discrimination on the basis of sex but not marital status. While this is true federally, the Human Rights Acts of some states include marital status as a prohibited ground of discrimination and the meaning of the term has been considered by a number of state Supreme Courts.[63]

These observations are picayune in the face of the wealth of the information and insightful criticism included in the book.

The two concluding chapters examine Human Rights Commissions as organizations and describe the administration and enforcement of human rights legislation. The chapter on enforcement is particularly valuable from a practical point of view. Here can be found the case law on such matters as the right to an adjournment, the production and discovery of documents, as well as surveys of damage awards and non-pecuniary remedies that have been ordered.

There is a helpful appendix of all board of inquiry decisions listed chronologically by province followed by federal tribunal decisions. The subject matter of each decision is indicated by abbreviated notations.

As one can gather from the preceding comments, *Discrimination and the Law in Canada* is an immense contribution to the field of human rights law and will take its place with Mr. Justice Tarnopolsky's earlier work[64] as a standard text in that area.

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NATIONAL LAWS AND INTERNATIONAL COMMERCE — THE PROBLEM OF EXTRATERRITORIALITY. By Douglas E. Rosenthal and William M. Knighton. The Royal Institute of International Affairs, Chatham House Papers 17, Routledge and Kegan Paul Ltd., 1982. Pp. xi, 96 ($11.50)

This very short book is jointly authored by a former United States Department of Justice official, Douglas E. Rosenthal, and a senior civil servant in the United Kingdom Department of Trade, William M. Knighton. The product, however, has a distinctly American flavour and is predominantly an explanation and defence of the American position of extraterritoriality. This orientation is not particularly surprising since the problem is primarily an American one and since Mr. Knighton had to represent world interests. The apologia for the American position is found throughout the book. Whether the various reasons advanced constitute justification, explanation or rationalization will be a matter for each reader to decide for himself. The effects doctrine, for example, to which reference is made by the authors, obviously constitutes justification if it is indeed a principle of international law. However, the

[63] *See* Kraft Inc. v. State of Minnesota, 264 N.R. 2d 386; Washington Water Power Co. v. Washington State Human Rights Comm'n, 91 Wash. 2d 62, 586 P. 2d 1149 (1978).

[64] *Supra* note 7.

* Canadian Human Rights Commission.

suggestion that the Constitution and the federal system predisposed the U.S. to accept the effects doctrine seems to be edging toward rationalization. The fact that the states *inter se* do not adhere to the strict doctrine of territoriality and yet manage to co-exist loses its persuasive power when one remembers that there are constitutional limitations on what each state may do. Nevertheless, as an explanation of the history and attitudes underlying the present American position and as an explanation of the basis for the reaction of the rest of the world the book has considerable merit if read on the intended general introductory level.

Some balance is achieved in the discussion of the problem: the American position is acknowledged as requiring some modification both with respect to the content of the law and with respect to control of enforcement; the Americans are reported to have committed, on occasion, the same sins as those they aggressively attempt to prevent the rest of the world from committing; the reactions of the rest of the world are not characterized as unjustifiable; and it appears to be considerations for the international system rather than considerations of national self-interest which ultimately are given paramountcy.

However, this contribution to the growing body of literature on extraterritoriality will not be required reading for anyone interested in the legal aspects of this subject. Although the problem is acknowledged to be a legal one (since it results from the application of legislation in one state allegedly infringing on the sovereignty of another state) and although reference is often made to the legal issues involved, the author's main thesis is that "the extraterritoriality problem is. . . most constructively viewed as a primarily political and economic problem, too important to be left to lawyers".[1] Their reasoning appears to be not so much that no legal solution exists but rather that the problem is escalating and the pressure should be taken off the legal system at the political and diplomatic levels. This, the authors suggest, could be achieved by revising some of the more far reaching and contentious American laws at the political level and by negotiating a compromise of the political and economic objectives underlying the allegedly extraterritorial statutes at the diplomatic level.

There is much to be said for this position. The introduction in the American courts of the weighing of interests approach in *Timberlane*[2] must be regarded as a promising step from the point of view of the rest of the world. However, in the context of private international law from which the approach has been borrowed it is not without difficulties and when the conflict exists between the public law of two sovereign states the difficulties become extraordinary. Thus *Timberlane* is not a complete solution and agreement on the principles of international law governing the legislative jurisdiction of each state seems as impossible as ever.

The generality and seriousness of the problem are said to be in the facts that all areas of law are amenable to the same type of

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[1] P. ix.

