

examining the re-defining of sexual roles in a situation which necessitated another mode of behaviour. Both collections widen our knowledge of the much needed study of women's impact and development. They also provide us with the perspective of human adjustment in behaviour and attitude when forced under the critical challenge of survival and the desire for growth and development.

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DAVID H. FLAHERTY, ed.—*Essays in the History of Canadian Law*. Toronto: University of Toronto Press (for The Osgoode Society), 1981. Pp. xvi, 428.

The Osgoode Society is to be commended for publishing the first volume of this two-volume project. Editor David H. Flaherty acknowledges this as a "pioneering volume" (p. xiii) which deliberately seeks to shape the course of Canadian legal history and argues for a comprehensive perspective which will "illuminate the interaction between law and society" (p. 3). Flaherty proceeds even further to define the focus of legal history as history and not law, (p. 25), thus avoiding a narrow definition of this newly burgeoning field. His own introductory essay reviews the significant comparative literature which provides suggestive models for Canadian legal history, particularly the works of the American legal historian, J. Willard Hurst. Thus Flaherty seems to suggest that a "law and society" approach avoids narrow internal discussions of courts, legislation or legal processes and instead relates legal developments to broader historical trends and the current historical literature.

Nineteenth- and twentieth-century Canadian legal history is the focus of the eight essays and an annotated bibliography of Ontario's statutes and legal publications from 1792-1980. The essays fall into three broad categories: those concerned with the development of the law and the courts; those dealing with the law's relationship to the economy; and those which explore the theme of women's status and family law. How successful then are these essays in following a "law and society" approach?

Three essays deal more narrowly with the development of laws and courts; Graham Parker's discussion of "The Origins of the Canadian Criminal Code" surveys the background and reception of the 1892 Criminal Code and as such strays further from the editor's intentions. Parker's main points—the influence of the writings of James Fitzjames Stephen on Canadian codifiers and the lack of discussion in Canada of the principles of codification—shed little light on the relationship between law and society. John D. Blackwell's contribution on William Hume Blake and the Judicature Acts of 1849 succeeds somewhat better, although the author cannot resist the temptation to view Blake as a "good guy reformer" riding the white charger of legal reform. Nevertheless, Blackwell's essay will be of interest to students of early Ontario political reform since he details Blake's often tense relationships with both Tories and reformers. To their credit both Parker and Blackwell discuss Canadian legal history in a comparative dimension looking both to British and American developments.

The third essay by Kathryn M. Bindon is a study of the development of legal institutions in Rupert's Lands through the biography of Adam Thom, the first recorder; conflict between company and community emerges in a discussion of the relationship between legal change and the Hudson's Bay Company's

desire to maintain profits from, and dominance over, the fur trade. This very interesting notion of competing systems of law is unfortunately lost sight of by the author in developing the biography of Thom, a Scottish emigrant and an extreme francophobe. These three essays shed some light on individuals and legal processes; Blackwell and Bindon open up areas which should be followed up, particularly the relationship between law and politics and the conflict between competing notions of law.

Despite the ambitious title of R. C. B. Risk's essay, "The Law and the Economy in Mid-Nineteenth Century Ontario: A Perspective", the author actually examines this relationship only through a discussion of legal institutions and processes. This essay summarizes the contents of his three important, previously published essays on the same subject. Risk finds the Ontario courts much less innovative and change-oriented (and hence more British) than the "instrumental" courts of the United States which clearly recognized economic policy considerations, particularly in the area of competitive transportation franchises. The legislatures, according to Risk, were much more important in the Canadian context because they made decisions about franchises without court control. Despite the author's recognition of this period as critical in Canada's economic, religious, social, and political history, his discussion of law and the economy fails to draw on social history evidence of conflict within Ontario. Integration of recent material on conflict in lumbering and in railroad and canal building in Ontario by Michael Cross, Ruth Bleasdale, and others would assist in broadening discussion from a necessary but narrow focus on legal structure into the realm of "law and society". Such an approach demands that researchers must move beyond reported cases and decisions (the internal approach described by Robert Gordon, an American legal historian) to extra-court and extra-legal terrain in order to appreciate fully the role of the law.

