Fathoming Meech Lake.

By BRYAN SCHWARTZ.
Winnipeg: Legal Research Institute, University of Manitoba. 1987.
Pp. x, 264. ($18.00)

Reviewed by H. Scott Fairley*

The power and pervasiveness of executive federalism in the Canadian federal state has been well appreciated by the leading students of Canadian politics[1] but has attracted too little attention from lawyers, in particular, as that process impacts on questions of constitutional reform.[2] The 1987 Constitutional Accord of First Ministers pulled out of the closet of the Prime Minister's retreat at Meech Lake on April 30, 1987, and later refined in a similarly closed marathon negotiation in the Langevin Block on June 3rd, compellingly illustrates why more attention is merited. Fathoming Meech Lake gives us a timely and energetically provocative critique which addresses the process as well as substance of constitutional reform. It deserves serious scrutiny.

The primary *raison d'être* of Meech Lake was to secure belated acceptance by the Province of Quebec of the Constitution Act, 1982,[3]

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[1] The most comprehensive and insightful study to date is R. Simeon, Federal-Provincial Diplomacy (1972); see also D.V. Smiley, Canada in Question: Federalism in the Eighties (3d ed., 1980), pp. 91-119.

[2] Meech Lake tests the limits of political consensus, but appears to have established one for our time. The future, however, is altogether another matter. For discussion on the limits of executive federalism to resolve jurisdictional controversies, see H.S. Fairley, Constitutional Aspects of External Trade Policy, in M. Krasnick (research coord.), Case Studies on the Division of Powers (1986), p. 1 (vol. 62 of studies commissioned by the Royal Commission on the Economic Union and Development Prospects for Canada), at pp. 31-32.

[3] See: Government of Canada, A Guide to the Meech Lake Constitutional Accord (August, 1987), p. 1. Opponents of Meech Lake often stress that the "constitutional"

through the promise of further constitutional amendments. Given its purpose, the minimum conditions interposed by the Government of Quebec also dictated most of the content for the 1987 Accord: recognition of Quebec as a distinct society; a constitutionally entrenched provincial role with respect to Supreme Court of Canada appointments; limitations on federal spending powers in provincial fields; and a veto for Quebec over certain constitutional amendments.[4] But the result, Schwartz argues, goes far beyond original intent in a manner that may rend rather than mend the fabric of the Canadian federal state.

Professor Schwartz foregoes some of the stylistic niceties of more relaxed scholarly reflection to pursue the task of "enlightening" us before the Meech Lake reforms come to fruition. As an active participant on behalf of the Government of Manitoba during the federal-provincial negotiations which framed the Accord, as well as from the vantage point of a constitutional scholar, Professor Schwartz is particularly well-situated to fulfill his chosen tasks. However, he does not tread lightly.

This book is one of involved rather than detached scholarship. The point of view may draw some criticisms from readers, particularly in terms of the colourful and frequently irreverent rhetoric Professor Schwartz employs to underscore his analysis. Introductory quips citing alternative titles for the book—for example, "Wrestling the Premiers to the Ceiling", "Meech Lake: A Pre-Mortem", "Let's Wait and See How Things Devolve"—illustrate the point. However, even for those who might not appreciate the author's brand of wit—it could be viewed equally as "refreshing"—what emerges in the pages that follow is a remarkably thorough, well-balanced analysis of the proposed constitutional language

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deficiency of Quebec lying outside the federal-provincial accord to proceed with patriation and amendement of the Constitution in 1981 is in reality a false issue. The Supreme Court of Canada made clear that Quebec was bound by the Constitution Act, 1982, in any event: *Re A.G. Que. and A.G. Can. (Quebec Veto Reference)*, [1982] 2 S.C.R. 793, (1982), 140 D.L.R. (3d) 385.

Nevertheless, the sociopolitical counterpoint does have a powerful constitutional dimension of its own. See statement by Yves Fortier in Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and House of Commons on the 1987 Constitutional Accord (hereafter cited as Special Joint Committee), Issue No. 12, August 25, 1987, at p. 12:81: "From a strictly legal point of view, of course, the 1982 Constitution Act applies to Quebec. But in this area, as in many others, lawyers must show some modesty. The fact is that politically and even morally, the 1982 Constitution Act does not apply to Quebec. Those who claim it does are guilty of constitutional heresy." *Cf.*, *References re Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753, (1981), 125 D.L.R. (3d) 1; G. Marshall, Constitutional Conventions: The Rules and Forms of Political Accountability (1984).

[4] See Quebec Liberal Party, Mastering Our Future (1985); speech by Quebec Minister of Intergovernmental Relations, Gil Remillard, at Mont Gabriel, Quebec, May 9-11, 1986, reprinted in P.M. Leslie (ed.), Rebuilding the Relationship: Quebec and its Confederation Partners (1987), App. A, p. 39.

in the 1987 Constitutional Accord. Indeed, Professor Schwartz seeks to inform as much as persuade; in the result, this book should be an enduring contribution to Canadian constitutional discourse, not simply a forgotten polemic on the alleged folly of Meech lake if—or rather *when*—the Accord becomes law.[5]

To re-engage the opening remarks of this review, a particularly valuable contribution of Professor Schwartz's analysis is its insight into the process of constitution-making in Canada. The 1987 Accord is described as "a cabal of First Ministers".[6] But his concern for a pattern of politics accountable only to the pressure of peers and the subsequent historical record could equally have carried a more general warning. Meech Lake could be symptomatic of systemic shortcomings in a process where rigid cabinet and party discipline make the politics of accommodation between federal and provincial government elites too easy to practise, especially for majority governments. While the argument is well-made, Professor Schwartz tends to eschew its broader dimensions, given his focus on the apparent debacle of Meech Lake.

The argument for legitimacy of process deserves greater appreciation than Canadian constitutional discourse has tended to give it. In this respect, it is instructive to note that isolated but prominent academic criticism was also levelled at the process leading to the 1982 constitutional reforms;[7] however, the import of such events strikes Canadian constitutional law scholarship as unfamiliar stuff. Distrust of government actors is a manifestly American and, more to the point, characteristically un-Canadian tradition.[8] Nevertheless, Professor Schwartz takes pains to distinguish the process prior to the 1982 Act from what happened at Meech Lake, apparently in an effort to deflect defences of the Accord based on previous practices.[9] *Quaere* whether a more promising line might have been to characterize Meech Lake as an especially egregious example of a political phenomenon—executive federalism writ large—for which a more general prescription for political as well as constitutional restraint is appropriate?

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[5] As of this writing (June 1988), the Accord has been affirmed by Parliament and seven provincial legislatures.

[6] P. 4.

[7] See B.A. Ackerman and R.E. Charney, Canada at the Constitutional Crossroads (1984), 34 U.T.L.J. 117; R. Romanow, J. Whyte, H. Leeson, Canada. . . Notwithstanding: The Making of the Constitution, 1976-1982 (1984).

[8] Mere titles are suggestive of our differences. For a stereotypical juxtaposition, see and compare E.Z. Friedenberg, Deference to Authority: The Case of Canada (1980), p. 14 ("Canadians as such have no tradition identifying government as the source of oppression"); J.H. Ely, Democracy and Distrust (1980) (arguing for a representation-reinforcing theory of judicial review in United States constitutional law protective of minorities).

[9] Pp. 5-6.

In fairness, the target chosen by Professor Schwartz is delimited by the 1987 Accord, not general constitutional themes. Yet his argument does not entirely succeed in showing why the process resulting in Meech Lake was manifestly different from what had gone on before the Constitution Act, 1982. This book's concern for legitimacy in constitutional processes transcends its object of attack whether its author wants it to or not.

Constitutional form is another area of concern. The text of the Accord has the flavour of an annual political agenda and bears a marked resemblance to the work of a statutory revision committee. But constitutions are not statutes, a message that may have arrived late in Canada, but which the Supreme Court of Canada has unambiguously affirmed.[10]

The convoluted language of Meech Lake does tend to undermine the appropriate pursuit of enduring constitutional values.[11] Given a newly proposed constitutional requirement for annual constitutional conferences that even goes so far as to dictate the initial agenda—not surprisingly, the surrender of another federal field (fisheries)—the document appears to voice the particularized demands of today's political actors more than a commitment to future generations, a point Professor Schwartz visits upon the reader at various places throughout his analysis.

The discussion of constitutional conferences comes late in the book, just as it does in the text of the Accord. Nevertheless, it is most closely linked to the concerns for process with which Professor Schwartz begins. His distinction between "constitutional politics" and "ordinary politics" is particularly illuminating:[12]

> Constitutional politics occurs when a group of committed people step back from short-term, utilitarian, political pursuits or out of their indifference to public life. They attempt to persuade the people that certain procedures and principles ought to be secure amidst the pushing and shoving of ordinary politics.

Constitutional politics suggests a forum for the pursuit of enduring principles, not the short term pursuit of collective social goals.[13] But, accord-

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[10] See *Hunter* v. *Southam Inc.*, [1984] 2 S.C.R. 145, at p. 155, (1984), 11 D.L.R. (4th) 641, at p. 649 (*per* Dickson J.): "A constitution. . . is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power. . . Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers."

[11] Even those in substantive agreement with the Accord have said as much. See statement by Professor G. Beaudoin, Special Joint Committee, *supra*, footnote 3, Issue No. 2, August 4, 1987, p. 2:72: "Now, we are treating our Constitution as if it were still a statute."

[12] Pp. 113-114.

