

Book Reviews

IN THE LAST RESORT:

A Critical Study of the Supreme Court of Canada

By Paul Weiler (Carswell/Methuen, Toronto) 1974, 246 pp.

This book is the culmination of a remarkably ambitious research project. In 1969 Professor Weiler embarked on a study of the Supreme Court of Canada's work in several representative fields of law in the twenty years since it became our final court of appeal in 1949. The immediate result was four excellent articles examining the Court's contributions to Tort Law, Criminal Law (Mens Rea), Labor Law, and Constitutional Law during the period in question. Now Professor Weiler has attempted to draw together from these specialized studies some general conclusions about the effectiveness of the Supreme Court, and some suggestions for its future.

His central message is one that has needed to be said for a long time: the Supreme Court of Canada has failed dismally to live up to expectations. Although it showed considerable promise during the 1950's, its contribution to the rational development of Canadian law in the decade that followed was disappointing at best. Professor Weiler attributes this failure to two related root causes. One is an undue emphasis on achieving just solutions to particular disputes rather than on fashioning sound general principles. The other is a tendency to hide behind evasive formal rationales, rather than to articulate, fully and honestly, the real reasons for arriving at conclusions.

Professor Weiler's proposals for improving the situation seem generally very sound. Some of them have already been embodied in draft legislation which, although delayed by the recent election, is likely to be passed by Parliament before long. To enable the Court to reduce its burgeoning work-load, and to concentrate on cases which it regards as involving issues of great legal significance, it is proposed to make all appeals dependent on leave granted by the Supreme Court itself. He does not accept the suggestion advanced by some that private law appeals should be abolished altogether; the Supreme Court can play a useful role in private law, so long as it has the power to select only matters of great importance for review. He proposes that the retirement age of Supreme Court judges should be lowered to 65, that they should be appointed for 10 or 15 year non-renewal terms, and that all appointments should be reviewed by an all-party committee of Parliament. He believes that as in the United States' Supreme Court, all nine judges should sit on every case, and time limits (more generous and flexible than in the U.S., however) should be placed on oral arguments.

The most important recommendation is addressed to the judges themselves: they must strive for greater consistency in their decisions by

discovering, articulating, and openly following the basic policies and principles underlying the field of law in question, rather than contenting themselves with a literal or formal analysis of the "black-letter" rules involved. Professor Weiler explains this key recommendation as follows:

"Now the point of *legal* principles can be seen. Judges must develop and settle the law in the light of the policies believed appropriate for that area. However, these value judgments need not simply reflect the personal attitudes of the judges who happen to sit on that appeal panel. Instead, the court should be able to discern a series of policy judgments already embodied in existing legal standards. The judges must articulate a theory which explains how these many judgments form a systematic whole, a theory which is summarized in the legal principle. The principle expresses the theme by which a society has gradually resolved the competing interests and values which are the common strands of this area of life. Once such a theory is articulated, it may become the fundamental reality of the law which governs the judges. If a new question arises, a court can and should appeal to this principle to justify its new legal rule. If one of the existing rules seems incompatible with the thrust of the law's evolution that same principled argument will justify a revision."¹

This is a little glib. Every field of law is founded on a compromise between various competing policies, and when a judge has to decide which one to favour in certain circumstances it is likely that he will be somewhat influenced by his personal attitudes. To say that the judge is restricted in his choice of principles to *legal* standards is unrealistic also, since at that level it is hard to distinguish between legal policy and social policy. What the good judge should be aiming for is a legal decision as consistent as possible with the social policies he thinks the community wants that field of law to serve. Community opinion concerning social policies is subject to frequent shifts, of course, and the courts should be prepared to follow, after a decent interval, except in matters of such great importance that the Legislature alone should deal with them. Judges must, in other words, be prepared to revise principles, as well as rules, in the light of changing social values.

With these qualifications, it is submitted that Professor Weiler's advice to the judges is wise. If they paid greater heed to the policy goals of the branch of law in question when thinking about and explaining their decisions, the Court would be much less prone than at present to developing the inconsistent lines of cases that Weiler documents and criticizes so well. Fortright overrule of unacceptable previous cases would replace hair-splitting distinctions and deliberate obfuscation. Much confusion would be dispelled or avoided.

