

a refreshingly new way of going at the subject. I wrote in another place⁵⁷ 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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they use questions based on selected materials to encourage the students to work out for themselves the underlying principles. Unlike textbooks, which should be able to stand on their own, casebooks are incomplete without the professor. Dean Friedland's casebook, then, should not be compared to textbooks, nor should anyone be disappointed if it does not provide direct answers to all of their questions on criminal law and procedure. It does, however, have the virtue of providing an abundance of material and very complete references to sources which provide the authoritative discussion purposefully absent from the casebook itself.

What Dean Friedland's casebook is intended to do, and does very well, is to provide the means to develop a student's ability for analysis, synthesis and exposition of the criminal law. This it does through careful selection, editing and arrangement of the cases and materials so as to maximize discussion in class and reflection afterwards.

The cases are not excessively edited. Unlike some casebooks which reduce the cases to little more than short quotes, enough of the chaff is left to allow students to develop an ability to find the wheat. Cases are usually arranged to highlight the controversies and difficulties of an area rather than to merely expose the present law. The section on attempts, for example, begins with the decision of the Quebec Court of Appeal in *Tousignant v. The Queen*,¹ followed by the Supreme Court decision of *Lajoie v. The Queen*,² even though the latter overruled the former. This arrangement, however, focuses attention on the problems which inhere in the *mens rea* of attempts, rather than merely stating the rule as laid down by the Supreme Court. This approach is evidenced throughout the casebook.

In a good casebook there is always a tension between the need to cite important cases of local authority, and the desire to use precedents which stimulate the search for underlying principles. In most instances, Dean Friedland strikes a happy medium between the two. Although the casebook is unmistakably Canadian, it includes many Commonwealth and American cases. Although some (especially, I suspect, students) may criticize the non-Canadian content, it indicates that the cases were selected for their pedagogical merit as well as for their law-making authority.

As well as cases, the casebook also contains a wealth of "materials" (articles, newspaper clippings, reports, etc.). Because there is so much from which to choose, it is easy (and quite unfair) to fault the book for what is not there; every professor of criminal law has a favourite article which he would have included, but these can be covered by the inevitable "supplementary reading list". What is included has been carefully selected, with a balance being struck between the "classical" and the "Canadian". For example, the chapter on "Morality and the Criminal Law" begins with

¹ [1960] Qué. B.R. 767n, 130 Can. Crim. Cas. Ann. 285, 33 Can. Crim. 234.

² [1974] Sup. Ct. 399, [1973] 10 Can. Crim. Cas. Ann. (n.s.) 313, 33 D.L.R.3d 618 (1973).

well-known quotes from the *Wolfenden Report*,³ Lord Devlin's *The Enforcement of Morals*,⁴ and Mill's essay *On Liberty*,⁵ followed by several excellent excerpts from Canadian materials: Morton's *The Function of Criminal Law in 1962*⁶ and *The Ouimet Report*.⁷ This careful blending is reflected throughout the book. Also of interest are the problems and questions which are frequently spliced between the cases and materials.

Criminal law teaching is not monolithic; there are probably as many different approaches as there are professors teaching the subject. A national casebook should, therefore, exhibit sufficient flexibility to at least partially accommodate different approaches. Dean Friedland's casebook has this adaptability. For example, although substantive criminal law and criminal procedure are considered together, reflecting the trend toward considering criminal law as a process, the casebook can be effectively used for either procedure or substantive law where these are taught separately. The order of the chapters may also be altered to suit particular tastes, although the present arrangement is quite sensible. For example, a professor might want to consider the problems of the inchoate offences (Chapter 6) after *mens rea* (Chapter 8). This can be done without difficulty.

Much more could be said about particular chapters which could be reduced or deleted and other materials which could be included. For example, more could have been said about the general aims and purposes of the criminal law in the substantive chapters, less space could have been spent on trial by jury, and more on plea bargaining in the chapters dealing with procedure. Most of this admittedly stems from personal preference and does not reflect on the casebook's overall excellence.

In conclusion, it is perhaps important to note the need for, and to encourage, yet another edition. Since the present edition's publication there have been many important developments in Canadian criminal law. The Law Reform Commission has produced a wealth of excellent materials and will soon be making reports to Parliament on the principles of criminal law, strict liability, criminal law and mental disorder, principles of criminal procedure, discovery, and sentencing. As well, there has been considerable research and legislative activity in the Federal Government, of which the recent Criminal Law Amendment Bill, C-71⁸ is but one example. There is also heightened public interest in sentencing, parole, probation and the use

³ REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENCES AND PROSTITUTION, (The Wolfenden Report, U.K. 1957).

⁴ SIR P. DEVLIN, *THE ENFORCEMENT OF MORALS*, MACCABAEAN LECTURE IN JURISPRUDENCE OF THE BRITISH ACADEMY (1959).

⁵ J. S. MILL, *ON LIBERTY* (Henry Regnery Co. ed. 1955, first published 1859).

⁶ J. MORTON, *The Function of Criminal Law in 1962*, C.B.C. UNIVERSITY OF THE AIR LECTURES (1962).

⁷ REPORT OF THE CANADIAN COMMITTEE ON CORRECTIONS (The Ouimet Report, 1969).

⁸ C-71, 30th Parl., 1st Sess. (1975).

of jury trials, more than enough to justify a further edition or, at least, a supplement.

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POLICE COMMAND: DECISIONS AND DISCRETION. By Brian A. Grosman. Toronto: Macmillan Company of Canada. 1975. Pp. ii, 154. Index. Cloth \$12.95, Paper \$5.95.

Those who define law strictly—as a closed, logical system of authoritative rules—will find little of relevance in Professor Grosman's *Police Command*. Instead, they will find that a law professor has used social science techniques to describe what municipal police organizations do, and to give his views on what they should do, with useful emphasis on the gaps between the two phenomena. This short book is a useful addition to the scarce literature in Canada in political science, public administration and organizational theory. But is it relevant to lawyers in their various roles as advisers, litigators, judges, legislators and reformers?

For all those roles, *Police Command* is not only relevant to law as a learned profession; it is the type of reading that should be required of lawyers as a matter of their continuing self education. This is not to say that the book lacks shortcomings. It does not try to be definitive in its field, largely because it seems aimed less at the social scientist than at the average person. And it will be important to point out what it should encourage in the way of further research. But in fairness to the author's effort to take a first step, his book should also be evaluated as an important start in Canada to substitute knowledge for opinion in understanding the essentials of the legal process as it takes place beyond the law we find in books. For those who define law as a process for formulating and applying rules, formally and informally, for facilitating intended results, it will surely be more enlightening studying *Police Command* than spending the same time perusing the Criminal Code.

In large, growing North American cities during the past decade, police departments have been more subjected to the pressures of rapid social and technological change than other urban institutions, save local government as a whole. The sudden increase in the professional literature on criminal justice in recent years in the United States reflects this fact. That some ninety per cent of the citations in *Police Command* are American suggests the need for more research and writing in Canada. To be sure, the policing problem in Canadian cities is more recent, and differs in significant respects

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