[13] The distinction between matters of principle and policy has been appreciated more clearly in the field of analytical jurisprudence than in constitutional law. See R. Dworkin, Hard Cases (1975), 88 Harv. L. Rev. 1057; R. Dworkin, Taking Rights Seri-

ing to Professor Schwartz, what we are getting in the 1987 Accord is the work of ordinary politicians pursuing ordinary politics. Even accepting the principal goal of bringing Quebec within the constitutional framework it could not "as a province" agree to back in 1981 as worthy of pursuit, Professor Schwartz compellingly argues that the price was far too high. Moreover, the costs did not inflate solely because of Quebec. Rather, Ottawa capitulated spinelessly to a lot of ordinary politics by the other nine provincial leaders whose signatures were also required. That brings us to the substance of the Meech Lake reforms.

Professor Schwartz sees much that is repugnant in the murk of Meech Lake. Nevertheless, he also demonstrates quite convincingly that much of the panic over the most controversial provisions in the 1987 Accord is probably overstated, particularly in terms of what the courts may do subsequently with them.

The "distinct society" provisions of the Accord giving special constitutional status to the Province of Quebec were greeted with alarm and dismay by a variety of powerful interest groups representative of Quebec anglophones, other linguistic and ethnic minorities, women, and exponents from other human rights constituencies who viewed these general interpretative provisions as a potential threat to the individual rights protected by the Canadian Charter of Rights and Freedoms,[14] in particular the equality provisions in section 15. At the level of *legal* interpretation, the Schwartz analysis does much to alleviate these fears. He observes that the 1987 constitutional guarantees for anglophone Quebecers are unlikely to be seriously undermined. And the same basic response appears to emerge with respect to Charter issues. The Quebec clause is perhaps best understood as a *sui generis* addendum to reasonable limits arguments pursuant to Charter section 1 and there, Professor Schwartz concludes—quite rightly—that "Quebec's record on the treatment of women, the elderly and the handicapped has been as good as that of any jurisdiction in Canada".[15]

Rather, the real danger seen by Professor Schwartz lies in the message a constitutionally entrenched distinct society will send to present and future government actors—the politicians, not the judges. Here, Professor Schwartz delineates an unfortunate trend toward not simply the familiar "two solitudes" of French and English speaking Canada, but to a multiplicity of solitudes maintained by provincial governments—just what the federal government policies of the Trudeau years had attempted

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ously (1977). Nevertheless, it has made its way into the caselaw. See, *Reference re Residential Tenancies Act*, [1981] 1 S.C.R. 714, at pp. 749-750, (1981), 123 D.L.R. (3d) 554, at p. 583 (*per* Dickson J.) (*viz.* the burden of constitutional interpretation contrary to legislated social goals).

[14] Constitution Act, 1982, Part I.

[15] P. 60.

to overcome. Thus Meech Lake appears to enshrine the mentality of balkanization everywhere, not just for Quebec; "but" - and here the author's metaphor is particularly compelling -"dividing Canada into ten ghettoes is not an improvement on setting aside one".[16]

The balance of the Accord is characterized primarily in terms of the erosion of certain central institutions of government—the Senate and the Supreme Court of Canada—and the potential ossification of the constitutional *status quo* to the extent that subsequent amendment will be governed by new requirements of provincial unanimity to effect constitutional change. Senate reform is the major casualty here and Professor Schwartz is hardly alone in voicing his concern.[17]

Professor Schwartz also devotes considerable attention to the perceived erosion of federal spending powers, in particular with respect to national shared costs programs. The constitutional status of federal spending powers—for example, conditional grants to provinces, particularly in areas of allegedly exclusive provincial jurisdiction—has always been somewhat ambiguous. However, Professor Schwartz offers the view that it "was not in pressing need of affirmation, and certainly is not assisted much by the sort of backhanded acknowledgement that s. 106A might provide".[18] Unlike other commentators on the subject,[19] Professor Schwartz concludes that "the stress is more on limiting federal authority than on affirming the authority that does exist".[20] Again, however, his in-depth analysis of the proposed constitutional language also tends to minimize its potential impact. For example, federal programs deriving substantial support from federal aspects of divided jurisdiction should be unaffected; "[t]he boundaries of federal authority, moreover, are situational rather than absolute".[21]

Nevertheless, the theme that emerges from the spending power provisions and, indeed, from most areas of the Accord is a conception of Canada Professor Schwartz sees "in terms of governmental units with vested rights, rather than. . . an overriding political community composed of equal individuals".[22] It is noteworthy that this conception emerges perhaps no less strongly in the substance of the Accord than it does in the process by which it was formulated.

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[16] P. 50.

[17] See testimony of the Hon. Eugene Forsey in Canada, Special Joint Committee, *supra*, footnote 3, Issue No. 4, 1987, at p. 2:100: "To be perfectly frank, the only Senate reform that involves a constitutional change that anybody now living is ever likely to see is what is in here as a purely interim arrangement."

[18] P. 155.

[19] See P.W. Hogg, Meech Lake Constitutional Accord, Annotated (1988), ch. 8.

[20] P. 155.

[21] Pp. 171-172.

[22] P. 197.

It is perhaps surprising that the constitutional reform package produced at Meech Lake has not stirred more controversy amongst Canadian constitutional commentators. Then again, it may simply be typical of our traditional scholarly detachment. On that score, Fathoming Meech Lake stands apart from the mainstream. Professor Schwartz *is* a partisan and he candidly sets forth comprehensive reasons for disquiet; however, equally comprehensive counter-arguments are also furnished that appropriately qualify worst-case scenarios. Nevertheless, his conclusions are hardly sanguine.

Does the overall argument carry the day? That is not the point, nor indeed the sole objective of its author. No one need accede to the point of view offered by Professor Schwartz to derive substantial benefit from how he gets there. A myriad of insights emerge along the way to engage our understanding of what the Constitution is, should be, and may become in the wake of Meech Lake. For those members of our profession who are fascinated by such questions, Fathoming Meech Lake provides a provocative testament to interesting times.

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Language Rights in Canada.

Edited by MICHAEL BASTARACHE.
Montreal: Les Éditions Yvon Blais Inc. 1987. Pp. xlii, 538 ($39.95) (French edition: 1986)

Reviewed by William Tetley, Q.C.*

Language rights are a major factor if not the keystone of every constitutional issue in Canada today. In fact, language has replaced federal/provincial rights as the constitutional problem of the hour. And where federal/provincial relations are of acute interest to governments, but of little interest to the man in the street, language is of interest to everyone. Every Canadian seems to care.

The Meech Lake accord is centred on language, the free trade negotiations with the United States have language as an untouchable part of the Quebec and Canadian social structure and Duplessis had advised never to legislate on language, but all the provinces and the federal government have failed to follow his dictum. It is time, therefore, that a book be written on exactly what our language law consists of, and Language Rights in Canada is just that. Michel Bastarache, André Braën,

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Emmanuel Didier and Pierre Foucher, all fine constitutional law scholars, have written an excellent text which gives a broad, yet detailed, picture of language rights across Canada.

André Braën, Vice Dean of Law at the University of Ottawa, is author of the first chapters which deal with language as an international concept. He points out that language rights mean the existence of minorities and that the Congress of Vienna of 1815 was "the first multilateral treaty dealing with the protection of linguistic minorities".[1] Poland, Austria, Hungary and Switzerland, amongst others, have legislated on language. The Universal Declaration of Human Rights, adopted in December 1946 by the General Assembly of the United Nations, also confirms that everyone is entitled to fundamental rights and freedoms without discrimination and, in particular, without discrimination based on language.

But is there discrimination against the minority when the majority asserts its rights and its language?

This is the central dilemma of any consideration of the legal consequences of language and the central issue of this book. Also central is the linkage between language and linguistic minorities and Braën handles this particularly well.

Braën points out that language is both a cultural and social phenomenon, that various nations have legislated on it territorially and others have restrained minority languages generally, even prohibiting them. From his analysis one can conclude that the core of the dispute in Quebec and Canada is the rights of the individual versus the collective rights of the majority. How far may the majority go in obtaining its rights? And just as important, how far may the minority go in its claims? One should not forget what Thomas Carlyle said, that the most oppressive form of tyranny is of the minority over the majority.

Bilingualism is also explained by Braën, and its protection by section 133 of the Constitution Act 1867,[2] by section 23 of the Manitoba Act 1870[3] and by sections 17 and 18 of the Canadian Charter of Rights and Freedoms.[4] The discussion leads us to the realization that bilingualism is a wonderful but difficult legal concept—as difficult to arrive at as pure democracy or the perfect marriage.

Michel Bastarache, Associate Dean of the Common Law Section of the University of Ottawa, considers bilingualism under the Canadian judicial system, both federal and provincial. His survey makes it clear that despite the legislation of recent years it is the judicial system that

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[1] P. 4.

[2] 30 & 31 Vict., c.3 (U.K.).

[3] 33 Vict., c.3 (Can.).

[4] Constitution Act, 1982, Part I.

has clarified, broadened, and even established many of our rights to use French or English. *Blaikie* v. *The Attorney-General of Canada*[5] and *Bilodeau* v. *Attorney-General of Manitoba*[6] are only two of many, many examples.

Professor Pierre Foucher of the University of Moncton deals with the right of the citizen to receive public services in both official languages. In particular, section 20 of the Canadian Charter of Rights and Freedoms is explained and its limits outlined. It is a fine analysis and shows that Canadians have a right to bilingual services from *federal institutions* where there is a significant demand or because the nature of the office makes it reasonable that bilingual services be available. Professor Foucher gives with clarity the limits of the right.

