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Alain BACCIGALUPO, *Police et droits de l'homme : droit pénal comparé Canada-France*, Cowansville, Yvon Blais, 2001, 1032 pages, ISBN 2-89451-519-7.

Alain Baccigalupo, né en 1944, a passé la première moitié de sa vie en France et la deuxième ici au Canada. Docteur en administration, sciences politiques et droit, et professeur de sciences politiques et droit public à l'Université Laval, il s'est d'abord intéressé à l'administration par la publication, entre autres, de *L'administration québécoise*, Berger-Levrault (1976), *Les grands rouages de la machine administrative québécoise*, Agence d'Arc (1978), et *Système politique et administratif municipal québécois, une perspective comparative*, Agence d'Arc (1989).

Le présent ouvrage *Police et droits de l'homme : droit pénal comparé Canada-France* est le fruit d'un travail de six ans sur une thèse de doctorat à l'Université de Paris I (Panthéon-Sorbonne). L'auteur explique son choix du Canada et de la France par l'opposition des deux systèmes juridiques, la ressemblance entre les systèmes policiers, surtout au niveau fondamental dû au fait que ces deux pays appartiennent à la civilisation occidentale, et ses connaissances de la langue, la culture, l'histoire et le régime juridique de chaque pays. Il ajoute que si ce choix est circonscrit à deux pays seulement, les analogies possibles entre les deux pays choisis et d'autres pays qui s'inscrivent dans

leur même tradition (soit romano-germanique ou common law) et l'influence que des organes étrangers ou internationaux ont eu sur les régimes juridiques français et canadien permettent de faire des observations qui dépassent les bornes des pays eux-mêmes.

Les trois grandes questions auxquelles l'ouvrage essaye de répondre sont [1] si « le modèle canadien d'inspiration anglo-saxonne protège mieux les droits individuels que le modèle français »; [2] si l'adoption d'instruments telles la Charte canadienne et la Convention européenne des droits de l'Homme ont eu l'effet d'accroître la protection des individus et de rapprocher les deux systèmes, et; [3] quels progrès restent à faire face au *lobby* policier et les réclamations par la société d'une plus grande sécurité collective? L'étude est limitée au stade d'enquête et d'investigation par la police et l'auteur n'examine donc pas l'étape du procès ni non plus l'exécution de la sentence après déclaration de culpabilité.

L'ouvrage est organisé sous quatre grandes rubriques, la première consacrée à la présentation du corpus juridique qui forme la toile de fond de l'étude, la deuxième à la relation entre les pouvoirs de la police et la vie privée, la troisième à la détention du suspect et l'influence des droits de la personne sur le comportement de la police, et finalement la quatrième aux droits de la défense,

soit le droit au silence et celui de consulter un avocat, par exemple.

La méthodologie de base de l'auteur est celle de l'étude comparative de systèmes de droit. Cependant, à cause de sa formation pluridisciplinaire, il étudie les questions dans une perspective beaucoup plus large que celle rencontrée dans bien d'autres textes juridiques. Ainsi, l'ouvrage amène un large éventail de connaissances et de réflexions sur le sujet.

Le texte est très soigneusement recherché et la bibliographie et la table de jurisprudence sont, sinon exhaustives, au moins très méticuleuses. L'ouvrage couvre tous les points importants du thème et constitue un excellent outil de référence.

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John CURRIE, *Public International Law, Essentials of Canadian Law*, Toronto, Irwin Law, 2001, 446 pages, ISBN 1-55221-051-0.

John Currie is a professor at the University of Ottawa where he teaches constitutional law, torts, legal research and writing, and international law. *Public International Law* is the first full-length legal text of which he is the sole author, although he has previously co-authored *The Law of Criminal Attempt: A Treatise*,

Carswell, 2000, (368 pp.), *Injunctions*, Carswell, 1996, (237 pp.), *Supreme Court of Canada Manual: Practice and Advocacy*, Canada Law Book, 1996 — looseleaf, (425 pp.) and was a contributing editor to *Settlement Procedure and Precedents in Ontario*, Butterworths, 1998 (199 pp.).

Public International Law is published by Irwin Law in its "Essentials of Canadian Law" series, which is designed to provide up-to-date concise summaries and analyses of major legal issues of the day and to be "serious but succinct".¹ Regarding this volume specifically, after reminding the reader that international law is not so much an area or topic of the law as it is an entire "legal system" the author indicates that since his volume is meant to be an introductory text, it is therefore beyond its scope to exhaustively examine all the substantive areas of the subject.

