

Les Cahiers de droit

**D. A. SCHMEISER, "Cases and Comments on Criminal Law",
Butters-worth & Co. (Canada) Ltd., 1966, \$25.50**

Peter W. Hutchins



Volume 9, Number 1, 1967–1968

URI: <https://id.erudit.org/iderudit/1004348ar>

DOI: <https://doi.org/10.7202/1004348ar>

[See table of contents](#)

Publisher(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (print)

1918-8218 (digital)

[Explore this journal](#)

Cite this review

Hutchins, P. W. (1967). Review of [D. A. SCHMEISER, "Cases and Comments on Criminal Law", Butters-worth & Co. (Canada) Ltd., 1966, \$25.50]. *Les Cahiers de droit*, 9(1), 105–106. <https://doi.org/10.7202/1004348ar>

Tous droits réservés © Université Laval, 1967

This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

érudit

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>

lois connexes ? Que pourrait-on dire aussi des renvois judiciaires aux différents articles de doctrine, aux commentaires d'arrêts ?

Enfin, cet ouvrage se complète par quatre dossiers spéciaux de jurisprudence dans des domaines offrant un intérêt évident, tant pour les juristes que pour les commissions scolaires et les enseignants. Nous ne pouvons trouver nulle part une étude plus fouillée sur le nouveau secteur du Droit du travail en matière scolaire (rapports individuels de travail et rapports collectifs de travail) ; sur l'appel à la Cour provinciale notamment en matière d'emplacement scolaire, de construction d'écoles, de soumissions, d'emprunts, de rôle d'évaluation, de transport d'enfants ; sur la responsabilité civile de l'instituteur (surveillance et correction) ; et sur la responsabilité criminelle de l'instituteur (lésions corporelles). Ces dossiers publiés en annexe constituent à mon sens la base sur laquelle doit nécessairement reposer toute tentative à la compréhension de ces secteurs.

Le contenu et la présentation du Code scolaire annoté du Québec, 1967, reflètent tout le soin que l'auteur a mis à charpenter son ouvrage. Celui-ci est d'une utilité dont nous remercions vivement M^e Dupont.

Même si cet ouvrage a été préparé avant tout à l'intention des étudiants en Droit et des juristes du Québec, il est appelé, sans doute, à rendre un immense service aux commissions scolaires, aux enseignants et à ceux que l'administration scolaire touche, de près ou de loin. Il leur deviendra peut-être de plus en plus indispensable. Je le souhaite sincèrement et j'ai plaisir à en féliciter l'auteur.

ME PH.-A. MILLER, C.R.,
Professeur de Législation scolaire à la
faculté des Sciences de l'éducation
(Laval)

D. A. SCHMEISER, *"Cases and Comments on Criminal Law"*. Buttersworth & Co. (Canada) Ltd., 1966. \$25.50.

"With the exception of annotated codes, there is little Canadian material on criminal law. There are some excellent English books, but

the increasing divergence of Canadian and English criminal law requires greater emphasis on Canadian decisions."

Thus writes D. A. Schmeiser in the Preface to his recently published work *"Cases and Comments on Criminal Law"*. There is little doubt that the author has made a valuable contribution to a sparse literature on Canadian Criminal Law. However, what is most important is the nature of that contribution. Furtheron, in his Preface, Prof. Schmeiser states, "The book was compiled as a teaching aid, but practitioners may find it a convenient reference to leading cases." It is in its pedagogical character, then, that we discover the real value of Prof. Schmeiser's work, and that under two aspects :

1. a perspective created through a juxtaposition of particular issues and general principle of criminal law and
2. the dialogue established between author and reader as to the treatment of the problems.

If we look at the format of *"Cases"* we find in the first two chapters an exposé of general principles in criminal law, to wit, in Chapter I basic procedure, proof of crime, proof of intent, territorial jurisdiction, time limitation for prosecution, concurrent civil and criminal proceedings and in Chapter II the elements of a crime. After this foundation the author concentrates on defenses. To this end he consecrates his third chapter on specific defenses (innocent motive, impossibility, necessity, etc...) following it by a chapter on capacity (infants, a corporation...), another on justification (self-defense, defense of property, etc...) and finally one on Parties to Offenses. The only specific offenses dealt with are those treated in his final chapter homicide, rape and indecent assault, theft and false pretences and fraud.

It is within the structure of each section that we discover the teacher in Prof. Schmeiser. Each issue treated, whether it be the physical element of a crime, necessity in the commission of a crime or whatever is

introduced either by the appropriate articles of the Criminal Code and in specific cases other sources such as the B.N.A. Act or by a series of questions situating the issue on the practical plain and illustrating the problems which may be encountered. This is followed by a series of cases reported in abbreviated form so as to illustrate clearly and without supplementary material the issue directly under consideration. Finally at the end of most cases reported the author gives his commentary and refers the reader to additional sources.

By this format Prof. Schmeiser fulfills two great pedagogical exigencies: the situation of the particular issue in practice with an indication of the inevitable problems which arise and a helping hand through the often tortured wording of our criminal code and contradictory jurisprudence toward the solution of these problems.

By way of illustration let us consider his comments upon *Woolmington v. D.P.P.* (1935) A.C. 462.

"The rule that the Crown must prove the guilt of the accused beyond a reasonable doubt is a very simple one, and yet it is frequently breached in practice, and causes law students some difficulty." (P. 21).

Again in dealing with the reverse onus clause in the proof of crime he traces the jurisprudence of various provinces to illustrate how some of our courts have been rather confused about the effect of a reverse onus clause. And in his commentary upon *Rex v. Vickers* (1959) 33 C.P. 182, he offers a valuable warning concerning the isolation of a text of law.

"The Kitson and Vickers judgments illustrate the dangers of a mechanical application of legal rules without reference to common sense and morality." (P. 381).

Dialogue as a pedagogical tool is indispensable and dialogue is what the reader experiences in the pages of *Cases*. The questions, left unanswered for the most part, which appear at the beginning of each section and often in the commentaries on the cases force the reader out

of his traditional passive role. If any indication is given, it is presented in the form of a reference, inducing the reader to ponder and search. Thus he asks in his section on Proof of Crime. "Is the balance of probabilities rule or the reasonable doubt rule preferable? Which rule is more in keeping with the fundamental principles of our criminal law? Which rule did the legislatures intend the Courts to apply?" Here is a point of departure for the dialogue.

This then is the nature of Prof. Schmeiser latest contribution to Canadian criminal law — a revelation of not a solution to the problems inherent in that law. One may not agree with all the opinions offered by the author, however, this effects but little any assessment of the work as a tool for teaching and research. Surely in the juridical formation, as in any discipline, the object is not only to listen dutifully to established authority, but to question the validity of that authority, to maintain the dialogue. It is perhaps with this in mind that Prof. Schmeiser dedicated "*Cases*" "To my students, constantly challenging and inspiring."

PETER W. HUTCHINS,
Second year Law student

ROGER DEHEM, « *Initiation à l'Économique* ». Les Presses de l'université Laval, Québec 1967, 298 pages. \$5.50.

Auteur de plusieurs ouvrages et articles, M. Dehem est une compétence en matières économiques. Il offre ici à tous les intéressés un manuel élémentaire de base.

Ce manuel vient combler une lacune; offrir à ceux qui en auront besoin des notions élémentaires et générales en sciences économiques, le tout augmenté de dimensions historiques, institutionnelles et politiques. Ayant pour cadre l'économie canadienne, l'ouvrage ne délaisse pas pour autant l'économie internationale à laquelle il consacre plusieurs pages.

Si le livre a surtout été conçu en fonction des cours optionnels qui