Book Reviews
Comptes rendus

Law in Context: Enlarging a Discipline.

By WILLIAM TWINING.
Oxford: Clarendon Press, 1997. Pp. 365. ($108.00).

Reviewed by J.P.S. McLaren*

One faces the prospect of reviewing a book which is a collection of a retired academic's essays on legal education with some misgivings. Is this likely to be an exercise in rehashing the interminable debates that rage within the groves of academe about the function of legal education? Am I really going to learn anything new? Will there be any ideas of value to those of us still in the trenches as we face the apparently interminable challenge of figuring who we are and why we have been called? How exciting, anyhow, is life as a law professor likely to be in print? These are some of the questions which occurred to me as I picked up this book and opened it. Although I was aware of Professor Twining's reputation as both a scholar and lively thinker about learning and teaching the law, I must confess that I had read little of his work on these topics, with the exception of "Pericles and the Plumber."[1]

I can honestly say that I found this book, a collection of essays by Professor Twining, penned during forty years or so of an incredibly active life in the academy, quite inspirational. First of all, as the introductory chapter, "Wandering Jurist" shows, it represents the ruminations of one who is not only abnormally perceptive as to what goes on round him, but also one who sought in his career to experience law and its workings in a variety of different cultural, political and social contexts. Twining was one of a remarkable generation of British legal academics, who, having graduated from law school in the 1950s and early 1960s, were not satisfied with gravitating to the still insular world of English law teaching, but took graduate work in the United States, and then cut their teeth in academe as young faculty members in university law schools being set up in Africa. When Twining did return to Britain it was not to the somnolence of the traditional law school, but to Queen's, Belfast, already caught up in the turmoil of civil strife, and then to Warwick which was in the forefront of recharting legal

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[1] (1967), 83 L. Q. R. 396.

studies within the broader context of political, social and economic knowledge. One of the most compelling aspects of this book is the evident enthusiasm which the author still has for the value of all those experiences — the analytical, philosophical training he received at Oxford, under H.L.A. Hart in particular; the insights into realist legal theory and practice acquired at Chicago with Karl Llewellyn; the challenge and sometimes futility of relating the imported common law of England to African cultures with long histories of indigenous law and government; seeking to remain calm and committed to the rule of law which was being daily challenged and sometimes subverted in Northern Ireland; and, in his Warwick phase, taking important initiatives in introducing the cloistered world of British legal education and the legal profession to "law in context."

The enthusiasm for what Twining learnt from these very different experiences is reflected in a refreshingly holistic approach to legal education in which he finds inspiration at both a theoretical and practical level from a variety of scholarly, empirical, institutional and cultural sources. This is a book which is unlikely to appeal to readers who have predetermined and narrowly ideological conceptions of what legal education should be about. Professor Twining avoids lining up with particular groups, intent on grinding their own theoretical axes. Rather he views legal education as a continuum in which theory, doctrine and skills training are blended together in varying proportions depending on the objectives of the particular education process. He is clear that the study of law should always be intellectually stimulating, and that this is most likely to be achieved by programs which cumulatively challenge students to apply their minds to a range of learning experiences, and underline the relevance and value of each of them to the educated and well-rounded law graduate. As his chapters on "Theory in the Law Curriculum" (written with Neil MacCormick), "General and Particular Jurisprudence: Three Chapters in a Story," "Reading Law" and the "The Reading Law Cook Book" demonstrate, Twining is also one who recognizes the importance of legal theory in influencing legal culture as we have received it, and sees law as imbricated in various forms of literature, non-legal as well as legal, which are thus relevant to legal education. In his writing he is much more interested in using scholarship to open the doors of the mind, rather than setting up targets to be shot out of the air. Although ready to criticize firmly what he considers as weaknesses in philosophical and jurisprudential writing on the law, and sociological investigations into what lawyers do, he also recognizes that the very same works may contain insights which are invaluable in explaining what law, as a set of ideas and practices, is about, and what the person educated in the law ideally brings to the conduct of human affairs. To the extent that Twining engages in critique, and he does so liberally, it is invariably well argued and respectful. Finally, as one might already anticipate, he brings into his reflections experiences with and from legal education in a range of countries and cultures. This is a work lacking in the legal imperialism that tended to mark the work of English legal academics and philosophers in the past.

The book begins with several chapters which explain the measure of the Man. They enlighten us as how Twining's experiences at various points in his early career have rubbed off on him, and directed him to reflect on the cultural contingency of law, the value of seeing law and its operation in a broader sociological context with important connections to other disciplines and bodies of knowledge, and the importance of testing the claims made for law as both a regulator and facilitator of human conduct. These include the justly feted "Pericles and the Plumber" in which he sets out the supposedly conflicting models of the mythic lawyer as statesman and technician, and, by examining various pedagogic theories of legal education, demonstrates the need to combine the models, thus bringing us closer to a comprehensive and integrated working theory of legal education.

A second section of the book is dedicated to Twining's strong belief in educating potential lawyers about facts, and the central place of Evidence within the law school curriculum. To one who has never taught Evidence these chapters were immensely interesting for what they revealed about the intellectual challenges of this area of the law, the ongoing struggle to develop a theory of evidence law and the, as yet, fitful involvement of social scientists, especially psychologists, in examining fact gathering and assessment in the law as processes directed by the mind and by the frailties of human interpretation and language. One also comes away from reading these chapters with a sense of the very real debt Twining owes first of all to Jeremy Bentham and then to John Wigmore in terms of conceptualizing and lending intellectual depth to Evidence, and how stimulating Twining's classes in the subject must have been as he used their work and that of more modern writers to encourage students to reflect on evidence from a theoretical perspective, to use inductive logic in constructing charts to analyze masses of evidence for its probative value and to critique the law's operation in practice.

Then follows a segment in which Twining, with help from Neil MacCormick, demonstrates the importance of introducing students to the value of dialoguing with legal philosophers, as a means of understanding both the philosophical presuppositions of the law and criticisms of its theory and practice. In this they examine the "why," "which," "when," and "how" questions, favouring flexibility in approach and content. On one thing they are clear: they are vigorously opposed to cramming courses in legal philosophy and jurisprudence with every legal theory in sight, because, they argue persuasively, coverage smothers genuine reflection. In the chapter on "General and Particular Jurisprudence" Twining relates the English positivist tradition of jurisprudential thought to pressures for globalization in the modern era. While finding that by and large the exponents of the English positivist school have engaged in abstraction in theorizing about the law and leant towards general jurisprudence, the lack of engagement with "ought," as well as "is" questions, and a tendency to pay scant attention to transnational and global relations and to legal pluralism, raises serious questions about

the ability of positivist theory to respond to these new challenges and forces loose in the contemporary world.

