

empathy which prevents him from ever passing over without reading carefully any dissenting judgment; a constant devotion to Frederick Philip Grove who in his opinion is Canada's greatest writer; and, to be honest, the failing, albeit slight, of John W. Dafoe as a public speaker. From the nature of his writings generally it can be seen that here is a man who is not only a genuine scholar of the law, and mini-biographer of men not so well known who have made significant contributions and of men whose flame burns not so brightly as once it did, but also here is a gourmet and a reader of Canadian poetry; indeed, here is a man of substance and accomplishment.

In concluding this glimpse of Roy St. George Stubbs and his writings to date, I leave you with this list of what I consider to be the best of Roy Stubbs, exclusive of his book reviews: *Four Recorders of Rupertsland*; *Daniel Webster: The Olympian*;⁵⁹ *Hon. Edmund Burke Wood*;⁶⁰ *In Search of a Poet*;⁶¹ *On Crime and Punishment*;⁶² and *On Appointment of King's Counsels*.⁶³

CAMERON HARVEY*

WHY A COURSE ENTITLED LEGAL INSTITUTIONS?

Legal Institutions is a compulsory First Year course at the Faculty of Law, University of Manitoba;¹ if you put to one side its civil procedure content,² it is merely an expanded version of the traditional and now, in most Canadian Faculties of Law, jettisoned course in *Legal History* or *History of Law*. Most knowledgeable people would agree that at least in recent years *Jurisprudence* and *Legal History* have been by far the two least appealing and most irritating courses to Canadian law students. Insofar as *Legal History* is concerned, the lack of student satisfaction stems from several causes: it is, unlike the other First Year courses³ which

59. (1937) 23 A.B.A.J. 753.

60. (1962) 34 M.B.N. 109.

61. *Winnipeg Tribune*, December 31, 1966, January 7, 14, 1967—a sketch of Guttormor J. Guttormson, the world famous Icelandic poet of Riverton, Manitoba.

62. (1962-65) 1 M.L.S.J. 283.

63. (1951) 23 M.B.N. 15, and its sequel at p. 61.

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1. The length of the course is 105 hours, although the student receives credit and thus is responsible for only 90 of the hours. A bare outline of the course without reading references is appended to this note.

2. Which is a basic Civil Procedure I course and which was made a part of the *Legal Institutions* course mainly as a result of the credit hours involved (that is to say from the point of view of the University's grading system.)

3. Traditionally, *Legal History* was a compulsory First Year course. In some Canadian law schools it is now available as a Second or Third Year optional course.

are new and refreshing to the neophyte law student,⁴ an Arts type subject which reminds the student of a period he considers to be behind him; it does not deal, as do the other First Year courses, with a subject matter with which the student can very readily identify; it is not easily seen as a practical course which can be put to any use in the future; there have been too few teachers with sufficient interest or expertise giving the course on other than a fag end of their teaching load basis; little or no attempt was made to infuse what was customarily a course in English Legal History with material dealing with Canadian Legal History particularly with respect to the development of institutions and the administration of justice. Thus, through apathy or assumed irrelevance Legal History as a compulsory subject has gone by the board.

During the summer of 1968 Dean Edwards and I, pursuant to a revision of the First Year curriculum which had been passed by the Faculty Council in the Spring, revamped the former Legal History course. We took our inspiration from what had been done in this regard particularly at Dalhousie and in Australia. What we wished to do was what we eventually accomplished in the form of the present course outline,⁵ namely to change and broaden the thrust of the course from concentration entirely on English legal history. We pared down the English legal history content and introduced material of a general introductory and orientating nature for fledgling law students, as well as material on Canadian legal history in general and Manitoba legal history in particular, and material which would give the student some elementary awareness of that ever difficult subject of legal ethics. The reading references contained in the course syllabus are an important facet of the course. While it is realized that the students have time really to no more than scratch the surface of the reading references, through the fixing of one compulsory reading assignment⁶ and an essay some in-depth reading is accomplished. The hope is, nonetheless, that the syllabus will provide many students with a jumping-off point for future leisure reading.

All of this still begs the question of the justification of the course, especially on a First Year compulsory basis.⁷ The answer is actually quite simple although I am not oblivious to the fact that there are and will be many who will not agree.⁸ Let us examine the course outline. First of all,

4. Virtually all Canadian law students have at least two years, if not three, four or more years, university experience behind them before entering law school.

5. *Supra*, note 1.

6. It is our belief that if Catherine Drinker Bowen's biography of Edward Coke does not stimulate the law student to further similar reading excursions then he or she is beyond reach!

7. A surprising number of students seem to come to the course with a preconceived mental block.

8. I am inclined to add that many people will not agree with my reasons mainly through ignorance; but then I hesitate to ascribe their disagreement to that basis because I am sure that there are some legal educators who consider themselves to be my superior who will be in the ranks of the dissenters.

much of the course is in fact of a highly practical nature in the sense that it is relevant to other First Year courses, and in the sense that it is directly related to the practice of law;⁹ here I am speaking particularly of the material covered in Sections II, VI, VIII, IX and X of Part I.¹⁰ Similarly, the topics canvassed in Section V of Part I deal with matters of which one would expect a law student to have some knowledge, namely the evolution of our present court structure and trial procedure, the development of constitutional monarchy and the parliamentary system of government, and the last great period of law reform in England, the effects of which of course were experienced in Canada.

