the incidence of the mercantile terms "Ex works", "F.O.B." and the like;[8] and contractual usage by industry in the area of the extent of seller's liability for defective goods and its right to cure defects.[9] But beyond these, there are throughout the *Report* the more impressionistic accounts of prevailing commercial practices which inform and enliven any discussion of "black letter" statute and caselaw. The *Report* outlines, as Professor Fridman does not, such matters as the "battle of the forms" phenomenon,[10] the incidence of pressures to modify sales contracts in inflationary times,[11] the types of situations in which assignments of rights and delegation of performance are most frequently encountered[12] and the circumstances which conspire to produce so many sales contracts with what the sympathetic lawyer would call open terms, the unsympathetic one chronic uncertainty.[13]

Of course, a text could, as Professor Nordstrom's does, treat sales law from a "functional" perspective, starting with the place of sales in the array of commercial transactions relating to goods, and then moving through formation of the contract and the "battle of the forms", the meaning of the contract, the warranties of the seller considered as part and parcel of what the buyer bought, the performance of the contract, the acquisition and loss of title and risk of loss of goods and the parties' remedies if things go wrong. But even if a less "functional", more "legalistic" approach is followed, descriptions of commercial context can be introduced at appropriate points. A less "functional", more "legalistic" approach is more typical of Anglo-Canadian texts, and it is the scheme of Professor Fridman's book.[14] In his comprehensive text, following a discussion of the scope of the Sale of Goods Act and issues of formation, there appear in order accounts of the "proprietary" and "contractual" effects of sale contracts, seller's and buyer's remedies, and some more-or-less miscellaneous matters comprising auction sales, assignment of rights and delegation of obligations, conflict of laws issues, special mercantile transactions and other relevant legislation,

[6] *Ibid.*, Vol. 1, p. 81.

[7] *Ibid.*, Vol. 1, p. 109.

[8] *Ibid.*, Vol. 2, pp. 346-347.

[9] *Ibid.*, Vol. 2, p. 462.

[10] *Ibid.*, Vol. 1, pp. 81-82.

[11] *Ibid.*, Vol. 1, p. 96.

[12] *Ibid.*, Vol. 1, p. 119.

[13] *Ibid.*, Vol. 1, pp. 177-178.

[14] See *e.g.* P. S. Atiyah, Sale of Goods (5th ed., 1975) (hereinafter cited as Atiyah). It is understood that appearance of a 6th edition of this remarkably compact text is imminent.

such as that of the personal property security type. However, at too many points the text suffers pedagogically for lack of any contextual narrative. This is altogether apart from the book's prohibitive (for student acquisition) price tag.

So what in detail does the book offer the Canadian practitioner? And why should he or she—as opposed to the teacher of law—use the *Report as well as* Professor Fridman's text?

Mention has already been made of the text's virtue as a "digest" of Sale of Goods Act law, as well as the text's comprehensive substantive coverage. The second edition is much larger than the first,[15] as well as much more attractively packaged. Much of the increase in size results from a discussion of at least the more significant parts of the legislation in the sales area which appeared or came into force between the first edition and the second. This includes such legislation as British Columbia's Trade Practices Act (1974),[16] Alberta's Unfair Trade Practices Act (1975),[17] Saskatchewan's Consumer Products Warranties Act (1977),[18] Ontario's Business Practices Act (1974),[19] and Personal Property Security Act (enacted 1967; amended 1973; in force 1976),[20] New Brunswick's Consumer Products Warranty and Liability Act (1978)[21] and the amendments to the federal Combines Investigation Act creating statutory civil liability in respect of breach of *inter alia* the deceptive advertising prohibitions.[22] Unfortunately, this cross-country outpouring of legislation in one respect heightens the discomfort of someone coming from Professor Fridman's first edition to his second. Such a person must face the fact that, while both editions have excellent tables of cases, *neither* has a table of statutes. This omission is a defect the book regrettably shares with the *Report*.

More seriously, the book has some curious gaps in coverage of legislative provisions in the sales law area other than the Sale of Goods Act, at least so far as Ontario, and other provinces with matching legislation,[23] are concerned. The book fails to mention that that provinces' Consumer Protection Act and Business Practices Act

---

[15] Compare the 509 pages of the 1st edition.

[16] S.B.C., 1974, c.96, as am.

[17] S.A., 1975, c.33, as am.

[18] S.S., 1977, c.15.

[19] S.O., 1974, c.131.

[20] R.S.O., 1970, c.344, as am. by S.O., 1973, c.102.

[21] S.N.B., 1978, c.18.1.

[22] R.S.C., 1970, c.C-23, as am. by S.C., 1974-75, c.76, s. 12.

[23] The relevant provisions can be fairly readily picked up through CCH Canadian, Canadian Sales and Credit Law Guide (2 vols., loose leaf).

make the distinction (so important under the Sale of Goods Act) between a sale of goods and a sale of services largely irrelevant for their purposes.[24] He fails to consider the important question with respect to conditional sale agreements whether the province's Personal Property Security Act (PPSA) has had the effect for Sale of Goods Act purposes of changing the time at which "property" passes under such agreements.[25] He fails to note that the amendment to Sale of Goods Act section 25[26] attempting to better align it with the PPSA has not yet been proclaimed—a point which is probably not of any substantive importance, however.[27] More seriously, there is no mention at all of the Ontario Bills of Sale Act[28] with its important filing requirements for certain kinds of sales of goods: those not accompanied by delivery and followed by an actual and continued change of possession of the goods.[29] He fails to consider the extent to which the antideception provisions of modern statutes, such as Ontario's Business Practices Act and the federal Combines Investigation Act, outdate at least for "consumers" the common law attitudes towards "puffery" he describes.[30] There is no mention of obtaining possession of goods through an action under Ontario's Replevin Act,[31] which offers some substantial advantages over the common law position which he reviews.[32] The provision in the province's Consumer Protection Act which interdicts cut-off clauses in consumer contracts[33] is nowhere dealt with. There is no discussion of the impact of the PPSA on the assignment of certain kinds of contractual rights arising under sale contracts.[34] And, while the Pyramidic Sales Act of the province[35] is mentioned, the fact that it was repealed in 1978[36] is not.

---

[24] See Consumer Protection Act, R.S.O., 1970, c.82, as am., *e.g.*, s. 31; but see also s. 44a. And see Business Practices Act, *supra*, footnote 19, ss 3 and 4, read with ss 2 and 1(c).

[25] See Personal Property Security Act, *supra*, footnote 20, s. 2(a) and Report on Sale of Goods, Vol. II, p. 262, n.23. The point, however, is not a "necessary" one as the Report suggests.

[26] S.O., 1967, c.89, s. 1.

[27] Report on Sale of Goods, Vol. II, p. 291, n.43.

[28] R.S.O., 1970, c.44, as am. by S.O., 1972, c.1, s. 26.

[29] S. 3. See discussion in Report on Sales of Goods, Vol. II, pp. 302 *et seq*.

[30] See Report on Sale of Goods, Vol. I, p. 140 and the excellent article there referred to, Miniter, Misleading Advertising: the Standard of Deceptiveness (1976), 1 Can. Bus. L. J. 435.

[31] R.S.O., 1970, c.412.

[32] See Report on Sale of Goods, Vol. II, p. 439.

[33] S. 42a.

[34] See s. 16.

[35] S.O., 1972, c.32.

[36] By S.O., 1978, c.105.

As a related point, one could quarrel with his failure at a number of appropriate points in his discussion of the Sale of Goods Act-based law to cross refer to his discussion elsewhere of the newer legislation. For example, in his treatment of unconscionability there is no cross reference to the recent spate of unfair trade practices legislation that for consumers in the relevant provinces holds out the prospect of a firmer ground for recovery. And in his discussion of express undertakings as to the quality of the goods there is no mention of the possibilities of recovery under such legislation or under the Combines Investigation Act.

At least for an Ontario lawyer, the acquisition of the *Report* as well as Professor Fridman's book is justified if only because of its better coverage of most of the relevant legislative provisions.[37] Lawyers both inside and outside Ontario will find acquisition of the *Report* useful for the way it overcomes some other omissions, and some of the errors in Professor Fridman's text.

For example, the *Report* correctly renders Blackburn J.'s views in *Lee* v. *Griffin*,[38] that a sale of goods is to be distinguished from one for work and materials by the factor whether a completed chattel results, title in which passes to the other party. Professor Fridman has identified Blackburn J.—erroneously—with the competing, relative value, test.[39] The *Report* is right to point out what Professor Fridman might be read to deny, that defects in goods which are purely cosmetic are capable on present caselaw of rendering them unmerchantable.[40] As the *Report* makes plain, it seems to be impossible to accept Professor Fridman's suggestion that where the areas of risk of loss and frustration overlap, at the point of the perishing or deterioration of the goods without the fault of either party, the problem should be resolved *either* by saying the contract is frustrated *or* by saying that the party who bears the risk should bear the loss.[41] Surely the better answer is that the frustrating event should discharge the seller's obligation to deliver; but whether the buyer must still perform should depend on who bore the risk of loss. Finally, the *Report* points out that it is *not* the case that the right to sue in tort for trespass to goods, detinue and conversion depends necessarily upon who has title to the goods. The foundation rather appears to be who has actual possession or the right to possess.[42]

---

[37] See references to the Report on Sale of Goods in the preceding notes.

[38] (1861), 1 B. & S. 272, 121 E.R. 716, discussed in the Report on Sale of Goods, Vol. I, p. 46.

[39] See p. 24.

[40] Compare *ibid.*, pp. 229-230 with Report on Sale of Goods, Vol. I, p. 212, n.75.

[41] Compare p. 337 with Report on Sale of Goods, Vol. II, pp. 371-372.

[42] Compare pp. 488-489 with Report on Sale of Goods, Vol. I, pp. 276-277.

Among the list of matters not specific to Ontario which are omitted from Professor Fridman's book but which are considered in the *Report* is the question whether the Sale of Goods Act implied condition as to title is breached where a buyer derives title from a *nemo dat* exception.[43] The *Report* points out that there is a good policy reason why this should be so.[44] Also omitted, but not from the *Report*, is a raising of the question whether a buyer who has rightfully rejected may have the power in certain circumstances as an "agent of necessity" to dispose of the goods on behalf of the seller.[45]

It must also be admitted that there are some serious errors and omissions in the book which reading the parallel parts of the *Report* does not overcome. It is surely not clear that the majority in the Ontario Court of Appeal in *Tilden Rent a Car* v. *Clendenning*[46] meant to enunciate a rule making clauses in standard form contracts ineffective only if "onerous *and* unusual".[47] There is no clear indication in the case that industry-wide adoption will save an "onerous" clause. In discussing the problem of an open-ended avoidance right for breach of the implied condition as to title,[48] no mention is made of the possibility of pre-avoidance cure by the seller, for which there is some authoritative support.[49] His statement that entrustment to a mercantile agent for display purposes only is incapable of engaging the Factors Act power of disposition[50] is surely at least open to question in light of the dicta of Denning L.J. in *Pearson* v. *Rose & Young*.[51] The discussion of the problem for reselling buyers of deemed acceptance of the goods without an opportunity to inspect them[52] would have benefited from account being taken of the Ontario Court of Appeal decision in *A. J. Frank & Sons Ltd.* v. *Northern Peat Co.*,[53] which offers a rather neat escape

---

[43] Report on Sale of Goods, Vol. I, p. 196.

[44] *Ibid.*

[45] *Ibid.*, Vol. II, p. 475.

[46] (1978), 18 O.R. (2d) 601.

[47] As Professor Fridman suggests at p. 49.

[48] P. 118.

[49] See *Patten* v. *Thomas Motors Pty. Ltd.*, [1965] N.S.W.R. 1457, mentioned in Atiyah, p. 51, n.1.

[50] P. 140.

[51] [1951] 1 K.B. 275, at p. 288, discussed in Atiyah, p. 197, n.1 and accompanying text.

[52] Pp. 268 *et seq.*

[53] [1963] 2 O.R. 415, mentioned in passing in Report, Vol. II, p. 451, n.83 and accompanying text.

from the rigours of *Hardy & Co.* v. *Hillerns & Fowler.*[54] The discussion of buyers facing claimants to holder in due course status in respect of sellers' instalment obligations paper and the impact of Part V of the Bills of Exchange[55] is seriously misleading where it suggests that the caselaw development in *Federal Discount Corpn.* v. *St. Pierre*[56] has now been outdated. The case clearly has potential for the large class of "near consumers"—buyers of chinchillas for breeding purposes, home knitters and their ilk—outside the scope of the Part V provisions. It is simply not correct to say that repossession of goods sold under a conditional sale agreement will without more terminate the agreement.[57] And it is incorrect as a matter of cross-country generalization to say[58] that registration under conditional sales—type legislation is notice for the purposes of the relevant *nemo dat* exceptions in the various Sale of Goods Acts and Factors Acts.[59]

However, there is much that is very useful to the practitioner in the book which the *Report* simply does not cover, at least in sufficient detail. Professor Fridman's concern is to give the practitioner the law on sales "as it is",[60] and to that end there are some good summaries of general law as it impacts on sales transactions. In this category we find useful statements of collateral contract—collateral term analysis.[61] There is a useful conjoint survey of the law with respect to waiver, estoppel, variation, repudiation and abandonment.[62] He has good accounts of innocent and negligent misrepresentation caselaw,[63] and an introduction to the doctrine of *error in substantialibus.*[64] And he has a fairly detailed

---

[54] [1923] 2 K.B. 490 (C.A.).

[55] Pp. 288-289.

[56] [1962] O.R. 310 (C.A.).

[57] Compare p. 378, n.12 with *McNutt* v. *Alexander Fraser Ltd.* (1960), 23 D.L.R. (2d) 236 (N.B.A.D.). The two cases cited for his proposition by Professor Fridman—*Hayes* v. *Mayne,* [1927] 3 W.W.R. 524 (Sask. C.A.) and *Humphrey Motors Ltd.* v. *Ellis,* [1935] S.C.R. 249—both involved a resale or attempted resale. And see also the dicta in *Humphrey Motors Ltd.* v. *Ells,* [1935] S.C.R. 249, at pp. 252-253.

[58] P. 541.

[59] See Ziegel, *G.M.A.C.* v. *Hubbard*: Statutory Conflict, Conditional Sales and Public Policy (1979), 3 Can. Bus. L.J. 329, at pp. 331-332. This article contains an excellent review of the law and the policy implications for both conditional sales and personal property security jurisdictions.

