BOOK REVIEWS
LIVRES NOUVEAUX

Modern Legal Philosophy: The Tension between Experiential and Abstract Thought. By Cornelius F. Murphy, Jr. Pittsburgh: Duquesne University Press, 1978. Pp. viii, 241.

Professor Murphy points out in the Introduction to his book that the field of modern legal philosophy is fragmented. There exists a wide range of theories about the nature of law and justice, and each jurisprudential author competes with his rivals for acceptance of his view as the exclusive truth about law. The presence of so many seemingly incompatible approaches, each claiming superiority over all others, makes it difficult for those not fully initiated into the secrets of the discipline to appraise the worth of any jurisprudential insight.

Professor Murphy sees a need for an integrative attitude towards the study of legal philosophy which emphasizes the complementary character of diverse interpretations of legal reality rather than the undeniable discrepancies between these interpretations. He does not believe that this task can be accomplished by attempting to reduce the differences between the various theories and advance an understanding of their interrelationships. He suggests that the prevailing theories can more profitably be viewed as efforts to grasp legal reality at different levels of cognition. Some schools of jurisprudence approach the subject from a purely empirical standpoint, others advocate a theoretical or epistemological method, again others inject a speculative element into their inquiries.

Professor Murphy points out, for example, that analytical jurisprudence of the Austinian variety strove to dissect the basic notions of developed legal systems in an empirical manner without reference to the political, social, and economic factors giving rise to these notions. The sociology of law, taking account of the fact that the legal and social orders intersect at every juncture, broadened the scope of empirical investigations of law by viewing the evolution of legal systems and institutions in the context of the nonlegal developments of a particular society. Sociological jurisprudence, in the form it assumed in Lasswell-McDougal's policy science, centered attention on the correlations between legal decision-making and social values. Kelsen's Pure Theory of Law, influenced by Neo-Kantian views about epistemology, exalted logical rigor and theore-

tical consistency in the analysis of legal phenomena. Some conceptions of justice elevated one particular abstract-rational principle such as autonomy of the person or harmonization of freedoms, to the rank of a sole criterion of the just and the unjust. The Thomistic natural-law tradition, especially in the modernized form into which it was cast by Jacques Maritain, advocates a multifaceted approach to law and justice according to Professor Murphy; it avoids, in his opinion, the onesidedness of other theories by recognizing various ways of obtaining knowledge, not excluding speculative endeavors. Professor Murphy identifies himself to a farreaching extent with this last-mentioned position.

In the opinion of this reviewer, a strong case can indeed be made for treating the problems of law and justice from a number of different methodological premises. The partial autonomy of the law, which secures to the institution a certain power of resistance against temporary social fads and short-term political currents, justifies a technical analysis of basic operative concepts peculiar to legal systems. On the other hand, the law cannot escape the impact of significant social forces which will, at least in the long run, modify the content of legal rules and transform the structure of legal institutions. Empirical observation of these forces and elucidation of their effect upon legal evolution therefore constitute legitimate tasks for legal sociology. The descriptive compartment of natural-law thinking will discern congruences in the legal regulations of different nations and attempt to trace these similarities to certain common traits of human nature. In its axiological branch, the natural-law doctrine will investigate the relations between law and morality with a view to determining whether departures from certain minimum postulates of human decency ought to affect the validity of legal norms. A theory of justice, if it goes beyond a factual account of competing views on the subject, will introduce a speculative element into legal philosophy by offering a societal blueprint which, in the opinion of its protagonist, will respond to human needs and aspirations to an optimum degree.

Today, many philosophers and social scientists may object to any revival of speculative thinking as an acceptable form of scholarly undertaking. It should be kept in mind, however, that the greatest creative scientist of the twentieth century, Albert Einstein, recognized the need for speculative theorizing even in the realm of physics. He said: "Since ... sense perception only gives information of this external world or of 'physical reality' indirectly, we can only

grasp the latter by speculative means."[1] He also observed that "every true theorist is a kind of tamed metaphysician, no matter how pure a 'positivist' he may fancy himself."[2]

In the physical sciences, a theory originally arrived at by way of speculation or experience-guided intuition will be in need of subsequent empirical testing in order to secure its ultimate acceptance. In the area of axiological thinking about justice, which involves theorizing about an "ought" rather than an "is", empirical verification of a certain view as being "right" is not possible in the same sense. But verification of a different kind occurs when an image of justice arrived at by way of reflective thinking becomes incorporated into the political and social structure of a nation. This happened, among others, to the philosophies of justice elaborated by Montesquieu, Locke, and Rousseau. When we consider the potential pragmatic impact of theoretical constructs upon social reality, we must fully concur with Professor Murphy's thesis that the tension between experiential and abstract modes of juristic thought can be resolved in principle by acknowledging the validity of both approaches and the possibility of a fruitful interrelation between them.