The chapters then turn to the place of legal skills in legal education. In the chapter, "Legal Skills and Legal Education" Twining who has been for long an advocate of embedding skills training in university legal education, provides a ringing defense of this position and quietly but effectively demolishes the primary arguments which have been traditionally trotted out for denying the place of skills courses or modules in law school curricula. In this chapter and the next which assesses the seminal contribution of Karl Llewellyn to the modern skills movement, Twining notes how in recent years skills education has become a central feature of analysis and debate within the United States and Commonwealth countries. Rather wryly, he observes, we may have so overdone it in the sense of generating an ever-lengthening checklist of skills which have to be mastered in a finite period, that Llewellyn's call for an enrichment of skill experience in law school to produce lawyers of greater vision, has been submerged in a new quest for and obsession with coverage.

What to read in law is the focus of two chapters. Both "Reading Law" and 'The Reading Law Cookbook" provide helpful insights into the wide and rich range of literature both law and books about law which can be utilized by law teachers in enlivening and contextualizing what they teach. He is quick to point to some of the pitfalls involved in authors writing books of dramatic and historical interest which miss the boat, as it were, because the story line obscures any evident pedagogical purpose. In those context he takes aim at Brian Simpson's book, *Cannibalism and the Common Law*[2] for confusing serious scholarship with entertainment, and in the process ignoring the potential for providing any significant theoretical insight or guidance flowing from the story. From his own teaching, he gives us intriguing examples of how newspapers can be used to make law students law-sensitive in terms of what they read on a day-to-day basis in the media, and observes how another cannibalism story, Lon Fuller's article, *The Case of the Speluncean Explorers*[3] devised to raise fundamental questions about law, morality and reasoning, while now dated, still provides a firm basis from which to start the quest for relating jurisprudential theory to legal issues.

Twining has a lengthy chapter on Access to Legal Education and the Legal Profession which, like several others, is in the form of a report to the Law Faculty to the University of Xanadu. The latter is a university in a former colony facing the challenges of the post-colonial era in balancing its own realities and inevitable pressures for social and economic change from outside. Based on an analysis of what has been happening in a number of Commonwealth countries, including Canada, which have been debating this question, and his negative reaction to the American phenomenon of successful constitutional challenges

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[2] A.W.B. Simpson, *Cannibalism and the Common Law* (Chicago, University of Chicago Press, 1984).

[3] (1949), 62 Harvard L.R. 616.

by privileged applicants to elite law schools, Twining favours flexibility and inclusiveness in access. Choices should be provided as to the routes by and the points at which aspirants enter the process of legal education, programming introduced to help those who have been disadvantaged at earlier points in their educational careers and approaches taken which are culturally sensitive and recognize the need to compensate for past exclusion of particular groups from entry to the legal profession.

In the three concluding chapters, "Preparing Lawyers for the Twenty-first Century," "Pericles Regained," and "A Nobel Prize for Law?" Professor Twining returns to his opening theme of what we should expect from well-rounded and educated lawyers, and what the implications of the answers to this question are for those engaged in the legal education project. It is evident from his thinking towards the end of his working life that overall the author finds the domain of law and legal education significantly more interesting than he found it at the start, where the emphasis was so much more on unrealized potential and the challenges ahead. He observes that the decades of his career in the law have witnessed major changes in how law is practiced and utilized; in how legal education has been conceptualized and diversified; and, in how legal scholarship has blossomed and expanded its reach to the extent that law has become much more accepted within the academy as a serious and legitimate intellectual discipline. He concludes that, while the challenge of responding to the two myths about the role of lawyers, opened up in "Pericles and the Plumber" continues to tantalize us, as we should expect, the discipline has now matured to the point that it is not so evident that what it demands in learning and utilizing knowledge is fundamentally different from other disciplines. The continuities are, he suggests, becoming clearer. Flowing from this recognition is the need for those who educate and train lawyers at every stage of the education continuum to value the educated law graduate as one who has been exposed to an education which blends together the learning of theory, doctrine, process and skills, and to understand both the intellectual and practical validity of each of these elements and the need for their mutual reinforcement. Interestingly, given the excitement which American legal education had for him as a student and young legal academic, Twining finds evidence that it, if anything, remains emotionally tied to the perceived demands and needs of a unitary, and perhaps idealized, legal profession, and insufficiently attuned to the broader range of tasks which both practicing lawyers and legally-trained people are increasingly called upon to do in society. Twining's parting challenge is the need for all of those engaged in the diverse project which has developed around the teaching and learning of law to understand that their efforts are connected and part of a continuum, and to work positively together to enrich the discipline further and to enhance its creative possibilities.

Professor Twining has covered a large canvass in this collection of essays. He has done so in both a clear and engaging manner. The book is both a history

and sociology of modern legal education in the common law world, and written with a refreshing breadth of vision. It reflects both the commitment of the writer to his life's work and the great integrity which he has brought to that challenge. If I have a criticism, it is that there is too little here about the challenge of teaching law ideologically, that is openly in the context of particular theoretical and empirical critiques of law and its operation. My sense is that Professor Twining believes in the value of this approach within a range of pedagogical options, but it is not one which interests him personally. Moreover, one suspects that he would have problems with programs which reflected an ideological party line and denied or ignored the range of intellectual and practical experiences and the balancing of belief and professionalism which is for him central to a lawyer's worth. However, while this reticence is understandable, it is unfortunate that he does not have more to say. There are law teachers who for thoroughly valid reasons, including profound personal commitment, do teach from the point of view of feminist, critical race, Aboriginal, or radical political theory. It would have been interesting and undoubtedly revealing to have found out more clearly where this approach to legal education fits into the legal world as William Twining sees it. Apart from this criticism, this is a book which sums up in an engagingly personal way most of the important developments in legal education in the past forty years, sets out the benefits which these developments have brought to legal education and those involved in it, and looks to the future and what it will demand of those who teach law at various stages in the continuum of learning. We are left in no doubt that in Twining's view the objective is to produce lawyers and legally-trained persons of knowledge, high ethical standards, professional integrity and skillfulness, who are able to work effectively, creatively and responsibly in an increasingly complex world. Amen.