[60] P. ix.

[61] Pp. 177 *et seq.*

[62] See ch.12.

[63] Pp. 403 *et seq.*

[64] Pp. 45, 168, 402, 456. The page references in the book's index are seriously incomplete, and in one case in error.

survey of the conflict of laws aspects of both the contractual and the proprietary aspects of sales contracts.[65]

Professor Fridman's concern with the law "as it is" means that there is no attempt systematically to relate his treatment to the United States Uniform Commercial Code, nor is there any attempt to anticipate the recommendations of the *Report*. Canadian lawyers with a transborder practice with a Code state are not necessarily poorly served, however: the book does flag some of the more significant Article 2 provisions at appropriate points. And it is not at all clear, at least outside Ontario, that adoption of the *Report's* Draft [Revised] Sale of Goods Act is imminent, apart altogether from the question whether its adoption in Ontario might not be delayed by the apparent need to do some reworking of the Draft Act's provisions.[66]

But it is unfortunate that at a number of points Professor Fridman's self-imposed ordinance is applied too restrictively. This results in a disservice to the leeways of choice in much of modern sales law available to those struggling to adapt the existing Sale of Goods Acts to North American conditions. Here the *Report's* discussion is particularly valuable. Thus, the discussion in Professor Fridman's book of the problem of passage of property under those Acts would have benefited from a warning to the reader, like the one in the *Report*, to read the precedents carefully against an appreciation of the particular property-tied issues at stake in the cases.[67] There is considerable evidence in them of result-oriented reasoning, in which something of the Code's distinctive "issue unbundling" approach is evident. The distinction between a mere representation and a contractual term in terms of the discussion in the caselaw is well made by Professor Fridman.[68] But, however those discussions are read, the distinction remains as the *Report* puts it "elusive and difficult to apply",[69] giving rise to extensive leeways of choice which have been exploited in ways which show some regularity in result that Professor Fridman could usefully have addressed. A full discussion of the common law "rule" that time of delivery is *prima facie* of the essence surely requires some mention such as the *Report* makes of the "rule"s' apparent inadequacy in modern conditions.[70]

---

[65] See ch. 20. The Report only covers the contractual aspects: Vol. II, p. 564.

[66] In particular the difficult ones as to the seller's right to cure and the buyer's rights to demand cure and to reject. See ss 7.7 and 8.1 in Vol. III, pp. 44-45 and 48-49, respectively.

[67] See Report, Vol I, pp. 260-261.

[68] Pp. 166 *et seq*.

[69] Vol. II, p. 135.

[70] Vol. I, p. 149. Compare Fridman, pp. 245-246, who does, however, acknowledge the possibility of change here.

One wonders when courts will break out of the mould to act on scattered suggestions in the caselaw[71] that the matter should be made to depend on the nature of the contract and the character of the goods dealt with.

Finally, two minor concerns with Professor Fridman's text should be mentioned. There is a regrettably large number of typographical errors to mar the improved packaging. There is also some evidence that a more rigorous editing process would have been useful. For example there are some unnecessarily hard to follow passages in the book which should have been put right before printing.[72]

In *fine*, Professor Fridman has rendered the practitioner and the teacher of commercial law in Canada a considerable service. The acquisition by them of such a comprehensive and up-to-date account of difficult to survey legal terrain is amply justified. But, at least until his next edition, the acquisition by all those interested in Canadian sales law of the eminently merchantable *Report on Sale of Goods* of the Ontario Law Reform Commission is also clearly indicated.

R. L. SIMMONDS*

* * *

Winfield & Jolowicz on Tort. Eleventh Edition. By W. V. H. ROGERS. London: Sweet & Maxwell. 1979. Pp. lv, 718 incl. index. (No Price Given)

The appearance of Dr. Winfield's text in 1937 prompted appreciative reviews from Arthur Goodhart[1] and Cecil Wright.[2] Both were agreed that the volume, intended for the student reader, was accurate in its statement of principle, clear in the manner of its writing, comprehensive in its coverage, judicious in its selection of footnotes and was endowed with an enthusiasm which guaranteed its success. However, while Professor Goodhart congratulated the author on his effort to wean readers away from "torts" to "tort" and toward the single principle that "all harm done by one person to another is, in the absence of legal justification, tortious", Dr. Wright complained

---

[71] See *Hartley* v. *Hymans*, [1920] 3 K.B. 475, at pp. 483-484, and *Paton & Sons* v. *Payne & Co.* (1897), 35 Sol. L. Rep. 112 (H.L.).

[72] See *e.g.* the account of *Dennant* v. *Skinner*, [1948] 2 K.B. 164, at p. 81; the sentence on p. 179 accompanying n.35.

* R. L. Simmonds, of the Faculty of Law, University of Windsor, Windsor, Ontario.

[1] Review, (1938), 54 L.Q.Rev. 126.

[2] Review, (1938), 16 Can. Bar Rev. 237.

of the sameness of the book when compared with the English writing in the area and worried over the stultification engendered by the classifying of torts into "pigeon-holes". Also the reviews differed on the effectiveness of the author's use of non-English authorities and citation to foreign legal writing.

Subsequently Dr. Winfield saw his book through five editions before it fell into the hands of three successor-editors through another four editions before coming under the control of Professor Rogers who published the tenth edition in 1975 and this edition under review.

In his preface to the tenth edition Dr. Rogers disclaimed recognition for major revisions but in the eleventh it is clear that most portions of the text have been substantially rewritten to take account of both judicial and legislative change in recent years. Nevertheless the factors which provoked the differing opinions in the reviews of the first edition are still in evidence. That is, while the opening chapter introduces a theory of tortious responsibility along with extended examinations of compensation systems, the impact of insurance and the recommendations of the Pearson Commission,[3] the remainder of the text speaks of the nominate torts and of other delicts which are still about to be.

And again, while this edition suggests an increasing awareness of things "overseas", and particularly of the latest Canadian cases, the citation to United States authorities often appears quixotic. In this regard, it is no rival to John Fleming's text[4] which most effectively argues for the homogeneity of the tort law of the United States and the jurisdictions of the Commonwealth of Nations.

As to detail: there is an American response to the hypothetical offered at page 52;[5] the statement of principle on lawyers' liabilities is now suspect;[6] the discussion of *res ipsa* at page 99 does not have the benefit of any of the medical malpractice examples which enliven the Canadian scene;[7] the writing on nervous shock cites *Fenn*[8] but might have been different if *Duwyn*[9] had been available to the editor; while *Cherneskey*[10] appears in the defamation section the writing is

---

[3] Cmnd. 7054 (1978).

[4] The Law of Torts (5th ed., 1977).

[5] *Garratt* v. *Dailey* (1955), 46 Wash. 2d 197.

[6] *Saif Ali* v. *Sidney Mitchell & Co. et al.*, [1978] 3 W.L.R. 849; *Ungaro* v. *Demarco* (1979), 21 O.R. (2d) 673; Bogart, Immunity of Advocates from Suit: the Unresolved Issue (1980), 29 U.N.B.L.J. 30.

[7] *Kapur* v. *Marshall* (1978), 4 C.C.L.T. 204 (Ont. H.C.).

[8] *Fenn* v. *Peterborough* (1979), 9 C.C.L.T. 1 (Ont. C.A.).

[9] *Duwyn* v. *Kaprelian* (1979), 7 C.C.L.T. 121 (Ont. C.A.).

[10] *Cherneskey* v. *Armadale Publishers Ltd.* (1979), 7 C.C.L.T. 69 (S.C.C.).

weak on the policy considerations implicit in the public figure and public corporation suits;[11] in chapter 19 the editor does not explore the possibilities of the one person or family company as plaintiff for losses suffered as a consequence of personal injury or death of an employee;[12] the proprietary interests discussed in *Krouse*[13] have been extended in recent litigation;[14] and lastly, with regard to rescuers the Vermont statute[15] has still to attract attention in England.

In conclusion, in this edition we have a book which has retained the qualities recognised at its birth but which now shows clearly the hand and direction of its most recent tutor. It may be time for a change of name. Overall then, it is better than Linden,[16] as good as Salmond,[17] but not yet an equal of Fleming.[18]

EDWARD VEITCH*

* * *

The Modern Law of Trusts. Fourth Edition. By DAVID B. PARKER and ANTHONY R. MELLOWS. London: Sweet and Maxwell. 1979. Pp. xxx, 428. (No Price Given)

The law of trusts has been fortunate in attracting skilful expositors such as Hanbury, Snell, Pettit and Waters, and the fourth edition of *The Modern Law of Trusts* by David B. Parker and Anthony R. Mellows is no inferior interloper in this select group. The new edition retains the same general shape as its immediate predecessor but has been re-written and expanded in places to reflect the changes in trust law since 1975. In style, the text is clear, concise, well-written, and pleasingly free of academic obfuscation. Of value both to the student and the practitioner is the authors' procedure of introducing a new topic with a clear explanation of its theoretical

---

[11] McLaren, Defamation Actions and Municipal Politics (1980), 29 U.N.B. L.J. 130.

[12] *Mensink* v. *Dueck* (1979), 9 C.C.L.T. 149 (B.C.S.C.).

[13] *Krouse* v. *Chrysler Canada Ltd.* (1971), 25 D.L.R. (3d) 49.

[14] *Athans* v. *Canadian Adventure Camps Ltd. et al.* (1978), 17 O.R. (2d) 425; *Racine* v. *C.J.R.C. Radio Capitale Ltée* (1978), 17 O.R. (2d) 370.

[15] Franklin, Vermont Requires Rescue (1972), 25 Stan. L.Rev. 51.

[16] Canadian Tort Law (1977); Review, (1979), 95 L.Q.Rev. 618; Review, (1979), 42 Mod.L.Rev. 248.

[17] On The Law of Torts (17th ed., by Heuston, 1977).

[18] The Law of Torts (5th ed., 1977).

* Edward Veitch, of the Faculty of Law, University of New Brunswick, Fredericton.

basis before diving into the details. English users of the text will find special interest in the many practical examples of the effect on trusts of English fiscal legislation, in particular, the introduction of capital transfer tax in the Finance Act 1975.[1] Humour, which is all too often absent from legal writing, is sprinkled throughout the text; for example, in a discussion of the difficult question of selecting a life or lives in being in relation to perpetuities, the authors write at p. 95, "There is a dictum in the Irish decision, *Re Kelly*,[2] that the life chosen must be that of a human and not of an animal—but then who but the Irish would ever consider the question?"

One area in which reform seems imminent is that of charitable trusts concerning which the Goodman Committee reported in 1976. The recommendations of the Committee are included in the re-written chapter on Charitable Trusts. The Committee suggested that the famous definition found in the Charitable Uses Act,[3] be restated in simple and modern language and extended to include objects now considered to be within the scope of charity. Such a suggestion has much to recommend it in that it does not wipe out the corpus of case-law which has been constructed yet gives the court more freedom in the characterization and categorization of trusts. The Goodman suggestion is preferable to that of the Expenditure Committee of the House of Commons[4] which recommended a new statutory definition emphasizing that all charities should be required to satisfy the test of benefit to the community. This ignores the present difficulties faced by the courts in defining "public benefit" and, in any case, the Expenditure Committee did not volunteer a new statutory definition! The Goodman Committee also suggested, *inter alia,* that (i) the present distinction between charitable activity by charities at home or abroad be abolished so that an object which is charitable at home should also be considered charitable when carried out abroad; (ii) that the "poor relations" and "poor employees" trusts are no longer justifiable as charitable; (iii) that "research" should be a charitable object in its own right; (iv) that religious organizations of the fanciful or freakish sort which are detrimental to the moral welfare of the community should be excluded from the categories of charity; and (v) that the encouragement of sport and recreation should be recognized as an independent charitable object, provided that the element of community benefit was present.

In addition to the expanded discussion of charitable trusts, the chapters on the definition, classification and creation of trusts have

---

[1] C. 7.

[2] [1932] I.R. 255, at p. 260.

[3] 1601, 43 Eliz. I, c. 4.

[4] 10th Report Session 1974-75.

also been revised to reflect recent developments. In this regard the over-worked law student will be especially thankful for the brief resume of Megarry V.-C.'s two hundred and forty-one page judgement in *Tito* v. *Waddell (No. 2)*[5] concerning the definition of trusts "in the higher sense" and "in the lower sense". Finally, mention must be made of the up-dating of trust law in the area of implied or resulting trusts of matrimonial and common law homes. The authors do not forget the sledgehammer-wielding mistresses in *Cooke* v. *Head*[6] and *Eves* v. *Eves*.[7]

The Modern Law of Trusts does not purport to replace established texts such as Hanbury or Snell, however, for the student it provides an excellent introduction to the basic elements of trust law and for the practitioner a handy reference work.

M. H. OGILVIE*

* * *

Contract. New Nutshells. By IAN DUNCANSON. London: Sweet and Maxwell. 1979. Pp. vii, 79. ($4.15)

The impulse to compile pocket-size books containing all of the law has often been coupled with the impulse to criticize and reform. In 1651 Oliver Cromwell naively permitted his "Barebones Parliament" freedom to debate and legislate; when they proposed a root and branch reform of the legal system and the compilation of a chapbook containing all of the common law, he responded by abolishing Parliament. Nutshelling the law has also been one means of filling many an idle, day by impecunious, young English barristers awaiting that first brief, not to mention the salvation of examination candidates. Now, Sweet and Maxwell has joined this time-honoured bandwagon with their *New Nutshells*, one of which is Ian Duncanson's *Contract*.

This little booklet presents the essential principles of contract law written in clear, concise and uncomplicated language. Contract professors would be well advised to steer their students clear of the book because its excellent organization and exposition of the conceptual framework of the law of contract as well as its thorough coverage of the rules might eliminate the need in the minds of some

---

[5] [1977] Ch. 106.

[6] [1972] 1 W.L.R. 518.

[7] [1975] 1 W.L.R. 1338.