The remainder of this review will be devoted chiefly to that part of Professor Murphy's book which contains an incisive critique of the theory of justice developed by John Rawls, a work that has attracted a great deal of interest among legal scholars, philosophers, and social scientists.[3] The first principle of justice set forth by Rawls requires that each person should have an equal right to the most extensive system of basic liberties compatible with an equal liberty for all. The second principle demands that social and economic inequalities should be arranged so that they are to the greatest benefit of the least advantaged and attached to offices and positions open to all under conditions of fair equality and opportunity. According to Rawls, the first principle should have priority over the second in any advanced society, with the result that liberty may be restricted only for the sake of liberty.[4]

Professor Murphy criticizes this conception of justice, among other reasons, on the ground that it is defined only in terms of what

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[1] Einstein, *The World As I See It* (1934), 60.

[2] Einstein, *On the Generalized Theory of Gravitation* (1950) 182 Scientific American 13.

[3] Professor Murphy's criticism is found on pp. 138-55 of the book here reviewed.

[4] Rawls, *A Theory of Justice* (1971), 302.

a rational person would desire in order to promote his personal advantage. In his opinion, it neglects the links which tie the individual to the larger society of which he or she is a part. Murphy also takes issue with Professor Rawls's advocacy of a market economy, pointing out that this facet of his theory is removed from concrete social reality, in which oligopoly has become a dominant feature unlikely to be displaced by a return to nineteenth-century competition in an open market. He also offers a cautious critique of Rawls's view that personal merit should have no place in the distributive scheme of justice, since the distribution of natural endowments is regarded by Rawls primarily as a fact of nature.[5] Professor Murphy believes that, although there are reasons for not making personal merit an explicit part of distributive justice, the moral significance of efforts to develop and improve the talents which nature has bestowed upon an individual should not be ignored. Furthermore, Professor Murphy expresses his reservations concerning Rawls's "difference principle" (requiring that social and economic inequalities be permitted only to the extent that they benefit the least favored members of society); he reasons that this principle is too onesided to serve as a panacea for solving highly complex problems of social and economic justice. Using an example of my own, would a high school course for specially gifted students be unjust because no conclusion can be reached that such a course would be to the advantage of the pupils at the bottom of the class, or to deprived members of society generally?[6] The difference principle, even though it has value as a guide to social action in certain situations, might lead to the encouragement of mediocrity if universally applied; and mediocrity is one of the banes of contemporary Western society.

In this reviewer's opinion, Professor Murphy's criticism of the Rawlsian philosophy of justice is well taken. This philosophy is part of a trend, also exemplified in somewhat different ways by the writings of Robert Nozick and Ronald Dworkin,[7] to predicate the theory of justice almost exclusively on the conceptions of rights and entitlements. The notion of a common good, which places limitations on an individual's liberties not only for the sake of protect-

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[5] *Ibid.*, 107.

[6] Rawls admits that "it is not in general to the advantage of the less fortunate to propose policies which *reduce* the talents of others." *Ibid.*, 107 [emphasis added]. The main problem is, however, whether a special slot should be reserved for merit in a theory of justice.

[7] See Nozick, *Anarchy, State, and Utopia* (1974); Dworkin, *Taking Rights Seriously* (1977), especially Ch. 7.

ing the rights and freedoms of others but also for the purpose of safeguarding important public concerns, is deliberately neglected in the works representing this trend. In view of the fact that the perplexing problems of poverty, crime, population explosion, ecological challenge, and depletion of natural resources can be resolved only by an exertion of individual restraint, discipline, and cooperative effort demanding certain sacrifices, this philosophy should be characterized as regressive rather than progressive.

This characterization does not imply that we should return to the medieval view that law and justice are to be measured primarily in terms of their contribution to the public good.[8] Human rights are of extremely great importance, as long as they are not conceived as absolutes incapable of being limited for overriding public purposes.[9] The endeavor to synthesize private goods with the common good makes, of course, very stringent demands on the wisdom and resourcefulness of the public authorities; and it may be necessary to have certain institutional devices, such as a reasonable amount of judicial supervision, to correct serious misjudgments.