Sections I-III, which are covered during the Introductory Week for First Year students prior to the beginning of the Fall term, are an attempt to meet the problem of introducing students to the study of law. It seems obvious to me that tyro law students cannot simply be plunged into the study of Torts, Contracts, Criminal Law and Property without some groundwork having been laid. In this regard, it is not sufficient to do no more than refer them to books such as those written by Llewellyn, Williams, and Stone.¹¹ It may be that we are trying to handle too many topics too quickly, but with only the experience of one year behind us it is too soon to reach any conclusions.

This leaves Sections IV and VII which have to do with the legal history of Manitoba in particular. The point of covering the material contained in these sections is not only to expand law students' general knowledge, but also to instill in them a sense of the local tradition and heritage of the profession most of them are hoping to enter. Surely it is not necessary to belabour the merits of equipping law students with a feeling for and familiarity with the historical development of the legal institutions and the practice of law of their own province.

In conclusion, I wish to point out that this note on our Legal Institutions course was written not only for the information of readers of this Journal, but also for the enlightenment of future Manitoba law students. My plea to them is that they give the course a chance and take it seriously. As with any other course, the return will be directly related to the input.

CAMERON HARVEY*

9. Again, I shall leave to one side the civil procedure content for it is not an essential part of the Legal Institutions course in the sense that it could be taught as a separate course and nobody questions the obvious practical justification of its existence.

10. *Supra*, note 1.

11. Karl Llewellyn, *The Bramble Bush* (Oceana, N.Y. 1951); Glanville Williams, *Learning the Law* (Stevens, London, 7th ed. 1963); F. F. Stone, *Handbook of Law Study* (Prentice-Hall, N.Y. 1952).

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APPENDIX

Part I

Compulsory Reading: C. D. Bowen, The Lion and the Throne

Section I. General Introduction to Law (8 hrs.)

- A. What is law? What is the end of law? What is the relationship between law and order?
- B. Of what is our law comprised, i.e. what are the sources of our law?
 - (i) Custom
 - (ii) Judicial Decisions
 - (iii) Legislation
- C. Our system of law is called the Common Law system. What is meant by the term "common law"? What are the differences between the Common Law system and the Civil Law system?
- D. The operation of the two systems in Canada.
- E. The relationship between Common Law and Equity.
- F. Divisions of our law by subject matter:
 - (i) Public Law
 - (ii) Private Law

Section II. Case Reporting and the Doctrine of Precedent (3 hrs.)

- A. History of law reporting.
- B. Stare Decisis, the Doctrine of Precedent.
- C. Reading and briefing a case.

Section III. The Legal Profession (1) (2 hrs.)

The Composition of the Legal Profession. The role of the Law Society of Manitoba.

Section IV. History of Legal Education in Manitoba (1 hr.)

Section V. The Historical Development of the Administration of Justice in England (13 hrs.)

- A. The law courts:
 - (i) local courts
 - (ii) common law courts
 - (iii) conciliar courts

- B. Trial by jury and the forms of action.
- C. Magna Carta.
- D. The development of parliament and the achievement of the supremacy of parliament.
- E. Nineteenth Century Reforms.

Section VI. The Historical Development of Some of the Main Branches of the Law (22 hrs.)

- A. Torts.
- B. Contract.
- C. Equity.

Section VII. Legal History of Manitoba (6 hrs.)

- A. Hudson's Bay Co. and the Red River Settlement.
- B. The judicial re-organization of 1839.
- C. The transfer of Rupert's Land to Canada.
- D. The establishment of the Court of Queen's Bench and Court of Appeal.
- E. Law Enforcement.

Section VIII. Introduction of English and French Law into Canada (2 hrs.)

Section IX. The Legal Profession (2) (3 hrs.)

- A. Professional and Judicial Ethics.
- B. Disciplining of Lawyers and Removal of Judges.
- C. Counselling or Engaging in Acts of Civil Disobedience.

Section X. Interpretation of Statutes (15 hrs.)

Part II (30 hrs.)

Section I. Structure of Canadian Courts and Administrative Tribunals

- A. Federal Courts.
- B. Provincial Courts.
- C. Outline of Courts in England, United States of America and other Canadian provinces.
- D. Administrative Tribunals:
 - (i) Provincial
 - (ii) Federal

Section II. Jurisdiction of Courts

- A. Court of Queen's Bench.
- B. Court of Appeal.
- C. County Court.

Section III. Pleadings and Practice

- A. System of Pleading.
- B. Law of Pleadings.
- C. Types of Pleadings.
- D. Practice:
 - (i) Service
 - (ii) Amendments
 - (iii) Discovery
- E. Non-compliance and Errors

THE MANITOBA OMBUDSMAN ACT 1969

Another Canadian province has recognized that the existing means, political and legal, for the protection of the citizen against the possibility of abuse of power by the administration are inadequate and has supplemented them by creating an Ombudsman. The Ombudsman Act 1969, which in terms of s. 47 is to come into operation on a day fixed by proclamation, has much in common with the Ombudsman Act 1969 (Alberta). That Act was based on the New Zealand legislation of 1962. Where different provisions have been contained in the Manitoba statute, they demand close scrutiny and in some instances they call for justification because they curtail, unnecessarily it is believed, the sphere of the Ombudsman and his accepted role as the watchdog on the administration. This note falls naturally into two parts. The first contains a general description of the Act and the second part deals with those provisions which place restrictions on the powers of the Manitoba Ombudsman and thereby reduce the effectiveness of that office. They may be interpreted as evidence that the government was unwilling to permit the Ombudsman to conduct investigations likely to cause embarrassment. If this is the explanation, the first Ombudsman will take up office under conditions different from those applying to his counterparts elsewhere.