Pierre Foucher also discusses whether section 16 of the Canadian Charter gives one the right to work in one's own language in the public sector, and this is followed by descriptions of provincial legislation on the same question.

Perhaps the thorniest language question of all revolves around the right to be educated in the language of one's choice or on occasion the government's choice. The discussion by Pierre Foucher shows how section 23 broadens Bill 101 adopted by the Parti Québécois in 1977 in Québec.[7] Unfortunately, he does not point out that section 23 does not go as far as the broad rights accorded under Bill 22 adopted in 1974 by the Bourassa government.[8] History is not a consideration in this text so that the evolution of the law is not dealt with, rather we are told what the law is now.

Our language legislation in Canada would seem to be more developed than in any country in the world and this can be seen especially in the private sector. Dr. Emmanuel Didier, a legal language specialist, methodically (and it requires organized, detailed plodding) presents the law that governs Canadians in their private lives. He starts off with the fundamental principle of freedom of language in the private sector and then develops the restrictions as found in laws and regulations. But the restrictions have their exceptions. Persons involved in bilingual signs in Quebec might look at the exceptions outlined by Dr. Didier as they exist in Bill 101, especially in respect to public health and safety. Other exceptions refer to municipal, educational and social services as well as where historic or cultural values are involved.

The text ends with André Braën explaining the enforcement of language rights and Michel Bastarache reminding us again of the principle

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[5] [1979] 2 S.C.R. 1019.

[6] [1986] 1 S.C.R. 449.

[7] Charter of the French Language, S.Q. 1977, c.5.

[8] Official Language Act, S.Q. 1974, c.6.

of the equality of the official languages and its limitations. We are brought down to earth.

There are both French and English editions of the text and one or the other is a must for every Canadian who wishes to understand the language issue, let alone for those who argue so forcibly about it. It is especially a must for columnists and editors, many of whom are writing nonsense in the newspapers today. Their prose is often purple because the authors are not jurists or do not know the law. Day after day in the Montreal French or English language papers, there are broad generalities on language which completely ignore or distort the realities of the law. Once, as a member of the Bourassa Cabinet in the 1970s, I quietly pointed out to the editor of one of Montreal's English language dailies that the fiery editorial on language inciting the English-speaking population to the barricades was based on two fundamental errors of law. The answer came back rather pathetically "But, Bill, none of us is a lawyer at the paper!" Perhaps law school should be compulsory for editors and columnists, but if we cannot arrive at that level of competence, the present text should be obligatory reading for persons intent on writing on the constitution and the law

The rest of us would also do well to read the text.

Is the book perfect? Of course not. It could do much more. It could offer advice and comment and the authors' views. Instead, the authors stick to their intended objective, to describe the law impartially. This is laudatory, but I would have preferred that the four experts had given us their personal views. Bilingualism is a difficult concept—for some people it is not bilingualism they are seeking but double unilinguism—everything being done for them in the language of *their* choice. Bilingualism, on the other hand, is the desire and ability to live and work in both languages. This is the challenge for Canada or parts of Canada if bilingualism is the solution. It would have been useful had the authors given us a formula for Canadian bilingualism—how far, in what places, and in respect of what matters.

The text, however, is a very useful preparation for the language debate in Quebec and Canada; in fact, it is the best explanation of Canadian language law that I have seen. As such, it is essential to every administrator, professor, lawyer, editor, columnist, in fact every citizen interested in the language problem in Canada and especially in Quebec.

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Examination of Witnesses in Criminal Cases.

By EARL J. LEVY, Q.C.
Toronto, Calgary, Vancouver: The Carswell Company Limited. 1987. Pp. xxxv, 263. ($55.00)

Reviewed by Ian A. Hunter*

It requires a remarkably lion-hearted barrister to undertake yet another book on the techniques of advocacy; not only are there English[1] and American[2] competitors, but even Canada[3] is not virgin territory. What is remarkable is that Earl Levy finds novel and useful insights, relates them forcefully and succinctly, and in the context of Canadian procedural and evidentiary rules. The result is a book which will benefit both practitioner and student, to say nothing of the frustrated academic who has long had to teach criminal practice courses without a contemporary Canadian trial manual.

The chapter headings bespeak a no-nonsense, practical approach which is supported by text peppered with useful, and often amusing, examples. Chapter 3 on examination-in-chief (which the author correctly calls "the neglected child of trial advocacy") is especially shrewd. The prerequisite to effective examination is preparation and plodding thoroughness; it seldom qualifies for the witty riposte or the rapier thrust of cross-examination which satisfies the barrister's often outsized ego. Consequently, examination-in-chief is a hard subject to write about and harder still to illustrate effectively. But Levy provides useful guides to preparation, sequence of witnesses, use of photographs, demonstrative evidence, and so on. Take a simple point like this one:[4]

> The questioner should ask questions as if genuinely interested in the answers and give the impression that he is hearing the answers for the first time. If counsel appears uninterested or bored a similar response may be triggered in the jurors.

So simple—yet so vital.

One difficulty with such a book is that the line between advocacy, procedure and evidence is never clear. For example, immediately following useful hints of how to make a witness feel at ease is an analysis

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[1] For example, D. Napley, The Technique of Persuasion (3rd ed., 1983); F.J. Wrottesley, The Examination of Witnesses in Court (3rd ed., 1961); J.H. Munkman, The Technique of Advocacy (1951).

[2] For example, W.H. Spellman, Direct Examination of a Witness (1968); R.E. Keeton, Trial Tactics and Methods (1973).

[3] J. Sopinka, The Trial of An Action (1981); R.F. Reid and J.A. Holland, Advocacy: Views from the Bench (1984).

[4] P. 19.

of the arcane distinctions (typologized by Wigmore) between "past recollection recorded" and "present recollection revived". Similarly, chapter 18 (on Criminal Records) seems incongrously placed between chapters on Preliminary Inquiries (chapter 17) and Making Objections (chapter 19). A related problem is overlapping: the same topic recurs in several chapters; for example, the expert witness appears in chapters 4, 8, 14 and 16. The author's dilemma here is real: to include such topics makes the focus diffuse; to omit them invites accusation of incompleteness. For the most part, Levy focuses on advocacy skills and keeps a tight rein on the urge to wander.

Perhaps the most common, and frequently the most fatal, error of the inexperienced barrister is to succumb to the almost irresistible temptation to cross-examine when he should remain silent. If this single admonition of Earl Levy were taken to heart, and followed, the standard of criminal practice in Canada would noticeably rise:[5]

> There is nothing sadder than seeing the cross-examiner use an aimless and scattergun attack on the prosecution witnesses hoping that something fruitful will occur for the defence. The almost inevitable result will be that the prosecution's case is made stronger by this Russian roulette approach as the cross-examiner fills in gaps in the Crown's case or, because he foolishly repeats the same questions as those asked in-chief, the witness repeats the same damaging answers. Worse, it may distract attention from the genuinely strong parts of the defence case. The best that such a cross-examination will achieve is to try the patience of the judge and the jury who will no doubt entertain serious doubts about the credibility of the defence. It may be that a naive client will be happy with his counsel and will tell all in his jail corridor about what a great fighter he was; but there can be little pride for the lawyer who, like the fisherman, was dragged into the river by his catch.

Bravo for Earl Levy.

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Visualizing Deviance: A Study of News Organization.

By RICHARD V. ERICSON, PATRICIA M. BARANEK and JANET B.L. CHAN. Toronto: University of Toronto Press. Pp. x, 390. ($45.00 cloth) ($18.95 paper)

C.N. Mitchell*

Journalists claim that despite some political biases they engage primarily in the type of straight reporting that is responsive to their readers' needs and that is a prerequisite to effective democracy. However, Ericson, Baranek and Chan's critical dissection of Canadian news outlets challenges these

[5] P. 93.

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claims using two methodologies. The shorter part of the book surveys theoretical and secondary sources analyzing the relationship between social control and journalistic output. The book's greater part[1] reports, in perhaps more detail than many readers will appreciate, the results of interviews and field observations garnered during 1982 and 1983 through direct research, primarily at CBLT television and the Globe & Mail newspaper in Toronto. The book is of legal significance because it documents the way in which journalists police organizations and legitimate certain "authorized" approaches to social control.

