BOOK REVIEWS

THE LEGAL POINT OF VIEW. By R. A. Samek. New York: Philosophical Library. 1974. Pp. XVIII, 403. $15.00.

That Professor Samek has written a book that is often difficult to follow and nearly impossible to review in a summary way can be guessed at by the fact that the two notices so far given it in Canadian law journals are badly divided.[1] Lenhardt of Western Ontario sums it up as "meaningless rhetoric", while McGill's Professor Slayton sees it as "one of the few significant Canadian contributions to modern jurisprudence".

My own view is that *The Legal Point of View* is a timely book. As Professor Friedland has observed,[2] Canada sorely needs a jurisprudence of her own—one, I should add, that is other than simply a re-working of Blackstone and Austin. Samek's book goes a good way toward meeting that need.

Professor Samek's interest in and capacity to write a book dealing in a new way with the older, more traditional problems in legal philosophy is clear to anyone who has read his *Canadian Bar Review* articles on *The Enforcement of Morals: A Basic Re-Examination in its Historical Setting*[3] and *The Dynamic Model of the Judicial Process and the Ratio Decidendi of a Case.*[4] For in the latter he lays down, in only a footnote to be sure, the proposition that in *The Legal Point of View* commands centre stage: "Facts are not hard particles which can be classified into 'material' and 'immaterial'. Our way of looking at the world is conditioned by our interest, by our point of view, and this may vary not only in space and time, but according to the purpose in hand".[5] Samek elaborates this notion in his book by continually insisting that the question, "What is law?" cannot be answered straightforwardly by naming some sort of "essence" that allegedly captures the meaning of "law", but only in terms of some model that a person constructs in light of the purpose he has for asking it. In his article on *The Enforcement of Morals*, on the other hand, he alerts his readers to the thesis he develops especially in chapter eleven of *The Legal Point of View*, that "any attempt to exclude the immorality of an act as a relevant factor in deciding whether to make it illegal, is both dangerous and futile".[6] This too is an unusual stance to take in Canadian jurisprudential circles, given the current positivistic orthodoxy.

The book, however, does have some puzzling aspects to it. Chief amongst these is Samek's insistence that traditional jurisprudential problems

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[1] Lenhardt, Book Review, 13 W. ONT. L. REV. 203 (1974); Slayton, Book Review, 21 MCGILL L.J. 164 (1975).

[2] Friedland, *Law for the Layman*, 50 CANADIAN WELFARE 4, at 5 (No. 4 1974).

[3] 49 CAN. B. REV. 188 (1971).

[4] 42 CAN. B. REV. 433 (1964).

[5] *Id.* at 436-37 n. 7.

[6] *Supra* note 3, at 221 (italics omitted).

can best be solved by employing the analytical method of the Cambridge philosopher Ludwig Wittgenstein, when in fact it seems as though Samek uses Wittgenstein only to get past a sometimes caricatured version of what he calls "essence-of-law" models of law (such as Austin's notion that law is essentially a command), into a nominalism that is, really, not Wittgensteinian at all. How much this affects the things he says that will be of interest to academic lawyers as opposed to philosophers is, I think, an open question. His book is worth reading by both sorts of scholars, though, if only to allow them to answer it for themselves. And the genuine insights he offers into the nature of law as a social institution will be interesting (in some cases, as I shall try to show, importantly so) to all who do.

Samek has divided *The Legal Point of View* into two parts and a postscript. In the four chapters of part one he gives the reader: (1) his view of what constitutes philosophical (as opposed to legal, political, psychological) questions and how to deal with them; (2) an explanation of the different ways a "discourse" functions, namely as assertions, evaluations, prescriptions and performances (in "I apologize" a person is doing something as well as saying something); (3) an explanation of what a "point of view" is; and (4) an account of what norms are and how they fit together into systems. This last is important, Samek thinks, because, as we finally learn in a clear way after over three hundred pages, "a norm-system . . . gives the legal point of view its formal structure". [7]

Part two of the book is given over to Samek's reporting about and critique of the five "essence-of-law" models of law that have dominated all of western legal theory except that being done by the Soviets and Scandinavians. These are: (1) the command models of Hobbes, Blackstone, Bentham and Austin; (2) the norm-model of Kelsen; (3) Hart's recognition model; (4) the positivist rule models; and (5) Fuller's aspirational model. Samek says that his purpose in dealing with this historical material is "to demonstrate the superiority of [the legal point of view as a] new organizing concept over the traditional models". [8] He means to use that concept to reinterpret the essence-of-law theories of law in order to show what is and what is not of value in them. [9]