Jennifer Nedelsky's "Judicial Conservatism in an Age of Innovation" exhibits some of the same problems of an internal approach. Her essay explores reported nuisance cases from 1880 to 1930, the major period of industrialization, to challenge the accepted wisdom of legal history that "Canadian reliance on English decisions" (p. 283) accounts for the conservatism of Canadian courts. Nedelsky maintains that Canadian courts actually circumvented English innovations. Unlike the United States, where Morton Horwitz has argued that the legal system adopted favourable views and policies toward economic development, Nedelsky finds that Canadian courts accommodated industrialization only to the extent that they were willing to limit the damages to be paid by industries; no systematic pattern of refusing injunctions to protect industry emerged in the reported cases. One of the problems with this line of argument is recognized by the author—one needs to know what the actual impact on industry was to make any clear assessment of the court's role. Despite its limitations, Nedelsky's essay opens up important territory in legal, economic, and social history.

The third essay in the "law and economy" category is Paul Craven's discussion of "The Law of Master and Servant in Mid-Nineteenth Century Ontario". In 1847 the legislature reinvented a previously discarded master and servant law; not only did this law clearly favour employers over employees, but it also revealed the ambivalence of the propertied about waged labour in general. Craven views the enactment of the law as deliberate policy arising from this ambivalence and from social conditions in Ontario. Unlike most of the other authors in this volume, Craven moves beyond reported cases to look at police court records; this factor plus his knowledge of social and economic history serves to move the discussion towards a genuine "law and society" approach.

Two articles in the volume address the themes of the status of women and children in Canadian law. Constance Backhouse's pioneering study of custody in the nineteenth century argues that changing conceptions of motherhood and childhood help to explain the reversal of "patriarchal" patterns in custody awards. Mothers began to receive custody of their children by the last quarter of the nineteenth century when judges began to recognize the need for better child protection and the potential benefits of maternal custody for children. This rather than a "women's rights" argument was the motivating force, according to Backhouse. The lack of research in this area of women's rights' activism and Backhouse's limited knowledge of sources in Canadian women's history make this argument a very tentative if interesting one needing further demonstration. Backhouse further notes the increased role for state intervention by the end of the nineteenth century when the "interests of the child" might dictate removal from parental authority.

While Backhouse limits her comments to English Canada, Jennifer Stoddart focuses on Quebec's Dorion Commission of 1929-31. The investigation of the civil rights of women, backed by feminists, served to distract attention from the demand for suffrage in Quebec. The Commission served to reaffirm the *status quo* and from the start it played a political role in reasserting fundamental values in Quebec. Although some of married women's legal disabilities were eased by reforms arising from the Commission, the basic principles of the Civil Code were not challenged. Not only does Stoddart's essay provide an analysis of the Civil Code, but it also integrates the Commission's political and ideological role into an understanding of the role of women in the family and in the survival of the French nation. The Commission reaffirmed the ideological perspective of the clerically-dominated élite. Stoddart's very useful essay is based on evidence from a commission rather than court cases; the nature of the evidence and her background in both law and social history enable her to demonstrate successfully a "law and society" approach.

This volume has moved legal history in Canada forward; not only will legal historians benefit from Flaherty's attempt to broaden our notions of legal history but social, economic and political historians will be forced to recognize the relevance of legal materials for their own fields. Social historians in particular should be pleased to see materials on women and labour, too often ignored or fragmented from general historical discussion. Nonetheless, these essays reveal, in varying degrees, the need for more social and economic history before we can actually realize the kind of legal history the editor proposes.

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FRANCES G. HALPENNY et JEAN HAMELIN (sous la direction de) — *Dictionnaire biographique du Canada*. Volume XI: *De 1881 à 1890*. Québec, Les Presses de l'université Laval, 1982. xx, 1192 p.

Il y a une année déjà que le volume XI du *Dictionnaire biographique du Canada* a été publié. C'est le huitième d'une série amorcée en 1966 par une équipe de chercheurs œuvrant à Québec et Toronto. La période qui va de l'an 1000 à 1800 a déjà été couverte par les quatre premiers volumes. D'ici quelques années, tout le XIX^e siècle aura été couvert à son tour grâce aux volumes V à