* M. H. Ogilvie, of the Department of Law, Carleton University, Ottawa.

students to read cases and the standard textbooks. The author's approach is not merely descriptive, rather, he also attempts to explain the policy behind the courts' approach to the black-letter rules. However, the explanations are heavily larded with humour and cynicism (or is it realism) about the law of contract. Some examples will illustrate his approach. First, in relation to the notion that the abuse of a superior bargaining position should prompt equitable assistance to the weaker party, we are told that: "Of course, capitalism would not work if contracts secured, through inequality of power were not generally upheld. . . ."[1] Or again, *Stilk* v. *Myrick*[2] is presented as one more incident in class warfare: "But recall that *Stilk* was decided in an age when trade unionism was regarded by judges as treasonable conspiracy, and that the plaintiffs were seamen who combined against their employer to demand higher wages."[3]

In addition, *ad hominem* attacks are made on lawyers, judges and authors of learned textbooks, for example: "Lawyers often suffer palpitations when their antique forms are attacked. . . . Legislation often removes the sillier difficulties that lawyers get themselves into on behalf of parties who cannot afford to avoid falling victims to the courts."[4] Yet again, "It is important not to be mystified by the names which courts and textbooks have given to terms".[5] Refreshing though this candour may be, it is inappropriate in a nutshell and indeed detracts from what is otherwise a valuable guide to the basics.

For the knowledgeable student of contract law, nutshells serve much the same purpose as the prompter in the theatre, but for the first-time student they are misleading in that they present the law as a systematic body of principles and suggest that sophisticated contractual relationships are amenable to simple solutions. Cromwell was right, of course, however good nutshelled compilations of the law might be, their inherent subversion of the established order demands their eradication!

M.H. OGILVIE*

* * *

[1] P. 23.

[2] (1809), 2 Camp. 317, 6 Esp. 129.

[3] P. 36.

[4] Pp. 30-31.

[5] P. 43.

* M.H. Ogilvie, of the Department of Law, Carleton University, Ottawa.

Criminal Law. By ALAN W. MEWETT and MORRIS MANNING. Toronto: Butterworth & Co. (Canada) Ltd. 1978. Pp. 577. ($60.00)

Recent times have witnessed a substantial output of books concerned with the functioning of the Canadian criminal justice system. Some like Graham Parker's *Introduction to Criminal Law*[1] have worked over the broad canvas and confronted head-on the sociological, legal and other policy issues which abound within the field. Others such as Schiffer's *Mental Disorder and the Criminal Trial Process*[2] and Goode's *Criminal Conspiracy in Canada*[3] have focussed microscopically upon narrower issues. Mewett and Manning's book is not about the criminal justice system and it is not about a very specific topic. As the authors say, they are endeavouring to provide lawyers and law students with a detailed and critical examination of the criminal law of Canada and, as such, this book is characterised within the field of contemporary criminal justice research by its exclusive attention to the *law* relating to crime.

But, sidestepping the question of where the book fits into modern criminal justice research, it must be said that the authors have performed a most valuable service for all students of Canadian law by producing this first textbook on criminal law. Fortunately or otherwise, it seems that the fates decree that few first textbooks meet with unqualified approval of their reviewers as may be seen from the cautious and sometimes critical notices received by Smith and Hogan, Jerome Hall, and Glanville Williams. Most survive however to reappear in newer and better form. The authors of this book already have in mind an expanded version which will pay more attention to the acknowledged short treatment of the area of specific offences which in the present edition occupies only the last third of the book. As for the book's audience the authors address themselves to both lawyers and law students, a quaint but perhaps recognizable division of the trade, and the book clearly will be of great assistance to all who have anything to do with criminal law. However to think of the book as a textbook raises the question at least for teachers in this area of the merits of this type of exposition and the philosophy behind it over the already widely used cases and materials books, such as Friedland.[4] It may be too late for a move to be made into territory effectively occupied by such a different teaching tool as the latter. However in the few months I have had to use Mewett and Manning in the classroom students have found it a helpful thematic

---

[1] (1977).

[2] (1978).

[3] (1975).

[4] Cases and Materials on Criminal Law and Procedure (5th ed., 1978).

narrative in supplementing the designedly disjointed cases and materials text.

As for the Bench and Bar the large collection of appellate decisions and the analysis of the thorny problems of attempts, incitement, obscenity, constructive murder and rape, to mention but a few of those given detailed treatment by the authors, will make their task easier. Practitioners however tend to see the criminal law in procedural rather than substantive terms, as of course is the reality in the lower courts, so that the authors' self-imposed limitation of the text purely to the substantive law to the exclusion even of references to procedural and evidential issues may be some disadvantage. Practitioners particularly may also find that the space devoted to specific offences is too short.

But, whether it is a student or a practitioner who uses the book, he will find a comprehensive account of the criminal law as it is in the cases. To begin there is a useful discussion of the elements of the criminal act, personal liability, and in the opening chapter, the origin and purpose of the criminal law. Here, and this is no reflection on the efforts of the authors, one is struck by the absence of any detailed work on the criminal law in Canada prior to codification. At a time when many excellent accounts of early criminal law in the United States are appearing, Canadian research seems generally to be directed at the modern phenomena. As for the book's account of the purpose of the criminal law although the morality issue and the definition of crime are well canvassed, when "punishment" is discussed, sentencing alternatives such as suspended sentences, community service orders, and diversion should have been included. Also there is but a brief mention of the payment of compensation to the victims of crime, and no reference to the extensive Canadian research that has been done in this area. With regard to codification and its virtues there may be little point in rehearsing yet again the pros and cons, but in light of the authors' overwhelming commitment to the law of the cases and, more generally, in the context of the mechanics of law reform, discussion of the potential vitality of the Criminal Code as a statement of principles might have been appropriate.

There are some small issues in this early part of the book with which this reviewer would disagree: who may be an aider or abettor in cases such as *Kulbacki*[5] is probably a question of the *right* to control the vehicle, and not "an ability" to control, Salajko[6] did not just stand by and watch a girl being raped, and Russell[7] did not

---

[5] *Reg.* v. *Kulbacki*, [1966] 1 C.C.C. 167.

[6] *Reg.* v. *Salajko*, [1970] 1 C.C.C. 352.

[7] *R.* v. *Russell*, [1933] V.L.R. 59.

merely stand by and watch his wife and two children drown. But such detail apart my main concern is with the hesitation of the authors to venture into areas where there is need to elucidate the policy alternatives—take for example their treatment of complicity where the Germanic principle of differential punishment is ignored; or again, the issue of vicarious liability where the authors do little to meet the comment made by Glanville Williams twenty years ago concerning the relevant case-law that "what is most strikingly lacking is a discussion of the philosophy of vicarious responsibility".[8]

From the elements of the criminal act the discussion moves into strict liability and the inchoate, or as the authors prefer to rename them, "unfulfilled" offences. Unfortunately the vitally important judgment of the Supreme Court in *Reg.* v. *City of Sault Ste. Marie*[9] although footnoted in the chapter on mistake, is not included here. Needless to say strict liability will never be quite the same again, and by the time of the second edition of Mewett and Manning there surely will be indications to be included of how Dickson J.'s categories of crimes in the true sense, public welfare offences and offences of absolute liability are being interpreted.

In the older treatises on criminal law the treatment of defences may have been all too short, or even non-existent, but recent research and writing has dealt at length with the notions of justification and excuse. Mewett and Manning, much in vogue, look long and intensively at the individual defences, including the now important topic of abuse of the criminal process. However there is no conceptual overview as one finds for example in Fletcher's *Rethinking Criminal Law,*[10] and there is a dearth of references to the substantial body of periodical literature on the topic. The defences pose many intriguing questions for the comparative lawyer yet again there is no reference to the approaches to these issues in other jurisdictions. Those matters apart comments of only minor importance can be made with regard to this important section of the book, which contrary to the table of contents begins on page 163, and not on page 263. First with regard to drunkenness it would be helpful if Lord Birkenhead's three propositions from *D.P.P.* v. *Beard*[11] were quoted verbatim and reference were made to the comprehensive discussion of this defence by Gold.[12] Secondly, in discussing the

---

[8] Criminal Law: The General Part (2nd ed., 1961), p. 285.

[9] (1978), 40 C.C.C. (2d) 353.

[10] (1978).

[11] [1920] A.C. 479.

[12] Gold, An Untrimmed "Beard": The Law of Intoxication as a Defence to a Criminal Charge (1976-77), 19 Crim. L. Q. 34.

insanity defence two important, and conflicting, decisions relating to what is meant by "wrong" in section 16 of the Criminal Code in the wake of *Schwartz* v. *The Queen*[13] are omitted.[14] Thirdly, the chapter on Mistake might be made more complete by including both the argument for a reasonable time for compliance with new regulations[15] and the seminal United States Supreme Court decision in *Lambert* v. *California*.[16] Finally, for a fuller appreciation of ignorance of the law the decision of O'Hearn Co. Ct J. in *R.* v. *Villeneuve*[17] must be read in conjunction with *R.* v. *Maclean*[18] and *R.* v. *Potter*.[19]

In just under 200 pages in the final section of the book the authors deal with specific offences and as already mentioned the preface suggests that a more detailed, critical account of these may be forthcoming in a later edition. However, to the contrary, it may be that there is much that could be excised from what in the book's present form is little more than a catalogue of legalistic black-letter definitions. The jurisprudence of bawdy houses, public indecency, kidnapping, and possibly the whole of chapter 23: Offences Relating to Trade and Commerce, for example, provide no great insight as to the operation or interpretation of the criminal law. For the profession there may be some value in such a catalogue though all the material found here, and more, is readily available in the standard annotated Codes. From the pedagogical standpoint the evaluative skills to be imparted to the student of criminal law can be conveyed equally well by limiting discussion to the major crimes against the person and to crimes relating to property—as, for example, in Howard[20] or Lafave and Scott.[21] It is the British texts generally which have pursued the catalogue approach, mentioning just about all the offences known to the criminal law from abduction to written threats.[22] That however has to be viewed in the context of an uncodified system, where there is still some premium if not intellectualist kudos to be achieved from stating precisely what activities come within the ambit of the

---

[13] (1976), 29 C.C.C. (2d) 1.

[14] *R.* v. *Simpson* (1977), 35 C.C.C. 337; *R.* v. *Meadus*, unreported, noted in Schiffer, Mental Disorder and the Criminal Trial Process (1978), p. 135.

[15] See *Burns* v. *Nowell* (1880), 5 Q.B.D. 444, and *R.* v. *Levine*, [1926] 3 W.W.R. 550.

[16] (1957), 355 U.S. 225.

[17] [1968] 1 C.C.C. 267.

[18] (1974), 27 C.R.N.S. 31.

[19] (1978), 3 C.R. (3d) 154.

[20] Criminal Law (3rd ed., 1977).

[21] Criminal Law (1972).

[22] J.C. Smith and Brian Hogan, Criminal Law (1975).

criminal law. The authors' choice of direction in the next edition, in itself, will have more than editorial implications.

Editorial errors in the text unfortunately are rather numerous, the most quotable being *Betts* v. *Ridley*.[23] Pagination at pages 437-440 has gone awry, as too the index on obscenity and obstructing justice, at page 573. The index, generally speaking, is inadequately brief, and in addition, there is no table of statutory and Code provisions. Smith and Hogan's *Criminal Law* is referred to more than any other text, but the relevant edition is often omitted. The reference at page 139 to Glanville Williams, *Criminal Law: The General Part*,[24] is obviously out of place, while the reference at page 140 to the same text confuses the section and page number.

In conclusion it should be emphasized that this is a book about criminal law rather than criminal justice, and as such, is purposefully designed to be used more by lawyers than by the non-legal expert. Consequently the authors omit reference to relevant sociological and medico-legal literature, much of which today however should be a compulsory part of the education of law-makers and law students alike. It may be that, in their turn, legal practitioners will find frustrating the absence of any discussion of or references to, procedural matters, and they may wish to have far more information on the specifics of offences, particularly those relating to drugs and traffic. As for the student, he may find bewildering the relentlessly narrow reduction of understanding of the criminal law to merely what the courts have to say on a given point, and if he wishes to research further he will be disappointed by the paucity of reference to either periodical literature on Canadian criminal law or on any issues of interest to the comparative lawyer. For the student the book seems too positivistic. However the ground has been cleared by the authors for further and better things and in particular in the discussion of defences there is a firm foundation on which to build. But, for the moment, and in its present form, it is difficult to see Mewett and Manning occupying a really pivotal position in criminal jurisprudence.

C. JAMES*

* * *

[23] Pp. xv, 42 and 51.

[24] *Op. cit.*, footnote 8.

* C. James, of the Faculty of Law, University of Windsor, Windsor, Ontario.

The Admissibility of Confessions in Criminal Matters. Third Edition. By The Honourable Mr. Justice FRED KAUFMAN. Toronto: Carswell. 1980. Pp. 399. ($42.50)

In the context of Canadian legal publications, Kaufman on confessions may now be described as "venerable". Day in and day out for almost two decades, the first and then the second editions have demonstrated themselves to be valuable companions in one of the most crucial aspects of the criminal process. The importance at trial of the accused's pre-trial statements is witnessed by the regularity with which significant judicial decisions are reported, dealing with various aspects of the admissibility into evidence of such statements.

Since the "voluntariness" rule is "judge-made", the case-law is conclusive. The third edition of this text is so comprehensive and so up-to-date that it is difficult to imagine any lawyer or judge, who does any amount of criminal work, allowing himself or herself to be without a copy.

The book is aimed at the practitioner. The author is more interested in describing the existing law than in assessing its strengths and weaknesses with a view to recommending reforms. However, even when describing the existing law, he makes his points cautiously, with the skill of an astute appellate counsel. He studiously avoids over-stating his case and reinforces his credibility with frequent and lengthy quotations. Indeed, the reader might occasionally prefer fewer quotations and more of Kaufman himself. On the other hand, the practitioner and judge in the court room will welcome the total context provided by these reproduced passages from the leading cases.

However, the author does not completely avoid drawing his own conclusions. For example, in his treatment of the *Boulet*[1] case, he suggests that the Supreme Court of Canada may have been too categorical in its broad conclusion that the voluntariness rule has no application to statements which are given in testimony at prior judicial proceedings. As always, the point is made carefully, gently and persuasively.

The third edition of Kaufman on confessions represents a great deal of work by the author. It is expanded but it is also re-organized. The more recent cases have been not merely "added on" but woven into the text. The book is also improved by an expanded index, many more cross-references and an increase in the number of sub-headings found throughout the text.

