Les Cahiers de droit

F. H. LAWSON, A. E. ANTON, L. Neville BROWN, *Amos & Walton's Introduction to French Law*, Oxford, at the Clarendon Press, 3rd edition, 1967, 412 pp., $9.25

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conflit, et que par conséquent la souveraineté nationale était en suspens jusqu'à la signature d'un traité de paix entre les deux pays. La régie des zones devait revenir à la Commission mixte d'armistice sous la surveillance de l'ONU.

En adoptant une définition restrictive de la zone démilitarisée, les Israéliens ont pu se permettre d'exécuter des travaux d'aménagement des eaux du Jourdain et du lac Hula, bien que ces travaux aient posé un grave danger à la sécurité de la région. Les Syriens ne pouvaient endurer que ces travaux soient mis à terme, d'autant plus qu'un traité de paix n'était pas intervenu entre les parties pour déterminer le statut permanent des zones contestées. C'est pourquoi la Syrie a toujours préconisé que ces zones soient régies par l'ONU à l'exclusion d'Israël en attendant une réglementation finale du conflit.

Le Dr Bar-Yaacov a bien raison de conclure que, règle générale, l'armistice ne peut fonctionner effectivement que s'il s'agit d'une mesure temporaire qui conduit à courte échéance à la conclusion d'un traité de paix. Mais il aurait dû appliquer cette logique aux activités israéliennes dans les zones démilitarisées de 1949 à 1966, ce qui l'aurait amené à la conclusion que ces activités n'ont eu d'autre résultat que d'éloigner les possiblités d'un règlement pacifique du conflit.

Patrick J. KENNIFF,
Droit II

Alexander PASSERIN D'ENTRÈVES, **The Notion of the State.** Londres, Oxford University Press, 1967, 230 pages. $2.50

La grande valeur de ce livre réside dans l'approche, sinon originale, du moins éclairante d'une notion aussi confuse qu'elle est fréquemment employée, la notion d'État. L'œuvre se veut d'abord pédagogique, comme l'indique le sous-titre « An Introduction to Political Theory ». Plutôt que de présenter une analyse statique, elle se structure sur une vue dynamique d'un concept historiquement instable. Sans être trop appuyées, les lignes de force sont dégagées de façon très satisfaisante, et ce, toujours en respectant le caractère évolutif de la notion d'État. En effet, l'étude se poursuit à travers une suite de tableaux où la notion d'État est arrêtée à chacune des grandes conquêtes de la philosophie politique, depuis les premiers Grecs. Cette présentation permet de bien saisir à la fois la continuité et la complexité de la croissance de l'Etat.

Une telle œuvre cependant, si elle répond bien à des impératifs pédagogiques, ne peut être qu'insatisfaisante à partir d'un certain niveau de curiosité du lecteur; pour être clair, les analyses sont sommaires et peu élaborées. De plus l'auteur accorde une importance disproportionnée aux grands noms de la pensée libérale pour négliger les grands courants modernes sur la notion d'État. Les apports de l'École allemande et de la sociologie américaine sont à peine soulignés.

Si on ne cherche pas un livre qui fasse le point sur le sujet, mais si on attend plutôt une œuvre capable de structurer de façon nouvelle les notions acquises, et surtout capable de les re-présenter dans une perspective de développement et de conquête historique, alors ce peut être une lecture très profitable, d'autant plus qu'elle ne se révèle pas trop fastidieuse, eu égard à la densité du sujet.

C'est souvent ce qui manque à la Théorie politique, une vue globale et une juste perspective de l'histoire du développement théorique de l'État, à côté de sa croissance factuelle.

Claude DUMAS,
Droit II

F. H. LAWSON, A. E. ANTON, L. Neville BROWN, **Amos & Walton's Introduction to French Law.** Oxford, at the Clarendon Press, 3rd edition, 1967, 412 pp. $9.25

This is the third and most recent edition of Amos and Walton's notable work on French civil and commercial law. Considerable revision has gone into the preparation of this edition, particularly in the domain of matrimonial régimes, which were radically revamped in 1965.

Although this work is written for the British lawyer looking across the English Channel to France, its importance to the common law lawyer of Canada seeking to better his understanding of the intricacies of Quebec law cannot be underestimated. Its purpose is primarily practical. In the words of its authors, « It is offered primarily to practising lawyers... in what are known as common law countries... in the hope that they may be induced to look outside their own law and make a first approach to an unfamiliar legal system ». With the growing interdependence of nations and the facility of modern communications, the lawyer who confines his knowledge to the law of his own region runs the risk of alienating himself from vast branches of legal practice where the conflict of laws is taking on a dominant role. Providing as it does a practical orientation designed to assist the common law lawyer in the drafting of cases for opinion, it is invaluable to the student of the conflict of laws. The influence of the Napoleonic Code extends to wide areas of the globe as disparate as Brazil and Egypt, but it is particularly significant in the Canadian context. Without works of this nature written in English, the task of the student not versed in the French language would be insurmountable.

