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CANADIAN JURISPRUDENCE, TIHE CIVIL AND COMMON LAW IN CANADA. Edited by Edward McWhinney, Toronto: University of Toronto Faculty of Law Comparative Law Series, vol. 4, 1958.

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group because in that very diversity of background lies the strength that is needed to keep the needs of the law in general and the necessities of broad policy from overpowering the case that is a very real personal problem to the individuals involved.

Quite properly, and in keeping with the author's thoroughness, he makes some predictions as to the future of the Court: moderation will still govern the interpretation of economic regulatory statutes governing such fields as anti-trust, securities and labor; the Court will continue to hew to its present firm position on race relations; the weight of the Court will follow a line of moderation in coping with the problems of speech and thought restriction.

Mr. Frank also has some very cogent suggestions as to how the Court can keep pace with the problem of keeping up with this nation's growth and the increasing number of problems concomitant to such growth. For a start, he suggests that the Court can increase its output by an enlarged use of its staff; by greater use of orders without opinions; by eliminating time-consuming diversions, such as exhaustive footnoted opinions, promiscuous dissents and promiscuous concurring opinions which have cut into the Court's productivity; by solving all the big questions in a big way—by making every decision a hard-hitting, decisive statement of firm policy; and by choosing to hear more cases, not just the big matters that make great policies.

Mr. Frank has vast experience—from the source up—to prepare him for the monumental task he has set for himself in this book. His background in general practice, in teaching constitutional law and in clerking for Mr. Justice Black have given him the insight and experience to collect the wonderful array of information and statistical data that has been brought together between the covers of this book. The author's brilliant summarization and evaluation of this material makes the work a true milestone in the history of the United States Supreme Court. Not only is the *Marble Palace* delightful and gripping to the lawyer; it is a distinct contribution to the lay public who cannot help but gain a greater understanding of this great institution and be imbued with the courage, will and ability to help maintain the American tradition of liberty.

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CANADIAN JURISPRUDENCE, THE CIVIL AND COMMON LAW IN CANADA. Edited by Edward McWhinney, Toronto: University of Toronto Faculty of Law Comparative Law Series, vol. 4, 1958. Pp. 393. \$7.50.

Introduced by an eloquent foreword on the law in a plural society in a crisis age (Justice Rand of the Supreme Court of Canada), the present collection of articles on some of the main branches of Canadian law

makes good on the plural aspect, on the "juridic mosaic" (XI), and overlooks happily the crisis. The plural character of Canadian law is well brought into focus by the introductory contribution on the legal theory and philosophy of law in Canada by the editor, who presents a broadly conceived tableau of the Canadian legal scene. Starting with the English law as the foundation of Canadian law, characterized as a derivative kind of second-hand influence, the other component factor is identified as the civil law (civil code) in force in the province of Quebec. This Civil Code is almost nostalgically praised as "un magnifique instrument de culture" in need of adaptation though attempting to remain aloof. There is also, particularly since 1949 when Canada became independent from the Privy Council, the *bete noire*, accused of everything, even of attempting to make over the Civil Code into a common law image, a decisive trend toward some kind of legal nationalism. The author characterizes it as a movement to establish "an indigenous, autonomous, Canadian jurisprudence." This picture, however, cannot be accepted as complete. A realistic assessment of the impact of legal developments in the United States both on the state and federal level, seems unavoidable. This aspect, perhaps the most dynamic in present legislation as well as legal education, is unfortunately mentioned only in relation to some details, an aversion apparently due to a traditional attitude expressed by one contributor that American jurisprudence still is regarded as "somewhat radical and suspected" and that American educational methods "met with ferocious opposition." Even mere comparative study "has still to win unanimous acceptance," in spite of the fact that the foreword acknowledges the existence of the "rich and copious legal thought in the United States" The value of the present collection would only increase by a realistic presentation of the present impact of United States legal patterns, particularly in the field of constitutional law, corporations, labor law and various aspects of commercial law, particularly security devices, or, for example, the bulk sales acts which are, from a comparative point of view, as American as the proverbial apple pie. The movement for uniform laws, mentioned in several places, also shows distinct similarities with such efforts in the United States, except an obvious reluctance to believe in its desirability. "Is there any particular advantage to be gained by the uniformity of provincial laws?" asks the eminent author of the foreword.