Professor Murphy's work provides a much-needed antidote against latter-day attempts to return to the philosophies of Locke, Kant, and (at least in Rawls's theory) Rousseau, with certain accommodations made necessary by twentieth-century conditions. The question whether, as Professor Murphy suggests, a neo-Thomist legal philosophy offers a satisfactory alternative to the neo-liberal trend will be left open in this appraisal of his work. The general tenor of the appraisal, however, will leave no doubt in the mind of the reader that this reviewer regards Professor Murphy's book as a worthwhile and constructive contribution to the philosophy of law.

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[8] See, for example, St. Thomas Aquinas, *Summa Theologica* (transl. Fathers of the English Dominican Province, 1913-1925), Q. 90, art. 4.

[9] This proposition is discussed in greater detail by Bodenheimer, *Jurisprudence: The Philosophy and Method of the Law* rev. ed. (1974), 240-45.

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Unfair Contracts. By Sinai Deutch. Lexington, Mass. and Toronto: D.C. Heath & Co., 1977. Pp. xvi, 314.

In *Unfair Contracts,* Dr Deutch assumes the formidable task of exhaustively researching and commenting on the doctrine of unconscionability, particularly but not solely as contained in § 2-302 of the Uniform Commercial Code. A discussion of both the pre-code and post-code eras provides an historical perspective and an analysis of current problems with suggested solutions surrounding unfair contracts.

While there has been much excellent writing on the doctrine of unconscionability (from Llewellyn to Leff and beyond, as Professor Pooley's foreword indicates), this work represents the first attempt to deal with all aspects of the doctrine. The book is not mere repetition of the views of others, but a useful and informative analysis of what others have had to say on the subject of unconscionability, in a critical manner, with the writer's prejudices clearly stated. Nor is it a merely academic discussion, for as an epilogue to his text, Dr Deutch suggests a revision of § 2-302 to provide what he considers to be a balanced and fair solution to the problems posed by unconscionability in commercial and consumer sales contracts.

In many ways it is surprising that fairness in contracts requires much discussion in liberal democracies where justice and equality are the reason for all things legal, political and social. Of course, ways of achieving fairness and equality vary in different jurisdictions and there are innumerable notions of what comprises these elusive concepts. While few would disagree that contracts should be "fair" as between the parties, there would be considerable discussion as to what is "fair" in given contractual situations and how fairness should be achieved. The nineteenth century view was to leave market forces to decide these questions. That this has been manifestly unsuccessful is illustrated by the numerous legislative interventions into the market place (of which § 2-302 is one) even in countries with the strongest orientation to free-enterprise. It is highly doubtful that this technique (if it may be called that) could ever have worked successfully, especially in the highly complex world of twentieth century industrial society.

Dr Deutch commences his study with a discussion of the traditional doctrines used by courts to limit the abuses of market power evident in unfair contracts. He highlights commonly accepted deficiencies in these covert methods of relieving oppressed parties and calls for an open attack on unfair "bargains" as have so many others.

He continues by dealing with the apparent dichotomy between the pervasive concept of freedom of contract and interference by courts in executed contracts, and concludes, although perhaps not in so many words, that all freedoms (including freedom of contract) have meaning only if they are accompanied by responsibilities.

A discussion then follows of § 2-302, the Official Comments, relevant cases, and academic writing which sheds considerable light on the pressures and compromises which led to the phraseology of the article and on what it was originally intended to achieve. For instance, it becomes clear that the article was originally intended to be used in contracts between merchants rather than in consumer transactions. That emphasis has now changed considerably, providing a useful, if not perfect, tool for consumer protection.

Deutch expresses concern over the section's lack of a definition of unconscionability or of guidelines towards an understanding of what is meant by the doctrine. The nature of the concept, as he readily admits, makes it impossible to define it exhaustively. "Shopping Lists", as contained in trade practices acts of those Canadian provinces possessing such legislation,[1] are not only guides but are also definitional in stating that a particular activity or act is unconscionable or will give rise to a contract or contractual term which is unconscionable. There will always be a residue of situations, some not yet invented, which will fall outside the listed guidelines. Here the law is left with its vague concept of unconscionability — but is it any the worse for it? Deutch seems more concerned about uncertainty in the law than he need be. Even those areas considered quite settled by interested onlookers are full of uncertainties when examined in depth. Uncertainty is an integral concept, especially in developing areas such as consumer protection, and indeed in all other areas concerned with protecting the weak. Flexibility and development carry with them uncertainty but this should not concern us greatly considering the general uncertainty inherent in law.