Chapter One is enhanced by the addition of a section dealing with "Self-Serving Statements". The section is well placed,

---

[1] *Boulet* v. *The Queen* (1976), 34 C.C.C. (2d) 397 (S.C.C.).

following a discussion of the "inculpatory — exculpatory" problem which was resolved by *Piché*.[2] In dealing with self-serving statements the author lays out the difficult cases of *Hodd*,[3] *Graham*,[4] *Newton*[5] and *Risby*.[6] Again, the reader might prefer to have Mr. Justice Kaufman's personal views of how the "loose ends of the problem" should be resolved. At the same time, an author who is also an appellate judge, must tread with some care. Let us hope that his Lordship will have the opportunity to deal with this aspect of extra-judicial statements in an appropriate case in his own court before too long.

Chapter Three is laden with recent cases on such questions as the introduction of statements after the close of the Crown's case, the actual examination of statements by the trial judge at the outset of the *voir dire*, the necessity of calling "all" of the officers who were in the presence of the accused prior to the taking of the statement and others. Indeed the number of new and important decisions dealt with in this chapter alone makes the book a sound investment. The author also introduces, in chapter three, the dramatic decision in *Wong Kam Ming*[7] which could lead to our Supreme Court reversing its earlier decision in *DeClercq*.[8]

Succeeding chapters proceed meticulously through the various facets of the "voluntariness" rule. Who is a person in authority? What is the meaning of "freely and voluntarily"? Is there a "right to counsel" in relation to pre-trial interrogation? The author discusses much more fully than can be found in other Canadian texts, questions such as the use by the police of deceit and trickery in obtaining statements, the operation of the voluntariness rule where a juvenile has been interrogated and the effect of "spiritual" inducements.

In sum, Mr. Justice Kaufman has done an excellent job on the third edition of his text. It will be invaluable to judges, practitioners and police officers. It is likely to be surpassed only by the fourth edition.

ED. RATUSHNY*

* * *

---

[2] (1971), 12 C.R.N.S. 222 (S.C.C.).

[3] (1970), 1 C.C.C. (2d) 363 (B.C.C.A.).

[4] (1972), 7 C.C.C. (2d) 93 (S.C.C.).

[5] (1976), 34 C.R.N.S. 161 (S.C.C.).

[6] (1976), 32 C.C.C. (2d) 242 (B.C.C.A.), aff'd (1978), 39 C.C.C. (2d) 567 (S.C.C.).

[7] [1979] 2 W.L.R. 81 (P.C.).

[8] (1968), 4 C.R.N.S. 205 (S.C.C.).

*Ed. Ratushny, of the Faculty of Law, Common Law Section, University of Ottawa.

Conflict of Interest Regulation in the Federal Executive Branch. By ROBERT G. VAUGHN. Lexington, Massachusetts: D.C. Heath & Company. 1979. Pp. xv, 187. ($21.95)

This book is an outgrowth of work conducted by the National Centre for Administrative Justice in the United States. The Centre has as its general purpose the advancement of administrative justice in society. The book is part of a general education programme conducted by the Centre on the problems of conflict-of-interest in both regulatory agencies and the federal executive branch of government in the United States.

The extent of contemporary concern with conflict-of-interest regulation has magnified and broadened in the past two decades. Even a casual perusal of any major newspaper indicates the extent to which problems of conflict-of-interest of the most pressing sort are in the public eye. In the United States, such issues as the constitutional crisis of the Nixon administration, and the reassessment of the federal regulatory process have been responsible for the development of a substantial new body of literature, laws, and regulations on conflict-of-interest. This book deals with but one aspect of the problem: the character and scope of conflict-of-interest regulation in the federal executive branch.

Throughout the book the author struggles with the problem of defining conflict-of-interest in government. The shift in the debate regarding conflict-of-interest over the past decade is well and interestingly highlighted in the course of struggling to define the problem. It has moved from the area of bribery, graft, and corruption to the more subtle and complex problems centering upon separation of government and public interest. The book traces this shift and seeks to demonstrate the difficulties that plague attempts at increased regulation. The problem of definition is never solved; it returns, in the final chapter, to its starting point, with a reminder that there are limits to legal regulation beyond which the only constraints upon conflict-of-interest regulation must be found in ethics and public morality.

The bulk of the book is spent comparing the two established methods of regulating conflict-of-interest: criminal enforcement and administrative regulation. Much of this discussion necessarily deals with the implications arising from the modern shift to greater use of the administrative process. In reading through this part of the book, one is struck by how very far the Americans have out-distanced Canadians in defining and dealing with conflict-of-interest in the federal government. The range of statutory regulation is broad in comparison to Canadian regulation, covering such far-reaching

topics as the past employment activities of federal employees in the Ethics in Government Act of 1978.[1]

The two chapters dealing with areas of current controversy are fascinating reading for a Canadian. They demonstrate the similarity of the public rhetoric while underscoring the lack of legal or administrative regulation of conflict-of-interest in this country. The debate ranges over the advisability of requiring public disclosure of financial interest, past employment restrictions, President Carter's conflict-of-interest requirements for his appointees and the role of Congress in approving such appointments. In a post election environment in Canada, one can see the same debates emerging in a Canadian context. The difference is that, in Canada, past practice suggests that the issues will be resolved at the political level, thereby circumventing the more permanent standard setting process of statutory or administrative regulation of the problem.

This book is excellent reading for anyone interested in the topic of conflict-of-interest and particularly its regulation in the United States federal executive branch. The book is required, and provocative, reading for anyone interested in developing a similar analysis of the problem in Canada. It is hoped that its existence will stimulate a more extensive coverage of this problem in the Canadian legal and social literature.

RICHARD H. MCLAREN*

* * *

Legal Services for the Community. By MICHAEL ZANDER. London: Maurice Temple Smith. 1978. Pp. 403. ($5.75)

The last decade has witnessed a growing public discussion about the English legal profession and the provision of legal services to British society. This public discussion has been stimulated in no small part by the writing and commentary of Professor Michael Zander of the law department of the London School of Economics. Zander has been in the forefront of British research into restrictive practices, unmet legal needs, and particularly the provision of legal services to low-income citizens. His writing, which has appeared in academic journals and *The Guardian* newspaper (he is their legal correspon-

---

[1] 92 Stat. 1867.

*Richard H. McLaren, of the Faculty of Law, The University of Western Ontario, London, Ontario.

dent), strengthened the growing demand for a review of the professional monopoly of barristers and solicitors. As a result of the demand the Royal Commission on Legal Services was charged, in February 1976, with investigating all aspects of legal services in England and Wales, and specifically to consider the question of whether the legal profession's monopoly should be retained intact and whether the conventions should be retained that divide the profession. The Royal Commission, which reported in October 1979, stimulated an unprecedented amount of discussion about the legal profession and was welcomed as a once-in-a-generation opportunity to scrutinize legal education, professional training and competence and the earnings of barristers and solicitors.

Zander's *Legal Services for the Community* is an expansion of his written evidence to the Royal Commission on Legal Services and is the culmination of more than a decade's study of the English legal profession by its most eminent commentator. Including much of his earlier research in the field, it brings together in one volume a comprehensive description and analysis of the public and private sectors of the British legal profession as well as of the alternatives to traditional delivery methods in legal services.

One of the significant aspects of *Legal Services for the Community* is Zander's detailed description of the development of law centres. Here the author compares the American model of legal aid developed within the philosophical framework of the war on poverty with the English system of judicare which was established in the period immediately following World War II under the direction of the Law Society. Zander's personal commitment to the introduction of community legal services in Great Britain has provided him with intimate knowledge of the previously unwritten history of the burgeoning law centre movement. The superbly detailed description of the development of law centres in England during the 1970s, in the face of opposition of the Law Society which had been operating a judicare (private solicitor) scheme since the early 1950s, is sufficient reason to read the book, for Zander has added an important chapter to the growing literature on legal aid. His description and analysis of the development of legal services in the public sector makes the book a required companion to Earl Johnson Jr.'s definitive study of neighborhood law offices in the United States, *Justice and Reform*.[1]

Zander raises one issue which has thus far been ignored in the on-going Canadian discussion of the merits of judicare vis-à-vis community legal services. He is concerned about the discrepancy between the highly technical and specific financial criteria required

---

[1] (1974).

to obtain legal aid provided by the judicare schemes as compared to the flexible and often vague eligibility requirements of community law centres. The client who applies for legal aid from the judicare legal aid plan will be carefully screened as to his financial resources and will often be required to contribute to the cost of legal services. Zander asks whether law centres are conferring a benefit on clients who utilize their services on a gratuitous basis which is denied to clients with an equivalent income who attempt, through legal aid, to retain a solicitor in private practice. Examining this issue at great length, Zander is ultimately unprepared to require law centres to impose more stringent economic criteria for their services, out of concern that this requirement could fundamentally change their approach to legal services.

Readers of Zander's earlier writing will be surprised to find that the author no longer advocates a Legal Services Commission to co-ordinate, manage and stimulate civil and criminal legal aid for England and Wales. In *Legal Services for the Community*, Zander agrees with the submission of the Lord Chancellor's Legal Aid Advisory Committee that no sufficient case has been made for divesting the Law Society of its stewardship of civil legal aid. Though agreeing in principle with both the analysis and recommendations of the Osler Commission on Legal Aid in Ontario—that legal aid should be governed by a board of governors and not by the Law Society of Upper Canada—Zander states that in England and Wales the Law Society is merely a manager: all significant decisions being made by government. It is government which ultimately determines the amount of monies available for legal aid and whether the private or the public sector is to be encouraged in the provision of legal services. He cites the withdrawal of legal aid from undefended divorces in England as an example of a situation where the ultimate and crucial decision was made by government (the Lord Chancellor's department) in face of the Law Society's opposition. Although he acknowledges the need for co-ordination of decision-making and overview of legal services in criminal and civil matters in both the public and private sectors by informed professionals and lay persons, Zander backs away from recommending a legal services commission similar to those in Quebec, Manitoba, Saskatchewan and British Columbia. He suggests rather that the expansion of the role of the Lord Chancellor's Legal Aid Advisory Committee is the most effective method of developing a variety of alternatives to the provision of legal services which will, in the end, be paid for by government. Pragmatic as this approach may be, this writer would question Zander's conclusion submitting that the Saskatchewan Legal Services Commission has demonstrated that there is an effective role for a commission composed of representatives of the consumers of legal aid, the profession, and government who together

administer the legal aid budget and set priorities in the delivery of legal services.

Legal Services for the Community is essential reading for the growing number of lawyers and law students in Canada who are concerned with evaluating the role of the legal profession and specifically legal aid in the face of changing professional and economic expectations of the public and government. In particular Zander's description of the non-lawyer's role in providing legal services in solicitors' offices and directly to the public is of considerable interest. He examines the relationship between the legal, para-legal and lay advisors and provides interesting descriptive data about the work of non-lawyers in citizens advice bureaus, trade unions, consumer advice centres and housing advice centres. Zander examines the profession creatively, providing a highly critical yet significant commentary on the English legal profession—a commentary and evaluation which sheds light on the path likely to be walked in Canada.

Zander's journalistic style, carried over from his *Guardian* assignments, actually makes the text enjoyable reading—a rare compliment for a piece of legal academic writing. Although many readers will disagree with Zander's recommendations, they will nevertheless be provoked to reconsider, if not change, their opinions about certain professional issues. Zander has chosen to present his own views in the context of the significant evidence to the Royal Commission on Legal Services and his insightful comments upon the evidence of others is often fascinating. Even the *Law Society Gazette's* reviewer acknowledged that the book was ". . . very readable—and generally speaking—plausible and surprisingly it is not quite as infuriating as one might perhaps have expected".[2]

F. H. ZEMANS*

* * *

Legislation Related to the Needs of Children. By CANADIAN COUNCIL ON CHILDREN AND YOUTH. Toronto: The Carswell Company Ltd. 1979. Pp. 109. (No Price Given)

The publication under review is an attempt to briefly describe and clarify the legal position of children in Canadian society. The policy rationale underlying its existence is clearly stated in the opening passage as follows:

---

[2] (1978), 75 L. Soc. Gaz. 900.

* F. H. Zemans, of Osgoode Hall Law School, York University, Toronto.

> The 7,000,000 children in Canada make up about a third of our population and yet they remain largely invisible in social policy and planning. They do not have the right to vote and they cannot influence policy. For various reasons and in varying degrees their lives are determined by people other than themselves.[1]

Legislation Related To The Needs of Children was originally developed as an appendix to the report of a task force of Canadian experts in child-related matters under the sponsorship of the Canadian Council on Children and Youth. The entire bilingual report, entitled *Admittance Restricted: The Child as Citizen in Canada,* is available directly from the Council. It is an extensive policy paper designed to explain the present situation in detail which then moves on to advocate a number of substantive changes.

As an appendix, its purpose was primarily to specifically denote the incredible extent of current provincial, federal and territorial legislation which affects the lives of children directly, although much of it is not thought of from this standpoint. Fortunately, this publication can stand alone and be of considerable utility to the legal community. It has in fact already been reprinted once[2] and now is appearing as a Carswell paperback. The material is accurate up to and including 1978.

The publication opens with a very brief introduction and discussion of the constitutional division of legislative authority between the provinces and the federal government. In doing so it makes the salient observation that the British North America Act[3] contains not a single reference to a child or children in the entire statute. Subsequent interpretation developed the notion that provincial jurisdiction over most child-related matters resided in the "property and civil rights" head[4] while the federal government's more limited authority was based on "marriage and divorce"[5] and "criminal law".[6]

The first major chapter, if it can be called that as the text is only six pages in length, concentrates on the child's need for economic support. The chapter contains a brief discussion of the various types of legislation in the area relating to injuries to parents, property law, inheritance, and child support provisions in connection to divorce or family breakdown. The present problems concerning eligibility for maintenance and enforcement of judicial orders are mentioned. The

---

[1] P. 4.

[2] (1979), 6 R.F.L. (2d).

[3] 1867, 30-31 Vict., c. 3, as am. (U.K.).

[4] *Ibid.*, s. 92 (13).

[5] *Ibid.*, s. 91 (26).

[6] *Ibid.*, s. 91 (27).

summary ends with an attempt to outline the overall thrust of economic support legislation being on the ability of parents to pay rather than the actual welfare of the child.

The bulk of the chapter, and its most important part, is the legislative chart which follows the text. It lists every conceivable federal and provincial statute and territorial ordinance in regards to the parental obligation of support; remedial provisions in case of default due to physical or mental incapacity or death, refusal to provide, dissolution of the marriage, and parenthood out of wedlock; and, finally, dealing with the situation of income-producing minors or those with income from independent sources. The chart clearly indicates the full title of each statute or ordinance, the complete citation, all amendments since enactment or the last revision, and refers to the relevant section or sections of the Act under each subheading.