There are many constructs of legal thought whose expression of social values has been exaggerated. An idealistic mind can doubtless detect ethical and ethereal overtones in workaday legal tools and apparatus; but accepting the existence of a class of laws with the character of moral indifference, to attribute to them without discrimination a transcendent glitter indicates a lack of experience of the roughness and toughness of both the forensic arena and the areas generally of secular relations. This tendency may become so precise, its lines so refined, and its application so strict and exquisite, that its triumph would be

that of injustice. The edges of legal rules are jagged and their application designed to bring neither intellectual ecstasy nor dismay to the thinker on the mountain top.

A counterpart to this contribution appears to be the discussion of the French Canadian attitude to the Canadian constitution by Pigeon. It may be added that the constitutional problems are more fully presented in a recent publication by Lower, Scott and others entitled *Evolving Canadian Federalism* (1958).

The dual approach by pairs of articles on the main subjects adopted for discussion is then followed throughout most of the collection. The study by Lederman on the common law system in Canada, discussing mainly general common law doctrines of precedent, is followed by a study of the contribution made by the Civil Code of Quebec and its relation to French, German and Swiss codifications. Throughout the collection the consensus is quite common that there is a considerable impact exerted by the common law on the law within the single civil law province; on the contrary, the reverse influence is said to be nil. This area of symbiosis of two great legal systems deserves much closer attention and competent comparative study, related also to Louisiana, Puerto Rico and the Philippines.

The dual approach then is used to discuss contracts (by Milner and Crépeau), the former emphasizing certain specific aspects, like the form, agreement and consideration, and the latter discussing the general theory of contracts. In a similar way are presented torts, common law by Dunlop, civil law by Baudoin, the law of real property (Macdonald and Cardinal), and the law of succession (Bowker and Rivard).

The collection is concluded by three non-dual type of contributions. The first deals with criminal law (Mackay), which, due to constitutional reasons, was enacted as uniform law in 1892, followed closely by the Evidence Act (1893). The second study concerns itself with procedure and judicial administration (Kilgour). In this area the differences between common and civil law are less patent, particularly since the Code of Civil Procedure for Quebec (1867) adopted from the beginning strong common law features, thus avoiding the "exacerbating technicalities of an outdated procedure in which mastery of an esoteric mechanism was the badge of success." The final contribution is of exceptional interest explaining specific problems Canada faces in her international situation, particularly in regard to treaties. *Et mem minisse iuvat* the attempt to extend Canadian territorial waters to twelve miles.

The parallel method of discussion adopted in this collection is, without a doubt, valuable since it describes the same topic from the viewpoint of both legal systems. However, the collection stopped here and did not venture into a deeper comparative analysis of unavoidable interactions. On

the whole, writers have preferred to measure distances from the points where their respective legal systems originated to their present position: the common law from the English law proper, and the civil law from the Napoleonic Code and the French doctrine.

This collection, well written and documented, was long overdue. It still bears overtones of past traditionalism, not only in approach but also in the selection of subjects discussed, by concentrating on areas highly conservative (contracts, torts, property, succession) while, at least for the time being, more dynamic areas, like, corporations, labor law, commercial law, are omitted. Particularly regrettable is the fact that Canadian conflict of laws problems have been left aside.

These remarks only prove with how much interest a publication of this kind and quality meets outside of Canada. Students of Canadian legal developments, as well as comparativists, are grateful indeed to the men who produced this valuable account of some of the fundamental problems of Canadian law.

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TAXATION IN MEXICO. By Henry J. Gumpel and Hugo B. Margain. Boston: World Tax Series, 1957. Pp. 428. \$12.50.

This book fills an important gap in the legal literature regarding Latin America. With international trade growing at an incredible pace, it has become more and more necessary to gather all the existing information on investment conditions.

"Taxation in Mexico" is one of the volumes published in the World Tax Series, the offspring of the Harvard Law School International Program in Taxation. The other published volumes available deal with Brazil, Great Britain and Australian taxation. This program has been developed as the implementation of the Resolution adopted at the Economic and Social Council of the United Nations for the gathering of information on national tax laws and administration. Obviously, the importance of this series does not need to be overemphasized; it is one of the steps to be taken for using the mutual knowledge of tax systems to suppress the problem of double taxation. The whole collection will be also a very useful tool for the practice of international lawyers and for research purposes.

The book was written by a number of specialists; Dr. Gumpel is the author of the basic draft. A German scholar, who emigrated to the States, he is the typical cabinet research man. Although his text was basically correct in accordance with the existing Mexican legislation, there were certain