[2] Timberlane Lumber Co. v. Bank of America, 549 F. 2d 597 (9th Cir. 1976).

comprehensive legislation and aggressive enforcement experienced in anti-trust law and that other countries are likely to start passing legislation with the same extraterritorial scope as the American anti-trust laws. The authors also suggest that deference to the United States is likely to decrease as the U.S. becomes more dependent on international trade and as its international power declines from the heights it reached immediately after World War II. A cynic might be tempted to put these propositions together and leap to the conclusion that this plea for a concentrated effort to resolve the problem of extra-territoriality is merely an attempt to prevent the Americans getting a taste of their own medicine.

Criticism of the authors' discussion of the legal issues involved is warranted on the grounds that any foray into legal areas requires a certain degree of correctness and precision even in an avowedly non-legal treatise. For example, a reader not trained in the law may be misled or at least puzzled by reiteration without explanation of the phrase "extraterritorial application" of law. Even American law cannot be directly enforced outside the geographical confines of that country. Only the courts of the legislating state can apply that law directly. Other courts may apply it if permitted by their conflicts rules but all courts retain a residual discretion to refuse to apply foreign law. Furthermore, it is nowhere made clear that officials of one country cannot directly enforce judgments or orders of their own courts in another jurisdiction. All such enforcement must be done either through foreign courts or through such techniques as the lifting of licenses in or the banning of exports from the legislating state. The fact that most commercial activity is now carried out by international corporations is what makes American law so eminently enforceable. Such corporations have both a presence and property in more than one country thus rendering the enforcement of national judgments easy at home and engendering an indirect extraterritorial application of law.

There is some irony in the fact that one journal listed this book as received in the category of Private International Law,[3] as it is the discussions of conflicts rules which are the weakest. The passing references to the rules for recognition and enforcement of foreign judgments, for example, are so broad and so positively stated as to be misleading. Furthermore, the discussion of *British Nylon Spinners Ltd. v. Imperial Chemical Industries*[4] is inaccurate. It was Sir Raymond Evershed M.R. who delivered the leading judgment carefully explaining why enforcement of the American decree would amount to a conferring of extra-territorial jurisdiction in the circumstances of the case. Lord Denning, in his one paragraph concurring judgment, never used the phrase "extra-territorial jurisdiction" attributed to him. He did, however, write a leading judgment in *Smith Kline and French Laboratories Ltd. v. Block*,[5]

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[3] 32(2) INT'L AND COMP. L.Q. 557 (1983).
[4] [1952] Ch. 9, [1952] 2 All E.R. 780 (C.A.). *See* p. 77.
[5] [1983] 2 All E.R. 72 (C.A.).

also discussed by the authors,[6] although he did not put the emphasis on the size of the jury awards in the United States as a ground for refusing to stay the English action that the authors suggest. The conflicts choice of law rule for tort also suffers in that it is stated in broad, universal terms but, as stated, could represent only the American position.[7]

The book itself is well bound and the text is clear and miraculously free from error. The style, however, has a tendency to choppiness with the occasional awkward sentence. Additionally, it sometimes appears that the authors had a quota of commas and dashes which were required to be used. There are no footnotes, although there is a modest bibliography to which references are made in the text by way of parentheses.

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LAWMAKING BY THE PEOPLE: REFERENDUMS AND PLEBESCITES IN CANADA. By J. Patrick Boyer. Butterworths, 1982. Pp. xxix, 304. ($67.50)

As one of the initiators of the municipal referenda on balanced nuclear disarmament held in more than 100 Canadian cities in the fall of 1982, I welcome the opportunity to review *Lawmaking by the People: Referendums and Plebescites in Canada.*

At the time of the referendum initiative in Ottawa, City Council was advised by the City Solicitor that this referendum was based on questionable legal grounds. Ottawa City Council chose to hold the referendum anyway. This legal uncertainty was an obstacle faced by every municipal council considering such action and many chose not to act because of it.

After reading Mr. Boyer's work on the subject of referenda, I have a better understanding of these legal obstacles. In a detailed, thorough and, I assume, complete accounting of all legislation in Canada permitting municipalities to hold plebescites or referenda, Boyer makes clear that a court of law would likely rule that the actions of the City of Ottawa were not within the constraints of enabling legislation.

Lawmaking by the People does not address itself exclusively to the question of municipal referenda. After clearly defining the differences between referenda, which bind the government holding the polling, and plebescites, which are consultative in nature, Boyer gives the reader a concise history of the philosophy of "direct democracy" which gave rise to many of our existing laws on the subject. The Progressive Movement, which swept Canada in the mid- and late nineteenth century, held that the people are perfectly capable of making their own decisions on issues not clearly mandated to their legislators. This Movement had

[6] P. 86.
[7] *Id.*
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