Canadians, on average, spend fifty-three minutes a day reading newspapers,[2] a figure I find rather astounding, and much of what they read is a repetitious litany of crime, error, deviance and disaster. From ten to twenty-five per cent of newspaper coverage is devoted to the crime/accident category with a gross overemphasis on murder and sexual assaults. Murder comprises 0.2% of all crime but rates 26.2% of all crime mentions in one news source whereas thefts, at 47% of all crimes, rated only 4% of all mentions. Furthermore, as lawyers may have noticed, crime coverage focuses on capture, arrest and being charged; the media pay little attention to the legal process after arrest and before sentencing, the phase where lawyers dominate. International news consist of stereotypical stories of disasters, scandals, riots and revolutions. Conflict is also the dominant theme in industrial news where words like "strike" and "dispute" are repeated. Even sports reporting was found to focus on crime, deviance and control efforts.[3]

According to journalistic lore this daily offering of deviance and bad news is done in service to the public to meet popular demand. In fact, journalists make no systematic surveys of what the public wants or finds newsworthy or relevant.[4] Instead, the authors discovered that news reporting is essentially a dialogue between journalists and influential sources with citizens acting as "mere spectators".[5] In extreme cases, news items are scarcely more than bureaucratic propaganda but even on a daily basis an uncritical reliance on certain sources is routine. Journalists claim they investigate on behalf of their general readership but usually they look no further than what a source tells them.[6] Perversely, reporters come to regard the opinions of unimpeachable sources as "hard facts" with the result that investigations or critical conjecture are avoided because they would soften the "facts". Consistent with this warped sense

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[1] Pp. 95-344.
[2] P. 46.
[3] P. 49.
[4] P. 351.
[5] P. 9.
[6] P. 119.

of "fact", the authors found that journalists tended to judge veracity according to the authority and nobility of a group's spokesperson.[7]

A related question is the degree to which readers are sceptical of the news. The 1981 Royal Commission on Newspapers found readers ready to identify the groups most favourably represented by newspapers. Almost half identified government, one fifth mentioned advertisers and only six per cent cited readers.[8] Interestingly, governments in Canada are now the biggest buyers of advertising space.[9] If, as the authors suggest, news organizations borrow their authority from the authority of the "authorized knowers" they regularly cite, then it makes sense for journalists to reproduce the values, opinions and perspectives of the politically powerful.[10] The police, for example, are made to appear as "legitimacy incarnate" by journalists who "routinely underpin police authority as primary definers of social order".[11]

To the extent that journalists become a part of their source organizations they experience a form of "regulatory capture", a term coined to describe the process by which regulators of the trucking industry, for example, come to serve industry rather than public interests. Visualizing Deviance chronicles the myriad ways in which journalistic self-interest conflicts with service to the general polity. Take the matter of what makes a murder newsworthy. While people might benefit more from coverage of the familial, personal violence most likely to affect them, journalists find murders newsworthy if they involve disputes between rival organizations or threats to legitimate authority.[12] Murder of police officers is extremely newsworthy although many other occupations experience higher fatality rates and although police deaths rarely constitute genuine threats to Canadian society. On the other hand, certain types of crime or deviance are not reported at all. On one occasion a television reporter attempted to follow up a newspaper report about a crime wave on Toronto's waterfront. After extensive investigation the newspaper account was proved false but the television reporter never considered exposing the fabrication.[13] Generally, rival news organizations are not subject to direct criticism or even contradiction (for example, no story appeared on how no crime wave was plaguing the waterfront).

Journalistic claims of reform leadership and democratic protection are also belied by journalists' routine reliance on "authorities" and their

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[7] P. 55.
[8] P. 122.
[9] P. 38.
[10] P. 359.
[11] P. 357.
[12] P. 170.
[13] P. 175.

meek parroting of the authoritative position. Journalists repeat, *ad nauseam*, the police tally of drug busts and the sentences handed down to convicts but they rarely, if ever, question the premises behind the law, for that would require entering into an adversarial relationship with their host sources. Deviance is therefore misrepresented as resulting from personal failure and requiring better institutional controls. The constant refrain of bad news is not accidental or a consequence of public demand. To the contrary:

> This bad news offers the citizen a sense of the knowledge-power arrangements in society and where he might fit in it. In being bombarded daily with stories of misfits and who is authorized to designate and deal with them, the citizen is given his sense of place in the administered society. As cultural labourers actively participating in the construction of the administered society, journalists find that processes in deviance and control provide the best building material. . . . Only certain organizations and people are given routine access to say who and what is good or bad, and who and what should be given more freedom or less freedom, and what measures seem appropriate to effect the desired control.[14]

The thesis that journalists function directly as "social-control agents" is interesting and plausible. The concept, however, needs to be made more concrete and in that regard I would welcome in the companion volume some effort to formulate alternative structures for journalists. On a broader note, detailed ethnographics of other social control agents would also be welcome. In particular, close observation of judges, lawyers and legislators should prove instructive, in part because I suspect the same contradiction between professed ideals and actual practice observed with journalists will emerge in these other professions. Journalists legitimate their practices by reference to the objectivity, fairness and balance best seen in the kind of investigative journalism that uses multiple sources, searches out important truths and serves the public. This ideal, however, in the authors' opinion, "could not be farther from the truth of what their work actually consists of".[15]

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Canadian Immigration Law.

By DAVID MATAS.
Ottawa: Canadian Bar Association. 1986. Pp. iv, 69. (Free of charge)

Reviewed by William H. Angus*

Perhaps the best person to review this short paperback would have been someone who knows nothing whatsoever, or at least very little, about

[14] P. 357.

[15] P. 358.

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immigration law. The work is expressly directed to the lawyer in general practice who has an occasional immigration question, and it may be of some use to a lay person. It endeavours to simplify and demystify what is admittedly a very complex field of statutory law in order to make the area accessible to all in the spirit of public legal education.[1] Anyone who has endeavoured to achieve this objective in any area of the law will understand how difficult is the task. Fortunately, the author has largely succeeded in this instance.

After a somewhat rambling introduction, there follow chapters on how to enter, how to stay in, how to survive in and how to leave Canada. A brief conclusion rounds out the work. All in all, this basic organization of the material is a pragmatic and sensible approach to the subject matter in the circumstances.

For its relatively small size, the book has a number of strengths. From time to time, arguments based on the Canadian Charter of Rights and Freedoms[2] are anticipated and briefly discussed. Some other rather difficult legal issues are considered with admirable clarity, such as whether the person concerned is a genuine immigrant or a "parent of carriage". Policy considerations are injected into the discussion quite frequently, particularly with respect to refugees, but also on matters such as visa exemptions, delay in issuing visas, and the 1982 economic immigrant freeze when occupational demand was artificially set at zero.

Like almost any new work, there are a few weaknesses which should be addressed before a second edition is published. On the topic of entering Canada as an immigrant, the author leads off with refugees, and follows with families and economic immigrants. It seems somewhat unfortunate that such prominent treatment is given to refugees as immigrants when currently the public has difficulty in distinguishing between the two groups and treating each on its own merits. Furthermore, the last sentence of the introduction to refugees as immigrants states that "Canada is not a country of first asylum".[3] It is immediately followed by a new sub-heading: "Canada as a Country of First Asylum"—surely a stark contradiction and confusing to beginners and experienced alike. In the same section on refugees as immigrants, the sub-heading "Non-Governmental Organizations" is followed by an opening sentence which bears no relation to the heading. Indeed, much of the material under this sub-heading relates only very indirectly to non-governmental organizations. This section on refugees as immigrants is the weakest portion of the book. Later treatment of the inland refugee claims procedure and

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[1] Law Union of Ontario, The Immigrant's Handbook: A Critical Guide (1981), was an earlier effort to achieve similar objectives, but it is now substantially outdated.

[2] Constitution Act, 1982, Part I.

[3] P. 17.

tips for the refugee on how to survive in Canada are much better, although the part on claims procedure is now redundant in light of the enactment in 1988 of the amendments to the Immigration Act, 1976.[4]

Section numbers of the Immigration Act[5] are rarely referred to by the author, which certainly makes the text more readable. Footnotes are nonexistent. Similarly, case names are not employed, although there are occasional references to and brief discussions of unnamed cases. For example, the author's consideration of misrepresentation as a ground for removal from Canada maintains that a two-fold test has been imposed by the Supreme Court of Canada, presumably in the *Brooks* decision,[6] requiring not only that further inquiries by immigration officials are foreclosed by the misrepresentation, but also that there be *prima facie* proof that the person concerned is in a prohibited class. The author argues that the second part of this test has been dropped by decision-makers up to and including the Immigration Appeal Board, while the Federal Court has not been definitive on the issue. It is equally arguable, however, that the *Brooks* case does not require a second part to the test, and that the Federal Court of Appeal has applied the first part by itself on numerous occasions.[7] Unfortunately, the introductory nature of this small book permits only a superficial examination of this and other significant issues.

Given the enactment of the 1988 amendments to the Immigration Act,[8] substantial portions of the book under review have been rendered obsolete. A second edition of this useful little volume is necessary. This will provide an opportunity for editorial correction of minor errors and improvements in form. Nevertheless, the idea for, and execution of, this brief introductory work is to be commended.

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[4] S.C. 1986-87-88, c.35 and 36.

[5] Immigration Act, 1976, S.C. 1976-77, c. 52 as am.

[6] *Min. of Manpower and Immigration* v. *Brooks*, [1974] S.C.R. 850, (1973), 36 D.L.R. (3d) 522.

[7] See *Litas* v. *Min. of Manpower and Immigration*, [1975] F.C. 242, (1975), 57 D.L.R. (3d) 304 (C.A.); *Hilario* v. *Min. of Manpower and Immigration*, [1978] 1 F.C. 697, (1977), 18 N.R. 529 (C.A.), among many others, but these cases have not specifically addressed the argument of the author. This reviewer happens to agree with the author on the merits.

[8] *Supra*, footnote 4.

International Securities Regulation.

Edited by ROBERT C. ROSEN.
Dobbs Ferry, N.Y.: Oceana Publications Inc. 1986-. Pp. vii, 1098 (including first update, October 1987). ($100.00 per volume)

Reviewed by Ralph Simmonds*

Despite the severe market break world-wide of October 1987, international securities markets remain big business.[1] One piece of evidence of this is the continuing support of commercial publishers for ventures such as this one. However, this work (ISR) should be of concern not just to those with clients who have, or ought to have, interests in international markets.

When it first appeared, ISR joined a number of other publications in the area. These publications fall into three categories. One such, into which this work falls,[2] is a collection of surveys of individual countries, with each survey more or less following a common scheme of organization. What is distinctive about ISR is its reproduction, in English, of original documents from the legal systems of the jurisdiction in question—laws, decrees, regulations, policy statements, guidelines and the like.