Finally, in his postscript Samek deals directly with the relation between the legal and moral points of view, taking as his framework for discussion the various versions of natural law theory that have been developed in western legal philosophy. Why Samek relegates the notion of natural law, which as Professor Rommen wrote "always buries its undertakers", [10] to a postscript is not altogether clear, especially in view of his insistence upon the close relation between legal and moral values and in light of the fact

[7] R. SAMEK, THE LEGAL POINT OF VIEW 339 (1974).

[8] *Id.* at xvi-xvii.

[9] *Id.* at 87.

[10] H. ROMMEN, THE NATURAL LAW 267 n. 2 (1948). Rommen is paraphrasing Gilson's statement that "[p]hilosophy always buries its undertakers". *See* E. GILSON, THE UNITY OF PHILOSOPHICAL EXPERIENCE 306 (1937).

that natural law theory has often been developed in terms of the command model of law. Perhaps the reason is that natural law theory has been used, as the other theories Samek treats of have not, as a model of the moral as well as the legal point of view [11] and thus deserves a section of its own. Or, perhaps, Samek discusses natural law as an after-thought because it has, owing to the peculiar and stilted eighteenth and nineteenth century expositions of it, lost its ability in the second half of the twentieth century to serve as an intellectual tool for explaining jurisprudential puzzles and pointing to solutions for everyday legal and moral problems.

Professor Slayton is certainly correct when he says in his otherwise sympathetic review of *The Legal Point of View* that Samek's discussion "is on many occasions complex to the point of obscurity; only the most diligent and patient reader, and one with some philosophical knowledge, can hope to grasp the analysis". [12] In order to minimize its difficulty the reader would, I think, be advised to turn from the preface directly to chapter five. It is a summary of chapters one through four (although often consisting simply of an exact repeating of earlier sentences), containing capsular statements about what he is up to. It is here that Samek explains most concisely what the thesis of his book is, namely that what is needed in legal philosophy is a "new organizing concept, a new model concept which I shall call the *legal point of view*", [13] as well as what his aim was in writing it, namely to show that the legal point of view is a better device for untangling the traditional problems of jurisprudence than the old "essence" models. [14] Indeed, chapter five marks the first time in the book that Samek actually explains in related sentences what the model of "the legal point of view" is. It is, he writes, "that mode of institutional social control which is enforced through the effective application of a norm-system by the courts or tribunals acting as norm-authorities of the system". [15] By having this definition in mind the reader will find it easier to work his way through the philosophically difficult Part One.

Also helpful to an understanding of the first part is the ground covered by Samek in his conclusion. It might, then, be read next. Here he treats in a more concise way than in the early chapters the notions of "truth-claims", [16] validity, [17] and the relation between the philosophical and other points of view. [18]

With the summaries and definitions of chapter five and Samek's conclusion under his belt the reader can with *relative* ease turn to chapters one and two where Samek explains what philosophizing about jurisprudential

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[11] R. SAMEK, *supra* note 7, at 108.
[12] Slayton, *supra* note 1, at 166-67.
[13] R. SAMEK, *supra* note 7, at 86-87.
[14] *Id.* at 87.
[15] *Id.* at 87-88.
[16] *Id.* at 338.
[17] *Id.* at 340.
[18] *Id.* at 342.

topics means to him and what sorts of "discourse" thinkers working in jurisprudence can and do use. After this, one could jump directly to chapters six, eight and ten dealing with Hobbes, Blackstone, Bentham, Austin, Hart and Fuller. Finally, chapter three dealing with "points of view" might be read quickly since it is not strictly necessary to one who has read chapter five, and chapter four, being a highly technical treatment of norms developed largely in terms of the norm-theory of von Wright might be read only in parts if at all. It could perhaps prove helpful to one's reading of the chapter on Kelsen, but I tend to agree with Professor Slayton who says that Samek has not shown this to be so. [19]

One last point about the format of *The Legal Point of View*. Philosophical Library has a way of charging top dollar for its publications. I am not implying that Samek's book is not worth the fifteen dollars asked for it; it is. But for that price one deserves to receive a book that has been given at least some sort of editorial care. Prospective readers should be alerted to numerous errors. [19a]

Because the complexity of Samek's book makes summarizing so difficult, the question of its value might be better presented to potential readers by focusing on specific topics. Certainly his conception of philosophy and his related notion of what it means to "define" something are important; so is his concept of what constitutes a "point of view". Also, something of Samek's work in his sections dealing with the history of legal philosophy ought be reviewed because it is there, he says, that his own "point of view" is shown to its best advantage.