A key question that Professor Weiler has not dealt with as well as one might wish, is the perennial controversy over "judicial activism". He certainly does not ignore the issue - it arises time and again in several different parts of the book. Nor does he make the familiar error of supposing that judicial creativity is either good or bad *in toto*; he

1 P. 51.

recognizes that it is a question of degree and context. Nevertheless, some of his observations on the subject strike the reviewer as considerably less acute than most of his perceptions about the Court. He seems to suggest, for example, that whereas judicial law reform is desirable in the fields of Torts and Criminal Law, it is not welcome in Labor Law or Administrative Law. While it may be true that there are on average fewer appropriate opportunities for judicial intervention in the latter areas than in the former, it would be highly unsatisfactory to apply such a generalization uniformly. There are principles of Tort Law that are too well settled to be properly overturned by a court. There are, on the other hand, many issues of Labor Law that ought legitimately to be left to judicial action. The question of whether and to what extent a court should legislate calls for much more sophisticated statesmanship on the part of the judge than Professor Weiler suggests. Each case must be considered on its own merits, with the judge weighing such factors as the importance of the issue, the likelihood that it would receive prompt legislative or administrative attention, the degree of innovation involved, the probability that the innovation would be accepted by community opinion, and so on.

The central part of the book — the bulk of it, in fact — is devoted to summaries of the earlier articles on the Court's treatment of particular areas of law, together with a previously unpublished chapter on Civil Liberties. I think this was a mistake. Space constraints have made it necessary to impose severe limitations on the length of these studies, and while Professor Weiler has been very skillful in his selection and use of examples, many of his conclusions are unconvincing because of the paucity of supporting evidence. Another problem is that there are too few fields of law covered to give a really representative view of the Court's work. We learn nothing about its performance in Contracts, Commercial Law, Property, or Family Law. In the areas that are dealt with, there is sometimes a tendency to become preoccupied with substantive aspects of the field in question for their own sake, with insufficient consideration of their implications for the Supreme Court of Canada as an institution. Moreover, the amount of space required for these chapters has prevented Professor Weiler from exploring in sufficient detail such important general questions as *stare decisis* in the Supreme Court, the reasons for the Court's notorious retreat from policy-making in the 1960's, or the pros and cons of the various procedural reforms that he proposes or rejects so summarily. He would, I think, have been wiser to have allowed his earlier articles to stand on their own considerable merits, and to have restricted this book to a fuller examination of the more general questions.

The quality of the chapters on particular fields of law is uneven. The discussion of Torts is uniformly excellent, for example, but the section on Civil Liberties is incomplete and indecisive, perhaps because it is not based on any prior article. Although these chapters raise far too

many provocative issues to be dealt with adequately in a book review, Professor Weiler's treatment of Constitutional Law is so disturbing to the reviewer that a few comments on that subject cannot be avoided.

I do not intend to contest all his constitutional pronouncements. I agree with his observation that the Court has tended in recent years to find concurrent federal-provincial jurisdiction wherever possible, and with his opinion that this is a desirable trend. Although I disagree heartily with his proposals to abolish constitutional references and to deny individuals the right to challenge the constitutionality of litigation, I am content to leave those questions to the readers' good sense. However, his repeated assertion that the Court should play a progressively smaller role as "Umpire of Federalism" because it is not well suited to that type of task cannot be left unchallenged.

He argues that although the interpretation of the *British North America Act* was originally a "legal" question (and remained so as late as 1949 when the Privy Council ceased to function as the final arbiter of constitutional matters) this is no longer the case now because the current meaning of the Act has changed so much from the original meaning due to judicial interpretation. When contrasted with his view that it is a legitimate judicial function in the private law field to adjust the meaning of both statutory and common law rules to meet changing social conditions, this contention strikes one as startling. It is especially hard to understand how the *B.N.A. Act*, which had been grossly distorted by the courts long before 1949, could be regarded as sufficiently pristine to involve "legal" problems in 1949, but no so in 1969. The changes wrought in the first 80 years were much more sweeping than those of the last 20. In any event, in a country with a common law tradition a standard should be no less "legal" merely because it is judicially created.

Weiler's other major argument against judicial review of constitutional matters (apart from the contention that is not "democratic", which he himself refutes effectively in the chapter on Civil Liberties) is that judges are poorly qualified to make the complex economic and governmental decisions called for in such controversies. Although there may be some truth in that assertion, it ignores the generally high level of intelligence and experience in public affairs that most Supreme Court judges possess, and it overlooks the possibility of procedural reforms that would give the Court greater access to relevant socio-economic data. His suggestion for a separate constitutional tribunal to replace the Supreme Court in such matters (which, by the way, is not very fully developed, and has for some reason been left out of his concluding chapter) would probably differ very little from a "constitutional banc" of a reformed Supreme Court of Canada.