The next three chapters follow the same format in approaching the child's need for health care, for protection and for education. They all contain brief descriptions of the present legislation, some of the problem areas and an attempt to specify the philosophy behind the law. Each then incorporates a lengthy legislative chart.

The last chapter pertains to the special needs of the native child. It subdivides and defines native children as Inuit, status Indians, non-status Indians and Métis, which is an essential precondition for any discussion of their legal position. The publication then points out that only status Indian children are recognized as being in a somewhat unique legal position in that they can be subject to some provincial laws and not others in fields occupied by the federal Indian Act.[7] Special mention is made of those sections in the Indian Act which enforce different standards in some common legislative areas along with the unparalleled provisions dealing with registration and enfranchisement.[8] The lack of input or involvement of Indian children in these crucial decisions is highlighted as is the general confusion surrounding which legislation in fact applies on any particular issue.

Although this last chapter does not contain a legislative chart, the majority of the relevant parts of the Indian Act appear in the text. This discussion will, perhaps, be the most interesting to many readers as it is virtually the only publication available on this particular topic.[9]

[7] R.S.C., 1970, c. I-6, as am.

[8] There is a slight error in this part as s. 12(2) of the Indian Act is mistakenly printed as s. 2(2): p. 105.

[9] The only other publication of which this reviewer is aware is The Royal Commission on Family and Children's Law of British Columbia, Tenth Report, Native Families and the Law (1975).

Members of the legal community will find the commentary which accompanies the legislative chart as too general to be of any significant use other than as a quick refresher of some of the problem areas. It is the legislative chart itself, which occupies over three-quarters of the entire publication, which is the real reason to obtain this book. Simply put, it serves as an excellent collection of all legislation in Canada which affects children in any way. It is grouped in such a manner as to permit the reader to readily find the appropriate legislation on any particular point and, if desired, to ascertain similar provisions in all other Canadian jurisdictions. In addition, the chart can serve as a checklist as it contains references to even the most obscure statutes which would usually be overlooked.

BRADFORD W. MORSE*

* * *

English Legal System. By STEVE BRANDON, IAN DUNCANSON, GEOFFREY SAMUEL. London: Sweet and Maxwell. 1979. Pp. vii, 104. ($4.15)

How rare and how difficult it must be to write an introductory book on the legal system which both edifies the novice and stimulates the knowledgeable. Those few, foolhardy venturers who have attempted so to do have either been sucked into the Charybdis of glibness or washed ashore on the Scylla of misleading superficiality.[1] The *English Legal System* by Steve Brandon, Ian Duncanson and Geoffrey Samuel safely navigates these dangerous waters and is an interesting and valuable introduction. Aimed at an English audience, several chapters are of interest to the Canadian student, only for comparative purposes; however, a number of chapters, in particular, those describing areas of law such as contract or tort, the historical development of the law, the sources of law and legal reasoning are as relevant in Canada as in England. The book is short, numbering a mere one hundred and four pages, but because it is well-written it covers the material in greater depth than similar books. The sentences are short, precise, structurally simple and avoid the triteness so often characteristic of that writing style and the general approach is analytical as well as descriptive.

---

*Bradford W. Morse, of the Faculty of Law, Common Law Section, University of Ottawa.

[1] Two recent Canadian books are, S.M. Waddams, Introduction to the Study of Law (1979) and Patrick Fitzgerald and King McShane, Looking at Law, Canada's Legal System (1979).

Several aspects of the book call for special attention. In their brief descriptions of the various subdivisions of law, the authors describe only criminal law, contract, tort and trusts. Why other important areas such as family law, property or administrative law are omitted is far from clear. Perhaps, the authors redeem themselves, at least with contract lawyers, by remembering the very simple fact that the contract principles developed by the courts are a response to the problems created by the contracting parties who have failed to exercise their freedom to write their own contractual rules. Too many thumbnail descriptions of contract law leave the reader with the impression that the judge-made rules bind the parties regardless of their respective wishes.

The best chapter is chapter eight, entitled, "The Development of the Common Law" in which in the short space of twenty-two pages a detailed and very useful description of the courts of common law, the court of equity, the law merchant and the historical unification of these separate structures and systems of law is presented. Together with the discussion found in chapter nine on the influence of the writs and the forms of action on the development of the common law, especially the substantive law of remedies, the book contains one of the best, brief introductions to the historical background of the modern legal system.

Despite these pleasing characteristics, the book suffers from one underlying flaw in that an almost polemical critique of certain aspects of the legal structure surfaces from time to time. Even the otherwise objective and excellent chapter on the development of the common law is marred by the conclusion that: ". . . the common law survived not so much as a result of intellectual and social prowess, but more because the minds of those who staffed the institutions were, with only few exceptions, extraordinary narrow, inflexible and riddled with petty jealousies."[2] Undoubtedly this observation is as true of the common law as it is of the personnel of any human institution or structure, past or present, but it does nothing to explain the longevity or aptitude for survival which the common law possesses, even to this day and despite the Judicature Acts, 1873-5.[3] As an explanation of historical causation, such a statement is completely inadequate.

Polemical underpinings are most evident in chapter five on "Tribunals" and chapter six on "The Legal Professions and Access to the Legal System". Here we learn about the disadvantages suffered by the inarticulate faced by professional advocates in

---

[2] P. 76.

[3] A number of Judicature Acts were passed between 1873 and 1910 and were consolidated by the Judicature Act, 1925, 15 & 16 Geo. V. c. 49.

tribunals, the monopoly exercised by the legal profession and the inadequacies of legal aid. Granted these problems exist but the primary function of an introduction to the legal system is to describe, not berate. The authors easily could have satisfied both functions by first objectively describing the structure and then stating the criticisms and reform proposals which they advocate.

In conclusion, then, the *English Legal System* provides a good, little introduction to the legal structure which may be usefully assigned in introductory law courses both at the undergraduate and first year law school level. Moreover, it also provides a refreshing re-examination of basics for the practitioner and thoughtful perspective to the interested lay person.

M. H. OGILVIE*

* * *

Liability in International Air Transport. By GEORGETTE MILLER, Diplôme d'Etudes Supérieures, LL.M. (McGill), Ph.D. (Australian National University). Deventer, The Netherlands: Kluwer. Boston: Kluwer Boston Inc. 1977. Pp. xiv, 404. ($44.00 U.S.)

A number of books and a great many articles and case-notes have been written about the Warsaw Convention. But this book by Dr. Georgette Miller is the most detailed publication of its kind since Dr. Hubert Drion of the Netherlands published his *Limitation of Liabilities in International Air Law* in 1954. The book is concerned with a detailed examination of the Warsaw system in the municipal courts of Australia, Canada, France, the United Kingdom and the United States.

The Warsaw system includes a bewildering variety of legal instruments: (a) the intergovernmental treaties in the form of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929), the Hague Protocol (1955), the Guadalajara Convention (1961), the Guatemala City Protocol (1971)

---

* M.H. Ogilvie, of the Department of Law, Carleton University, Ottawa.

and the four Montreal Protocols (1975), and (b) the inter-airline arrangement in the form of the Montreal Agreement (1966). The Guatemala City and Montreal Protocols are not yet in force and the Montreal Agreement, which applies to the carriage of passengers an absolute liability regime and limits of $58,000.00 U.S. (exclusive of legal costs) and $75,000.00 U.S. (inclusive of legal costs), becomes less and less attractive for claimants as inflation makes inroads into these amounts.

Because the Warsaw passenger limit, whether in the original Convention (now $10,000.00 U.S.) or in the Hague Protocol (now $20,000.00 U.S.), has been low during the whole history of the Warsaw system, many claimants have had to engage in costly, and not always successful, litigation with a view to breaking the limit. Some courts, in order to escape from the strait-jacket of the Warsaw system, have understandably attempted to rewrite the Convention or circumvent it.

Most cases on the Warsaw Convention have been litigated in United States courts with French courts in second place in the amount of Warsaw litigation. There has been only sporadic Warsaw litigation in Australia, Canada and the United Kingdom. Because the countries selected for study are among the major aviation powers of the world, the book covers the overwhelming majority of Warsaw cases decided to date and, in so doing, provides a comprehensive discussion in English of aviation case-law in France. This is useful for lawyers in common law jurisdictions since, the text of the original Warsaw Convention being authentic only in the French language, the common law courts have not been uninterested in French case-law when giving judgments on the Warsaw Convention. Also, because Canada has a civil law jurisdiction in Quebec, which has been one of the focal points for Warsaw cases in this country, the up-to-date examination of the French approach to Warsaw litigation will be of use to the civilians in Quebec.

Although the book contains a detailed comparative law study of the Warsaw system, this should not frighten away the lawyer not specialized in air law. On the contrary, the approach to the subject is of such a practical nature that the book contains very valuable insights into the Warsaw system. These make the book a *vade mecum* for anyone who has to advise on liability problems in relation to carriage by air.

In this short review, it is impossible to give detailed description of a book containing 428 pages and over 1800 footnotes. Nevertheless, it will be useful to give an outline of the main topics covered.

The book begins with a consideration of the scope of the uniform regime of air carriers' liability and then proceeds to an

examination of the changes made to the original Warsaw Convention by the Protocols of amendment in 1955, 1971 and 1975. Against the background of the general principles of carriers' liability, there is a study of the principles of the Warsaw Convention which provides for a regime of presumed and limited liability of the carrier with few defences, and the breaking of the limits in case of *dol* (wilful misconduct or equivalent default) or where the carrier does not comply with the Convention's requirements as to the documents of carriage.

There is a careful examination of the liability of the carrier for the carriage of passengers, checked baggage and goods and for delay. After discussing the defences of the carrier and pointing out the difficulties relating to the currency used to fix the liability limits, the author devotes—and rightly so since this is the heart of the Warsaw-Hague system—considerable space to the conditions under which the carrier will lose the benefit of the limits of liability.

There follows a discussion on the question of whether the Warsaw Convention creates a cause of action and the treatment of this question in the United States, Australia, Canada and the United Kingdom and France is described. The author says that the answer to the question is negative in the United States and France "but there is hardly anything in common between the reasoning used in each country. The answer is not so clear in Australia, Canada, and the United Kingdom. But if the Convention is read in conjunction with its enactment in municipal law, there is no doubt that a cause of action is provided".[1] Possibly the position in the United States has now changed since the question of whether the Convention itself creates a cause of action for wrongful death was recently answered in the affirmative in *Benjamin* v. *British European Airways*.[2] As to Canada, even if the Convention coupled with the Carriage by Air Act[3] creates a new cause of action, this does not oust jurisdiction of provincial courts and confer it on the Federal Court of Canada in an action involving a Warsaw contract.[4]

The next part of the book is concerned with the nature of the action contemplated by the Convention. Here it is stated that "French Courts have clearly established that actions governed by the Warsaw Convention are contractual and, as such, exclude the

---

[1] P. 232.

[2] (1978), 572 F.2d 913 (2nd Cir.), cert. denied, (1979), 47 U.S.L.W. 3482 (U.S. Jan. 15, 1979) (No. 78-129); see, also, casenote in (1979), 44 J. Air L. & Com. 669.

[3] R.S.C., 1970, c. C-14.

[4] See, in this regard, *Bensol Customs Brokers Ltd.* v. *Air Canada* (1978), 87 D.L.R. (3d) 613 (F.C.T.D.).

application of any rule which does not belong to the law of contract. This does not exist in common law countries, where the existence of a contractual action is not exclusive of an action based on tort or on bailment, or of the application of rules which normally belong to such actions."[5]

The book explores the difficult matter of who can be plaintiffs and defendants under the Warsaw Convention. In the case of passenger claims, Schedule Two to the Carriage by Air Act[6] settles the problem which may be more difficult of solution in a country, like the United States, where the Convention is the law of the land and is not implemented by legislation. Problems as to prospective defendants arise because the contract for carriage may have been issued by a travel agent, a freight forwarder, a charterer, an airline other than the one performing the carriage (but acting on behalf of the latter under an interline arrangement) and the operator of the aircraft.

As Dr. Miller points out with respect to the proper forum under the Warsaw Convention, a number of difficulties have arisen in relation to article 28 of the Convention mainly in the courts of the United States and France. She says that most of the significant differences which now exist between the American and the French judicial interpretations relate to the role that article 28 has been made to play in each legal system and to the manner in which the article has been combined with the domestic law rules designating the proper forum. In particular, problems have arisen due to discrepancies between the original French text of article 28 and its English translations; the relationship between the concepts of "jurisdiction", "venue" and "compétence"; and the judicial definitions of the place of article 28 within the legal systems of the United States and France.

On the topic of limitation of actions (article 29 of the Convention contains a two-year period), it is stated that, on looking at the results achieved in the United States and in France, a complete similarity appears since, in both countries, plaintiffs have been allowed to rely on the tolling provisions of the *lex fori*, although if one considers the reasoning used in the various courts to arrive at those results, the differences outnumber the common features.

In recapitulating the various factors preventing uniform interpretation, Dr. Miller points out that the Warsaw Convention contains some inherently ambiguous provisions, that there are problems arising out of the insertion of the uniform law of the

---

[5] P. 244.

[6] *Supra*, footnote 3.

Convention into pre-existing legal systems and, lastly, that the "fact that the uniform law has been interpreted by municipal courts has had a decisive influence in the emergence of a great number of differences between individual Warsaw cases".[7] However, it is stated that "the role played by municipal law in the interpretation of the Warsaw system cannot be realistically condemned, and should not be condemned *en bloc* for theoretical reasons, despite its part in preventing uniform results to be achieved".[8] A further conclusion is that there can be no miraculous solution, which could suddenly ensure a uniform interpretation of the Warsaw system and that, for the future, a series of practical steps at the drafting stage would greatly reduce the chances of disparities occurring at the interpretation stage.

The book is completed by a comprehensive table of cases, a lengthy bibliography and an index. These items, coupled with the footnotes, make the book an indispensable tool for anyone who has to deal with the complexities of the Warsaw system.

GERALD F. FITZGERALD*

* * *

International Law. Second Edition. By D.W. GREIG. London: Butterworths. 1976. Pp. xxi, 944. ($49.15 hardbound, $34.10 paper)

It is a pleasure to welcome this new edition of Professor Grieg's *International Law*, which is one of the most readable of current general texts on international law. Perhaps the most important development since the first edition has been the publication of the Single Negotiating Text of the United Nations Conference on the Law of the Sea, and the learned author has rightly decided that it is not possible to give a proper perspective on this most important branch of international law without drawing due attention to the existence and significance of this Text,[1] even though we appear no nearer to adoption of a new Convention than when this text was promulgated.