Indeed, this text cannot be properly described as an authoritative reference work, but it lives up very well to its stated goals thanks to its lucidity and brevity, which are its distinctive character and greatest attribute. At 446 pages it is more compact than a number of other texts on the same subject, but more importantly, it is written in a concise, even condensed style that lawyers lacking great familiarity with international law and students of law or even political science will surely find very accessible. For a

1. Irwin Law, online : http://www.irwinlaw.com/books.cfm?series_id=1 [visited : May 5 2003].

legal text it is refreshingly light reading and one can easily tackle whole chapters or even the entire work in several sittings and in the process glean an excellent, albeit perhaps somewhat basic, understanding of the key issues in public international law. Those who wish to deepen their understanding of a given topic will appreciate the inclusion of a short bibliography at the end of each chapter under the heading "Further Reading".

The progression from the historical origins of international law through the basic questions (sources and subjects) to more in-depth analysis of sources, then to the matter of the reception of international law in Canadian domestic law and finally to some specific matters such as jurisdiction, immunity and human rights is well conceived and easy to follow. As a neophyte in international law, I found this was, of the several texts I have read, the most effective structure for introducing the reader to the base metals of the subject. The progression is steadily from the broad to the specific, from the simple to the more complex. For example, already in the second chapter, "Subjects of International Law", the author presents in broad terms the four elements of the State. He then returns to fill in the details of each of these requirements in greater detail in a subsequent chapter "States and Territory." This structure has the advantage of quickly providing the reader with a basic understanding of the state and then allowing her to deepen this understanding, if she so desires, by referring to the subsequent

chapter. The advantage of this structure is that one is not obliged to read all of the minutiae concerning the State in order to have a basic understanding of it — it isn't necessary to choose between knowing every detail and knowing nothing at all.

Naturally the author must at times adopt positions on various matters in international law, but I found that he generally tended to make an effort to present any debate or uncertainty surrounding a topic in as objective a fashion as possible rather than adopting and arguing a specific position. This allows those who have little familiarity with international law to begin to understand its discourse and the context of its major debates rather than being plunged into them unprepared by an author who immediately presents his or her argument on the subject. Readers who wish to see the various viewpoints on the debate introduced by Prof. Currie may then refer to works cited as "Further Reading".

Although the work is clearly geared toward a Canadian audience by making reference to Canadian jurisprudence and dealing with certain Canada-specific issues such as the reception of international law in Canadian domestic law, readers should not expect much commentary on current events or the dilemmas in international law of particular concern to Canada. The author eschews references to issues or examples that, while potentially interesting to the reader, are not essential to a basic understanding of international public law in the

strictest sense. On the one hand, this disciplined focus on the fundamentals of international law allows for greater concision, but on the other, it might at times be interesting and helpful in understanding the general principles being expounded if there were some additional discussion of prominent recent issues. As an example, although it is arguably highly relevant and very illuminating even in an introductory text, there is essentially no discussion of the secession of Quebec and the Supreme Court's examination of the principle of the self-determination of peoples in its reference on the subject.

The organization and layout of the work is excellent. The 11 broad themes that form its chapters are neatly presented in a summary table of contents. It may seem a minor point, but a number of works on the same subject contain only detailed tables of contents, which make it frustratingly difficult to get an overview of them since one must decode the various layers of their detailed summary. A glossary of terms, which while being a useful tool in any work, is in my opinion indispensable in an introductory text, is included. The index seems to be sufficiently detailed and contains references to pages in the body of the work and its glossary. One problem I remarked, however, is that some of the page numbers indicated in the index are inaccurate. In all cases the erroneous references were only one page off and the references were therefore easy enough to locate. But needless to say, this inconvenience,

although minor, is unfortunate. There is also a table of cases cited which includes both national and international decisions. A table of legislation and international texts providing page references for the various instruments referred to might be a useful addition in future editions.

This book will therefore be most interesting to those who wish to glean a basic understanding of international law as well as those seeking a clear and concise summary of certain points as a primer for additional research. The first group, who will not wish to do any of the additional reading, will find that the book can be read relatively quickly and with a high level of comprehension and that the introductory chapters provide a quick understanding of the key issues in international law. These individuals will find some opportunity to progressively acquire deeper knowledge in subsequent chapters while not delving too deeply into all of the esoteric specifics of public international law. Those who are looking for a starting point for research will appreciate the "further reading" as a bibliographical launching pad and will find that those readings can be understood and placed in context thanks to the skeletal understanding provided by Prof. Currie's work. In both cases, this is a book to be read, either by chapter or in its entirety, rather than to be referred to as an authority on specific points of international law.

Public International Law is available from Irwin Law for the price of \$49.95 and may be pur-

chased directly from the publisher online at <http://www.irwinlaw.com/>

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Maurice MARTEL, Paul MARTEL, *La compagnie au Québec : Les aspects juridiques*, volume I, Montréal, édition spéciale, Wilson & Lafleur, 2002, pagination par chapitre, ISBN 2-920831-88-7.

