

Review of *LAW & JUSTICE IN A NEW LAND: ESSAYS IN WESTERN CANADA LEGAL HISTORY* Edited by Louis A. Knafla. Toronto: Carswell, 1986. Pp. 379.

Following the method he used to produce the successful *Law and Society in Canada* in 1980, the editor has published a second volume of essays on legal history which were delivered to an inter-disciplinary conference at the University of Calgary in 1984. Unlike the first volume, however, and apart from Graham Parker's contribution, these papers focus exclusively on the West.

In his introduction the editor lays a substantial foundation which both underlies the succeeding essays and delineates the disparate topics they address: native rights, frontier justice, control of vice and social welfare. Early on he makes the point that the history of law west of Ontario lacks fundamental scholarship. This is emphasized by the fact that he is able to make a comprehensive survey of virtually everything which has been published in just over forty pages. His survey is then compressed into a formal bibliography of twenty pages by Janis Dickin McGinnis, a lawyer and historian; it will be a boon to researchers since it is the first such work to be devoted exclusively to the legal history of the West.

Thomas Flanagan, a political scientist, begins the section on native issues with a timely discussion of section 25 of the Canadian Charter of Rights, and goes on to analyse the term "aboriginal rights" from the native and European points of view. In so doing he makes it clear why at the recent constitutional conference such a wide gulf separated the premiers of the Western provinces from the representatives of Canada's indigeneous peoples on this issue, Douglas Sanders, a law professor, continues this theme by recounting the unsuccessful attempts which have been made by various government agencies to reduce or abrogate Indian hunting rights in Alberta. In a skillful integration of case law and social history Sanders demonstrates that such attempts were viewed with disfavour by sympathetic whites who took up the Indians' cases in the courts, where the bench held for native rights against both provincial and federal governments. This section is rounded out by the work of another law professor, Nigel Bankes. In a dry recital of facts, he traces the tortuous evolution of government policy relating to the allotment of lands, water, and mineral rights to western Indians from Confederation to the present. There is not a great deal of analysis here, but the author has done a commendable job of assembling the relevant legislation and laying it out in coherent order.

Hamar Foster, a law professor, opens the section on frontier justice. He discusses the struggle between a British Columbia judiciary with a colonial mentality and a popularly elected government. The questions at issue were the functions and jurisdictions of the Supreme Court of the Province and, in retrospect, many humorous exchanges occurred between judge and politician before their resolution. In quoting some of these the author has produced a most unusual piece of legal writing: one which provokes loud laughter as it instructs and informs. Two authors then consider a specific topic from different aspects: how the law of British Columbia evolved and how it was administered. In the early days of the gold rush the law of the mining camps was usually self-imposed by the miners who were mainly

Americans, and was based on the rough justice developed earlier in the similar conditions of the California gold rush. David Ricardo Williams, a legal historian, gives a forthright exposition of how a pragmatic governor and a chief justice adapted the California law and English common law for use in the gold mining camps during the early colonial years. This is followed by "The Sproul Case," in which Wilbur Bowker, a former law school Dean tells the story of a murder in a mining camp. Since the case was eventually appealed to the Supreme Court of Canada, and since the author follows it step by step, the reader gets an overview of the entire Canadian criminal justice system in operation in the 1880s. As there is obviously a great deal more that could be said about this case, and particularly by an author who is a good story teller with a happy knack of being able to use archaic terms of the legal art in appropriate contexts and then to explain what they mean clearly and concisely without departing from the story, it is to be hoped that he will expand his essay into a book on the model of Martin Friedland's *Case of Valentine Shortis*.

One of the announced objectives of the Canadian Criminal Code of 1892 was to provide a statutory definition of all crimes. An area in which it was less than successful in achieving this aim is explored by Terry Chapman, a history professor. She demonstrates effectively how Parliament avoided defining sexual encounters among males and thus left the way open for police and bench to apply the law as they saw fit. On the distaff side Elizabeth Langdon, a third-year law student, has made a comparative study of women convicted of criminal offences in Calgary in the first years of World Wars One and Two. It will come as no surprise to learn that the majority of charges were related to prostitution. Perhaps her most significant finding is that there was a fundamental difference between the "turnstile" treatment meted out to offenders by magistrates, as opposed to the reasoned consideration an appellant from such a group received from the bench of a superior court. In an abrupt shift of topic the final essay by Peter Sibernik, a legal historian, shows step by step how Ottawa and Edmonton resolved their differences during the depression in order to create an equitable system of unemployment relief and in so doing helped materially to bring on the demand for a welfare state.

Writers who differ so greatly in experience and background inevitably produce essays which vary considerably in style and sophistication. Nevertheless, each contribution in *Law and Justice* has its merits and several could hold their own with the best produced in similar British and American collections. In short, the book offers much informative and enjoyable reading and it is a valuable contribution to the fundamental scholarship of Western Canadian legal history.

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