1. *Philosophy and Definition.*

The reason Samek likes Wittgenstein is obvious from the first page of

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[19] Slayton, *supra* note 1, at 167.

[19a] Page 19, the word "law" requires quotation marks; page 20, line 5 read "besides" for "beside"; page 30, line 32 read "philosophers"; page 93, line 15 read "implausible"; page 150, line 27 read "as a command"; page 153, line 16 read "in the event"; page 199, line 22 for "distinction of" read "distinction between"; page 213, line 30 for "being*is*" read "being *is*"; page 248, line 24 for "claims" read "claim"; page 251, line 20 for "is" read "are" and line 32 "between" should probably be "among"; page 254, line 20 read "absence"; page 255, line 22 should probably read "division" rather than "distinction"; page 268, line 4 read "might becomes right"; page 290, line 7 read "It" for "If"; page 292, line 7 read "compelled"; page 294, line 12 read "in" for "is"; page 321, line 8 read "co-terminus".

In the bibliography page 347, for "Honhfeld" read "Hohfeld"; page 349, Samek's own "*Enforcement of Morals*" appeared in 1971 not 1964.

In the list of Abbreviations, page 351 "Bowring" should read "Works" for consistency.

In the footnotes, page 363, footnote 37 read "A Comment on" for "A Commen ton"; page 371, footnote 44 the words "in the Mirror" should appear only once and line 2 of page 372 should be struck; page 373, footnote 71, line 10 read "uses" for "nses"; page 373, footnote 76 read "39" for "34"; page 376, footnotes 49, 54, 61 (and page 380, footnote 41) usually read "*loc.cit.*" rather than "*ibid.*" which is ambiguous in such places; page 380, footnote 31, line 1 read "Chi." for "C." lest a potential reader wander endlessly through the C's in the library stacks.

chapter one. The Cambridge philosopher, he says, emphasized the "appropriateness of the question asked rather than . . . the correctness of the answer given";[20] his "new line of approach was concerned with getting to the root of the entanglement which led to the asking of the wrong kind of question . . . ."[21] And for Samek the question, "In what does the essence of law consist?" is precisely such an instance.[22] Thus, he writes, for "our purpose, the most important lesson to be learnt from Wittgenstein is this: the 'What is *x*?' type of question tends to initiate the wrong sort of inquiry. It prompts us to look for the essence of *x* which remains constant, independent of the context in which the word *x* is used. Thus, the question 'What is law?' had led to a wild goose chase after the essence of law".[23] The therapy that Wittgenstein proposes and Samek accepts is the acknowledging that language is "an instrument that [serves] different interests and needs in different ways";[24] the "meaning of words varies with, and is bounded by, their *use* in different language-games".[25] To philosophize, then, means to *show* this to be the case.[26]

Adherents of Wittgenstein who read *The Legal Point of View* may well judge that Samek has not faithfully represented him, although the fact is that too little of Wittgenstein's own writing has been quoted in the book to determine the matter.[27] I have already suggested that Samek identifies Wittgenstein with positions that do not seem to be his, especially Samek's nominalistic thesis that the word "essence" signifies nothing that is in any sense objectively real.[28] At the same time, however, it can also be said that Samek has sought to capture the spirit of Wittgenstein; and given his aim in writing *The Legal Point of View*—namely of showing that essence-of-law models cannot function at the jurisprudential level as well as his own point-of-view model can—this is what, in all fairness, is ultimately important. Much contemporary jurisprudential thinking, especially that which rests upon Austin's definition of law in terms of commands, does after all need shaking up. And this includes, in fact, the work of both Hart and Kelsen, both of whom wrote their very influential books on the concept of law and its pure theory against an Austinian backdrop.[29]

Armed with Wittgenstein's insistence that a word's meaning varies with its use, Samek forges on to explain that there is no such thing as exclusively

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[20] R. SAMEK, *supra* note 7, at 3.