Probably the most fundamental source of Professor Weiler's scepticism about judicial umpiring of constitutional problems, and the

one which troubles the reviewer most, is his belief that such disputes are best settled by direct negotiation among the governments involved. Given governments with equal bargaining power this would make some sense, but as Ontarians like Professor Weiler often tend to forget, most provinces are at a distinct disadvantage to the central Canadian giants in any contest of economic or political strength. One of the chief functions of a federal constitution is to offset some of these power imbalances; removal of the right to litigate constitutional claims would nullify much of this protection. The *Manitoba Egg Marketing Reference*,² which Weiler cites as an example of bad constitutional litigation, illustrates the point very well. Discriminatory purchasing policies by the provincial egg marketing agency in Quebec threatened to drive many Manitoba egg producers out of business. Although there was little doubt that the Quebec practices were unconstitutional, that province refused to respond to Manitoba's complaints, and the federal government declined, for political reasons, to take any immediate action. Federal authorities called upon Manitoba to await proposed federal legislation on the subject, but the pending legislation was far from satisfactory to Manitoba, and by the time it was enacted it would have been too late to save the Manitoba egg industry. Manitoba contrived, therefore, to put a case before the Supreme Court which resulted in an indirect judicial condemnation of Quebec's practices. Professor Weiler is correct in pointing out that the question then became a subject of negotiation among the various governments concerned, and that the eventual agreement differed considerably from the Supreme Court's pronouncement. The point is, however, that without the Supreme Court decision Quebec would not have been so willing to negotiate, and Manitoba would have entered the discussions with very little bargaining strength. In the constitutional arena, as in every other, elimination of machinery for the impartial adjudication of rights would benefit none but the powerful.

I have a few minor quibbles about the book. Professor Weiler's statement that Supreme Court judges have no constitutional guarantees of tenure³ must be based on a belief that they do not qualify for the protection given to "Superior Court" judges by section 99(1) of the *B.N.A. Act* which I submit is erroneous. His suggestion that the *Canadian Bill of Rights* could be applied to provincial legislation if it were treated as embodying only "principles" rather than "rules"⁴ is highly questionable. Typographical errors are more numerous than a reputable publisher should tolerate, and the dust-jacket claim that the book contains a "detailed analysis" of the *Lavell* case, when in fact

2. *A.G. for Manitoba v. Manitoba Egg & Poultry Association* (1971) S.C.R. 689; 19 D.L.R. (3d) 169. Professor Weiler's description of this case (p. 156) as "primarily an engagement fought by the bordering provinces of Ontario & Quebec" says a good deal about his approach to the decision.

3. P. 171.

4. P. 222, note 48.

there is nothing more than a short last-minute post-script about the case, probably constitutes a breach of provincial consumer protection legislation.

Lest the negative tone of the past few paragraphs should deter potential readers, let me conclude by saying that this is an important book. While the author's failure to stick rigorously to his central theme and to explore its ramifications exhaustively prevents it from being a great book, it is, nevertheless, one that ought to be read by every lawyer and prospective lawyer in Canada. Above all, one hopes that the nine just men in Ottawa will give it careful study.

DALE GIBSON*

CASES AND MATERIALS ON INTERNATIONAL LAW

By D.J. Harris (Sweet and Maxwell, London), 1973, 779 pp.

Mr. Harris, who is Senior Lecturer in Law at the University of Nottingham, England, intended this volume to serve as a casebook for the instruction of law students, rather than as a comprehensive sourcebook on international law. In this, he succeeds admirably. Indeed, Mr. Harris is to be commended in this attempt to socratize the teaching of the subject in British law-schools. He is correct in his assertion that there is no other casebook with treaties, cases and necessary materials which caters for the needs of the British law student. In fine, though far from being insular or myopic in character, the work is intended to pose questions of particular relevance to British students; and of course, other general questions of international law for the same consumers can also be best presented through English cases. And quite rightly so.

The publishers, however, make headier claims for the work. "Harris", it is stated, "is the only British casebook that has materials other than cases in addition to the cases themselves and, as such, it will be widely welcomed by teachers and students in Australia, New Zealand, the West Indies, North America and English-speaking Africa and Asia as well as in the United Kingdom itself..."