Another category of publication on world securities law is for surveys, from one jurisdiction's standpoint, of international markets and their regulation.[3] Still another category is for continuous reporting services featuring news from jurisdictions world-wide, as that news breaks, and as those affected find the time to write about it.[4]

ISR is not a very broad cover of the world's securities markets. Only Australia, Brazil, Canada, Hong Kong, Japan, and Switzerland were included in the original release. Leaving out the United States, the United Kingdom, Germany and France represented a very large omission, which has still to be cured.

For those countries that are covered the scale of treatment is decent. A nice touch in most treatments is a good statistical background that

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[1] A useful listing of pre-Crash data is in International Securities Regulation, Introduction, p. vii. For the continuing interest in international markets see, for example, The Financial Post Moneywise Magazine (July 1988), "Your Guide to Global Investing" (cover).

[2] For a review of a competing work, see R. Simmonds, Book review (1987), 1 Int'l Bus. Rev. 171, J.M. Robinson (ed.), International Securities: Law and Practice (1985).

[3] See H.S. Bloomenthal, International Capital Markets and Securities Regulation, Clark Boardman Securities Law Series, 3 vol. looseleaf (1982-), (U.S. perspective).

[4] See International Securities Regulation Law Report, Bureau of National Affairs, Washington, D.C.

details the volume of activity in some of the more significant parts of the local primary and secondary markets, as well as the number of licensed securities dealers or similar actors.

Each treatment appears to be an attempt to give the reader enough of the flavour of the local law to understand any local advice. Thus, there are compendious listings of the regulatory agencies, of their constating laws, and of related legal materials, particularly company or corporation law. The listings are fleshed out by narratives, and complemented by the "Documents" sections that follow each treatment and contain English texts of virtually all of the provisions referred to. None of this is easy reading. Certainly, the work is not meant to be read as a whole, but rather as a country by country reference, as the need arises.

The authors are either local practitioners or regulators, and appear to have been well chosen. Many of the accounts are enlivened by accounts of local practice,[5] although overall there is rather less of that sort of material than this work's prime readership would probably want. To an even lesser extent there are some attempts made, with varying degrees of explicitness, to relate the law pertaining to capital markets to wider local legal traditions, such as preference for self-regulatory bodies over government agencies,[6] and independent government agencies over ones that are part of the civil service.[7]

Evaluating the substantive merit of the treatments is of course most difficult. I am not an expert in all of these jurisdictions. With respect to the treatment of Canada, the one I can feel some confidence about evaluating, a generally impressive job of condensing the law has been done. My major concern is the same one I felt with a similar treatment (by another author)[8] in a competing work. The treatment in both cases focuses on Ontario to the virtual exclusion of other provinces, which is problematic on two counts. First, the lack of a federal regulator[9] and the variety of provincial laws make it a necessary nuisance to sensitize the reader to the variety of regulation in this country. It seems to me to be unfortunate

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[5] Perhaps the best examples of this are in the account for Australia, written by a commissioner of that country's National Companies and Securities Commission, which oversees a cooperative arrangement between the federal government and the states. Before the Australian federal parliament now is an omnibus bill that would dramatically centralize regulation, dissolving the arrangements he so well describes.

[6] This appears to be a recurring theme in the treatment of Hong Kong.

[7] See the treatment of Japan.

[8] See the review cited *supra*, footnote 2.

[9] Although the newly created federal Office of the Superintendent of Financial Institutions may be a federal securities commission in the making: see, for a brief treatment and references, R. Simmonds, The Financial Services Industries, Their Regulation and Their Future, in R. Janda and A. de Mestral (eds.), Access to Markets under the Free Trade Agreement (1988), pp. 52-54.

to have a treatment of Canada that does not alert the reader to the language dimension of regulation in Quebec, and to the differences between the Ontario and Quebec regulatory schemes in such matters as insider trading.

The other problematic aspect to an Ontario focus is that the variety of capital markets in Canada makes it appropriate to have an account that differentiates between the raising of risk capital in (say) British Columbia or Alberta and in Ontario.

Complicating the task of assembling a work such as this one is the rate of change in securities and related law. All of the treatments are now to a greater or lesser extent out of date. Usefully, the authors were asked to discuss prospects for the future, with the treatment of Hong Kong particularly notable in this respect, if in hindsight.[10]

As useful, albeit the bane of the librarian's existence, is the periodic updating of this work made possible by its looseleaf format. Already, two countries have been added to the initial list (India and Israel), and one country's commentary (although not its Documents) has been updated (Australia).[11] It would appear that updating at least yearly is being aimed at, although this has not yet been achieved.

From the perspective of an academic securities lawyer, ISR has some tantalizing elements. A most difficult problem posed by the profile of international securities market activity is the variety of regulatory standards. Some places are much less demanding than others, both in obvious and in subtle ways.[12] While cataloguing such differences is not an uninteresting activity, the more interesting issue raised by them is the perennial one of the contribution, or lack of it, of regulation—particularly government regulation—to market activity.

Perhaps the central challenge of finance theory to regulators everywhere is to come up with a better warrant for regulation.[13] The existence

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[10] On recent developments in Hong Kong, see The Economist, June 4, 1988, pp. 18 (leader article) and 72 (Finance Brief) (on report of Sir Ian Davison's Securities Review Committee). These to some extent confirm the intimations of the author of the Hong Kong account.

[11] To show just how quickly things change, that updating now needs a discussion of the developments referred to *supra*, footnote 5.

[12] See D.H. Landau, SEC Proposals to Facilitate Multinational Securities Offerings: Disclosure Requirements in the United States and the United Kingdom (1987), 19 N.Y.U. J. of Int'l L. & Pol. 457 (on grosser differences, here disclosure requirements in prospectuses); D. Michaels, Subject Matter Jurisdiction over Transnational Securities Fraud: A Suggested Roadmap to the New Standard of Reasonableness (1986), 71 Cornell L. Rev. 890, at p. 935 ff. (on more subtle differences, here in how fraud is understood).

[13] For a representative selection of literature using the insights of this theory (not always to attack the regulator), see Fifty Years of Federal Securities Regulation [in the United States]: Symposium on Contemporary Problems in Securities Regulation (1984), 70 Va. L. Rev. 545.

of comparatively unregulated but seemingly successful markets is now being added to the finance theory in that challenge.[14]

Of all the accounts in ISR the one for Hong Kong has the most interesting set of things to say to the academic lawyer on this score. The author depicts an almost exquisite tension in the colony, between the desire to be seen to have modern, transparent markets in which sophisticated actors utilizing considerable disclosure are on hand to service investors, and the desire to be faithful to the tradition of keeping out intrusive regulation, especially of the disclosure sort. The possibilities for comparison of markets and regulatory schemes that ISR suggests are most enticing, even if their exploitation is also likely to pose severe methodological difficulties. I am aware of at least one study that is attempting to respond to this challenge, in Europe.

Ultimately, the most enduring significance of works like ISR seems to me to lie in this possibility. That is, with the increasing availability in comparable form of information about the world's securities market and their regulators, the likelihood of gaining a better understanding of one's own domestic law also increases. Lest any one in North America, with its claims to pre-eminence in securities regulation, find that a rather extravagant claim, they need only look at the general condition of securities law scholarship both in the United States and Canada. Abbreviated comparisons, on a limited jurisdictional scale, are a relative commonplace in that scholarship. Wider comparisons, and better comparative methods, would seem to represent fruitful avenues for further insights. ISR and works like it should make it easier to follow at least the first of these avenues.

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[14] See the discussion of the regulation of insider trading in The Economist, May 7, 1988, p. 731 (referring to M. King and Ailsa Roell [of the London School of Economics], "Insider Trading", Economic Policy No. 6, April 1988, with rejoinder by J. Kay [of London Business School]). The market used as the "less regulated" comparison is the Tokyo one. There is a certain irony in that: the Japanese have a regulatory scheme heavily influenced by American federal law, as the ISR account indicates, down to the short swing liability rule for insider trading (liability for simply trading profitably, by selling and buying, or buying and selling, within any six month period), making Japan the only other jurisdiction I know of with that "draconian" rule. Further, although Japanese markets are said to be characterized by relatively high levels of insider trading, the Japanese themselves appear to be anxious to upgrade enforcement: see D. Toole, "The TSE Across the Sea", Financial Post Moneywise Magazine (July 1988) 22, at p. 25 (Finance Ministry to "beef up" enforcement in insider trading area).

Integration Through Law: Europe and the American Federal Experience. Volume 1, *Methods, Tools and Institutions*.

M. CAPPELLETTI, M. SECCOMBE and J. WEILER (eds).
Berlin: Walter de Gruyter & Co. 1986. Book 1, pp. xc, 616. (DM 256.00) Book 2, pp. xxxi, 351 (DM 140.00) Book 3, pp. xxx, 405 (DM 158.00)

Reviewed by Alex Easson*

Florence is a truly remarkable city. Perhaps no other achieves such a harmonious blend of artificial and natural beauty and there is nowhere from which its glory can be better appreciated than from the terrace of the Badia Fiesolana, home of the European University Institute. Set halfway up the hill, on the way to Fiesole, it provides one of the finest views of the city. On an autumn evening one can look over the gardens and the olive groves and watch the sun set behind the cypresses along the Via Bolognese, bathing the Duomo and Campanile, product of the artistry and engineering of the fourteenth century, in a soft, warm, purple haze, product of the pollution of the twentieth century. Add to that a hospitable climate for most of the year, a varied and stimulating cultural life, superb food and fine wine, and one begins to wonder how anyone could possibly find time for work.