The format of the book underlines its practicality. After a short introduction given to the definition of several essential concepts, the evolution of the French law from Gallic times through the period of the monarchy to the Revolution and the introduction of the Napoleonic Code is summarily traced. The main body of the book is divided into the traditional headings of the Civil Code, each heading being the object of a chapter : persons, property, obligations, torts, successions and matrimonial régimes. A special section is reserved for an examination of commercial law which, contrary to the common law, has not been integrated into the civil law structure.

Throughout, the authors are most careful never to lose sight of their readers. Constant references and comparisons permit the common law lawyer to find his way through the maze of new and frequently unfamiliar concepts with which he is confronted. The language employed is simple and forthright, without any attempts at excessive and abstruse erudition. No attempt is made, fortunately, to translate into English some of the terms peculiar to the French legal system, such as « la stipulation pour autrui », « la gestion d'affaires » or « l'héritier à titre universel ». The authors correctly prefer a detailed definition and explanation to inaccurate and misleading linguistic escapades.

The internal division of each chapter reminds one of the logical divisions and subdivisions which are characteristic of French legal treatises. The authors have preferred to treat under each division the major institutions and concepts related to the chapter heading. In this way the reader is not bombarded with a host of alien notions which would be the inevitable result of a dry and mechanical litany of the articles of the Napoleonic Code.

The common law lawyer or student in Canada who seeks an insight into the intricacies of private Quebec law must however be on his guard to differentiate where necessary between the French and Quebec systems, particularly in the areas of commercial law, matrimonial régimes, evidence and successions. In some of these cases the influence of English law has been felt either by its wholesale introduction or by the substitution of particular provisions of English law within the general framework of the French law. In the case of matrimonial régimes, the distinction is that the entire system in France has been fundamentally altered since the introduction of the community of acquisitions (« la société d'acquêts ») as the legal régime in 1965.

It must be noted also that this book may prove invaluable to students of Quebec civil law in that it serves as an excellent summary of the body of French civil law, thereby permitting the student to draw the distinctions between Quebec and French law so useful when invoking French decisions in support of a case before Que-

bec courts. This task is frequently onerous for the lawyer who must wade through the various classical treatises of French law, and it is often of precious value to have at hand an orderly summary which is both easy and time-saving to consult. In addition, the new chapter on matrimonial régimes is of particular interest, as the « société d'acquêts » will probably be introduced as the legal régime when the present revision of the Quebec Civil Code is completed. A study of the French institution would be an excellent preparation against this eventuality.

Patrick J. KENNIFF,
Law II

H. G. HANBURY, **English Courts of Law.** Fourth Edition, Oxford University Press, London, 1967, 152 pages. $1.50

This little book on the English legal system by H. G. Hanbury has two great advantages for the beleaguered student of law—it is brief and readable. As D. C. M. Yardley states in his Preface to the Fourth Edition, « The volume has been a work of literature as well as of law, and many students have welcomed the aid towards understanding which has been provided for them in so small a compass and in such a pleasurable way ».

The author is primarily concerned with the development and present constitution of the English Courts and in accordance with the spirit of English Common Law his approach is an historically oriented one. The book succeeds in presenting the two great phenomena of the English law —sometimes so baffling to students of other systems—evolution through usage and as the author puts it, « the English dislike for writing down more than the occasion demands ».

For the first—evolution of institutions of English Common Law—Prof. Hanbury has skillfully managed to reduce the contortions of English legal history into general patterns such is his assertion with Maitland that the whole history of English justice and police might be brought under the rubric of « The Decline and Fall of the Sherrif » symbolizing growing centralization. Another example of evolution traced is the trial by jury which we follow from the statut of 1275 authorizing the use of « peine forte et dure » to *Reg.* v. *McKenna* in 1960 when it was held that a judge may not hurry a jury into arriving at their verdict. The author's treatment of the struggle between the three common law courts—King's Bench, Exchequer and Common Pleas—reads like the report on an exciting chess game whereas his chapter on the Court of Chancery and the development of « equity » reveals the mystery of this phenomenon, little known to Civil law systems.

Of perhaps greater value to the reader unfamiliar with the British legal system is Prof. Hanbury's analysis of English aversion to codification as he writes « The English habit of mind prefers the fortuitous to the systematic : it prefers to leave problems to be dealt with as they arise : in a word, it prefers judicial precedent to codification, which has seemed indispensable to framers of the legal schemes of most European countries ».

If any reproach is to be made concerning Prof. Hanbury's work, it would have to be a questioning of the author's somewhat self-righteous tone concerning the legal system he is describing and the judiciary in whose hands it rests. For in any system it is possible to select particular advantages vis a vis others whereas a global comparison is perhaps more just. As for the judicial personnel, human weakness is never absent from the affairs of men.

All in all, however, *English Courts of Law* is a lucid, readable, account of the development of and philosophy behind the English legal system. To read Prof. Hanbury is to begin to understand what to the layman and strangeris often the most perplexing aspect of this system—the fact that it « has not been planned, it has developed "from hand to mouth" with a certain spontaneity, to meet contemporary needs ».

Peter W. HUTCHINS,
Law II