and counsel resulted in more serious breaches to the point where Kunstler characterized an observation of the court as, "about the most outrageous statement that I have ever heard from the Bench, and I am going to say my piece right now, and you can hold me in contempt right now if you wish to," and then went to speak in terms of there being no law in the Court and declare that the men were going to jail, "by virtue of a legal lynching". Weinglass, associated with Kunstler (who was cited for 24 specific contempts) was cited for 14 specified contempts ranging from a refusal to sit down when a motion had been disposed of to defying specific orders made with respect to the conduct of the trial.

This book is not a textbook; it will be little help to the student of the law of contempt, or the student of advocacy. Its value lies in enabling the concerned reader to escape from the fear that what we know about this aspect of the case is only what the press wants us to know. Confrontation in the court room is, of course, directed to the press and, as Kalven points out, the American press appeared to be delighted with a new art form. Those of us concerned with the thought that highly publicized activities in the United States seem to find a share of imitators here will find it an instructive exercise to try to determine what course of action a judge in this country would and should have taken. Even then we are somewhat hampered by the fact that one can question some of the rulings which seemed to result in the alleged contumacious conduct and the reader necessarily has difficulty in appreciating the depth of individual's reactions.

The publication of the transcript alone—undoubtedly a very profitable publishing venture[1]—has both vices and virtues. On the whole I would think that the benefit of objectivity outweighs the defect of lack of background information. This kind of conduct is a very serious matter, one deserving consideration by all concerned with the administration of justice. One can certainly hope that our courts, our counsel, our public, and our press appreciate the propostion, to quote Kalven, "that decorum in the trial process is a rational value in the pursuit of justice."

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[1] Books which consist of trial transcripts are not to be underestimated; the transcript of the Laski Libel Trial is, for example, of significant pedegocical value. The Chicago Trial produced at least one other book from its transcript: *Tales of Hoffman*, Bantam Books, 1970. The latter consists of selections of transcripts and acknowledges the transcript itself is "public domain".

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THE CONSTITUTIONAL PROCESS IN CANADA. By R. I. Cheffins, McGraw-Hill Series in Canadian Politics, 1969.

Is it possible for a man to go to Yale and not be lost to the McDougal-Lasswell school of policy scientists? Here we have a book that proves that it is. Professor Cheffins has written a concise but somewhat biased view of some of the traditional concepts used in the area of constitutional process in Canada at the present time. There is no doubt that in this time of constitutional change, it required a considerable amount of courage to undertake such a task. This courage is also reflected in the fact that the author does not hesitate to state his own views on a number of constitutional issues. Paul Fox, in a foreward, finds this a refreshing aspect of the book. I find it rather disconcerting to come

across a passage which seems to conclude an issue that I thought was still open without any real indication of how the author reached his particular position on the question. For example on page 36 we find that s. 94A of the British North America Act added in 1951 was "for Provincial paramouncy". It may be true that Professor Lederman holds this view.[1] It also seems true that Professor Laskin does not.[2] Fortunately, when reading the book one is warned of what is to follow by the use of the phrase "in my view" usually preceding such a statement.

One of the areas where the author and I part company is on our position on the dogma of supremacy of Parliament. The author suggests that "Parliamentary supremacy is a doctrine which has not proved as frightening an implementation as it appears in theory"[3] and that public opinion has on the whole been sufficient to prevent abuse by Canadian legislatures of the very wide-spread power vested in them. One has only to look at the legislation of Provincial legislatures such as that of Quebec with respect to Communism, or that of British Columbia with respect to aliens at various stages in the past, to realize that public opinion may not be a restraint on legislative action at all and in fact often works in quite the contrary way. The author does discuss some of the more common limits on Parliamentary supremacy such as power of the judicial review of constitutionality i.e. "the division of power approach," of legislation but he does to my mind, play down to the extent of perhaps ignoring some facets of the power of judicial review which have grown up since 1867. When one thinks for example of the many largely futile attempts by legislatures to protect their agencies from judicial review, a point which he makes but does not stress, or of the many places where courts have attempted to define a judicial function, as for example in the *Ottawa Valley Power Company* case[4] or of the "s. 96" cases, one is perhaps more optimistic about the power of judicial review. Even within the limited scope of judicial review granted by the author i.e. the use of division of powers approach, such cases as the *B.C. Power* case,[5] the *Union Colliery* case[6] or the *McKay* case[7] do seem to indicate there may perhaps be more in the "American" concept of separation of powers, than the author would admit. Add to this such cases as *Liyanage* v. *the Queen*[8] and the conclusion seems inescapable that supremacy of Parliament is not such a viable doctrine as the author contends that it is.

In a very useful chapter on subordinate legislation and administrative authority the author suggests that "Boards and Commissions in Canada do not seem to be afflicted by the same difficulties, and certainly have not been publicly criticized as their counterparts in the United States have been".[9] He suggests that some of the reasons for this are the length of tenure of board members being ten years at the Federal level and the fact that the problems faced by boards in Canada are not as complex as those in the more industrialized United States. I disagree

[1] Lederman, Book Review (1965), 43 *Canadian Bar Review* 669, 671.

[2] Laskin, *Canadian Constitutional Law* (3rd ed. revised) 1969, 106.

[3] Cheffins, *Constitutional Process in Canada*, (1969) at 45.

[4] [1937] O.R. 265 (Ontario High Court).

