INTRODUCTION

In the early part of this century the law faculty was established at the Unversity of Alberta — it was the year 1921 when the first full-time law class began their course of studies under then Professor, later Dean, Weir. Seventy-five years later, the law faculty together with the editors of the Alberta Law Review thought it worthwhile to commemorate that event by devoting a special issue of the Review to a sampling of legal issues of contemporary concern to the faculty. Each of the authors was recruited to write an article in their area of expertise that reflected the changing nature of the law since the time the law faculty was established. Their task was not just to reflect on how the law has changed, but also to contribute to Canadian legal scholarship in a variety of private and public law domains. The result is a collection that reflects well the energy and diversity of teaching and scholarship at the faculty of law.

The special issue commences with a brief history of the faculty's first seventy-five years as a full-time law school by John Law and Roderick Wood. Through text and photographs, the authors trace the evolution of the faculty since 1921. In this time, university legal education has become established as the norm for admission to practice and other law-related careers.

Lewis Klar reviews recent developments in tort law to show that the traditional place of fault as the organizing principle of negligence law has been supplanted by other objectives. Negligence law is about wrongdoing, writes Professor Klar, and allocating blame for wrongdoing properly is the sole domain of negligence law. The central role of fault, however, has been displaced by other societal objectives such as punishment, deterrence, and the efficient allocation of liability for compensation. Professor Klar calls for the courts to refocus on the essential element of fault in negligence law. This would leave to the legislature responsibility for designing supplementary programs to achieve these other societal objectives.

Roderick Wood traces the evolution of the personal property registry system in Alberta. The needs of commercial practice, developing societal practices and technological innovation (such as the proliferation of motor vehicle ownership) have all played significant roles in the development of the registry system over the last seventy-five years. Paradoxically, as the system became more centralized and efficient, access to the registry system become more decentralized through online registration and computer search capabilities. These improvements in the system have been undermined by the recent privatization of the system. Private registry agents now control the registration procedure and search capabilties, thereby increasing the transaction costs associated with personal property registration.

Timothy Caulfield and Gerald Robertson contrast attitudes toward the science of manipulating human life in the 1920s and the 1990s. Influenced by the eugenics movement prevalent in the early part of the twentieth century, the province of Alberta

enacted the *Sexual Sterilization Act*,[1] in order to provide for the orderly sterilization of individuals with mental disabilities. If bad science made for heinous social policy in the past, the authors ask whether the same could be said for the science of human genetics in the 1990s. New genetic technologies are emerging which have the capacity of both isolating and repairing the cause of many health disorders. The authors conclude that, while some fears about new genetic technologies might be justified, a social climate founded on individual autonomy and equality will lessen the likelihood of abuse while enabling society to take advantage, in a regulated environment, of the benefits of new scientific and medical innovations.

If there is any area of the law has gone through significant transformation over the last seventy-five years, it is the criminal law. Wayne Renke imagines how a law student of 1920 might perceive developments in modern criminal law, most notably, by the entrenchment of legal rights in the *Canadian Charter of Rights and Freedoms*.[2] The student likely would find that the modern criminal law has abandoned its traditional conceptions of the individual subject in favour of a richer notion of personhood. In modern criminal law the accused is entitled to enhanced rights in the criminal investigation and trial processes and, increasingly, the interests of victims of crime also are being accorded some worth and recognition. Even if the rights of the accused and victims of crime are noticeably enhanced, the student likely would find that those rights still fall short of their full realization.

If the criminal law has gone through a transformation, so has constitutional law more broadly. June Ross is concerned, however, with the way in which some aspects of constitutional law have not changed, particularly, the law of defamation. Professor Ross examines how courts have struggled with reconciling the constitutional guarantee of freedom of expression and other media of communication with the constraints on expression traditionally found in the common law of defamation. Courts largely have rendered immune from strict *Charter* scrutiny the common law that governs private action; in order to trigger *Charter* review there must be some governmental action or connection. But the *Charter* could have an indirect effect. The Supreme Court has stated that *Charter* "values" should have some influence in the judicial development of the common law. The *Charter*'s influence is tested against recent decisions in the law of defamation which have favoured the protection of reputation over freedom of expression. Professor Ross concludes that the *Charter*'s effects have yet to be felt in the realm of defamation law, despite the common law's regressive impact on freedom of expression.

Annalise Acorn provides a series of snapshots in order to contrast the changing face of feminism over the course of seventy-five years. In the first part of her article, Professor Acorn examines a selection of Emily Murphy's correspondence, the first woman police magistrate in the British Empire and one of the "famous five" who challenged successfully restrictions to the appointment of women to the Canadian

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1 R.S.A. 1928.

2 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

senate. The correspondence reveals both a faith in the law as a means of alleviating women's oppression and the outlines of the fractures that have since emerged in feminism — divisions based on race, class and sexual orientation. In the second part of the paper, Professor Acorn reviews some of the work of feminist theorists who have attempted to transcend and surpass the suppositions of universalism and essentialism. This new feminist work struggles to eliminate these notions in feminism's theoretical foundations while reflecting a greater understanding of and respect for difference.

Shannon O'Byrne traces the decline of the requirement for consideration in the law of contract. At the time of the law school's founding, contractual liability turned on the doctrine of consideration — no promise was enforceable without some exchange of value. A reliance-based model, one that took into account the interests of those who may have relied upon a promise but without consideration, began to emerge clearly in judicial decisions by the mid-twentieth century. Under this model, consideration is dispensed with in favour of a more fact-sensitive inquiry into the reasonableness of relying on a promise as a reason to enforce a contract. According to Professor O'Byrne, the reliance model rightly complements the requirement of consideration so as to avoid some of the harsh outcomes reminiscent of contract law earlier in the century.

Frederick DeCoste identifies three related moments in the history of legal theory that help to explain present problems in jurisprudence. Legal formalists conceived of law as both objective and autonomous of other disciplines; legal realists, in reaction to formalists, understood law in functional and sociological terms; lastly, accommodationists, closing up intellectual openings provided by realists, attempted to reinscribe the law's autonomy and reassert the possibilities for legal reasoning. All of this helps to explain the present impasse in jurisprudence, one that pits "outsider" jurisprudence (critical legal studies, feminist and critical race theorists) against an "internal" perspective that finds a moral and ethical core at the heart of liberal law. Professor DeCoste suggests that only the internal approach is consistent with the moral obligation of law schools, to imbue in students a belief and faith in the law.

David Percy describes the challenges to and changes in Alberta water law over the last seventy-five years. Access to water resources has been of central concern to both agrarian and urban communities on the prairies, and Alberta's legal regime often has not kept pace with both commercial and household requirements. The regime, for example, has not accommodated the need to transfer water rights from existing licensees to new users. Nor has the statutory regime traditionally taken into account the need for conservation and protection of the environment. Professor Percy reviews the legislative response to these failings in the new Alberta *Water Act*.[3] The *Act* creates new categories of users, provides for the transfer of water rights, and requires the Minister to take environmental considerations into account when making allocation

[3] S.A. 1996.

decisions. What will now be required, argues Professor Percy, is the political will to exercise vigorously the new powers available to government under the *Act*.

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