Another field which has been developing fast has been that concerning self-determination, and although the advisory opinion on the *Western Sahara* is of importance from this point of view, the

[7] P. 339.

[8] P. 358.

*Gerald F. FitzGerald, Q.C., of the Department of Justice, Ottawa.

[1] *E.g.*, pp. 190, 198.

author only refers to it in connection with his comments on the advisory jurisdiction of the World Court.[2] In fact, self-determination does not even figure in the index. Nor does it appear as a subheading to the entry on human rights which is primarily concerned with the European Convention, and he considers a denunciation of this as "the equivalent of the withdrawal of international rights from all persons within the territory of the state concerned".[3] While the European Court of Human Rights has undoubtedly delivered some significant judgments, Professor Grieg reminds us that the majority of individual petitions are dismissed at the first investigation, while the greatest contribution made by the Convention lies in the work of the Commission in achieving arrangements between the parties and thus forestalling court action.[4] On the contribution of the United Nations to the protection of human rights, he questions whether the Charter really goes as far as some maintain, and says in the context of apartheid "it is doubtful how far this campaign [to supervise non-self-governing territories internationally] has yet achieved any change in the law, so that the human rights provisions of the Charter still remain desirable objectives rather than general legal prescriptions".[5] He might have argued slightly differently had the Covenants of Human Rights been in force at his date of writing. On these, all he says is that "the number of ratifications to date has been regrettably small"[6]—and this is still true even though they have come into force. As for the Universal Declaration, it is refreshing to read his statement that "this is no more than a general statement of moral purpose and not a vehicle of legal obligation".[7]

Of late there has been a revival of appeals to the right of humanitarian intervention, and here Professor Grieg rightly draws attention to the "unreliability of community action arising out of the difficulty of securing agreement amongst the permanent members of the Security Council in favour of such action".[8] It is submitted however, that he appears to accept rather too easily the arguments of American scholars in favour of this right to justify intervention in the Dominican Republic by the United States, or by India in East Pakistan resulting in the destruction of the territorial integrity of Pakistan regardless of the terms of the Charter.[9]

---

[2] Pp. 683-684.

[3] P. 119.

[4] P. 816.

[5] P. 119.

[6] P. 118.

[7] *Ibid.*

[8] P. 880.

[9] Pp. 881-883.

As with so many recent texts on international law, the learned author reduces his discussion of the use of force by states to a single chapter. The historical background, the League Covenant, the Kellogg Pact (which does not appear in the Index) and Nuremberg merit a mere three pages. The problem of aggression and its relation to the Charter receive twice as much. Although there is reference to the reservation in favour of wars of national liberation, which are excluded from the definition of acts of agression,[10] there is no attempt made to discuss the implications of this. Professor Grieg is aware of the problem as is shown by his comments concerning the protection of diplomats from acts of terrorism, when he mentions how intractable the issue is because of "sympathy with the motives of the perpetrators" felt by so many third world states.[11] It will be interesting to see how Professor Grieg deals with the tolerance shown by the local government in such instances as the seizure of the United States embassy in Tehran. The larger part of the chapter on the use of force deals with self-defence, and Professor Grieg agrees with those who maintain that since article 51 of the Charter describes this right as "inherent", it leaves the concept of anticipatory self-defence intact. He cites Israel's pre-emptive attack on Egypt in 1967 as a perfect example of the exercise of this right.[12] With the adoption by the Geneva Conference on Humanitarian Law in Armed Conflicts of two new Protocols in 1977, we may find future textbook writers giving fuller attention to the rules of war. Professor Grieg only cites the Hague Conventions of 1899 and 1907 on pacific settlement,[13] even though the majority of Conventions emanating from those two conferences were concerned with the regulation of armed conflict.

It is not usual to find in a non-American text so careful an analysis of the rights and wrongs of the United States role in Vietnam. Insofar as the war may be considered a civil war, the author argues that, as there was no rival government in South Korea, it was legal for the government of the latter to call upon the United States for assistance, since "the rules of international law limiting the right of the established government of a state to agree to the use of force by another state have not sufficiently crystallised".[14] Here, Professor Grieg seems to minimise the whole trend of practice since the Spanish Civil War, as well as a plethora of United Nations declarations on non-intervention and the meaning of sovereign independence. Insofar as the war was international, interestingly

[10] P. 876.

[11] P. 220.

[12] P. 893.

[13] Pp. 621-622.

[14] P. 915.

enough he denies that the United States had any right to take advantage of what the Charter describes as collective self-defence.[15]

One of the attractions of Grieg's *International Law* is that it provides the possibility of looking at issues from "down under", and not merely from the Anglo-American point of view. It is interesting to note, therefore, his hesitancies with regard to the decisions of the World Court in the *Nuclear Tests Cases*. He concludes that if France had really meant what it said in the declarations that the court regarded as legally binding, it would have acceded to the Test Ban Treaty. He suggests, therefore, that "to talk in terms of a legal obligation arising from the French statements was scarcely realistic".[16] It is to be regretted that he did not see fit to discuss the Australian decision in *Burns* v. *Commonwealth of Australia*[17] relating to the Korean operation, for this is perhaps as important in considering the nature of "war" as is the *Kawasaki* case[18] which is noted at p. 869. Moreover, the *Burns* case raises nice points as to the municipal authority of the Charter, and Professor Grieg could have easily referred to it when commenting upon the status of international organizations under municipal law.[19]

The prime jurisprudential and philosophical problem for any international lawyer revolves round the question whether international law is in fact law. Too often, international lawyers go on to the defensive when confronted with arguments put forward by their municipal colleagues in the light of positivist theory. They automatically seek to find similarities between the two systems. Professor Grieg rightly points out that international law has "one major similarity that far outweighs [the] points of difference: it depends for its efficacy upon the general will of the community to abide by its rules. In the last resort, both international law and municipal law depend upon the underlying acceptance by the community of the duties imposed upon individuals, whether they be persons or states. Furthermore, international law can usefully be considered as law because it is treated as law by members of the international community".[20] Also, one must remember that "the problem of the trained lawyer is that he will approach international law with the prejudice of a lawyer. Despite its claim to be 'law', international law is in many ways an unfamiliar discipline. . . . [T]he legal mind is

---

[15] Pp. 915-917.

[16] P. 456.

[17] (1951), 4 Int. L.Q. 462.

[18] [1939] 2 K.B. 544.

[19] Pp. 111-112.

[20] Pp. 1-2.

[21] Pp. 918-919.

prone to regard all situations as capable of analysis in legal terms entirely detached from their political implications''.[21] Recent trends in the United Nations and at every international conference called to draft a convention, including the law of the sea, indicate how dangerous such a separation is. However, the task of the legal adviser is to advise on law. The task of a government is to seek its advice where it may and make its decision, which is a political decision, in the light of all the advice given. In view of some of the latest decisions of the World Court, one is tempted to enquire how valid is Professor Grieg's final sentence: ''Only in the comparative rarity of the judicial settlement of a dispute is it likely that the legal answer will be effective.''[22] If one looks at the ''busyness'' of the court in the last few years, one might be justified in assuming that the legal answer is never of significance.

L. C. GREEN*

* * *

The International Arbitral Process; Public and Private. By J. GILLIS WETTER. 1979. Dobbs Ferry: Oceana Publications Inc. 1979. Vol. I, pp. xxxviii, 617; Vol. II, pp. xv, 622. ($50.00 U.S. per volume)

For some years now, Oceana Publications Inc. have been placing international lawyers very much in their debt by producing multi-volume series of what may most easily be described as the raw materials of international law. Often, these series consist of officially agreed documents or of the records of international conferences and debates. Occasionally, however, extracts are included from doctrinal writings, when the particular editor thinks these have made a mark and should be preserved. The latest venture of this kind is to be a five-volume work devoted to *The International Arbitral Process,* covering both its public and private manifestations, the bulk of the work being, perhaps not unexpectedly, devoted to the latter. The author defines his object as being ''to enable the patient reader to acquire a true understanding of the subject, and to provide the international lawyer with most of the basic texts and information which are required for practising in the field as arbitrator, advocate and counsel''.[1]

---

[22] P. 919.

* L. C. Green, University Professor, University of Alberta, Edmonton.

[1] Vol I, p. xiii.

From the point of view of the public international lawyer, volume I is a veritable goldmine, being almost entirely devoted to interstate arbitrations. In fact, the first chapter is entitled "War or Peace: Public International Law Arbitration", and the first 170 pages are almost entirely concerned with the *Alabama*,[2] perhaps the forerunner to all modern interstate judicial activity. This is introduced by some excerpts from a speech by Lord Russell of Killowen on the sentiment for peace and in favour of arbitration as an alternative to war, delivered in 1896, almost a quarter of a century after the award. In addition, and perhaps as a gift to his readers, Mr. Wetter reprints, in praise of the glory of the Alabama Hall, the tourist brochure prepared by the City of Geneva, and, to prove that the Alabama Hall is still important, the speeches in the same Hall by Judge Lagergren in opening the Rann of Kutch arbitration, 1966, and by Sir Gerald Fitzmaurice opening the Beagle Channel arbitration ten years later. In so far as the *Alabama* case is concerned, perhaps there has never been so comprehensive a collection of documents so readily available to the modern lawyer—even a translation of some of the passages in Strindberg's *The German Lieutenant*, in which the settlement is described as being "not to the advantage of America, but of justice, not to the injury of England, but for the good of future generations".[3]

Those who admire Max Huber's award in the *Palmas* arbitration,[4] which is reproduced, will also take pleasure in Guggenheim's obituary statement as well as that by Pictet recording Huber's contribution to the Red Cross.[5] The *Rann of Kutch* case[6] is reproduced under the heading "Peace in Lieu of War", while the next 130 pages deal with "Hope and Disappointment—the Beagle Channel Award (1977) and its Repudiation", the last document being a piece reprinted from *The Economist* for January 13th, 1979, commenting upon "The Triumph of the Pope and his Mediator".[7]

Chapter II of Volume I is concerned with arbitration between States and Aliens, covering the *Aramco* case,[8] the *B.P. Concession* case[9] and the *Topco Calasiatic* case.[10] This chapter is followed by a collection of materials on arbitrators, umpires, experts, valuers and

---

[2] (1872), Moore's Arb. 656.

[3] Vol. I, p. 173.

[4] (1928), II U.N.R.I.A.A. 829.

[5] Vol. I, pp. 174, 186.

[6] (1976), 50 Int. L.R. 2.

[7] Vol. I, p. 404.

[8] (1963), 27 Int. L.R. 117.

[9] P. 432.

[10] (1978), 17 Int. Leg. Mat., 3.

conciliators, introduced by a reprint of Dean Mentschikoff's paper on "Commercial Arbitration",[11] described by Mr. Wetter as "one of the greatest articles ever written on arbitration".[12]

Volume II will appeal more to the private lawyer, particularly if engaged in commercial and arbitrations crossing international borders. Chapter IV is a 120 page nutshell on United States arbitration law, while chapter V looks at the American Arbitration Association, the London Court of Arbitration, the International Centre for the Settlement of Investment Disputes, the Court of Arbitration of the International Chamber of Commerce, the Arbitration Institute of the Stockholm Chamber of Commerce, all rounded off by a comparative analysis of the institutions,[13] and a short note on non-institutional ad hoc arbitration.[14] For the lawyer about to engage in arbitration, perhaps it is Chapter VI which will be most significant, for this discusses the laws and rules, including a uniform international procedure. In fact, in this 300-page chapter every facet that is likely to arise is covered, including qualifications, language, due process, *ex parte* proceedings, the difference between procedural and substantive law, and the like. The volume then concludes with a chapter concerned with revision and re-opening.

Both volumes contain a detailed table of contents of the entire work and it is clear from this that here we are about to be given one of the most useful and comprehensive works on every aspect of arbitration that has ever been published.

L.C. GREEN*

* * *

The Right to Health as a Human Right. Edited by RENÉ-JEAN DUPUY. Alphen aan den Rijn: Sijthoff and Noordhoff. 1979. Pp. 500. (No Price Given)

Article 25 of the Universal Declaration of Human Rights states that:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

---

[11] (1961), 61 Col. L. Rev. 846.

[12] Vol. I, p. 485.

[13] Vol. II, p. 234.

[14] Vol. II, p. 244.

* L.C. Green, University Professor, University of Alberta, Edmonton.

How many people involved in the current controversies over health care in this country are aware that health and the provision of health care services are the subject of international commitments in the field of human rights? Most Canadians are probably not accustomed to thinking of the right to health as a human rights, nor are they apt to consider the international dimensions of an issue which is generally regarded as having only domestic significance. Although it is trite to draw attention to the interdependence of all nations, to remark upon the recent increase in global communications which allows people in all parts of the world to keep informed about events in far distant places, it is nevertheless true that people in this country are largely ignorant of international efforts for the protection of human rights.

Certainly, the denial of political rights, along with the persecution of dissidents in various jurisdictions receive continuing coverage in the media. Furthermore, the occasional crisis, such as the horrors being suffered in South-East Asia, is intensively publicized. However, out of the limelight, the behind-the-scenes operations of a wide variety of international agencies are continuously affecting the development and implementation of a much broader range of fundamental human rights. One of the rights supported internationally is the right to health. As is shown by the papers in the book under review, the right to health has been universally recognized as a human right. Canadians might do well to look to the extensive experience available in other countries and cultures and in the organizations to which they belong, as they search for solutions to their own pressing problems.

The publication of *The Right to Health as a Human Right,* provides an excellent opportunity for concerned persons in this country to learn about the universal dimensions of what is usually regarded as an internal crisis. Other nations are pondering the same difficult questions. A wide range of international agencies including F.A.O., W.H.O., I.M.C.O., and I.L.O., are conducting continual research in the health care field, in addition to initiating international agreements, issuing standards, actively fighting the elimination of certain diseases, such as smallpox, and collecting and examining reports from their member status on their efforts to effect progress in the health care field. Furthermore, they are studying health from a legal and economic, as well as a scientific point of view.