[21] *Id.*

[22] *Id.* at xv-xvi.

[23] *Id.* at 9-10. *See also id.* at 11, 272, 274, 326.

[24] *Id.* at 4.

[25] *Id.* at 8.

[26] *Id.*

[27] I am indebted to Professor Harry Nielsen of the University of Windsor Philosophy Department, whose expert knowledge of Wittgenstein enabled me to construct the paragraph containing this note.

[28] R. SAMEK, *supra* note 7, at 13. It should be noted that Samek is not following Wittgenstein here but relying upon R. ROBINSON, DEFINITIONS (1954).

[29] *See* R. SAMEK, *supra* note 7, at 175 on Kelsen's relation to Austin and, *id.* at 219 on Hart's relation to Austin.

one correct definition of any word or concept. Definitions will legitimately differ depending upon the purpose one has in mind when constructing them and upon the method one uses to achieve that purpose. [30]

Aside from Samek's unorthodox notion that definitions are true or false [31] rather than as is usually asserted adequate or inadequate, I have no quarrel with him up to this point. When he goes on to allege, however, that there is no such thing as exclusively one right definition because "there is no such *thing* as essence" and that "things themselves have no essence which can be expressed in terms of other things" [32] I run into trouble. It is not that I think he is wrong here; it is that I am unclear about what he means. Indeed if I had to single out one problem that I have with *The Legal Point of View* it would be just this, that although its central thesis is that a point-of-view model of law can do a better job of making jurisprudential headway than essence-of-law models because there is no such thing as the essence of law, Samek's notion of "essence" is itself most unclear.

I shall not dwell on this point at length; a reviewer's task is to alert readers to problems, not deal exhaustively with them. Consider, however, the following statements Samek makes in connection with "essence": (a) "*Essence* is just the human choice of what to mean by a name", [33] (b) "Statements that this or that is the essence of law are quite meaningful . . . and they may be legitimately used for the purpose of constructing different evaluative models of law"; [34] (c) "One advantage of the proposed model of the legal point of view is that it avoids the pitfalls of looking for the non-existent essence of law"; [35] and (d) "The pricking of the bubble of natural law mythology has led to an unmerited devaluation of human nature as a fruitful concept". [36]

I shall limit myself here to two comments. First, after a careful reading of Samek's entire book one might *possibly* be able to infer that when Samek refers to the notion that something, *e.g.*, a law, has an essence he has in his mind the idea that that thing is comprised of one, basic, indivisible, atomic "x", everything else about it being non-essential, and that a definition of the thing in terms of essence is therefore assumed to capture that "x". If this is in fact what Samek means then I should want to say secondly that although this understanding (found, for example, in Hobbes) [37] may prove telling against definitions of law that purport to operate on this basis, such as Austin's definition of law as a command, it does not hold against definitions that, although claimed to capture the essence of law, are multi-faceted. The best known of these in the history of western legal theory is

[30] *Id.* at 11, 13.
[31] *Id.* at xvi, 24, 85, 273.
[32] *Id.* at 13.
[33] *Id.*
[34] *Id.*
[35] *Id.* at 273.
[36] *Id.* at 326.
[37] Thus his example of an essence is: "extension is the essence of a body". HOBBES, II DE CORPORE 8, 23.

perhaps Aquinas': "Law," he wrote, is "an ordinance of reason for the common good made by the authority who has care of the community, and promulgated." [38] I do not put it forth here in order to recommend it but to suggest to Samek's potential readers that his criticisms of essence-of-law models of law are not telling as they stand against this sort of definition.

2. *Samek on "Points of View".*

The reason Samek wrote his book was to present a "new organizing concept [for understanding law], a new model concept which I shall call the *legal point of view*". [39] A point of view, further, "marks out an *exclusive* field of interest". [40]

Samek's readers might at first think he is going simply to present an old positivism in a new format, for the insistence upon treating law in an exclusive way—usually "scientifically" and without reference to values—is generally thought to be just that. The reader's tendency to jump to this conclusion is reinforced when Samek writes that "the legal point of view is concerned with a mode of institutional social control which is enforced through the effective application of a norm-system, that is, of a hierarchical system of impersonal prescriptions, the issuing of the lower units of which is enjoined or permitted by the higher". [41]