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Canadian Employment Law.

By STACEY REGINALD BALL.

Aurora: Canada Law Book, Loose-leaf, approx. 1000 pages ($175.00).

Reviewed by Christopher K. Leafloor*

The Supreme Court of Canada has recognised the importance of employment. Most recently, in *Wallace v. United Grain Growers Limited*,[1] Mr. Justice

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[1] [1997] 3 S.C.R. 701.

Iacobucci, writing for the majority, referred approvingly to the following words of Chief Justice Dickson:

> "Work is one of the most fundamental aspects of a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.":[2]

The Supreme Court has demonstrated that it is prepared to expand employment law principles to adapt to the changing needs of workers in contemporary Canadian society.[3]

Employment law, consequently, is a topic that deserves serious and careful investigation by both lawyers and law schools. It is for this reason that many law schools offer not only labour law courses (which typically deal primarily with the unionised work-force), but also employment law classes (which deal with the non-unionised work-force). The importance of employment law is all the more apparent when one considers that most Canadian employees are not members of unions.[4]

Stacey Ball, in his recently published *Canadian Employment Law*, has given employment law the careful review it deserves.

His book is an ambitious undertaking. The current version of this loose-leaf service is nearly 1000 pages and cites approximately 4,000 cases and academic articles. The text comprehensively considers most areas of employment law confronted by employment lawyers. The text thoroughly reviews topics such as wrongful dismissal, the restraint of trade doctrine, fiduciary duties, tort law and vicarious liability, constitutional jurisdiction, employment contracts, occupational health and safety (this chapter was prepared by practitioner Jack Braithwaite), and employment law remedies. The text includes an extensive and useful review of the law that has evolved from the unjust dismissal provisions of the *Canada Labour Code*. This review is especially useful since many lawyers may not realise that non-organised employees under federal jurisdiction may be entitled, under the Code, to reinstatement with back pay. Ball's text does not yet contain a chapter on human rights, but this chapter will be distributed as an update. It does not appear that the text is intended to include chapters on workers' compensation, unemployment insurance or employment standards legislation. Perhaps it is requesting too much to suggest that Ball's text include chapters on these complicated statutory regimes, although

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[2] *Reference Re Public Service Employees Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at 368.

[3] See decisions such as *Wallace* v. *United Grain Growers Limited, supra* footnote 1; *Machtinger* v. *HOJ Industries* (1992), 40 C.C.E.L. 1 (S.C.C.); *Slaight Communications* v. *Davidson*, [1989] 1 S.C.R. 1038; *Reference Re Public Service Employee Relations Act (Alberta), supra*; and *London Drugs Ltd.* v. *Kuehne & Nagel International Ltd.*, [1992] 3 S.C.R. 299.

[4] See H. Arthurs *et al.*, *Labour Law and Industrial Relations in Canada*, 4th ed. (Toronto: Butterworths, 1993) at 31.

it would be helpful if the text were to include, at least, brief chapters on these areas of the law.

Canadian Employment Law is clearly written and well organised. Its structure is mapped by paragraph numbers that will be familiar to labour lawyers who rely on *Canadian Labour Arbitration* by Donald Brown & Professor David Beatty.[5] The text is divided by tabs that indicate the main topics discussed. It would be helpful, as well, if the text were to include tabs for each chapter number.

Ball's text provides more than black-letter law. Comprehensive footnotes review the supporting case law. The text contains a detailed "wrongful dismissal notice table" that is partitioned by various classes of employment. As well, Ball explores emerging trends in employment law, and has devoted an entire section to developing causes of actions. His footnotes contain references to academic articles and texts from Commonwealth and American jurisdictions. His discussion of "bad faith discharge", in particular, is especially interesting in light of Ball's involvement, as counsel, in *Wallace* v. *United Grain Growers Limited*,[6] in which Iaccobucci J., on behalf of the majority decision of the Supreme Court of Canada, stated that employers have a duty of good faith and fair dealing in regard to their employees, and that this requires, at a minimum:

> "that in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive."

Employment law principles have been pushed and pulled by competing legal rules. Legal concepts developed in England during the nineteenth century often conflict with the more modern desire, as noted by Chief Justice Dickson, to protect employees as a vulnerable group in society.[7] This conflict is reflected in Ball's text, and will be found in his discussion of, inter alia, employment contracts, wrongful dismissal principles, the restraint of trade doctrine in the employment context, the development of fiduciary duties in the employment context, the new "employee exception" to the doctrine of privity of contract,[8] as well as his discussion of emerging trends in employers' obligations of good faith and fairness.[9]

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[5] Published by Canada Law Book, loose-leaf.

[6] *Supra* footnote 1.

[7] See *Slaight Communications Ltd.* v. *Davidson*, [1989] 26 C.C.E.L. 85 at 104 where Dickson C.J.C. notes that the "...protection of employees as a vulnerable group in society is an objective with a high degree of importance attached to it."

[8] See *London Drugs Ltd.* v. *Kuehne & Nagel International Ltd.*, *supra* footnote 3.

[9] See *Ditchburn* v. *Landis & Gyr Powers Ltd.* (1995), 16 C.C.E.L. (2d) 1 (Ont. Gen. Div.); *Truckers Garage Inc.* v. *Krell* (1993), 3 C.C.E.L. (2d) 157 (Ont. C.A.); *Brown* v. *St. Albert* (City) (1996), 23 C.C.E.L. (2d) 158 (Alta. Q.B.)

To sum up: Ball's text is the most comprehensive text on employment law in Canada. It is carefully constructed and accurate.

Canadian Employment Law should be recommended to general practitioners and students who require occasional guidance on employment law issues, as well as to specialist employment lawyers (and their students) who routinely investigate subtle points of employment law.

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The Damages Lottery.

By P.S. ATIYAH.

Oxford: Hart Publishing, 1997, pp.201 (£7.99)

Reviewed by Jeff Berryman*

Few would doubt the tremendous influence Patrick Atiyah has had on the common law world. His writing on the law of contracts and the role that the act of promising performs still illuminates. His synthesis of social history and law, in what many regard as his *magnum opus*, *The Rise and Fall of Freedom to Contract*,[1] set new levels for English legal scholarship. Another path of Atiyah's writing has been on the role of tort law in personal injury law. And it is from this path that Atiyah's latest work has been derived.