In July 1978, in The Hague, there was held a colloquium or workshop on the right to health as a human right, jointly sponsored by the United Nations University and the Hague Academy of International Law. The papers there presented and discussed have been published in the present volume, edited by René-Jean Dupuy, a co-ordinator of the workshop. Professor Dupuy is secretary-general

of the Hague Academy of International Law, as well as being a member of the European Commission on Human Rights, and a member of the International Medical-Legal Commission of Monaco. Meeting together for the first significant international consideration of this urgent and important topic was an impressive list of legal, economic and medical experts from states of widely varying cultures and political and legal systems. The participants included law professors, medical scientists, a Nobel prize-winning economist, delegates from numerous international institutions and organizations, civil servants, the former Health Minister of France, the President of the European Commission on Human Rights, the President and a past President of the International Court of Justice, a representative from the Council of Ministers of the European Communities, and so forth.

For the purposes of analysis, the topic was divided into three parts:

1. The fundamental concepts of the right of health,
2. International action for the implementation of the right to health,
3. The right to health and protection of the human environment.

Although the law is still in the process of development, the delegates at the Colloquium all agreed that there is indeed a human right to health. The right is inextricably entwined with the right to life, the right to the integrity of the human body and the right to freedom. In fact, no other right can be put to its fullest use if a person has not his health. In addition to being protected in international agreements such as The International Covenant on Economic, Social and Cultural Rights, the right to health is manifested in the constitutions of many international organizations, in their deliberations, and in their resolutions and declarations.

The right to health has many facets, not all of which have been universally recognized or accepted. Some elements of the general right are: the right to be free from adverse effects on one's health through the acts of other persons, the right to treatment if one's health is impaired, the right to the prevention of environmental pollution which could be harmful to health, and the right to the entitlement of all of these rights without discrimination on the basis of race, sex, religion, nationality, economic and social status or other irrelevant grounds.

Even if the full range of elements of the right to health were agreed to by all nations, there nevertheless would remain the classic difficulty of international law—that of implementation. Without a central sovereign power, there can be no true enforcement of those

rules which are generally accepted. Yet, as is documented in the papers presented to the workshop, much can be done to effect voluntary compliance with the law, by the use of international standards and moral suasion. If the various organizations and individuals at work on the problem can promote public understanding and discussion of the issues involved that is already a first step towards the realization of the right to health of all humankind. Professor Dupuy sets out his expectations in his conclusions to the workshop:

> . . . our project was modest; we did not think that this Workshop—which was the first one to propound it so widely—could have the ambition of solving this problem; but it would have been successful . . . if it eventually led to a conscience awakening which contributes to create an international climate (this was asked for here), enabling in its turn the setting up of procedures necessary to achieve aims which, taken as a whole, constitute the implementation of a human right. At the same time, this Workshop and the Academy which held it, would have served to give an impetus to the renewed action of international organisations and they would have responded to the essential objectives which are those of the United Nations University. Now, these aims, how can we not see that they tend to give back their dignity to men, to those whom Bernanos, who was quoted this morning, called "the humiliated children".[1]

This is an extremely important book which should be read by everyone concerned about health and human rights.

PATRICIA LOUISE VASSIL*

* * *

Aboriginal Rights in International Law. By GORDON BENNETT. London: Royal Anthropological Institute in association with Survival International. 1978. Pp. 88. (No Price Given)

Mr. Gordon Bennett has broken new ground in the fields of international law and native rights by attempting the first survey on the impact of modern international law on the legal situation of indigenous peoples throughout the world. His study is truly international in focus rather than being limited to North America or even solely to the common law countries. He concentrates upon the existing rights to which indigenous peoples are entitled under international law and the possibilities for successful enforcement of those rights from a legal perspective.

---

[1] Pp. 488-489. Some of the papers in this book are in French and some in English and summaries of the debates are presented in both French and English versions. Professor Dupuy's conclusion is printed in a rather awkward English translation (from which I have quoted), as well as in the original French.

* Patricia Louise Vassil, M.A., LL.B. of Stickeman, Elliott, Robarts & Bowman, Toronto.

Although Mr. Bennett has chosen not to discuss the injustices of the past, his sympathies are quite evident in the first paragraph of his conclusion:[1]

> In almost every part of the world, justice for the aboriginal has repeatedly been subordinated to the predatory interests of the non-indigenous population. Industrial, commercial and agricultural concerns have been allowed to ride roughshod over the rights of communities powerless to defend themselves against the onslaught. In the absence of international supervision the future well-being of aboriginal peoples is seriously at risk, for national governments have too often shown themselves indifferent to the plight of ethnic groups which lack any effective voice in the political system and are the object of widespread prejudice among other sections of society. In many countries the absence of an independent judiciary, or a Statute Book which pays insufficient heed to the claims of the indigenous minority, further highlights the need for international control; so too does the almost invariable participation of the international funding system in the large-scale development projects which now pose a major threat to many indigenous communities.

His monograph opens with a rather short introductory chapter on the history of the development of international law doctrines concerning native peoples. He discusses the status of aboriginal peoples in international law in the context of the doctrine of guardianship. His commentary does include some reference to the incorporation of the guardianship concept, along with the trust concept, into domestic law. Unfortunately, his statement of the Canadian and American positions is far too brief and simply put, while he pays no attention to the situation in Australia, New Zealand, and other relevant countries. This reviewer finds it particularly surprising that Mr. Bennett has failed to delineate the dramatically different policies followed by Great Britain throughout its various colonies.[2]

His second chapter contains an even briefer discussion of the impact of Chapter XI of the United Nations Charter and the subsequently adopted General Assembly Resolutions 275 (III) and 1541 (XV). This summary treatment is perhaps appropriate considering the limited significance of these documents to date on the international scene. However, since many nations containing indigenous populations have refused to sign the more far-reaching International Labour Organization (I.L.O.) Agreements, the legal and political import of the United Nations Charter in reference to those countries is greater and warrants further study.

---

[1] P. 61.

[2] Mr. Bennett does expand upon the subject matter of this chapter in a recent article, Aboriginal Title in the Common Law: A Stony Path Through Feudal Doctrine (1978), 27 Buffalo L. Rev. 617. For another recent article on the history of aboriginal rights see H.R. Berman, The Concept of Aboriginal Rights in the Early Legal History of the United States (1978), 27 Buffalo L. Rev. 637.

The essence of this monograph is contained in the next chapter which concentrates strictly upon Convention 107 and Recommendation 104 of the International Labour Organization. It contains a detailed analysis of every prominent provision along with appropriate references to international and national case law, including some Canadian and Privy Council decisions,[3] domestic legislation, and modern events, such as the struggle of the Inuit and Cree of Northern Quebec to assert their rights in the face of the James Bay Hydro project.[4] His commentary is well written and insightful. One can always hope for a more detailed discussion and collection of information, yet Mr. Bennett clearly indicates that his intent is only to provide a somewhat brief overview of the area to spark debate and further research.

Although Canada has a sizeable population of Indians, Métis and Inuit totaling almost five per cent of our population, it is one of the many countries which has refused to formally ratify the I.L.O. Convention and accept the Recommendation, both of which were overwhelmingly passed on June 5th, 1957 with Canada as only one of eight countries out of 132 voting against the former. This is not due to their particularly radical nature, as they have both been rejected by the World Council of Indigenous Peoples at its second assembly in 1977 for not going far enough and for not involving indigenous people in the drafting process.[5] As well, Canada continues to play a major role on the international scene in promoting respect for human rights abroad. One can only conclude that our federal government has decided to avoid endorsing international agreements which contain meaningful guarantees of rights to the Native Peoples of Canada when they exceed the present position in domestic law.

Several of the minor provisions would have a direct effect on the legal system. For example, article 36(d) of Recommendation 104 enshrines free legal aid where financial resources are lacking. Complying with this provision in Canada would mean a considerable

---

[3] He specifically refers to *R.* v. *Drybones* (1970), 9 D.L.R. (3d) 473 (S.C.C.) (although he mistakenly cites the decision of the N.W.T.C.A.); *St. Catherines Milling & Lumbering Co.* v. *The Queen* (1889), 14 A.C. 46 (P.C.); *Calder* v. *A.G. of B.C.* (1973), 34 D.L.R. (3d) 145 (S.C.C.); *R.* v. *White and Bob* (1964), 52 W.W.R. 193 (B.C.C.A.) (erroneously cited as 53 W.W.R. 193 and omitting reference to it being affirmed at 52 D.L.R. (2d) 481); *R.* v. *Sikyea,* [1964] S.C.R. 642 (although misspelled as Sikya); and *R.* v. *Koonungnak* (1963), 45 W.W.R. 282 (although this case has been implicitly overturned in *Sigeareak E1-53* v. *The Queen,* [1966] S.C.R. 645).

[4] P. 28.

[5] Resolution B.1, Report of the World Council of Indigenous Peoples Second General Assembly (August 24-27, 1977), p. 82.

expansion of the range of services presently being provided under legal aid schemes in Canada.[6] Similarly, article 10(3) of Convention 107 could have substantial consequences for our prison system through its emphasis on rehabilitation rather than confinement.[7] Articles 7 and 8 attempt to guarantee the right of indigenous peoples to exercise internal control over legal matters as far as possible along with a recognition of their customary law by the general courts. This approach, which already exists in the United States,[8] if followed in Canada would generate the development of some form of tribal court system.

The most important provisions deal with land use and ownership. Bennett analyzes articles 11 to 14 of I.L.O. Convention 107 at great length in terms of examining the actual language used in light of the *travaux préparatoires,* the debates, I.L.O. committee reports, and the existing case law. Somewhat surprisingly, he does not refer to articles 2 to 8 of Recommendation 104 nor to the Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere,[9] contained in his appendices, on this point. In any event, Mr. Bennett's study of this area is particularly strong and well worth reading. Convention 107 contains a very clear recognition of aboriginal rights and defines indigenous peoples as full owners of the land in fee simple rather than the far narrower approach taken by the North American courts and the Privy Council. The adoption of this approach in Canada would have far-reaching effects on resource development in the North and on the land claims of the Indian and Inuit Peoples.

The next chapter centers upon the international law of human rights. The Universal Declaration of Human Rights is briefly discussed but the core of this segment is a very interesting analysis of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the latter covenant. Although none of these agreements is specifically directed towards indigenous peoples, their terms can be readily used to justify the existence and expansion of special programmes in Canada for all

---

[6] The reviewer has discussed the present situation in detail in (1976), 22 McGill L.J. 504.

[7] For further information see, *e.g.*, D. Schmeiser, The Native Offender and the Law (1974) and Report of the Metis and Non-Status Indian Crime and Justice Commission (1977).

[8] Pp. 23-25.

[9] International N.G.O. Conference on Discrimination Against Indigenous Populations in the Americas—1977 (Sept. 20-23, 1977).

Native Peoples. In addition, both Covenants clearly declare the right of all peoples to self-determination. Since the issues of self-government and self-determination are of increasing importance to the Native Peoples of Canada, one might expect to hear more about these agreements in the future. This is particularly likely as Canada has acceded to both Covenants which contain undertakings to adopt legislative and other measures to implement their contents.[10]

Mr. Bennett concludes his excellent monograph with several modest proposals for reform. Although there are the usual minor errors,[11] he is to be complimented for attempting the first broad survey in this area and for succeeding admirably. The result is a highly readable yet detailed study that should be of considerable interest to those people active in native rights or international law.[12]

BRADFORD W. MORSE*

* * *

European Integration. Edited by J.P. SIEMERS and E.H. SIEMERS-HIDMA. Alphen aan den Rijn: Sijthoff & Noordhoff. 1979. Pp. xvi, 228. ($47.50)

The problems of *European Integration* are becoming of wider than purely European interest with every development within the European Community, especially as the European countries tend increasingly to coordinate their economic and trading activities. As a result, it has been found necessary for non-European countries, including Canada, to enter into special relationships with the Community, to establish a Community office, to appoint diplomats, and also to begin examining some of the political and legal problems associated with the Community. It has been one of the complaints of those seeking to understand the problems, and this has been particularly

---

[10] For further information of a study of these issues in the U.S. context see J.H. Clinekell and J. Thomson, Sovereignty and Self-determination: The Rights of Native Americans Under International Law (1978), 27 Buffalo L. Rev. 669.

[11] *Supra*, footnote 3. In addition, Dean Lysyk is renamed "Lyke" at p. 65, footnote 15; *Millirrpum* v. *Nabalco Pty Ltd.* (1971), 17 F.L.R. 141 (Aust.) is misnamed at p. 38; and *Mistry Amar Singh* v. *Serwano Wofunira Kolukya* (1963), 3 W.L.R. 513 (P.C.) is cited incorrectly.

[12] For more information on I.L.O. reports and conventions in this area see L. Swepston, The Indian in Latin America: Approaches to Administration, Integration and Protection (1978), 27 Buffalo L. Rev. 715.

*Bradford W. Morse, of the Faculty of Law, Common Law Section, University of Ottawa.

true of graduate students in Canada and other non-Community countries, that it has been difficult to come upon the relevant literature, particularly that part of it which is not included in the learned periodicals.

It is not uncommon for those doing graduate research to find that their field has already been covered, or that much of their raw material is to be found in unpublished theses and dissertations. *European Integration* is no exception. Dr. Siemers, the Deputy Head of the European Commission Library, and Dr. Siemers-Hidma former documentalist-librarian of the Commission, have now placed all these researchers deeply in their debt. No less than 1210 theses and dissertations produced between 1975 and 1977 are detailed in this bibliography, which is divided into two main sections, the one dealing with European integration in general and the other with the European Communities. This latter is itself broken down into law, the EEC, organs, and spheres of activity, with full bibliographical details provided for each entry, so that any person wishing to consult knows where the document is, what it deals with and whether it is primarily legal or political.

Perhaps, since over one thousand such papers were produced in two years, the editors will soon produce a new volume. When this happens may one express the hope that they look outside the universities of the Community countries to Canada and the United States as well, for here too work is being done on European integration.

L.C. GREEN*

* * *

The Regulation of Banks in the Member States of the EEC. Edited by IBRO (Inter-Bank Research Organisation). Alphen aan den Rijn: Sijthoff & Noordhoff. London: Graham & Trotman Ltd. 1978. Pp. xi, 323. (Dfl. 175; $87.50)

This book consists of a series of reports on the regulations in each member State of the European Economic Community (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom) governing the establishment and general conduct of banks. Each report covers a separate State, but the reports follow a common format for easy reference and comparison. In addition, a pull-out chart is provided that lists the

* L.C. Green, University Professor, University of Alberta, Edmonton.

most important aspects of bank regulation for each country in table form.