There are other illustrations of Deutch's conservatism. For instance, he expends considerable effort in trying to deduce from judicial pronouncements the present scope of the doctrine of unconscionability, while only briefly commenting on the deficiencies in the case law. While this approach is of value, at least for the academic, a more searching analysis of what the doctrine should be, whether it can really solve the problems it has been set to solve, and whether some other concept could do the job more effec-

[1] S.B.C. 1974, c. 96, s. 2; S.O. 1974, c. 131, s. 2.

tively would have been better. To be fair, however, Deutch does set out to provide a text for both practitioners and academics.

The discussion predictably concludes that, in order to be really helpful, unconscionability must be defined — if only in terms of guidelines. Certainly guidelines help but not in the residual unforeseen situations. It must be recognized that while courts may be the best or only arbiters of disputes, inconsistencies, reversals of trends and general confusion will almost inevitably arise.

Deutch finds Slawson's well-known suggestions in *Standard Form Contracts And Democratic Control of Lawmaking Power*[2] revolutionary, and the proposals set out in the *National Consumer Act* (prepared by the National Consumer Law Center) which provided for a much more imaginative set of remedies, not always justified because they may not be fair to merchants. On reflection, such remedies as punitive damages, class actions, and an administrator's powers to seek injunctions and temporary relief and participate in class and other actions on behalf of the consumer do not appear, today, to be all that radical. In fact, Canadian trade practices legislation[3] has incorporated many of them. Deutch also feels that a contract should not be rendered unconscionable because of anything which might occur after the contract date — another principle from which Canadian legislation has derogated.[4]

There is a short but valuable comment on the Israeli *Standard Contract Law* of 1964[5] which provides for administrative machinery to review clauses in standard form contracts to test them for fairness. However, the law does not require all standard forms to be presented to the administrative tribunal for scrutiny and for obvious reasons has not been utilized very much. The law also provides the courts with the power to invalidate clauses prejudicial to consumers. An amendment in 1969[6] permitted relevant government officials and non-governmental organizations, such as consumer groups, to present contracts and terms to the tribunal for review, but still the administrative procedure is infrequently used.

Based on the Israeli experience and his dislike of Slawson's proposals, Deutch supports judicial rather than administrative con-

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[2] (1971) 84 Harv. L. Rev. 529.

[3] S.B.C. 1974, c. 96, ss. 16, 20, 24; S.O. 1974, c. 131, ss. 4, 6, 7.

[4] S.B.C. 1974, c. 96, s. 3.

[5] Sefer Ha-Chukkim no. 418 of 5724, p. 58; Laws of the State of Israel, vo. 18, p. 51 (1964).

[6] Sefer Ha-Chukkim no. 560 of 5729, p. 140; Laws of the State of Israel, vo. 23, p. 151.

trol. As a result, he concludes by rewriting § 2-302 to provide guidelines for the courts on what constitutes unconscionability in commercial and consumer contracts and to expand the remedies available to aggrieved parties. As for the latter, Deutch is only prepared to go as far as awarding lawyer's costs to the successful party — something which would normally occur in traditional common law jurisdictions. He does not suggest, for instance, that minimum damages (such as $100) be awarded to the successful party in a suit involving unconscionability in order to encourage consumer actions. Such a provision is contained in the *Uniform Consumer Sales Practices Act*.[7] There is no mention of the possibility of imposing criminal sanctions on parties found to have used an unconscionable contract, but as Deutch does not favour administrative procedures to help control the use of unconscionable contracts, he does not accept the tri-cornered approach taken by Canadian legislation, that is, the use of civil, administrative and criminal actions to quell unfair market practices.