The tradition of the political pamphleteer, an informed writer who seeks to proselytize a particular cause to a wider audience through the medium of a short essay, has had a long and established tradition in the Untied Kingdom. And it is in this vein that Atiyah has written *The Damages Lottery*. Unfortunately, the transformation from legal scholar to pamphleteer has not been easy. Atiyah states his own dilemma. "The main difficulty is that the subject is far too important to be entrusted to lawyers, but nobody else understands it well enough to be able to propose the deep-rooted reforms really required."[2]

What is Atiyah's subject? In *The Damages Lottery* Atiyah is attempting to explain to an essentially English lay public the pitfalls of a court adjudicated personal injury regime for accidents. In essence, those pitfalls are that the current system of assessing personal injury damage for accidents

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[1] P.S. Atiyah, *The Rise and Fall of Freedom to Contract* (Oxford, Clarendon Press, 1979).

[2] *The Damages Lottery* (Oxford: Hart Publishing, 1997) at 173.

is wildly expensive, absorbs huge sums in administration, is arbitrary and discriminatory in who receives compensation depending on principles of fault, causation, and the presence of insurance, and ultimately leaves a majority of victims who experience similar types of injuries either without compensation or dependent upon social security. An even more disturbing paradox is that while many lawyers and accident victims call for the reform of the current system, claiming that its levels of compensation are too low, and which engages the time of law reform agencies and parliament, the vast majority of victims of other incapacities brought on through disease, birth defects or illness, suffer the continual erosion of state provided social security. We are left with an image of a high class cadre tinkering over the Rolls Royce (here in North America read Cadillac) while the bread has been withdrawn from the sick and the lame.

The first half of *The Damages Lottery* is spent outlining the law of negligence and how judicial decision making has 'stretched' the law. For Atiyah this development of liability into new areas through judicial decisions, largely made in a vacuum of knowledge on the fiscal impact or accountability for such developments, results in further injustice by weakening the resources left to pay the majority of equally deserving victims. Of course, there is nothing new in this critique. Atiyah's own earlier work provides foundation for this book.[3] Even the title may have been borrowed from Terence Ison's *The Forensic Lottery*.[4] The lawyer will not find much new in this text, but then, that is not the primary audience. But even the lay person may find this a difficult read. Despite Atiyah's valiant efforts at demystification I fear that the lay person will quickly choose some other palliative to insomnia.

The second part of *The Damages Lottery* seeks to provide revelation. For Atiyah it is important that we realize that ultimately the public pays for all personal injury howsoever caused. We pay for it through taxes for social security or for the liability of governments for their own negligence, we pay for it through compulsory workers' compensation, and we pay for it through insurance, either first or third party, on a variety of policies. Largely, the person who does not pay is the person who actually caused the injury in the first place. The lay reader must understand that popular moral responsibility for causing an accident has little to do with legal responsibility and ultimately who pays. The law's mantra is now firmly to provide 'compensation', hence the 'stretching' phenomena motivated by compassion, and not to determine fault or exact punishment. Once this revelation comes it seems both unjust and hopelessly inefficient to allow the present system to continue. As Atiyah concludes "... the system is a mess...."[5]

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[3] P.S. Atiyah, *Accidents, Compensation and the Law* (London, Weidenfeld and Nicolson, 1970).

[4] London, Staples Press 1967.

[5] *Supra* footnote 2 at 158.

What salve does Atiyah offer? Atiyah first answers this inquiry by telling us what will not work. First, there is simply not enough money in the system to bring all accident victims, howsoever caused, up to the favoured position of tort accident victims. Second, the United Kingdom should not turn to either a comprehensive accident compensation scheme, as adopted in New Zealand, or an all embracing national compensation plan as originally proposed by Sir Owen Woodhouse for Australia. Atiyah dismisses these schemes on the basis that their economic forecasts were hopelessly optimistic and their operation mired in excessive bureaucracy. What Atiyah does suggest has both modest and profound components. On the modest side, Atiyah suggests the adoption of a no-fault automobile insurance regime as adopted in many North American jurisdictions. It is perhaps surprising to some to realize that the United Kingdom does not currently have such a scheme given the proven benefits from experiences on this side of the Atlantic. On the profound side, Atiyah suggests, "The action for damages for personal injuries should simply be abolished, and first-party insurance should be left to the free market."[6]

In a book designed primarily to identify present shortcomings, Atiyah only permits us a sketched out view of his proposal for reform. But there is something disquieting about Atiyah's suggestion. Abolishing the right to sue is the usual first step to the creation of no-fault comprehensive compensation schemes, and with this idea, I have no dispute. But whereas the reformers of old, Woodhouse and company, would substitute for the loss of the right to sue a publicly funded scheme committed to five objectives; community responsibility, comprehensive entitlement, complete rehabilitation, real compensation, and administrative efficiency,[7] Atiyah leaves us with a free market. But as many people have discovered in North America when seeking health, life and other forms of insurance, the free market is not nearly as accommodating when you are elderly, or have an existing disability, or are poor. Atiyah's free market is some type of privatized semi-comprehensive scheme which offers us at least two tiers of compensation. For Atiyah the spectre of any discriminatory treatment in a private first party insurance regime is certainly no worse than the current structure, and at least, offers the promise of wider coverage at a cheaper rate for many. However, for this reader, it would be disheartening, if on this side of the Atlantic, we heeded Atiyah's prescription particularly when we have seen renewed interest in comprehensive no-fault accident schemes; see for instance the legislative vicissitudes in Ontario over no-fault automobile insurance and the recent proposals of the Krever Blood Inquiry for compensation to the victims of tainted blood.

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[6] *Ibid.* at 189.

[7] *Compensation for Personal Injury in New Zealand*, Report of the Royal Commission of Inquiry, 1967, at 39.

Law and Morality: Readings in Legal Philosophy.

Edited by DAVID DYZENHAUS AND ARTHUR RIPSTEIN.
Toronto: University of Toronto Press, 1996, xii, 779 ($80.00).