M^{es} Martel nous offrent une mise à jour de leur célèbre ouvrage *La compagnie au Québec : Les aspects juridiques*¹. En fait, il s'agit plus d'une simple mise à jour car la version 2002 reflète l'entrée en vigueur du projet de loi S-11 qui a apporté plus de 200 modifications à la *Loi canadienne sur les sociétés par actions* et requis l'adoption du nouveau *Règlement sur les sociétés par actions* (2001).

Cet ouvrage demeure fidèle au plan élaboré dans les éditions antérieures. En effet, les premiers chapitres sont consacrés à la définition de compagnie, l'historique des droit des compagnies, et les aspects constitutionnels. On traite ensuite des formalités de constitution et des notions de prorogation (fédérale) et de continuation (provinciale). Un chapitre consacré au siège social de la compagnie est suivi par un autre consacré au nom de

la compagnie. Suivent des présentations sur la capacité et les pouvoirs de la compagnie, sur la publicité légale, sur des livres, registres et sceau de la compagnie. Une étude détaillée s'étendant sur plusieurs chapitres est ensuite faite sur la notion de capital-actions. On traite du conseil d'administration, des administrateurs, des dirigeants de la compagnie, des conventions entre actionnaires, des assemblées, de la compagnie face aux tiers, et de la protection des actionnaires minoritaires. L'ouvrage conclut en expliquant les diverses formes d'emprunt de la compagnie, les procédures de fusion et acquisitions de compagnies, la fin de l'existence corporative, et les obligations statutaires particulières aux compagnies « publiques ».

Le chapitre 18 traite de l'acquisition et l'échange d'actions, et le chapitre 19 traite des droits et obligations des actionnaires. Le chapitre 28 a été réaménagé de sorte qu'il renferme des commentaires sur la convocation des assemblées et une section sur les assemblées « à distance ».

En annexe se trouve un index des sujets, un index des lois citées, un index des règlements cités, un index des principaux arrêts cités, une liste des tableaux, et une liste de livres de références recommandés.

1. Pour les recensions antérieures, voir : (2001) 31 *R.G.D.* 239-240; (1998) 29 *R.G.D.* 261; (1998) 29 *R.G.D.* 115-116; (1997) 28 *R.G.D.* 125-126; (1993) 24 *R.G.D.* 457; (1991) 22 *R.G.D.* 875-876; (1989) 20 *R.G.D.* 756-757.

Dans leurs explications de la matière, les auteurs font un bel exposé en parallèle principalement de la *Loi canadienne sur les sociétés par actions* et de la *Loi sur les compagnies du Québec*. Mais ils examinent en fait toutes les lois qui touchent le droit des compagnies, notamment la *Loi sur les valeurs mobilières*, la *Loi sur la publicité légale des entreprises individuelles, des sociétés et des personnes morales*, et la *Loi sur la faillite et l'insolvabilité*.

Les auteurs y vont également de commentaires à l'égard de l'état du droit. À titre d'exemple, dans le chapitre 19, ils critiquent sévèrement les clauses de dividendes « discrétionnaires » et par surcroît le célèbre arrêt *R. c. McClurg*² qui a reconnu la validité de ces clauses.

On propose également des recommandations susceptibles d'améliorer les lois étudiées.

Cet ouvrage constitue une présentation complète et détaillée du droit des compagnies. Il représente une excellente source de référence pour les praticiens intéressés par la matière en question. En fait, ce livre est surtout destiné aux praticiens. Les étudiants pourraient avoir de la difficulté à assimiler l'énormité et la complexité de la matière. Nous les référons donc au manuel étudiant intitulé *Précis de droit sur les compagnies au Québec*³ qui est en fait une ver-

sion abrégée de *La compagnie au Québec : Les aspects juridiques*.

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Jurists from varied backgrounds and specializing in different areas touching upon civil liberties, human rights and fundamental freedoms, and those who hold an interest and respect for the Rule of Law, cannot ignore the signal instruction found in this exemplary publication. Indeed, all of us who are trained in the law must recall the examples in recent history in which the law was an instrument of domination, oppression and aggression. One of the foremost examples is drawn from the early years of Hitler's ascendancy in Germany, and the regime of laws that subverted justice and introduced tyranny. In this respect, *Deaf People in Hitler's Europe* provides a contemporary study of the legal system that introduced compulsory sterilization of the deaf, *entre autres*, and led the way to such other perversions as passive euthanasia and the destruction of "useless eaters".

2. [1990] 3 R.C.S. 1020.