The "shopping lists" of Canadian trade practices acts might provide a useful model to Deutch. For instance, as in British Columbia, a contract may be considered unconscionable if, at the time the transaction was entered into, there was no reasonable probability of full payment of the price by the customer.[8] Similarly, as in Ontario, a contract may be unconscionable where the seller knew or ought to have known that the buyer would not be able to receive a substantial benefit from the subject matter of the transaction.[9]

In conclusion, Deutch states that stricter standards should be applied to adhesion contracts because of the lack of assent involved, that parties to an unconscionability action should be given a fair opportunity to show why the contract or clause should or should not be enforced, and that whether or not a contract or term is unconscionable should be decided in the light of its commercial background, setting, purpose, and effect.

The book was informative and interesting, although not as stimulating as this writer had originally hoped and thought it would be. It is a revised version of Dr Deutch's doctoral thesis and perhaps bears that mark: to provide a basis as well as a stage for the author's main thesis, many avenues are explored which arguably could have been seen to be cul-de-sacs from the outset. For instance, the dis-

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[7] Uniform Laws Ann. 212 (master ed. Supp. 1975).
[8] S.B.C. 1974, c. 96, s. 3(2).
[9] S.O. 1974, c. 131, s. 2(b)(iii).

cussion of whether or not the doctrine of unconscionability in §2-301 is new or is developed from common law and equity is perhaps of passing interest but not very useful. More to the point is what is happening to the concept now and what will happen to it in the future. It is clear, as Dr Deutch points out, that the doctrine has not generally been interpreted as limited by common law or equitable principles, but has frequently been applied by courts in a more unrestrained manner.

For the non-American reader, some discussion of recent trade practices legislation in Canada and of the development in England of the doctrine of inequality of bargaining power would have been both valuable and relevant. All in all, however, this is a useful book. Although perhaps not daring in his conclusions and suggestions, the author has provided a valuable guide to the doctrine of unconscionability in the United States and anyone seeking to research this area of the law would be well-served to read this account at the outset, since it discusses all of the important decisions and writings on the subject.

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Essays on the Constitution: Aspects of Canadian Law and Politics. By Frank R. Scott. Toronto: University of Toronto Press, 1977. Pp. xiv, 422.

It was the Great Depression which turned Frank Scott towards Canadian democratic socialism, and led to the active and distinguished role he was to play from the beginnings of the League for Social Reconstruction, through the CCF to the NDP. He was not only a political activist but a constitutional lawyer whose place in a great generation of legal scholars was established by the force and clarity of his ideas, enhanced by his graceful and lucid command of language.

All legal scholarship reflects political values and this is perhaps particularly true of constitutional law. Scott says in his Preface,

> This involvement [with the CCF] sharpened my insight into the nature of law and particularly constitutional law. I saw that every legal change involves a choice of values, a selection of objectives, and in this sense I was greatly attracted to the concept of law as social engineering being then advanced by the great American jurist, Roscoe Pound. Changing a constitution confronts a society with the most important choices, for in the constitution will be found the philosophical principles and rules which largely determine the relations of the individual and of cultural groups to one another and to the state. If human rights and harmonious relations between cultures are forms of the beautiful, then the state is a work of art that is never finished. Law thus takes its place, in its theory and practice, among man's highest and most creative activities. (p. ix)

Controversy, even when it is concerned about social values, tends to be relatively short-lived as new issues arise and problems are seen in fresh dimensions. One must ask how well have these essays — some written forty years ago — stood the test of time. The answer must be that they stand up very well. Legal writing is often pedestrian, convoluted, and dull. Not least of the virtues of Frank Scott's essays is their demonstration that the law can be illuminated by lucidity and wit. But these essays are more than models of splendid prose: they also address themselves to the problems of constitutional order which will always be with us. In particular they explore the complex relationship between order and freedom and the nature of constitutional government in a multi-faceted society, for constitutional law concerns itself with the norms which bind governments in relation to the citizen. It defines how the social framework operates to maintain the social contract between the state and its members.

In these essays three themes predominate. The first reflects the preoccupation of legal scholars in a country gradually gaining control of the full panoply of independent statehood within the chang-

ing structure of the British Commonwealth through the dispersal of the remnants of Imperial sovereignty, and the implications of these changes on the law of the Canadian constitution. All of this is now past history but its value for a new generation of lawyers, to whom it must be a forgotten past, is that the issues are phrased with a clarity and force not found elsewhere.