Reviewed by F.C. DeCoste*

Properly understood, courses in legal philosophy, as taught in the context of the professional law school, have among their primary ends, giving prospective lawyers articulate and committed cause to live a life of law. Unlike similar courses taught elsewhere in the academy, that is, law school courses in jurisprudence *must* seek not merely to provision students with ideas about law, but to do so in a fashion which reveals law as an ethically viable and sustaining, and morally attractive and significant, life project. Unhappily, most published collections of materials for the study of jurisprudence in law schools — and there are many — are vehicles very poorly designed for reaching that pedagogic destination. Happily, by expressly avoiding a critical conceptual pitfall which condemns most collections, the present collection offers professors and students a most commodious and effective means for encountering and exploring the promise and fragility of law, as both an institution and a practice.

Most of the standard collections take what may be termed either a "schools" or a "topics" approach. The former proceeds from the understanding that legal philosophy consists of a series of chronologically ordered and discrete systems of belief, each addressing a set, time-honoured agenda, and each displaying a roughly uniform intellectual agenda.[1] Topical approaches are typically more modest, and make do instead with identifying and extracting materials according to whatever list of problems the editor thinks represents the presently important currents of legal theoretical discourse. Whichever their preference in these regards, most collections fail any useful pedagogic purpose — certainly within the context of the law school, but I suspect elsewhere as well — simply because they elide the matter on which such utility most depends.

First to identify, and then to explore, law as the law of societies which are self-consciously and by declaration liberal, would appear an obvious first step in any project of preparing a collection on legal philosophy for use by university

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[1] For instance, *Lloyd's Introduction to Jurisprudence* (London: Stevens & Co., 1994, 6th ed., Lord Lloyd of Hampstead & M.D.A. Freeman, eds.), perhaps the archetype of the schools approach, segregates extracts from the works of legal theorists into the familiar jurisprudential canon — natural law, positivism, realism, marxism, and so on.

students. From this very logical beginning, a host of inquiries which are necessary for any at all adequate understanding of law immediately appears; and chief among these is the question of the relationship between law and the terms and conditions of individual and collective life in liberal states. Most collections miss this critical first step, and proceed instead from the pre-reflective view that law is law *simpliciter*, in broadbrush the same everywhere and at all times. By in this fashion failing to localize the law theoretically and morally, these collections fail as well to provide occasion for mature assessment of law's importance as an institution to the values of liberty and equality on which the moral legitimacy of liberal states — and of the legal profession — finally depends.

What is required of collections, that is, is that they proceed from the understanding that legal philosophy is a department of political philosophy more widely conceived. They must recognize that law is always captive to political theory, and as an institution and a practice is, therefore, thoroughly cabined by some overall delineation of a way of life against which the parameters and possibilities of the social are assessed, and from which they ultimately arise. The success of the present effort by editors Dyzenhaus and Ripstein arises from just such a recognition of the proper place of law and legal theory. In their Preface, they declare their "central organizing assumption in compiling [their] anthology" to be their view that "questions about morality and law are at root questions of political theory."[2] And they can then quite properly proclaim as their purpose to help students, not just "in their intellectual pursuits," but as well, and indeed especially, "in their role as informed citizens."[3] I want now to explore, in finer detail, the difference all of this makes as regards both the collection's structure and its contents.

Since both ignore legal philosophy's debt to the political, neither the "schools" nor the "topical" approach could possibly serve the principle from which editors Dyzenhaus and Ripstein proceed. What they required, rather, was a structure which takes seriously law's relationship to the ends of political life, and this they offer in a relatively novel and most useful way.[4] The collection is divided into two parts. As put by the editors, "the first deals with general questions about morality and law, drawing on both the traditional literature ... and on contemporary debates about the role of law as a tool in the pursuit of equality."[5] The second part "considers a series of contemporary issues in which

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[2] At x.

[3] At ix.

[4] The novelty is qualified, because the better of the more recent collections on offer, all proceed from an acknowledgement of legal philosophy's debt and are, therefore, generally structured in a fashion similar to the present collection. See for example: Frederick Schauer & Walter Sinnott-Armstrong, *The Philosophy of Law: Classic and Contemporary Readings* (New York: Harcourt Brace, 1996).

[5] At xi. Part One, which is entitled "Morality and The Rule of Law," occupies pages 3 through 348.

the questions considered in the first section present themselves especially forcefully."[6] Which is to say, the two parts are integrated. The second is not merely a topical anthology of instantiations of the questions disclosed in the first, but rather an on-going and sustained interrogation of those questions. The introductions provided to the subsections in each part, along with the reading questions which follow most selections, tie the collection together as a pedagogic and conversational whole.

Part one contains five chapters. The first chapter, entitled "Positivism, Legal Ordering, and Morality," is followed by chapters on adjudication, on feminist approaches to the rule of law, on law and liberty, and on law and democratic governance. Each chapter consists of a mix of selections from classical and contemporary writers and of extracts from decisional law — much of it Canadian — which both demonstrate and extend the matters under consideration. What all of this amounts to, I think, is a wonderfully proper beginning for disciplined reflection on law.

The editors place the student at just that point where the importance of law becomes discernable. For the overall import of the chapters in part one is twofold. Students are led, first, to inquire whether law is a merely an empty vessel into which can be poured the random and arbitrary products of extra-legal, political and social power, or whether, instead, there inheres in law, as a social institution and practice, a morality which puts paid any notion of law as a mere formality for power. This question is, of course, not just the central and enduring question of legal philosophy, but the issue on which turns the moral and ethical fate of the legal profession. Though the editors curiously proclaim their neutrality on this question, they proceed as if law is indeed a political morality.[7] For the remainder of part one is devoted to matters concerning the purchase and limits of law which, of course, only arise on the assumption that law is something other than a score card for the winners of contests of power. It is a matter of much praise that the collection serves these ends in part one by introducing students to the works which constitute the currency through which theoretical commerce about liberal law occurs in the West. Particularly gratifying is the pride of place given to classical authors such as Hobbes and Mill, and to more contemporary writers such as von Hayek, Fuller, and especially Dworkin and Cover.

Part two begins with a chapter entitled "Defining Family," which is succeeded by chapters on civil disobedience, legitimacy and sovereignty, freedom of expression, and abortion. Like those in part one, the chapters in part two consist of selections from just the proper sources and of extracts from relevant and important case law,

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[6] *Ibid.* Part two runs from page 349 to page 756. There are three appendices. The first replicates the *Charter of Rights and Freedoms;* the second offers an overview of the Canadian legal system; and the third, which is particularly welcome, provides a useful glossary of legal and philosophical terms.