Yet Florence has, for much of its history, been a centre of great activity—of imagination, creativity, industry and commerce. Thus it is not so surprising after all that the European University Institute should have been the birthplace of this ambitious project, nor that that archetypal Florentine, Mauro Cappelletti, should have been its chief architect. This is in no way to underestimate the contribution of Professor Cappelletti's co-editors, Monica Seccombe and Joseph Weiler, whose industry and scholarship have been vital to the project.

The Integration Through Law project follows hard upon the heels of that other brainchild of Professor Cappelletti, the Access to Justice project, and is even weightier and more ambitious in scope. What we have here is the first part only, Volume One, occupying three books and over 1,500 pages if the forewords and tables are included. Part Two is open-ended, consisting of separate volumes devoted to studies of specific subjects, five of which have been announced. A reviewer could, perhaps, stop right there—fifteen hundred pages on federalism should be recommendation enough for any Canadian. But what makes this study of special interest is the variety of perspectives from which the subject is viewed. As the title of the project indicates, the central theme is the interrelationship of integration, law and federalism, the object of the

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analysis is Europe, or more specifically the European Community, and the study is comparative. Primarily, the comparison is between Europe and the United States of America, though the experience of Australia, Canada, Germany and Switzerland is also referred to.

Book One, entitled A Political, Legal and Economic Overview, indicates that the study is also an interdisciplinary one. The underlying philosophy is clearly expressed by Professor Cappelletti in the Foreword: the project stems from the single belief that a degree of convergence in at least some aspects of human behaviour basic to social life is a *sine qua non* for productive and peaceful coexistence of peoples. The conceptualization of this basic working hypothesis is attempted in what are termed the "twin ideas" of *integration* and of *pluralistic, participatory federalism*. The focus here is essentially upon Europe: according to Cappelletti the brand of "federalism" which can be envisaged for Europe is a system in which power is shared by local and central "sovereignties" and the central sovereignty is but the "participating" combination of the local ones. The exercise, however, is not entirely one way—a scrutiny of European experiences can also be of great value in understanding American (and Canadian) federalism.

The first chapter of Book One, authored by the three joint-editors, constitutes a lengthy but essential introduction to the entire work. The project, we are informed, "sets out to examine the role of law in the process of European integration as seen against the American federal experience". There are two principal guidelines: full utilization of the comparative method and concentration on the manifestation of the "federal tension" in the various systems examined. Federalism is seen, not simply as a means of organizing states, but as a political and legal philosophy. Law, too, has its dual aspect: as an instrument of integration and as the object of integration itself.

The second part of Book One comprises three complementary essays. Daniel Elazar and Ilan Greilsammer provide a political science perspective, Francis Jacobs and Kenneth Karst compare the United States and Europe from a juridical perspective, and Thomas Heller and Jacques Pelkmans complete the trilogy with an economic perspective. Elazar and Greilsammer begin their study by questioning whether the American federal experience is relevant at all to the problems of European legal integration. They compare the processes, methods and ideologies of integration in the two systems within a historical perspective. Applying the classic distinction between federation and confederation, they conclude that the European Community is a novel, but nonetheless recognizable and highly-developed confederation, and that the integration trend in Europe is, and is likely to continue to be, confederal rather than federal. Jacobs and Karst examine the institutional structure for centralized lawmaking, which is crucial to an understanding of the European Community and of the Court of Justice in particular. Their analysis of the Euro-

pean institutions and of their functioning in practice is especially succinct and helpful. Heller and Pelkmans provide separate contributions with, presumably, a jointly-written introduction. This is perhaps as well, for not only is this one of the longest and most difficult parts of the study but the approach and style of the two authors are very different. Heller, the lawyer, provides a closely-argued analysis of the legal theory and political economy of American federalism. The central thesis of his essay is that the explanation of the contemporary institutional form and historical dynamics of federalism in the United States begins with the theory of the liberal state, representing a fundamental cultural commitment. Pelkmans, the economist, examines the institutional economics of European integration. He emphasizes the importance of the community legal order and its fundamental economic significance. The discussion of leading cases is of particular interest: as Pelkmans demonstrates with great clarity, community law tends to make sense when one looks for the economic rationale for decisions and considers their economic implications. His conclusion, that the Community's legal order creates a stable, low-risk, environment for intra-community economic intercourse, provides a refreshing contrast to all the talk of democracy and fundamental freedoms which permeates much of the study.

Part Three of Book One also contains three essays. Gerard Rowe compares aspects of Australian and European federalism. Rowe does not view federalism through rose-tinted spectacles and quotes, with apparent approval, former Prime Minister Whitlam's assessment of the Australian political structure as "outdated, reactionary and resistant to change". Canada fares a little better, but not much, at the hands of Dan Soberman, whose comparison with the European Community will be of special interest. As Europe progresses towards greater economic integration the Canadian market has been undergoing increasing fragmentation, the result largely of "parochial selfishness". As if to demonstrate that federalism is not purely an aberration of the Anglo-Saxon mind, Jochen Frowein provides an interesting, too brief, account of federalism in Germany and Switzerland. A characteristic of both of these systems is the continuous cooperation between different levels of government. It is hard to resist the conclusion that the "continentals" manage these things rather better, but then one only has to recall that the other federal constitutions under review were originally drafted by the English, a people who know nothing of either federalism or of constitutions.

The remaining parts of Volume One must be dealt with more briefly. Book Two is entitled Political Organs, Integration Techniques and Judicial Process. Samuel Krislov, Claus-Dieter Ehlermann and Joseph Weiler commence with a study of the political organs and the decision-making process in the United States and the European Community. In the sense of presenting previously unpublished work and data, this is the most original part of the entire collection. The core of their essay is a study of

"lourdeur", a detailed analysis of the working, or non-working, of the community institutions. Though two of the three authors are lawyers, the approach here is very much that of the political scientist. Two essays on legal techniques for integration follow. The first, by Giorgio Gaja, Peter Hay and Ronald Rotonda, provides a concise and penetrating analysis of the various instruments for legal integration in the European community. In the second, Hay and Rotonda are joined by Ole Lando, in an examination of the conflict of laws as a technique for legal integration. Although somewhat tangential to the main study, this essay represents an outstanding legal contribution to the whole endeavour. The third part consists of a lengthy, but in parts very valuable essay by Mauro Cappelletti and David Golay on the impact of the judiciary on the integration process. As the authors so rightly observe, little actual integration among members of a federal or transnational union of states can take place without judicial assistance or acquiescence. In the case of the European Community the role of the judiciary has gone far beyond simple acquiescence. The essay draws upon many of the previous writings of Cappelletti and, for the present reviewer, dwells too much upon the "mighty problem" in European integration, namely whether Community law can be superior to the guarantees of fundamental rights of the Member States. In practice, this seems rarely to have presented any problem at all.

Book Three constitutes a sort of bridge, between the general, theoretical, studies of the preceding parts of Volume One and the specific, substantive, studies promised for Volume Two. Eric Stein, in collaboration with Louis Henkin, examines with his usual insight and clarity the emergence of a European foreign policy. The discussion of the phenomenon of "mixed agreements" is especially enlightening. The conclusion is that the contemporary European system for conducting foreign affairs is "unprecedented, unparalleled and hybrid". Two essays comprise the section on the Social and Economic Dimension; Bryant Garth contrasts the treatment of migrant workers and mobility rights in Europe and the United States, whilst Donald Kommers and Michel Waelbroeck, in a well-planned and remarkably clear essay, deal with legal integration and the free movement of goods. The final part, entitled the "Moral and Cultural Dimension", also comprises two essays, or four, since the first piece on the Protection of Fundamental Human Rights as a vehicle of integration really consists of three separate essays by Jochen Frowein, Stephen Schulhofer and Martin Shapiro. This section seems somewhat contrived, and the connection between the European Convention on Human Rights and the economic integration of the European Community has always seemed, to this reviewer, somewhat slender. The final section, again, seems rather peripheral, but nevertheless fascinating and essential reading for legal educators. In it, Lawrence Friedman and Gunther Teubner discuss the role of legal education in legal integration. As they correctly

observe, an outstanding feature of American (and the same could almost be said of Canadian) legal culture is its localism, yet the uniformity and, indeed, monotony of legal education is a simple matter of fact. They point out that Harvard is a *national* law school, not simply a Massachusetts one, and ask the reader to consider what a *European* law school would, or should, look like. Their answer merits serious consideration from any law teacher.

Having completed our journey through Volume One, it seems appropriate to return for a moment to the concluding part of Book One, the all too brief but thought-provoking commentary by Donald Kommers. His remarks on Canada will inevitably be of interest to readers of this Review. Much can be learned, he states, from Canada: in particular, the problems of Canadian federalism are ones that European federalists would surely wish to avoid! Later, in discussing the relationship between economy, democracy and federalism in Canada, he surmises that "democracy" has flourished, but the economy has been seriously fractured. Yet the Australian experience seems to be that "democracy" (which seems to be equated with greater local autonomy and participation) has proved an obstacle to the better protection of civil rights.