This is indeed a highly abstract and formal way of looking at law and certainly seems positivistic within Samek's own meaning of the term. In the only place he specifies clearly what positivism amounts essentially to, he writes, following Dworkin, that one tenet is that law is a "set of special rules used directly, or indirectly, for the purpose of determining which behavior will be punished, or coerced, by the public power". [42] This certainly sounds like what Samek means when he writes that according to "my model, the characterizing feature of the legal point of view is its concern with the *enforcement* of certain values, predominently moral, which are adapted for that purpose from other points of view through the machinery of courts or tribunals acting as norm-authorities of a norm-system". [43]

It is Samek's reference to morals here that will, I suspect, puzzle those readers who, as they go through the early chapters, think their suspicion about Samek's positivism is confirmed. For it is precisely this that sets him off from positivists such as Kelsen. Unlike Kelsen, Samek insists not only that the content of the norms of his model of a legal system is adapted

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[38] AQUINAS, I-II SUMMA THEOLOGICA 90, article 4 (Gilby transl. 1966). By "ordinance of reason" Aquinas means "directive judgment". "Common good" is an umbrella term referring to those "good things" that are promoted and sustained by all in the community and shared by all; *e.g.*, peace, security, knowledge, self-determination. Thus Aquinas includes in his definition not only the notions of authority and direction (command) but of the end or purpose of law as well.

[39] R. SAMEK, *supra* note 7, at 86-87.

[40] *Id.* at 38.

[41] *Id.* at 340. *See also id.* at 54-55, 65, 88.

[42] *Id.* at 285.

[43] *Id.* at 299.

primarily from the moral point of view for the purpose of social control [44] but that if values "diametrically opposed to those which are normally enforced by a legal system" are being enforced, the system is not a *legal* one. [45] This is a strong anti-positivistic statement, one that answers St. Augustine's question quoted by Samek on the fly-leaf of his book: "Without justice what are kingdoms but great bands of robbers?"

Readers should be alerted, then, to the very real possibility that Samek cannot be classified in terms of jurisprudential "schools". I have just suggested that he is not a positivist and so, why he entitles chapter nine "The Adequacy of Positivist Rule Models of Law" puzzles me even now. Nor is he a natural lawyer, for his use of moral values is purely formal; he sees them as *founding* a legal system rather than as goals to be secured by it. The phrase "common good" nowhere appears in his book. But then again, in his view, laws are norms, a type of prescription (chapter four) and as such are *generically different* from directives. Laws, therefore, cannot be thought of by him as directing citizens to act for the attainment of ends (as is the case for Aquinas, for example).

The implications of Samek's insistence that points of view must be regarded as exclusive, then, may be confusing to his readers. The only suggestion I can make is that what he really means to argue is that they are *distinct* from one another, not separate. Legal and moral points of view are too closely entwined in his mind for that. Perhaps readers with a knowledge of mediaeval philosophy might think of points of view as formally distinct, and realize that law can be looked at under different "formalities", none of which must be confused with any others but all of which might be unified in a comprehensive understanding of law in society. If this is what Samek intends, his thesis about points of view is not historically new although it will probably seem so to that majority of Canadian legal theorists who insist upon examining law from the essence-of-law models of Austin and Hart.

3. *Samek on the History of Legal Philosophy.*

Samek's historical chapters dealing with Blackstone, Hobbes, Bentham, Austin, Kelsen, Hart and Fuller are very much worth reading. He has not simply paraphrased their ideas; he has analyzed their theories as essence-of-law models of law and insightfully shown their strengths and weaknesses for the future of western jurisprudence. His best work here is his critique of Kelsen—probably because his own work, like Kelsen's, is developed in terms of the concept of norms. He devotes the least effort to Fuller, contenting himself largely with a limited defence of Fuller against Hart.