[7] At x.

again much of it Canadian. Praise is due here not only for the authors selected — Rawls, Dworkin, Finnis, and Thompson come immediately to mind, as do, especially, the selections from Martin Luther King, Jr. and Nelson Mendela — but also for the issues which the editors chose as venues to extend the inquiry begun in part one. Though many of the issues are presently topical, the praise is metered by their enduring jurisprudential significance. For it is in just these issues, and the hard cases they compel, that the morality and ethics of law and lawyering are most readily encountered.

It is often, and increasingly, charged that legal education and the profession, more generally, have lost their way.[8] To the extent that such claims are true, their purchase turns, in critical part at least, on the failure of law schools to inculcate in their charges an informed and committed care for law. Remarkable, indeed, is the number of students who graduate into the profession without even the meanest appreciation that law is a profession only because its practitioners are seized of something worthy to profess. Classrooms in which students engage legal philosophy are the frontline in any project which would redeem the law. That, rather than seeking to impart a disciplined view of law as a vocation on which so very much depends, so many of those classrooms are instead devoted to studied, corrosive cynicism about the law, is a cause for deep regret. That there are Canadian scholars, like Dyzenhaus and Ripstein, who would have it the other way, is in turn an occasion for some modest hope.

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Next of Kin: What Chimpanzees Have Taught Me About Who We Are.

By ROGER FOUTS.

New York: William Morrow and Company, 1997. Pp. xi + 420 ($32.95).

Reviewed by Michael P. Doherty*

The history of human rights has involved the incremental extension of the protection of law to groups which did not previously enjoy such protection. Racial, ethnic and religious minorities, women, the physically and mentally

[8] See for instance: Anthony Kroman, *The Lost Profession: Falling Ideals of the Legal Profession* (Cambridge, MA: Harvard U.P., 1993).

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handicapped, prisoners, and members of a number of other groups are now recognized as having fundamental rights which they were once denied. To date, however, those rights have remained exclusively "human" rights. Although the phrase "animal rights" is certainly part of the popular lexicon, it is not generally used to refer to "rights" at all; instead, it is usually based upon an inherent acknowledgment that non-humans have no fundamental legal right to be free from human cruelty, and merely asserts that humans have some moral obligation to avoid the worst sorts of cruelty towards non-humans.

Roger Fouts' account of his thirty years of involvement with chimpanzees, *Next of Kin*, will make readers question whether continuing to treat all non-humans as though they have no fundamental rights is possible. Fouts, now a professor of psychology at Central Washington University, was a young graduate student when he took on the responsibility for teaching American Sign Language to Washoe, a two-year-old chimpanzee. The results of the communication experiments conducted by Fouts, Washoe and other researchers and chimpanzees in the succeeding years are well known: namely, that chimpanzees are capable of acquiring large vocabularies and using them to communicate both concrete and abstract thoughts to humans and to other chimpanzees.

Considered in isolation, it might be easy to miss the significance of this discovery, or to dismiss it as just further proof that chimpanzees are particularly clever animals. Consider chimpanzees' ability to communicate in conjunction with their tool-using and tool-making abilities, other evidence of their intelligence, their close family relationships, and their complex social interactions, however, and it begins to take on greater significance. Add in the fact that 98.4 percent of our DNA is exactly the same as chimpanzee DNA — a higher proportion of shared DNA than between two hard-to-distinguish bird species like the red-eyed vireo and the white-eyed vireo — and it would be difficult to disagree with Jane Goodall's assertion in the introduction to Fouts' book that humans "are not standing in isolated splendor on a pinnacle, separated from the rest of the animal kingdom by an unbridgeable chasm." Reading about Fouts' thirty-year friendship with Washoe makes it clear that that chasm has been bridged.

It has not, however, been bridged in law. The law still accepts the Cartesian separation between humans and other species, but an Author's Note indicates that Fouts and his colleagues intend to try to change that. Through the Great Ape Legal Project, they intend to initiate a series of court cases that, if successful, will win non-human great apes the right to life, liberty and freedom from cruel treatment. Presumably, those cases will take place in the United States, where Fouts reveals that chimpanzees have been spun in centrifuges, shot into space, had their skulls smashed with steel pistons, been used as crash test dummies, and been injected with massive does of polio, hepatitis, yellow fever, malaria and HIV as well as lethal pesticides and carcinogenic industrial solvents.

It is interesting to speculate, however, about how Canadian courts might react to an attempt to assert the fundamental rights of a chimpanzee. Would they agree that the rights of "everyone" to life, liberty, security, and freedom from arbitrary detention or imprisonment pursuant to sections 7 and 9 of the *Charter* extend to chimpanzees? Of course, we cannot know at this time how the courts would respond. Anyone reading *Next of Kin*, however, will at least be able to judge how the courts *should* respond.

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Privacy and Loyalty.

Edited by PETER BIRKS.

Oxford: Clarendon Press. Price: $135.00

Reviewed by Patricia Hughes* and Edward Veitch**

The essays in *Privacy and Loyalty* were originally presented at seminars organized by the Society of Public Teachers of Law at All Souls College, Oxford, a series devoted, as Peter Birks says, to "the most difficult areas of the law, in the hope of drawing attention to their difficulties and stimulating the new thought that they badly need." In Birks' view, the law on privacy and on loyalty (fiduciary duty) has in each case "not been doing particularly well." Attempts to find the balance between privacy and other freedoms, particularly that of the media, and to establish the correct boundaries of the expectation of self-sacrifice through the fiduciary duty have "resulted in a story of frustration and failure." It is obviously the hope of the editor that these essays will help remedy that failure.

Much the same might be said of Canada since a similar book of essays reached the same conclusion about Canada twenty years ago.[1] For Canadians these essays provide a useful comparative assessment of the state of privacy law elsewhere, ranging from the minimal protection offered privacy in England to the broader right recognized in Germany and are worth reading for interest as

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** Editor.

[1] Dale Gibson, ed. *Aspects of Privacy Law* (Toronto: Butterworths, 1980).

we continue our own inquiry into the subject. For the most part, today privacy constitutes a value without constituting a right.[2]

Those who see privacy as an underlying value are more likely to argue for its constitutionalization, while those who identify it with specific concerns — the confidentiality of computer data, for example — are more likely to believe that a statutory right will suffice or, indeed, be more valuable. Those concerned with the invasion of privacy from private sources may find the recognition of a tort of invasion of privacy compelling.