Will, then, the volume be widely welcomed in that portion of North America called Canada?

The answer will probably lie in the transmission of Mr. Harris' objectives (rather than those of his publishers), to the Canadian context so that the question may be immediately posed: Are we in Canada ready for a manageable student casebook with cases and materials embracing

* Faculty of Law, University of Manitoba.

global precepts of international law, together with materials posing questions of particular relevance for Canadian students? If we are, then is "Harris" to be the next work in line which may be used as a teaching tool, but will be supplemented by mimeographed Canadian materials where necessary? If we are not, then "Harris" would seem to present a well thought out and interesting set of materials which could be handled easily by L.L.B. students in a basic course on public international law.

The Canadian content of "Harris" is small, and in one area would provide a misleading picture. On page 77, the case of *Attorney-General for Canada v. Attorney-General for Ontario*¹ (The Labour Conventions Case) is briefly reported. The inclusion of this case alone would seem to provide a one-sided picture of the legislative competence of the Federal Parliament in legislating to implement international treaties. The true picture of the Canadian conundrum can only be demonstrated by the inclusion of, at least, the case of *In re Regulation and Control of Radio Communication in Canada*², (The Radio Case) and also extracts from *Johannesson v. Rural Municipality of West St. Paul*³ and from the judgment of Kerwin, C.J., in *Francis v. The Queen*.⁴

On page 231, the famous *Trail Smelter Arbitration*⁵ of 1938 and 1941 is presented as the section on air pollution; and the inevitable "*I'm Alone*"⁶ of 1933 and 1935 is the segment on "hot pursuit" on page 352. Apart from these references, perhaps the other case of especial interest to Canadian students is *Mellinger v. New Brunswick Development Corporation*,⁷ a case which came before the English Court of Appeal in 1971, and which is deftly reported on page 277. In that action, the Development Corporation claimed to be an arm of the Government of New Brunswick which in turn was alleged to be a sovereign state in its own right. With the proliferation of development corporations in Canada, it is instructive to note two facets of Lord Denning, M.R.'s judgment. He held that under the British North America Act 1867, New Brunswick, in acting within its power as a province, is a sovereign state in its own right, and entitled, if it so wishes, to claim sovereign immunity. Secondly, he held, in construing the New Brunswick Development Corporation Act, that the Corporation in carrying out its activities was not a separate legal entity acting as an agent for the New Brunswick government or carrying on commercial transactions; it was in the same position as a government department. That being so, the development corporation was able to successfully plead sovereign immunity. Denning, M.R., however, in the case, obiter, throws doubt on the decision

1. (1937) A.C. 326 (P.C.).

2. (1932) A.C. 304 (P.C.).

3. (1952) 1 S.C.R. 292.

4. (1956) S.C.R. 618.

5. 3 R.I.A.A. 1905. (1941).

6. 29 A.J.L.L. 326 (1935).

7. (1971) 1 W.L.R. 604 (C.A.).

in *Baccus S.R.L. v. Servicio Nacional del Trigo*,⁸ which has always been said to reflect the continued British flirtation with the theory of absolute sovereign immunity. The Master of the Rolls seems sympathetic to the view expressed in the dissenting judgment of Singleton, L.J., that a separate legal entity which carried on commercial transactions for a state was an agent, and not an organ of the government, and thus was not entitled to plead sovereign immunity.

On page 360, however, it was good to see a mention of the main terms of the Arctic Waters Pollution Prevention Act⁹ and a brief resume of Canada's reply to the initial United States protest. Of slight interest is the mention of "*The Caroline*"¹⁰ on page 642, a case involving a plea of self-defence by the British authorities following the rebellion of 1837.

Given this dearth of Canadian material and the shortcomings in reporting the "provincial powers" cases, Harris would seem to stand quite favourably with other student casebooks on the market. The cases are soundly edited — with sufficient content to provide a clear picture of the facts and the relevant traits of the judgement; yet not so exhaustive as to distract the student's attention and provide the temptation to scan. The extracts from international legal materials are varied and interesting, and the conveniently spaced Notes by the author are sufficient to provide continuity. The Notes are, however, interspersed with questions for the reader which, though pertinent, in some instances do not raise burning issues, but merely call for an interpretation of the preceding material. Such questions may best be left for class questioning and perhaps are not too necessary in a casebook. For example, on Page 145, in dealing with Doctrines of Recognition, the reader is asked to evaluate the effect of the various recognitions of Biafra, during the 1967-70 rebellion, according to the declaratory and constitutive theories. Of a memorandum of the United Nations Secretariat of February 1950 relating to Recognition, (on page 149), it is asked whether there is in this instance a representation of British or United States views. Again, in the section on "Outer Space", the reader is required, at the end of the section, (at page 221), to evaluate which approach taken by McMahon in "Legal Aspects of Outer Space" is the most satisfactory.