3. P. MARTEL, *Précis de droit sur les compagnies au Québec*, 1^{re} éd., Montréal, Wilson & Lafleur Ltée, 2000.

The Preface, penned by Professor of History Donna F. Ryan of Gallaudet University, discloses how the impetus for this book was a conference held in 1998 entitled *Deaf People in Hitler's Europe, 1933-1945*, but that the result is not merely a record of proceedings. Instead, the editors have compiled an anthology of essays by means of which they bring life to the various struggles and hardships visited upon the deaf communities of Europe as a result of Nazism, and having their genesis a carefully crafted code of law. The book is meant not only to honour the courageous deaf survivors of the Holocaust by underscoring their experiences as deaf members of a community under the most systematic attack recorded in the annals of history, but to make plain for us the no less noble members of the deaf community in Europe that did not survive the horror. At the end of the day, these editors are to be commended for they have achieved much more than the modest assertion of having strung together several threads of investigation and scholarship: they have produced a timely and thought-provoking collection of articles and essays that reveal how the victimization of the deaf resembled and differed from that of the non-deaf community and in so doing, have overcome the many barriers in communication that confront the deaf. And, in addition, they have pointed to legal historians of the Holocaust (and jurists dedicated to the protection and promotion of liberty) an area of scholarship that has been under explored over the years.

In particular, I wish to underscore the value of the Introduction. It serves to make plain that recent historiography has recognized how often actions undertaken against people with disabilities were categorized as peripheral to the Holocaust and yet, our renewed understanding of Nazi eugenics leads to the conclusion that people with physical and cognitive abilities were targeted for special measures, from forced sterilization to outright liquidation, but always under the umbrella of legislation.

Hence, one is left with the belief that the book would have been different in quality and kind had it been written some years earlier. The focus of the Holocaust now embraces more than its principal victim, European Jewry, and touches upon new elements of inquiry. In addition, previously unknown documents have been made available from former East Germany and from the Soviet Union. The focus of historical research now embraces the plight of other groups, be they political opponents, religious minorities, or persons with challenges such as the Deaf. One recent example of this broadened scope of reference is Raul Hilberg's *Perpetrators Victims Bystanders*, Harper Collins: N.Y., N.Y., 1992.

As we understand from the Introduction, there is a commonality in suffering and a commonality in the scholarship that studies such suffering. The efforts of researchers and students of the Holocaust leading to books such as *Deaf People in Hitler's Europe* have brought together survivors

and scholars who might not otherwise have met, to our collective loss. In the ultimate analysis, we are given signal insights about the nature of life (and death) as a Deaf person under Hitler, and of life as a Deaf Jew under Nazism, and of the perversions that were enacted and implemented as part of legislation.

As for the other three parts, the reader is provided with a useful introduction. As we read, broad pseudoscientific theories, social policies, and mental images of an ideal population for the thousand year Reich informed the legislative scheme and governed the treatment of deaf people during Hitler's regime. Indeed, Henry Friedlander's essay, *Holocaust Studies and the Deaf Community* points to the origins, development and deadly *dénouement* of Racial Hygiene: how from a philosophy imbued by eugenics the treatment of the deaf and other challenged groups moved from concern as to their relative lack of contribution in the new world view to their lack of worth to the final belief that they were an outright organic blight that had to be eradicated. The historical context for the persecution of deaf people explains and foreshadows the persecution of many other groups, notably the Jews. In this respect, this often-overlooked feature of the treatment of the regime's first victims, being the ill, the insane, the deaf and so many others, may yield significant insights into the development of such barbarism, under the cloak of legality. As we read at page 22 and page 25, by way of limited

example, congenital deafness was identified as so disturbing an "ailment" that to permit such persons either to bear children, or to remain alive, was contrary to the needs of the community. If a society can sacrifice its best citizens in armed conflict, it must sacrifice its least deserving ones in equal measure, at the very least...

The second essay, *Eugenics in Hitler's Germany*, by Robert Proctor, highlights the signal role played by the medical profession in characterizing passive disabilities as active manifestations of a disease process requiring radical intervention, not unlike the need for an amputation. Once again, we are made to understand that the perversion of morality and ethics in the treatment of deaf persons and others labouring under certain more or less significant challenges eased the way for the widespread loss of any sense of mercy and compassion during the war years. Stated more bluntly, the capacity to view a deaf or otherwise disabled child as a person whose life was without intrinsic worth and could be ended by passive or active means, including gassing, merely paved the way for a global view that entire communities were without redeeming features and could be expunged without hesitation.

Although many more examples might be advanced to make plain how barbarism came to enjoy a legal status under Hitler, these few will suffice to highlight how the fundamental purpose of lawyers must be to protect those who are unable, for whatever reason, to defend themselves

against injustices. *Au demeurant*, our failure to recall and to understand the lessons of the past in this respect may well condemn many more to suffer the victimization that was visited upon the deaf

people of Germany, and then Europe, under Hitler.

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