Eric Barendt, in "Privacy as a Constitutional Right and Value," bemoans the lack of development in any form in the United Kingdom, although he recognizes that other actions may deal with the wrongs committed (particularly, an action for trespass, private or public nuisance, harassment or defamation). Barendt argues that privacy should be a constitutional, not statutory, right.[3] His understanding of privacy is a broad one based on its value in permitting individuals a wide scope of autonomy and non-intervention in order to make decisions about their lives and to have room to carry out quite innocuous tasks ("to get away from our public and social rules, to put our feet up metaphorically (and perhaps literally), and to release feelings and emotions which cannot appropriately be expressed in our public working life"). Barendt's essay is a philosophical one which explores the multivariate nature of privacy and the overlap and differences between claims to privacy and claims to liberty. Canadian jurisprudence reflects the "conflation" of these interests, as he refers to their treatment in England.[4]

David Feldman points out that "privacy is important for social reasons as much as individualistic ones." Privacy is about how we relate to one another: it has a social component, regardless of the emphasis on the individual. His "Privacy-related Rights and their Social Value" is a more complex assessment of the place of privacy in society than we find in Barendt. "Privacy doctrine" has protected from culpability those who hide behind it to engage in domination over others (in the family, for example). Therefore, "[t]he membrane between

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[2] The Supreme Court of Canada has taken this approach. Since the first considerations of the application of the *Canadian Charter of Rights and Freedoms* over a decade ago, the Court has expanded its application to circumstances that the early cases would have suggested were not subject to it: *Hill* v. *Church of Scientology*, [1995] 2 S.C.R. 1130 made it clear that the common law, even when challenged in a private dispute to which Charter *rights* do not apply, must conform to Charter *values*.

[3] One of the more recent pleas to constitutionalize privacy in Canada was made, unsuccessfully, by the Privacy Commissioner of Canada: *Entrenching a Constitutional Privacy Protection for Canadians: A Submission to the Special Join Committee on a Renewed Canada* (1991).

[4] In *R.* v. *Morgentaler*, [1988] 1 S.C.R. 30, the majority found that the restrictions on abortion contravened the right to security of the person guaranteed by section 7 of the Charter. Only Madam Justice Wilson based her decision on a privacy interest. In *Rodriguez* v. *British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, L'Heureux-Dubé and McLachlin JJ., in dissent, employed a privacy analysis to hold that a prohibition against assisted suicide contravened section 7.

public and private morality should always be semi-permeable, in order to allow the public good to form an element in private decision-making." Feldman is the only author who gives any conscious consideration to feminist or cultural analyses of privacy. In both regards, he shows himself to be more adept at the relationship between law and other disciplines or the "social context" of law than the other essayists.

Feldman explores how the European Court of Human Rights and Human Rights Commission have tried to develop a jurisprudence under the European Convention on Human Rights which recognizes the social nature of privacy and distinguishes between privacy itself and the conditions necessary for its maintenance. Feldman poses this "dynamic" jurisprudence as a model for an English privacy law. It might equally constitute valuable experience in "balancing" public and private interests should notions of privacy take firmer hold in Canada where this exercise has become most entrenched in criminal law analysis. There the *value* of privacy underlies specific rights such as the guarantee against unreasonable search or seizure under section 8 of the Charter.[5]

In "Privacy and Political Speech: An Agenda for the 'Constitutionalization' of the Law of Libel," Ian Loveland considers the question of constitutional protection for defamation. This chapter is primarily a review of the law, with some rather sharp criticisms made about the judges use of comparative law. While of interest in a general sense, this essay is perhaps of less comparative value to Canadians since it takes the Australian jurisprudence, based on the "American approach," and applies it to the United Kingdom.

In a useful contrast to Loveland's essay, Basil S. Markesinis and Nico Nolte engage in "Some Comparative Reflections on the Right of Privacy of Public

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[5] The test under section 8 is whether the accused had a reasonable expectation of privacy in whatever was searched or seized, a test of particular significance when it is the accused's home or body which was searched: *R.* v. *Dyment*, [1988] 2 S.C.R. 417. For recent jurisprudence, see, for example, *R.* v. *Belnavis*, [1997] S.C.J. No.81 (Q.L.), *R.* v. *Stillman*, [1997] 1 S.C.R. 607, *R.* v. *Feeney*, [1997] 2 S.C.R. 13 and *R.* v. *Wong*, [1997] 3 S.C.R. 36 1 S.C.R. 145. Restrictions on police entry into a private home were in furtherance of privacy prior to the Charter. With less success, some judges of the Supreme Court of Canada have suggested and the Canadian *Criminal Code* has been amended to require that the privacy of a complainant in sexual assault cases be balanced in determining whether the accused should be granted disclosure of therapeutic records: *R.* v. *O'Connor*, [1995] 4 S.C.R. 411; *L.L.A.* v. *A.B.*, [1995] 4 S.C.R. 536; also see *R.* v. *Carosella*, [1997] 1 S.C.R. 80. The relevant *Criminal Code* provisions were challenged and found to be unconstitutional: *R.* v. *Mills* (1997), 205 A.R. 321 (Q.B.) (on the breach of sections 7 and 11(d) of the Charter) and [1997] A.J. No. 1036 (Q.L.) (on the failure to justify the breach under section 1 of the Charter). For a civil case, see *A.M.* v. *Ryan*, [1997] 1 S.C.R. 157. John W. Grace, the Privacy Commissioner, has commended "the sensitivity to privacy shown by the Supreme Court of Canada in its interpretation of existing Charter rights, especially section 8:" "Privacy and Openness: The conundrum" in the Canadian Institute for the Administration of Justice, *Open Justice* (Montréal: Les Éditions Thémis, 1994) 185, 189.