The second theme is the changing nature of Canadian federalism. Scott remains a firm believer — as were the Fathers of Confederation — in a strong federal government moving firmly into control of new fields as they assume a national dimension, while provincial governments are left with a modest role outside the areas of national interest and policy. The difficulty with this position today is, in part, that it fails to take account of the fact that provincial politicians and civil servants, who now control great political resources, are in an unassailable position to expand and defend their powers under the constitution. For this reason the price of going back to a dominant and expanding central government, made tolerable by sectional representation in its major institutions, has become too high. The alternative is to devise institutional arrangements which minimize the cost and maximize the benefits in a state which cannot avoid a high degree of centralization. The point where Scott differs from most of the centralists of his generation is in his sensitive appreciation of the problem presented by Quebec and in his persuasive demonstration, which long antedated his membership in the Royal Commission on Bilingualism and Biculturalism, that Canada has always been a state in which the existence of the French language and culture alongside the English is a basic constitutional value with deep historic roots. His essays and addresses on this theme, both in French and in English, reflect his own deep roots in Quebec.

The third theme is the relationship between liberty and order and the legal basis of the concept of a bill of rights. One can sense, in the progression of his writing on this theme, how the gradual acceptance of the idea of a bill of rights came to be achieved, and also see at work the influence of scholarly writing in bringing about major political change. He rightly stresses the common law origins of the English notions of civil and political liberty and argues that in Canada, partly because of the diverse origins of the Canadian people to whom these ideas do not have an impelling historical sanction, and partly from the need to blend more "collective" rights such as language into them, there is need to formulate a bill of rights containing explicit guarantees appropriate to Canadian conditions.

It should not be forgotten that the positive recognition of these rights by Canadian courts owes much to the persuasiveness of his own legal arguments in a number of important cases which arose in Quebec. Political conviction and necessity drove Scott to delve deeply into the law in these matters and in the end to contribute considerably to its development. This has led him to important insights. Those trained in the common law should find much to think about in his essay on the Bill of Rights and Quebec law in which he demonstrates that in some important respects the civil law of delict provides more effective remedies than does the law of tort. It is a reminder that our two separate Canadian legal traditions can do much to strengthen each other.

Changing the formal structure of the constitution is not an easy matter. We are still debating changes in constitutional arrangements which were outmoded in Scott's youth. But constitutional adaptation does take place. The spirit of the constitution may change without any alteration in constitutional forms. The extent that our constitution reflects in its operation more democratic, open, and humane values is the result of a change in the climate of opinion in the last fifty years. Much of that change is the work of men like Frank Scott who challenged outmoded assumptions and thus altered the constitutional climate.

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The Law of Habeas Corpus. By R. J. Sharpe. London: Oxford University Press, 1976. Pp. 223.

Described by the publishers as "the most comprehensive book written on this central issue of constitutional law", this is an Oxford doctoral thesis which reflects great scholarship. Dr Sharpe is a Canadian who now practises law in Toronto. His book, however, is not focused primarily on Canadian law but on the law of England where the remedy was invented. There are nevertheless many references to Canadian law and practice. We are told, for example, albeit in a foot note (p. 135, n. 4), that the important section 6 of the Habeas Corpus Act of 1679 (which has been replaced in England) is still in force in Canada. In the matter of commitments for compulsory treatment and of bail, the author depends heavily on Canadian cases. There are also separate sections on federal jurisdictions and on appeals and successive applications in Canada. But there is no mention in the book of the Canadian *War Measures Act* or even of Canadian immigration law.

There are several references to the European Convention for the Protection of Human Rights and Freedoms but none to the Universal Declaration of Human Rights or to the United Nations Covenant on Civil and Political Rights.

The book is much more than a description of existing law and practice in an historical setting. The author displays a healthy scepticism about the correctness of some of the leading cases, and there is sharp criticism of certain Canadian cases relating to the question whether an applicant for the writ must be in actual physical custody: "In other words, the Canadian courts have done little more than cite cases for propositions which they do not support and they have ignored the cases which were more directly on point. There has not been a thorough examination of the principles at stake, but rather a shabbily supported assumption that the applicant must be locked up before he can apply for the writ." (p. 164)

There are also many suggestions for moulding the law to meet new conditions.

The book is clearly meant for students and practitioners. Dr Sharpe might consider putting his erudition to another service — writing a popular book in which there would be something more about the factual situations behind the cases and which could be understood by the general reader. For the public as well as the legal profession needs to know more about this ancient remedy. And, as

Professor Myres McDougal (of Yale University) has often said, it is necessary to bring human rights law down from its level of abstraction.

John P. Humphrey*