Clearly, an evaluation of the type of question, if any, to offer in a teaching casebook is a matter for the individual teacher. Some teachers may find the questions useful in providing guidance for students in progressing through the material.

Is this the time to enquire as to the contents of an ideal teaching casebook for the use of Canadian students? Perhaps there is insufficient

8. (1957) 1 Q.B. 438 (C.A.).

9. (1969-70) Stats Can. c. 47.

10. 29 B.F.S.P. 1137-38; 30 B.F.S.P. 195-6

Canadian case-law to provide extensive Canadian content.¹¹ But this should not prevent an author from seeking to emulate the declared objectives of Mr. Harris. There are numerous issues in international law today which have a great significance for Canada. The problem of Arctic sovereignty, doctrines of recognition, disputes relating to title to offshore minerals, protection of the sea bed and fishing grounds from pollution and the development of policies regarding territorial sea and contiguous zone, not to mention continental shelf. Not only should conventional materials be used to demonstrate these issues, but a wealth of available materials, giving an historical perspective as well as present day Canadian practices, should be freely utilized. Canada, for example, recognized the Communist Chinese Government long before the United States and was among the first to recognize the present military regime in Chile; employing in both cases its distinct concepts of recognition. Few casebooks, similarly, refer to the Senate Resolution of 1930 which gave such an impetus to the use of the "sector principle" in laying Canadian claims to Arctic territories.

PAUL THOMAS*

THE SOVEREIGNTY OF THE LAW

Edited by Gareth Jones; (MacMillan), 1973; 237 pp., appendix and index 17 pp.

What law graduate has not read or been referred to some portion of Sir William Blackstone's Commentaries on the Laws of England? At the very least, the Introduction and the chapters relating to the several species of trial and to the nature of crimes and their punishment should be familiar. If you are deficient in this regard and are feeling guilty about it, here is a further opportunity for you in the form of yet another book of selections from Blackstone's Commentaries, together with a forty-seven page introduction, by Mr. Jones, about Blackstone himself, about the impact of the Commentaries, and about Blackstone's critics.

My initial reaction to the suggestion that I do this review was that the idea was preposterous, mainly because I have no substantial basis upon which to assess the book, not having read either the Commentaries in their entirety or any of the other abridged versions of it, or a single substantial commentary on the Commentaries. However, I was persuaded, and I am brashly proceeding, taking courage from the realization that my plight in this regard is no different from that of virtually everyone else today.

In the Preface Gareth Jones describes his selections as follows:

"Most of the Selections are taken from the introduction and first book of the Commentaries. These pages established Blackstone's reputation as a thinker and

11. But see Castel, *International Law Chiefly as Interpreted and Applied in Canada* (1st ed. 1965), Univ. of Toronto Press, p.p. 1385; (2nd ed. 1973), Osgoode Hall Casebook Series, p.p. 1175.

* Faculty of Law, University of Manitoba.

provide a unique glimpse into the mind of a lawyer whose writings influenced politicians and, at the same time, directed the studies of generations and students. The selections open with the well-known essay on the study of English Law and continue with the author's philosophical enquiry into the nature of laws in general and the rights of persons... (his) discussion of the constitutional role of Parliament, the Crown, and the Judiciary, his analysis of the National Debt, and his condemnation of slavery....

The extracts from the three remaining books are sparse in comparison. I have tried to select those which are not recondite and which will be of general interest. Consequently, I have omitted much of the hard lawyer's law . . . which is now of interest only to the specialist legal historian. The Selections from these books include Blackstone's jurisprudential excursus on the right of property, his quaint analysis of English feudalism, his description of the courts of common law and equity, and his critical encomium on trial by jury. I have also reproduced the first chapter of Book Four on the nature of crimes and their punishments, which reveals Blackstone's humanity and his intense dislike of capital punishment. The selections end with the chapter on the Rise, Progress and Gradual Improvements of the Laws of England, which surveys historically the development of the principles of a common law which was, in Blackstone's view, dedicated to the 'protection of the Liberty of Britain'."