Samek does an especially good job of explaining that for Hobbes justice means "legal justice" and of how this identification began the war against modern natural law theories. [46] His criticism, however, is that Hobbes was

[44] *Id.* at 88.
[45] *Id.* at 195.
[46] *Id.* at 106-09.

able to launch his attack against natural law theory only by confusing the political with the psychological point of view. [47]

Samek does a quite thorough analysis of Bentham, who is in vogue again largely because of Hart's work (although I once heard Hart say in a public lecture that Hume is the "world's greatest legal theorist"), [48] but again the chapter on Kelsen is the most penetrating. It is here that Samek's point of view theory is at its best, especially when he investigates the so-called divorce between Is and Ought. [49] There is, he correctly notes, a "general tendency to interpret every *ought* as a *moral ought* and to interpret all values as moral values. This tendency has been a fertile source of confusion in jurisprudence. It has led to the identification of law with fact, which has resulted not only in stunting the development of *legal* values, but in eliminating all values from the province of law . . . ." [50] Advocates of Kelsen will find challenging his assertion that "Kelsen's *Pure* Theory exemplifies this unfortunate development" [51] in light of Kelsen's well-known insistence that his theory is exclusively normative. Finally in the chapter on Kelsen, Samek's treatment of the "notion that there must be *one* supreme legal norm, or one supreme norm-authority, that permits or enjoins the creation of all the norms of a legal norm system" [52] shows not only an insightful grasp of the historical development of modern legal theory but provides a foundation for developing new lines of thinking about the nature and role of authority in law.

As to Samek's chapter on Hart, I shall mention only that he has given there the most scathing criticism of Hart's idea of the "rule of recognition" that I have ever read. [53]

Samek writes in his preface that *The Legal Point of View* "was not specifically written for any class of reader". [54] Perhaps not, but his treatment of Austin's idea of jurisprudence will prove helpful to professors of the subject and jolting to those charged with determining law school curricula. For he makes it clear [55] that jurisprudence is not *a* subject but a way of approaching *every* subject. And too, law students who are led by their professors to assume that Austin's work is the exclusively valid starting point for thinking about law will find Samek's brief account of Kelsen's critique of Austin helpful. [56]

Professor Samek makes it clear throughout his book that he does not pretend to have done away with the need for further jurisprudential thinking. And, of course, he has not. But the value of his book lies in its display of

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[47] *Id.* at 108.
[48] In his university lectures on Kelsen at Oxford, Hilary Term 1968.
[49] *See* R. SAMEK, *supra* note 7, at 183-85, 201-08.
[50] *Id.* at 185.
[51] *Id.*
[52] *Id.* at 212. *See also id.* at 266.
[53] *Id.* at 268-69.
[54] *Id.* at xviii.
[55] *Id.* at 163-66.
[56] *Id.* at 167-69.

a refreshingly new way of going at the subject. I wrote in another place [57] that in my view Professor P. S. Atiyah's monograph on *Consideration in Contracts* [58] could, if read, revolutionize the common law of contracts. *The Legal Point of View* could do the same for Anglo-North American jurisprudence.

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CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE. Fourth Edition, edited by M. L. Friedland. Toronto: University of Toronto Press. 1974. Pp. xiv, 1021. $38.95. Student price: $24.75.

Summer sees the celebration of a solemn ritual common to most Canadian law faculties. The rite is time-consuming but simple. All that is needed is a xerox machine, an adequate law library, one or two eager summer students, several pairs of scissors, an unlimited supply of scotch tape, and a healthy disregard for the laws of copyright. Beginning slowly in May, the pace of the rite increases until it is frantic in late August. The result? A casebook, usually with at least one page missing, one upside-down, one which ends before the case does, and from one to ten pages entirely unintelligible.

Usually these deficiencies reflect less on the book's substance than on the quality of the average university printing plant. In fact, some "in-house" casebooks are excellent and reflect long and careful preparation. They do, however, tend to have relatively short life spans, dictated by how long the author teaches the subject and whether he has the necessary time for updating. Casebooks on rapidly changing fields such as criminal law must be constantly revised if they are to remain current.

There is, however, an increasing number of casebooks being published and marketed nationally. In criminal law, the best of these is Dean Friedland's *Cases and Materials on Criminal Law and Procedure.* Now in its fourth edition, it deserves careful consideration by professors teaching first year criminal law.

Casebooks are sometimes unfairly criticized for not being something they were never intended to be. Dean Friedland's casebook is not, nor was it intended to be, an encyclopedia of criminal law. As with virtually all casebooks, it is to be used in conjunction with a socratic or case method of legal teaching. Rarely do professors using this method attempt comprehensive and exhaustive coverage of all the law under consideration. Rather,

[57] 50 CAN. B. REV. 353, at 357 (1972).
[58] P. ATIYAH, CONSIDERATION IN CONTRACTS (1971).
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