Herein can be found both the strengths and weaknesses of the project. The editors have started out with a clearly articulated set of premises, central to which is the proposition that integration is desirable and "integration in a federal mode" preferable. They have assembled a formidably talented team of contributors who have produced a set of fascinating essays. But these essays seem largely independent of each other, there are major areas of overlap (especially in the parts dealing with the legal systems), and they do not conform to any common analytical scheme. Moreover, the various authors are perfectly prepared to question the underlying assumptions of the editors. The economist, Pelkmans, owns that there is nothing inherently "good" in removing every economic frontier (which makes it possible to make sense of the apparent contradiction that Canada scores badly in terms of economic integration yet has one of the world's most successful economies); others show that federalism is not inherently more "democratic" than other systems.

On balance, the lack of overall coherence is more than compensated for by the stimulus which this diversity of opinions provides. At a time when, in Canada, debate is focused on Free Trade and Meech Lake, this is a work which should not be overlooked.

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A Legal History of Scotland. 1286. Vol. 1. *The Beginnings to AD.*
By DAVID M. WALKER.
Edinburgh: W. Green and Son Ltd. 1988. Pp. xxi, 435 ($164.00)

M.H. Ogilvie*

The death of King Alexander III of Scotland (1249-1286) when, according to legend, his horse fell over a cliff during a late winter storm, marked in retrospect the end of a long period of relative growth and stability as measured by the standards of Scotland's turbulent and bloody history. Alexander's only direct descendant was the three year old "Maid of Norway", Margaret, the daughter of his daughter Margaret and Eric II, King of Norway. She died in 1290 on a voyage to Scotland from Norway to claim her throne. Some thirteen claimants for the throne and a series of English invasions introduced the country to a century and more of general discord, until the first Stuart, James I (1424-1437), restored a semblance of stability and established a relatively long dynastic line on the Scottish throne.

It is with the period prior to the unfortunate events of 1286 that Professor David Walker, Regius Professor of Law in the University of Glasgow, deals in the first volume of A Legal History of Scotland. Although there have been other books about the early history of Scots law and legal institutions,[1] and numerous historical accounts of early Scottish history, which inevitably chronicle the evolution of legal and constitutional institutions,[2] this is the first attempt "to write a continuous narrative account of the historical development of the legal institutions and the system of concepts, doctrines and principles which we have come to call Scots law".[3]

The volume under review is to be the first in a multi-volume series written by Professor Walker recounting the history of Scots law from its earliest beginnings to the present day. It is perhaps not inaccurate to describe Professor Walker as the pre-eminent legal scholar in Scotland in this century. He is certainly the most prolific, and in recent years has focused on Scottish legal history, publishing on the tercentenary of its

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[1] Stair Society, Introductory Survey of the Sources and Literature of Scots Law (1935), and Introduction to Scottish Legal History (1958).

[2] The leading studies published in the twentieth century are: A. Lang, History of Scotland (3rd ed., 1903-1907), (4 vols.); P. Hume Brown, History of Scotland (1911), (3 vols.); A.A.M. Duncan, Scotland, The Making of the Kingdom (1975); W. Croft Dickinson, Scotland from the Earliest Times to 1603 (3rd ed. by A.A.M. Duncan, 1977); A. Smyth, Warlords and Holy Men. Scotland AD 80-1000 (1984); G.W.S. Barrow, Kingships and Unity: Scotland 1000-1306 (1981).

[3] P. vii.

first publication an edition of Viscount Stair's The Institutions of the Law of Scotland,[4] and subsequently The Scottish Jurists.[5]

In the absence of indigenous models for a narrative account of Scottish legal history over the past millenium, Professor Walker's first volume is not dissimilar in style to accounts of English legal history by Baker,[6] Holdsworth,[7] Lovell,[8] Plucknett,[9] Pollock and Maitland,[10] Potter,[11] or Windeyer.[12] In contrast to these volumes which trace the development of legal institutions and doctrines in an historical vacuum, Professor Walker attempts to integrate traditional legal historical approaches with Scottish history for the period discussed.[13] The extent to which he can do so, however, is limited by the paucity of primary historical sources for early Scottish history. Surviving written records for the period are entirely legal, constitutional and ecclesiastical in nature, and insufficient archaeological work has been done to date to recover artifacts and uncover habitations so as to produce a richer understanding of the social, cultural and economic milieux of the period.

Thus, the volume is in the dry tradition of the "one-damned-fact-after-another" school of historical writing which is currently so unfashionable among contemporary historians, usually of a Marxist persuasion, who lack the historical imagination which distinguishes great historians from mere pedants as well as basic knowledge about the paucity of sources, challenges and difficulties in re-constructing the distant past. The limitations of Professor Walker's book are the limitations of his chosen subject. It may, however, be significant that his title is "A Legal History of Scotland", not "The History of Scots Law".

The problem of sources, then, is the overriding problem in re-constructing the period before 1286, and it is not surprising that one of the lengthiest as well as one of the key chapters in the book is chapter five, "The Sources and Literature of the Law". The sources are fragmentary and present numerous difficulties in relation to date, exact text, authority and authenticity.

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[4] (1981).

[5] (1985).

[6] J.H. Baker, An Introduction to English Legal History (2nd ed., 1979).

[7] W.S. Holdsworth, A History of English Law (1922-66).

[8] C.R. Lovell, English Constitutional and Legal History (1962).

[9] T.F.T. Plucknett, Concise History of the Common Law (5th ed., 1956).

[10] F. Pollock and F.W. Maitland, The History of English Law (2nd ed., 1968).

[11] H. Potter, Historical Introduction to English Law and Its Institutions (4th ed. by A.K.R. Kiralfy, 1958).

[12] W.J.V. Windeyer, Lectures on Legal History (2nd ed., 1949).

[13] Although not to as great an extent as M.H. Ogilvie, Historical Introduction to Legal Studies (1982).

To underline these difficulties we need only first remind ourselves of the English situation by 1286. By that date the Curia Regis, the Exchequer, the Common Bench and the King's Bench were firmly established, as well as the office of the Chancery, although it did not function as a regular court until about the turn of the next century. The court records for these courts were also established (the *Curia Regis* rolls, *Coram Rege* and *De Banco* rolls and the Exchequer plea rolls). Glanvill and Bracton had appeared as well as other legal texts based on these, including Fleta, Britton, Thornton's *Summa* and Hengham's *Summa Magna* and *Summa Parva*. Guides to certain aspects of government and administration had also appeared, such as Fitz Nigel's *Dialogus de Scaccario* and de Swereford's Red Book of the Exchequer. There is also evidence that law was being taught at Oxford and in London,[14] and that a recognisable class of "lawyers" was forming.[15]

In contrast, Scotland had no organised court system either at the royal court (although the king dispensed justice) or at the local level (although feudal courts existed). There are no systematic collections of legal decisions, but rather unevenly scattered references to the determinations of disputes in various manuscripts relating to the royal court, and the chartularies of religious houses. There are some collections of charters and grants illuminating feudalism and the land law of the period, and *brieves*, or writs, relating to private matters; however, there is nothing to compare with the Register of Writs in England at the same time. There is only one major legal treatise which has survived, the *Regiam Majestatem*; however, its text, date, authorship and authenticity are extremely controversial. Professor Walker's discussion of these problems is comprehensive and useful, but otherwise does not resolve the probably unsolvable questions.[16] Finally, there are surviving fragments of royal legislation, codes of burgh laws and some early customary law, but the public records have not survived to any great extent as far as we know.

While it was undoubtedly the case that legal development in Scotland languished behind that in England to the end of the thirteenth century, so that fewer records would have been produced, it is also the case that English invaders were responsible for the loss and destruction of the existing public records of Scotland before the eighteenth century. Thus, for example, in 1291 Edward I removed most of the records produced before that time and these appear to have been lost forever. Again, in 1650 Cromwell seized the subsequent public records stored in Edin-

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[14] J.L. Barton, The Study of Civil Law Before 1300, in J.I. Catto (ed.), The Early Oxford Schools, vol. 1 in The History of the University of Oxford (1984), p. 519.

[15] W.R. Prest, The Rise of the Barristers: A Social History of the English Bar, 1590-1640 (1986).

[16] Pp. 108-121.

burgh Castle and transported them to London. They were lost at sea while being returned to Scotland after the Restoration.

The meagreness of the extant public, constitutional and legal records of Scotland contrasts with the relatively rich records of the church which owned perhaps as much as forty per cent of the land in pre-Reformation Scotland and whose records have been preserved. Thus, it is possible to re-create the ecclesiastical law for the medieval period in some detail, in contrast to the temporal law.

Despite these depredations of Scotland's earliest legal heritage, Professor Walker has compiled from the remaining sources a relatively clear record of the constitutional and legal evolution of Scotland prior to 1286. The emerging picture of Scotland in the twelfth and thirteenth centuries is an encomium to Queen Margaret, the Anglo-Saxon wife of Malcom III (Canmore) (1057-1093) and her sons Edgar I (1097-1107), Alexander I (1107-1124) and David I (1124-1153). During this century, when the House of Canmore was at its height, Scotland's temporal affairs underwent Anglo-Normanization and feudalization, while her spiritual affairs were Roman Catholicized.

The structure and organization of the court, the royal household, the burghs, land-holding, the administration of justice, as well as legal procedure and substantive law, were all quite similar to equivalents in England, if on average a century behind in development. Indeed, the kingdoms, dukedoms and principalities of Western Europe in the twelfth and thirteenth centuries enjoy a remarkable degree of similarity in their constitutional and legal organization, one which has never been repeated since. Scotland was different only in that it lagged behind, perhaps primarily because it was on the geographical fringes of Western Europe, but also because it has always been a less richly endowed country in terms of its natural resources and climate than the other regions of Western Europe.