The complete text of the Commentaries exceeds 800,000 words; the length of these selections is somewhere in the neighbourhood of 95,000 words.

I could proceed to give my opinion of the wisdom of Mr. Jones' choice of selections from the Commentaries, and to comment upon what in substance these selections have to offer to the reader, but I shall resist this temptation to stray from what I consider a proper path for me in this review. I shall content myself with two observations: These selections indicate that there are segments of the Commentaries that should be of continuing interest to some layman,¹ the fledgling law student, and those lawyers who never cease to be students of the law. It is unfortunate for Canadian readers at least that most of Book Two of the Commentaries, which deals with various aspects of the law relating to real property, has been ignored.

The typical view of Blackstone as a writer and the Commentaries as a piece of legal writing can be illustrated by a quote from another review of *The Sovereignty of the Law*:

"Style in legal writing appears to be a vanishing art, as readers of modern legal journals will agree . . . the clarity and forcefulness of the style of Blackstone are a lesson to every potential writer, at whatever level, who intends to say something about law. He is never dull; nor obscure; nor long-winded. If all teachers of law, in lectures or text books could express themselves with similar or comparable ease and simplicity, students would find their studies much easier to absorb".²

1. Blackstone must be read judiciously by those not particularly familiar with our law, for of course he was describing the state of the law as it existed when he wrote the Commentaries during 1765-69; I do not think that this point is made clearly enough for these readers

2. G.H.L. Fridman, (1974) 12 Alta. L.R. 298. See also (1972) 116 Sol. J. 939.

And, it could be added that Sir William Blackstone certainly was to the whole field of law what Dr. Benjamin Spock was and is to the field of child care. Nonetheless, in today's context I cannot agree entirely with what continues to be the popular technical assessment of the Commentaries and I am surprised at the publication of this book. I do not think that very many people will pick up this book to take so much as cursory look at it; of those who actually read these selections, only a few will complete the book without a struggle.

Having entered the foregoing demurer I wish to close this review with a quote from chapter 17 of Book III. In this passage Blackstone is completing his point that legislative reform of the law in a parliamentary system is not an easy, and is possibly a dangerous, task; the passage demonstrates the literary quality of much of the Commentaries, even if substantively Blackstone's lack of support for legislative reforms which were to occur in the next one hundred years after his death:

"But who, that is acquainted with the difficulty of new-modelling any branch of our statute laws (though relating but to roads or to parish settlements) will conceive it ever feasible to alter any fundamental point of the common law, with all it's appendages and consequents, and set up another rule in it's stead? When therefore, by the gradual influence of foreign trade and domestic tranquillity, the spirit of our military tenures began to decay, and at length the whole structure was removed, the judges quickly perceived that the forms and delays of the old foedal actions, (guarded with their several outworks of essoins, vouchers, aid-prayers, and a hundred other formidable intrenchments) were ill suited to that more simple and commercial mode of property which succeeded the former, and required a more speedy decision of right, to facilitate exchange and alienation. Yet they wisely avoided soliciting any great legislative revolution in the old established forms, which might have been productive of consequences more numerous and extensive than the most penetrating genius could foresee but left them as they were, to languish in obscurity and oblivion, and endeavoured by a series of minute contrivances to accommodate such personal actions, as were then in use, to all the most useful purposes of remedial justice: and where, through the dread of innovation, they hesitated at going so far as perhaps their good sense would have prompted them, they left an opening for the more liberal and enterprizing judges, who have sate in our courts of equity, to shew them their error by supplying the omissions of the courts of law. And since the new expedients have been refined by the practice of more than a century, and are sufficiently known and understood, they in general answer the purpose of doing speedy and substantial justice, much better than could now be effected by any great fundamental alterations. The only difficulty that attends them arises from their fictions and circuities: but, when once we have discovered the proper clew, that labyrinth is easily pervaded. We inherit an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless. The interior apartments, now converted into rooms of convenience, are cheerful and commodious, though their approaches are winding and difficult."³

CAMERON HARVEY*

3. This quote is to be found in chapter 16 of *The Sovereignty of the Law* at p. 169.

* Faculty of Law, University of Manitoba.