[5] [1962] S.C.R. 642 (Supreme Court of Canada).

[6] [1899] A.C. 580 (Privy Council).

[7] [1965] S.C.R. 798 (Supreme Court of Canada).

[8] [1967] 1 A.C. 259 (Privy Council).

[9] *Supra*, n. 3 at 84.

with both these grounds of distinction. On the question of tenure of the heads of these agencies, the case of *Humphrey's Executor*[10] does seem to give the heads of the Federal agencies in the United States at least, a great deal more independence and protection from removal than the author would admit. On the question of public controversy, one has only to think of the controversy surrounding the activities of the Canadian Broadcasting Commission or of the Canadian Wheat Board, or of the wide-spread interest and criticism in and of the activities of such provincial or local agencies as liquor boards, transport boards, etc. or of such documents as the McRuer Report, to realize that the above statement greatly overstates the Canadian position.

One of the major criticisms of this book is that it largely ignores the position of the municipalities which are perhaps in the least enviable position of all levels of government in Canada. Here is the level of government which most directly affects most individuals with the most inadequate sources of revenue and yet one is not told in any great detail of these problems, which problems have been very seriously discussed at all levels of government in recent years.

In a short chapter on the position of the Crown in Canada, the author seems to suggest that there is in fact, and should be, a certain residual power in the office of Governor-General or Lieutenant-Governor to act on his own initiative in certain circumstances. I think that the author rather over-states the extent to which this power remains in such officials. He uses as his authority the Byng crisis and the refusal of the then Governor-General Lord Byng to grant dissolution and also cites three occasions where Lieutenant-Governors have exercised their right of refusing a grant of disillusion of a legislature. Given that these three occasions were all before 1892 and that the Byng crisis arose in the 1920's, is it realistic to assume that this residue of power would be exercised in the 1970's? The most recent attempt by a Lieutenant-Governor or a Governor-General to act individually, that of Lieutenant-Governor Bastedo who reserved Saskatchewan's Bill 56 in 1961, was very quickly squelched by the Governor-General acting on advice of the Queens' Privy Council assenting to the Bill.[11] One is slightly disturbed by the author's inconsistency in his willingness to grant the executive an independent authority as a control presumably over Parliament and/or the Cabinet and his reluctance to give a wider ambit to the power of judicial review.

The author's chapter on the judiciary indicates the difficulties of writing a survey book of this kind. In his discussion of the relationship between legislatures and courts he again rather overplays the doctrine of supremacy of Parliament to the detriment of the power of judicial review. Here again he shows the inconsistency of his position since he has argued so strongly for an individual power in the Governor-General or Lientenant Governors. It may be a very good question whether courts as presently constituted or manned are capable of exercising a viable power of judicial review, but such difficulties should not preclude and in fact have not precluded the courts from taking such a power.

One of the most useful chapters of the book is a chapter on the Consultative Processes in Canada i.e., on the mechanics of inter-govern-

[10] *Humphrey's Executor (Rathbun)* v. *United States*, 295 U.S. 602 (Supreme Court of the United States, 1935).

[11] *Supra*, n. 3 at 109, n. 10.

mental relations. There can be very few who doubt that given the strictures of the British North America Act and the interpretations placed on it by the "divisions of powers" cases of the Privy Council and Supreme Court of Canada, many of the most important constitutional decisions are now made by governments in this arena. One is grateful to the author for a consideration of this process. So also we are grateful for a somewhat brief overview of constitutional change and constitutional goals found in the final chapter of the book.

The final question that remains is, "who benefits from the publications of this volume?" It seems clear to me that it will be very useful for those to whom it was apparently directed: students in undergraduate courses in departments of political science. On the question of whether it is of some utility to law students one must balance the large amount of useful factual material found in it against the dangers of over-simplification and dogmatism also found there. It could be most usefully read as a companion book to a preliminary course in public law in the first year of law school.

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INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS. Vol. 1, 3rd ed. By Georg Schwarzenberger. London: Stevens, 1957; 2nd impression, 1969. xlviii and 808 Pp. £3.17s. 6d.

INTERNATIONAL LAW, THE LAW OF ARMED CONFLICT. Vol. 2. By Georg Schwarzenberger. London: Stevens, 1968. lv and 881 Pp. £8.8s.

INTERNATIONAL LAW. 2nd ed. By. D.P. O'Connell. London: Stevens; Toronto: Carswell; 1970. 2 Vols. xxxii and 1309 Pp. and index. £17, $48.65.

For many years now Professor Schwarzenberger has been a leading exponent of the inductive approach to international law and has maintained that an increasing role must be afforded in any approach to international law to the contribution made by international courts and tribunals, and especially by the World Court itself. He contends that, too frequently, commentators have tended to assume that international law is to be found in their own writings and the writings of their fellows, and that if States do not acually pursue policies reflecting these views then they are obviously in breach of the law. This *ipse dixit* attitude is becoming less common and writers generally are recognizing that State practice is entitled to at least the same amount of attention as the views of Professor 'X'. Schwarzenberger, on the other hand, has pointed out that one of the clearest manifestations of State views in practice is to be found in the judgments of tribunals that States respect, especially as the occasions on which such judgments have been disregarded are almost countable on the fingers of two hands. Moreover, there is a growing tendency for legal departments of foreign offices to support their contentions by refer-