A Legal History of Scotland is a systematic account of legal evolution within an historical context. It is limited in geographical scope to the Borders and the Forth-Clyde corridor. While the Highland fastnesses were nominally subject to a variety of feudal overlords, they were impenetrable and ungovernable, with a few exceptions such as Atholl and Badenoch. The book is based on primary sources, most of which have now been published, as well as the extensive secondary literature on early Scottish history.

Professor Walker's book is important because it is the first to attempt a synthetic narrative of Scottish legal history. It is also a good book—well-written, well-researched and well-organized. I look forward to the next instalments.

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The Constitution of the Commonwealth of Australia. Annotated. Fourth Edition.

By R.D. LUMB.
Sydney, Australia: Butterworths. 1986. Pp. xxxviii, 441. ($A55.00—hard cover; $A45.00—softcover)

Reviewed by Bradford W. Morse*

Those interested in Australian constitutional law directly, and Canadians in search of highly useful comparative material, are once again well served by Professor Lumb's latest edition of his annotations to the constitution of the Commonwealth of Australia. Our colleagues "down under" have been fortunate in always possessing a text that annotated their constitution, as the first one was produced by Quick and Garran[1] within one year of the enactment of the Commonwealth of Australia Constitution Act.[2] While this groundbreaking work naturally focused extensively upon the convention debates, early proposals, and comparisons with other written constitutions (interestingly enough primarily on the United States rather than on Canada), Professor Lumb's approach, when he began this series in 1974 with Professor K.W. Ryan, also of the University of Queensland, was to concentrate exclusively upon the way in which the Australian constitution specifically had been interpreted.

The utility of this text and the demand for it domestically is readily evidenced by the fact that a fourth edition is already in print twelve years after the first, and the third was even reprinted once. This does not reflect any shortage of scholarly commentary in that country, as there are a number of excellent books available[3] and the law journals are filled with articles on particular aspects of the subject.

The format and style of the fourth edition are little changed from the third beyond relocating the text of the entire constitution in consolidated form from the front of the book to the back. It still contains a valuable, but incomplete, six pages of references to the existing literature on the Australian constitution, only some of which is noted at relevant points in the text. The real strength, of course, lies in the excellent annotations. To maximize ease of usage, the relevant section, subsection, or paragraph is recited in italics, followed by Professor Lumb's contri-

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[1] The Annotated Constitution of the Australian Commonwealth (1901).

[2] 63 & 64 Vict. (U.K.), c. 12.

[3] See, for example, G. Sawer, The Australian Constitution (1975); Z. Cowen and L. Zines, Federal Jurisdiction in Australia (2nd ed., 1978).

bution. His commentary is always succinctly written, yet it contains considerable depth. The twenty-five page Act thus is stretched over 388 pages of analysis and is subdivided into 754 textual paragraphs and numerous sub-headings. The only hindrances to the speedy location of the desired material are the thoroughly inadequate table of contents, and the unfortunate decision made in this latest edition to delete the relevant section reference from the top of each page.

A significant number of substantive changes have occurred in Australian constitutional law in the intervening five years between editions. The Australia Act 1986 was enacted by the United Kingdom parliament as a result of legislation passed by the Commonwealth parliament pursuant to section 51(xxviii), which itself was based on statutes enacted by each state requesting this action. The initiative is somewhat akin to the patriation of the Canadian constitution in 1982 as it was designed to terminate the remaining vestiges of the colonial legacy. The formal aspects that fettered the self-governing powers of the states in the appointment of state governors and the awarding of honours by the Queen through the Commonwealth and Foreign Office are ended. The power of reservation and disallowance of state legislation is abolished, as is the ability of the United Kingdom parliament to legislate for the states. Australia has also now eliminated the last possible mechanism of appeals to the Judicial Committee of the Privy Council.

Lumb also naturally incorporates all of the latest jurisprudence, which includes the leading High Court decisions on state-federal conflict in the *Tasmanian Dam*[4] and *Queensland Electricity*[5] cases as well as the litigation emanating from the Commonwealth's use of its external affairs power (section 51(xxix)) to implement the UNESCO Convention for the Protection of the World Cultural and Natural Heritage and the International Covenant on Civil and Political Rights through domestic legislation.[6] Given our Charter and the recent disputes over the establishment of a national park on South Moresby Island, these latter two decisions will be of particular interest to a Canadian audience. Important changes in the jurisdiction and structure of the federal court system are also canvassed, and these, too, are of obvious relevance to similar recent developments in Canada. Another interesting parallel with our situation is

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[4] *Commonwealth* v. *Tasmania* (1983), 46 A.L.R. 625 (Aust. H.C.).

[5] *Queensland Electricity Commission* v. *Commonwealth* (1985), 61 A.L.R. 1 (Aust. H.C.).

[6] *Supra*, footnote 4, and *Koowarta* v. *Bjelke-Petersen* (1982), 39 A.L.R. 417 (Aust. H.C.) respectively. See also, *Viskauskas* v. *Niland* (1983), 47 A.L.R. 32 (Aust. H.C.), which struck down the Anti-Discrimination Act of 1977 (N.S.W.) for being inconsistent with the Racial Discrimination Act 1975 (Cth.), as well as *Metwally* v. *University of Wollongong* (1985), 60 A.L.R. 68 (Aust. H.C.), which disallowed a federal amendment designed to revive the New South Wales Act.

found in the High Court's decision supporting public funding of denominational schools.[7]

Although Canadians have generated a reasonable amount of scholarly productivity on our constitutional arrangements, one cannot but be envious of the Australians having such a highly valuable reference source as this one. We will, I hope, have its equal some day.

Professor Lumb is to be applauded for his continuing determination to keep this book as current as possible. The Constitution of the Commonwealth of Australia Annotated is truly *the* one text that any Canadian interested in comparative constitutional law should have in his or her library to turn to regularly as the starting point for research. After all, Australia is the country that most closely approximates our own on many levels, so that a close inspection of its experience is always worthwhile. I only hope that Professor Lumb keeps to his pace, and that we can look forward to a fifth edition within a few years.

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Copyright Law in the United Kingdom and the Rights of Performers, Authors and Composers in Europe.

By J.A.L. STERLING and M.C.L. CARPENTER.
London: Legal Books Pty. Ltd. 1986. Pp. cxi, 749; Supplement 1987, pp. xxxvii, 78. (£35.00)

Reviewed by W.R. Meredith, Q.C.*

This book is extremely readable and clear from the standpoint of Canadian lawyers interested in Canadian copyright, for two reasons. Firstly, there is the purely historic reason that Canadian copyright law developed from British copyright law. Indeed our Copyright Act,[1] that came into force in 1924 and remained practically unchanged up to the present, is very similar to the British Act in force at its enactment. The Canadian Act may be aptly described as a "rearranged" form of the earlier British Act. Secondly, and to the credit of the authors, Mr. Sterling and Mr. Carpenter have chosen not to write a purely academic treatise but rather a treatise that is a "how to find the law" compilation, that is, the book is structured to permit the user to find answers to specific problems arising in practice. Both the authors are English barristers and that background no doubt assisted them in phrasing their statements in the manner of submissions to a court.

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[7] *A.-G. (Vic.) (ex rel. Black)* v. *Commonwealth* (1981), 33 A.L.R. 321 (Aust. H.C.).

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[1] R.S.C. 1970, c. C-30.

The book is arranged in two parts. Part I outlines the law of the United Kingdom under headings such as "Definition of Copyright", "Subsistence of Copyright", "Duration of Copyright" and two chapters on what constitutes copyright infringement and what does not. A useful feature of the book is its numbered paragraphs that make it easier and quicker to find a particular point. This reviewer considers that the latter feature by itself makes it useful to have a copy of this book. Part I also has a chapter on Industrial Designs and elaborates effectively the developing of industrial designs with copyright protection of artistic works.[2] The latter reminds us of the close connection in Canada between copyright and industrial designs. Indeed, one of the classic textbooks of that great Canadian author, the late Dr. Harold Fox, is "The Canadian Law of Copyright and Industrial Designs".[3]

Part II, The Rights of Performers, Authors, and Composers in Europe, deals mainly with European rights and the European Economic Community. The book has fourteen appendices relating to Acts and international conventions, it has a lengthy table of statutes, a lengthy table of statutory instruments and a table of cases that lists over 1000.

The Supplement, as its name implies, adds further information. It is interesting that the Supplement is approximately one-tenth of the size of the original volume, showing how rapidly the subjects treated have been developing. The Supplement adds at least 150 cases, including several recent Canadian cases, as well as cases from the United States, Australia and other countries.

A particular feature of the book that must be mentioned is its excellent material concerning infringement of copyright in computer programs and semiconductor chip patterns.[4] Very helpful also is the authors' commentary on a United Kingdom statute, the Copyright (Computer Software) Amendment Act 1985.[5]

The work treats effectively the meanings of "reproducing the work in any material form" and "publishing".[6] The book has also interesting and carefully-stated portions concerning what constitutes infringement by reproduction, the law concerning the use of unelaborated ideas (which are not protected), and elaborated concepts (that are protected).[7]

Mr. Sterling and Mr. Carpenter obviously know their subject and they have produced a good and useful book and supplement.

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[2] Paragraphs 916-931.

[3] (2nd ed., 1967).

[4] Paragraphs 226-236, 573-578.

[5] 1985, c.41 (U.K.). See pp. cvii-cxi.

[6] Paragraphs 112, 113, 122, 123, 509, 526-527.

[7] The latter to be found in paragraphs 112, 113, 122, 127, 210, 505, 509, 526-527.