What emerges from these reports is an essential similarity both in the method and content of the regulations. Almost all the countries require a licence or authorisation before a bank can set up business, although under the British system an institution develops almost imperceptibly into a bank through a confusing process of administrative osmosis stretching over a period of years. Once permission to operate has been given, only Belgium, Denmark and Italy place strict limits on the type of business that a bank may undertake. On the other hand, all the EEC States with the exception of Luxembourg control to some extent a bank's investment policies. The purchase of shares or participation in non-credit institutions is restricted to a certain level of capital in Denmark, Ireland and the Netherlands and prohibited outright in Belgium and Italy. Only Germany, Luxembourg and the United Kingdom allow such investments without control. The attitude towards investment in credit institutions is more liberal and where it is controlled at all, as in Denmark, Ireland, the Netherlands and the United Kingdom, it is the percentage of ownership to be acquired that is restricted.

For the general conduct of the bank's business the definition of "own funds" is of particular importance, as "own funds" are the basis of the various solvency requirements. This is especially so in Belgium, Germany and Luxembourg, where "own funds" must always exceed fixed assets if the solvency of the bank is to be maintained. Generally, "own funds" are considered to consist of capital plus reserves and certain subordinated loan stock. The German definition is, however, less expansive, whereas Luxembourg, Belgium and France are even more liberal and include certain provisions and accumulated profits in the meaning of "own funds". Solvency tests are based on the percentage of "own funds" that must cover the bank's risk assets or liabilities, although in Germany and France the test is expressed in terms of how many times such risks and liabilities may exceed "own funds". Most EEC States also lay down obligatory liquidity ratios, that is to say, the ratio permitted between cash and realisable assets on the one hand and liabilities on the other. Only Belgium, Ireland and the United Kingdom have no such liquidity requirements, and the United Kingdom also does without a formal solvency test. The conduct of banks is further regulated in that their credit policies are also subject to legal maxima. These are often set down with the aim of discouraging large investment in one area or one customer. All large loans must be reported and Belgium, Denmark, France, Germany, and Italy all have a form of central risk bureau for loans over a certain amount. In addition all the States carefully scrutinise foreign exchange operations.

The supervision of banks in the EEC varies. In the United Kingdom complete reliance is placed on auditors. In Germany and Belgium some reliance is placed on auditors, but there is also a power of inspection. The other states rely solely on regular inspections by the supervising authority.

This is a book that deals with a very specialised area of the law and there is little attempt to make the area accessible to those not familiar with banking. The various reports contain many useful facts but these are presented *seriatim* with little comment and each report is taken in isolation. As a result, the book is not for those who are seeking some synthesis of European banking regulations or an introduction to the law and function of banking in Europe. Its value, therefore, as a contribution to the exegesis of the laws of Europe or to academic learning generally is somewhat limited.

Even for the initiated, this series of reports has its limitations. As Lord O'Brien, the President of the British Bankers' Association, points out in his foreword, the scope of the book is narrow. It is not an exhaustive study of banking in Europe and the prospective new banker is still left to consider the law of taxation, corporations, employment, commerce, consumer protection, exchange control and the fiscal matters in general before he can make any informed decision. At most this book will inform him whether he can set up a bank at all in a certain country and, if he later decides to do so, it provides him with a survey of the regulations that he will have to follow. It may well be that there is a need for such a guide and within these limitations the book is an excellent source of information.

PHILIP DE VILLARS RAWORTH*

* * *

A Source Book on Socialist International Organizations. Edited and translated by WILLIAM E. BUTLER. Alphen aan den Rijn: Sijthoff & Noordhoff. 1979. Pp. xxiv, 1143. (No Price Given)

There has been a tendency in the western world for too long to discount developments among the socialist countries and to assume that international organizations therein are, with few exceptions, not worth considering. To some extent this has been due to inability to obtain the relevant documents in a readily accessible form, although on occasion the American Society of International Law has included some texts in its *International Legal Materials*. Increasingly, during

* Philip De Villars Raworth, of the Faculty of Law, Common Law Section, University of Ottawa.

recent years, Professor Butler, Professor of Comparative Law in the University of London, has been filling the lacuna and making available a variety of Russian and other socialist legal materials. In his latest work he has provided us with a comprehensive collection of documents on *Socialist International Organizations,* each of which he has translated from the official Russian text, even where other texts might exist, as, for example, in the *United Nations Treaty Series*. This has enabled him to be consistent in language and style, in a form that "is believed [to be] a more accurate one . . . adher[ing] closely to the Russian original in syntax and style, as is imperative for juridical materials".[1]

In his introduction, the learned editor has drawn attention to the special significance of COMECON and promises a companion volume which will provide, as well as full details of the sources of each document in this volume, a bibliography on COMECON. Even the Danube Commission, which was established earlier in 1948 at Belgrade,[2] and which was rejected by the western powers, virtually to no effect, a point which Dr. Butler fails to mention, entered into a treaty with COMECON in 1975[3] "to develop international co-operation".

Study of the table of contents shows how comprehensive is the scope of international organization among the socialist powers, and while it may be true that the Soviet Union does in fact enjoy a privileged position, the appearance of equality and sovereignty is always preserved. However, the "formal procedures for decision-making strongly resemble the classical forms of international institutions, where policies are determined by duly empowered representatives of member countries who are under instructions from their governments and can take decisions by unanimous vote of either all members or of all members who have not declared a noninterest in a question under consideration. . . . [T]he materials in this volume embrace what is said to be 'organized integration', which means that economic rationality is to be pursued while state sovereignty is preserved. Total integration into a single political and economic community is not being held out as a natural concomitant of organized integration. That ultimate stage, if there is to be such, is relegated to the future".[4] However, just as COMECON was a response to the Marshall Plan, so we may find a similar development in response to the further integration of the European Community,

---

[1] P. xxi.

[2] P. 1120.

[3] P. 1131.

[4] P. 6.

particularly if the co-operation therewith of both Canada and the United States becomes really close. Moreover, developments in the third world, and particularly in the Arab and Muslim part thereof, for aleady it is clear that Iran has grave reservations about the Soviet Union, may make this "ultimate stage" nearer.

This volume will serve as a source book for comparative lawyers, particularly those interested in economic integration and international institutions, while other international lawyers will also find much in it to intrigue them, covering as it does registration requirements for international agreements; basic principles of the International Socialist Division of Labour; COMECON; international financial organizations, including an international bank for economic cooperation and another for international investment; international organizations for branches of industry, for instance, combined power systems, ferrous metallurgy, and so on; international transport organizations, in addition to the Danube Commission; international communications organizations; international scientific and technical organizations; procedures for settlement of disputes by arbitration; multilateral economic associations and joint enterprises; multilateral co-operation among academies of science; multipartite economic and scientific co-operation agreements, including veterinary co-operation and co-operation in the quarantine and protection of plants; and, as might have been expected, the Warsaw Treaty Organization, the Socialist equivalent to NATO.

In other words co-operation among the socialist states, at least in the economic sphere, and defining that term rather widely, is probably even more comprehensive than it is among the western powers.

L. C. GREEN*

* * *

The Evolving Legal Profession in the Commonwealth. By Sir FRED PHILLIPS, C.V.O. Dobbs Ferry, N.Y.: Oceana Publications. 1978. Pp. xx, 318. ($30.00 U.S.)

This is a most charming book. It is written with a grace that one seldom finds in contemporary academic or professional works and possesses the highly unusual distinction among books about law of being a pleasure to read.

---

* L. C. Green, University Professor, University of Alberta, Edmonton.

Sir Fred Phillips has had a varied and distinguished career. He has practised law and been a University administrator in a number of Caribbean countries. He was for a time Governor of the Associated State of St. Kitts-Nevis-Anguilla. It is evident that he has travelled widely throughout the Commonwealth.

Sir Fred believes in the legal profession. He believes in it with determination and passion. He is proud of its ideals and its traditions. He is unalterably convinced that the history of the profession is part and parcel of the history of the pursuit of justice.

But Sir Fred Phillips is not, as the preceding paragraph might have suggested, naive or romantic. He perceives that the history and traditions of the legal profession are, in the Commonwealth at least, fundamentally English. He is very much aware that the ongoing process of decolonisation has, properly, raised doubts as to the suitability of all imposed institutions. He understands that the profession, in its pristine English form, cannot continue unchanged in the Third World states of the Commonwealth. The very idea of an independent legal profession is being called into question in a number of these countries.[1] Sir Fred's concern in writing this book, then, is no less than the survival of the legal profession.

If the profession is to survive, the author recognises that it must first accept that its continued existence is not guaranteed. Reaching this acceptance will not, if my own observations have any validity, be an easy matter. To become a lawyer is to go through a rigorous process of ideological training. The usual result of this process as it affects its objects is a belief in the virtue and durability of capitalism and an unquestioning acceptance of the role of the legal profession within the society to which it gives rise. This intellectual and emotional orientation leaves lawyers ill-equipped to deal with alterations in social circumstances. Sir Fred Phillips is trying to tell lawyers in the warmer parts of the Commonwealth that their world is changing and that they had better face up to this fact and devise ways of responding to it. It is a little surprising and hardly encouraging that he would actually find it necessary to say such things in 1978.

Even less encouraging is the fact that Sir Fred does not himself appear to understand the dimensions of the phenomenon which he

---

[1] It has, for example, recently been recommended in Tanzania that the private bar be abolished. This recommendation was made by a Commission established by the Government of Tanzania in 1974. The Commission appears to have based its recommendation on, first, a belief that the legal profession functioned merely to "... lubricate the engine of exploitation", and, secondly, the fact that the private bar is, and has been, composed largely of non-Africans. This recommendation may have little practical significance since in 1976 there were only 43 advocates in private practice in the whole country. Tanzania, Judicial System Review Commission, Report, Dar es Salaam (1977), pp. 139-180.

seeks to analyse. There is a strong element of nostalgia in his book. We become conscious of a longing for the old days of gowned colonial barristers earnestly pleading cases over the hum of ceiling fans. Sir Fred knows that such things are now historical curiosities, but he does not really know why. He does not see a world system in crisis. He does not recognise the power of a nationalism that is determined to sweep away all the symbolic relics of colonialism. Most important, he has not grasped that "British Justice", the rule of law, and, therefore, the legal profession, simply do not figure in the ideologies of Third World rulers.

Much of his discussion is as a result, taken up with matters that can only be described as trivial. The author provides learned discourses on fusion,[2] the wearing of robes and wigs,[3] and taking silk.[4]

Sir Fred Phillips understands in a general way that the legal profession is obliged to attempt to change both the way it perceives itself and the way in which it is perceived. His ideas about how this might be done are, however, not original and, indeed, amount to little more than a broad recommendation that legal professions in other countries follow the paths of their North American counterparts. Thus, he is in favour of "modified" specialisation and advertising by lawyers. His strongest advocacy is on behalf of legal aid and the active participation of the profession in legal aid schemes. One may be pardoned for feeling less than sanguine about the future of the profession in the Commonwealth when the only suggestion which a sensitive and articulate lawyer can put forth as a means of overcoming the effective exclusion from the legal system of the great mass of the people is legal aid.

Sir Fred is obviously concerned about professional ethics. Since he devotes a substantial amount of the book to discussing ethics one can assume that he is aware that ethical standards in many countries are, to put it mildly, flexible. It is unfortunate that the author is not familiar with the excellent empirical work which Robin Luckham has done on the bar in Ghana. This work suggests that the usual popular image of lawyers is accurate and justified.[5] Also, while still on the matter of ethics, I must raise something which seems to me to be more than a quibble. Books cost a great deal today. Fully one-third of the present book is taken up by the reproduction in their entirety of

---

[2] Pp. 19-26.

[3] Pp. 113-120.

[4] Pp. 120-123.

[5] See Luckham, The Ghana Legal Profession: The Natural History of a Research Project (1976), 13 African L. Studies 106 and The Administration of Justice (1977), 9 Rev. of Ghana L. 190.

the Canadian Bar Association Code of Professional Conduct, the New Zealand Law Society Code of Ethics, and the Rules of Practice and Etiquette of the Bar of the States of Malaya. This is difficult to justify.

Legal education obviously looms large in Phillips' project. He briefly surveys legal education in the Commonwealth and then essays certain prescriptions which are, with respect, both trite and self-evident. He advocates the rejection of English models, heavy reliance on clinical programmes, and attempts to inculcate greater social consciousness in students. He seems to be unaware that legal education has gone far beyond his modest proposals in many Commonwealth states. Mention could have been made, for example, of the new directions followed by the Faculty of Law at the University of Dar es Salaam since the mid-60's. Not only have these revolutionised legal education in much of Africa, they have influenced both the old and the new Commonwealth—the law faculties at the University of Warwick and the University of Papua New Guinea being, in effect, spiritual colonies of Dar es Salaam. Sir Fred Phillips would have benefitted also from exposure to the work of the International Legal Center in New York which in 1975 published an exhaustive, if somewhat misguided, survey of legal education in the Third World.[6]

For almost two decades now we have been treated to a steady flow of writing about the role of the lawyer in developing countries. Theories and approaches have risen and fallen. For a time there was talk of "legal development". This was replaced by "law and development" and today we have "law and another development".[7] All the writings that deal with these subjects proceed from a realisation that an unprecedented process of social transformation is afoot in the Third World. They are all more or less frantic attempts to argue that law and lawyers have a role to play in the process. The fact that no-one has yet succeeded in adequately defining that role should not be taken to mean that there is no role. Still, the definition remains elusive and the present book does not significantly advance our ability to achieve it. Sir Fred Phillips has attempted to point the legal profession along a road which, he hopes, will ensure its future. The most useful chapter in the book is devoted to "The Profession and Political Pressures". It describes in detail the often outrageous attacks to which lawyers and courts have been subjected in a number of states. As this chapter makes evident, the future of the legal

---

[6] International Legal Center, Legal Education in a Changing World. (1975).

[7] It would not be rewarding to cite the literature. Suffice it to say that the genre has reached its ultimate fatuity in Yash Ghai, Law and Another Development (1978), 2 Development Dialogue 109.

profession is most uncertain. Sir Fred's book offers few guarantees that there will be a future.

ROBERT MARTIN*

* Robert Martin, of the Faculty of Law, The University of Western Ontario, London, Ontario, and of the Faculty of Law, University of Dar es Salaam, Tanzania.