Figures in Public Places" with a focus on tort law and on Germany. Generally, there seems to be more respect for the private lives of public figures, consistent with an appreciation of how little public interest is served by the revelation of details of the private lives of well-known people (other than a salacious interest in gossip). The authors comment that "the German preference for balancing the competing interests of free expression and personality rights (in the broadest sense of the words) lies much closer to the English way of thinking than the American which has, especially since the 1960s, accorded vastly preferential treatment to free speech." The essays by Loveland and Markesinis and Nolte concern themselves with politicians or other "public figures." But privacy matters to the ordinary citizen, as well. The Supreme Court of Canada may soon have an opportunity to address this aspect of privacy, or the right to anonymity, having granted leave in a case involving a photographer who took a picture of a woman in front of a building which was then used to illustrate a magazine story about buildings.[6]

Most of these authors are, in Roderick Bagshaw's phrase in his closing "Obstacles on the Path to Privacy Torts," "privacy disciples." Raymond Wacks, on the other hand, finds "the dominant analysis of the question of 'privacy' is, at least in its legal incarnation, misconceived and, perhaps, even counter-productive." In this company he is at best a "privacy sceptic." He explores "Privacy in Cyberspace: Personal Information, Free Speech, and the Internet." The Internet is highly unusual because it is not controlled by anyone and can be accessed for many purposes without identifying oneself. As Wacks points out, "[i]ts anarchy and resistance to regulation is, in the minds of many, its strength and attraction." This suggests that it is also difficult to trace people through the net, but regardless of how true that was even when Wacks delivered his essay, it has become increasingly possible for those with the skill to track particular users. Anonymity is a value on the Internet, yet as more commercial activity takes place and as criminal opportunities increase, as no doubt they will, there will be a greater pressure for disclosure. Although the Net shares much in common with other forms of communication, it is also highly distinctive and even what it shares may become distinctive merely by virtue of its reach. Accordingly, Wacks asks whether "this digital world require[s] a modified, or even a new, approach in the pursuit of an elusive equilibrium between 'privacy and 'free speech?'" Perhaps consistent with his general view of privacy rights, Wacks prefers to find solutions to problems arising through technical advance in technology itself, rather than in the law. Regardless of the appropriate response, the Internet does pose for law a problem different from traditional privacy problems; the traditional problems, for all they have been discussed, are conceptually and political difficult. The application of law to cyberspace,

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6 *Aubry* c. *Éditions Vice-Versa Inc.*, [1996] A.Q. no.2116 (C.A.). Article 5 of the Quebec *Charter of Human Rights and Freedoms* states that "Every person has a right to respect for his private life" and the civil law also provides more extensive protection than does tort law elsewhere. It will be interesting to see how dependent the Court will make its privacy analysis on the Quebec context.

however, poses problems of applicability that cross-border application of law only dimly suggests.

Roderick Bagshaw's essay in the spirit of English law on the matter, emphasizing the "obstacles on the path to privacy torts," closes this segment of the book.

He rejects the utility or acceptability of a constitutional privacy right for Britain, but of course, Canada is in a different situation and Eric Barendt's contribution may have more resonance to a Canadian reader. In general terms, however, Bagshaw's chapter is helpful in placing the other contributions in perspective and in highlighting their connection to the English legal system, indirectly identifying those factors which may make these ideas more or less valuable in our own context. Bagshaw's conclusion is not promising for the privacy disciples, nor is it particularly complimentary to the judiciary whose ability to develop existing torts (in trespass or nuisance, for example) may be the most likely route, "leading to complexity, inconsistency and distortion." Bagshaw's conclusion is in marked contrast to the optimism reflected in Peter Birks' Preface, but it may be a more accurate reflection of the achievements of the "privacy" segment of *Privacy and Loyalty.*

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Of the five private law chapters in this volume two are written by expatriate Canadians whose scholarship serves to delineate the separation of Canadian jurisprudence from that of our Commonwealth "neighbours in law".

Chapter seven, thankfully not entitled "Whither fiduciary obligations", by Charles Harpun makes the point that the terms "fiduciary" and "fiduciary obligations" are empty in themselves and are comprehensible only when analysed in terms of the need for discrete solutions to be found where particular duties are to be imposed. At pages 154-5 he calls in aid *dicta* of the Scottish Law Lord, Lord Normand but he might usefully have dug deeper into that jurists' training in the Roman law of *lucratus* to explain that judge's appreciation of the concept. The writer offers a valuable observation when he asks whether there is a universal principle or whether or not we must look to classic situations — the constructive trustee, the traditional trustee, the trustee in bankruptcy and the pension trust — in which to apply two notions, the trustee must make no profit and the trustee must not be in conflict. He feels that at the end of the day statutory regimes may well supplant the *ad hoc* development of the fiduciary obligation.

In chapter eight, Laura Hoyano, formerly of Alberta but now of Bristol, England expounds, at maybe greater length than was necessary, on trouble at the conceptual boundaries between tort, contract and equity. She speaks to the fragmentation of the law of the Commonwealth, each jurisdiction going its own way as only a Canadian could comprehend, and explains our practice of pleading in the alternative and for what advantages and with what results. She

accurately explains the position of the majority of the members of our final court: (1) does the fiduciary enjoy a discretion or a power; (2) can the fiduciary affect the beneficiary's interests; and (3) is there a power imbalance between fiduciary and beneficiary ? She also poses the question — is the undertaking by the fiduciary real or imposed — which takes us back to Lord Normand's training in the Roman law alluded to above—a judicially imposed remedy to obviate unjust enrichment or injustice. Ms Hoyano closes with an explanation of the decisions of our highest court on sexual exploitation and their unimpeachable rationales.

Another Albertan, Lionel Smith now of St. Hugh's, Oxford, in the succeeding chapter offers a wise corrective to the fad for the cause of action now routinely pled — breach of fiduciary obligation. He reminds us of the efficacy of pleading breach of contract, fraudulent misrepresentation and the tort of deceit. He emphasises the availability of the law of tracing as an effective remedy at law and thereby offers a calming influence on the practice as we now know it. This is not of course to suggest that Dr Smith is not a fan of equity which his writing reveals he most surely is.

Mr Glover in chapter ten asks the question —"Who are fiduciaries ?" —to which the Queen of Hearts J. might have responded —"Whomsoever I so determine." — and which reply might have some resonance amongst our own judiciary. He suggests that an operative test might be — fiduciaries are to be found in trusting relationships. Not bad, as it would explain our most recent case-law on sexual exploitation whether it be by parents, custodians or school and university teachers.

Lastly, Mr Hayton was given an unenviable task — present an overview of the chapters before. Wisely he hoved toward the "big picture" and posed the following questions: (1) Are law and morals drawing closer together ? (2) Is equity's role that of a "firefighter" ? (3) Are we courting John Selden's aphorism about the Chancellor's foot and (4) should commercial expectations be best left to the robust concepts of contract and tort ?

As my co-reviewer has made clear this volume of essays has everything to commend it.