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## A History of Dalhousie Law School

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# Reviews

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*A History of Dalhousie Law School.* By John Willis. Toronto: University of Toronto Press, 1979. Pp. viii, 302. Price: \$20.00

As the author is at pains to tell us at the very beginning, this is not an earth-shaking book. Furthermore, Professor Willis states in his preface that the project was started by the late Dean Emeritus Horace Read and thus is the work of two hands; if Willis himself had originated the project, “The book I should like to have written about the Dalhousie Law School would be something very different from this . . .” At that point, the reviewer felt some unease about the task at hand. He need not have worried: the history is a successful and worthwhile undertaking — and a delight to any “old boy” as Willis calls us — not just because it is carefully researched and well written by an eminent scholar about a subject of historical significance for Canadian legal history, not even because it is interesting and sometimes quite entertaining; the remarkable thing about John Willis’ history is that it *is* John Willis, the superlative teacher, speaking to us. Here is a man who has taken his classroom technique, so highly praised by all his students, and translated it into telling a rather longish story. First, he tells us why he is going to tell us about the subject; second, he outlines what he is going to tell us; third, he tells it to us; fourth, he summarizes what he has told us; and finally, he reminds us again why! Along the way he discusses the biases and limitations of the chief actors and himself, so that we are better able to judge the contents for ourselves. What more can we ask of a great teacher short of having him with us in a classroom for questions and discussion? It is unlikely that Professor Willis set out deliberately to use his technique; it just seems to flow naturally from the introduction onward.<sup>1</sup>

Three basic themes (not in Willis’s own order) recur throughout the story. The first is the contribution of the great founding dean, Richard Chapman Weldon, and his immediate successors in setting the aims of the Law School: to aspire, to dare to aspire ceaselessly, to teach law in the grand manner — law as a great institution of western society, for prospective lawyers who are urged to make

1. The author becomes aware of his own technique rather late on, At page 205, he says, “This Part already smacks too much of the legendary sergeant-major’s method of instruction — ‘First I tells ’em what I’m going to say, then I sez it, then I tells ’em what I said’ . . .”

their contribution to the public good. The daring lay in acting upon the inspiration in full knowledge of the economic poverty of the region and the resulting lack of financial resources to back up the constant striving. Perhaps anywhere else in Canada, above all in hardheaded Ontario, the effort would have been regarded with contempt or, at best, seen as no more than the result of foolish *hubris*. Certainly there were times when a lesser breed would have succumbed to despair. Perhaps inwardly they did at times, but they never gave up the struggle. The succession of deans in the first seventy-five years, every one of them, fought an unrelenting battle for resources with impoverished and sometimes not very sympathetic Dalhousie presidents and Nova Scotia governments.

Among the many trying periods, perhaps the most harrowing was from 1944 to 1945. In 1944, Dean Vincent MacDonald was called back from wartime service in Ottawa as Deputy Minister of Labour to forestall the virtual collapse of the School from loss of staff. John Willis himself left Dalhousie that summer, leaving only the returning MacDonald and George Curtis as fulltime teachers, with help from a number of practising lawyers to alleviate the crisis. True, there was a very small wartime enrolment in that year, but a full curriculum was still required; it must have been nerve wracking trying to carry on under such conditions. The next year, 1945, MacDonald managed to add two new junior members to bring the fulltime staff up to four in anticipation of the flood of returning veterans, but three weeks before the start of the fall term Curtis left to become dean of the new school at the University of British Columbia. And yet they coped, and once more began to rebuild.

The second theme is the success of this constant striving in the face of adversity in producing a remarkable group of leaders for Canada. The names are too familiar to list here yet again. We should note, however, that there were other factors at work (only briefly alluded to by Willis) than the Dalhousie Law School, and they deserve mention. Nova Scotia shared important characteristics with Scotland, the ancestral home of many of its citizens: a small region with little in the way of natural resources and opportunities for material success, and a hardy, thrifty people with a reverence for learning and the need to make their fortune in more prosperous parts. "Dalhousie's Little Law School" complemented that heritage well; it provided able and energetic young people with the tools and training to achieve their goals. In politics especially, law has been a major — if not *the* major — path to success, and

Dalhousie Law School was the main Maritime entrance to that path.

Of signal importance to Dalhousie's success, in the reviewer's opinion, is a sub-theme recurring again and again in Willis's account, but described with remarkable restraint for a man of his frankness — the failure of the rest of English-speaking Canada to provide any leadership in legal education until the arrival of the prairie schools after the First World War, and then providing it only in a minor way. In this sense Dalhousie's leadership, for which it deserves the highest praise, was as much a result of the vacuum elsewhere as it was of the School's own strength.

Ontario, for most of the years since Confederation, has contained half or more of the population of the common-law provinces of Canada, and enough wealth to have provided the resources for high quality education in law as it often did in other disciplines. The rest of the English speaking population in the common-law provinces was thinly spread across the country with limited resources for higher education. The chief culprit in this story, always too lightly excused even by Willis, was the repressive and narrow-minded Law Society of Upper Canada of the 19th century and first half of the 20th. It should be noted that in the 19th century, all four Ontario universities, Toronto, Queen's, Western and Ottawa, actually founded law faculties but the Law Society forced them to close. My own university, Queen's, tried twice (both times before Dalhousie began) — 1860 to 63, and 1880 to 83 — to carry on legal education. Both times the law faculty had to close its doors after its first graduates were refused recognition by the Law Society.

In its anxiety to maintain its monopoly over the legal profession the Law Society stifled all potential rivals and in the process made a mockery of law as a scholarly discipline. Such quality as there was at the Ontario bar was due to the innate ability of individuals overcoming the legal environment created by the Law Society. The harm done to the quality of law in this country over such an extended period has not yet been undone, if ever it can be. In 1957, partly through the efforts of more enlightened leadership and partly through the necessity of coping with the coming tide of post-war students, the Law Society made partial amends by agreeing to a system of university legal education in Ontario. Canada as a whole owes the Nova Scotia Barristers' Society and Dalhousie University special gratitude for undertaking and never failing in their commitment to university legal education, while others abdicated their responsibilities.

Thus we are led to Professor Willis's third major theme of continuity and consistency. Despite occasional, and in some periods rather frequent, crises over losses of staff — as in 1944 and 1945 — on the surface the School always managed to function in a more or less normal way, through wars, depression and boom periods, admitting students each fall and graduating classes with never less than adequate training and education. Loyalty, high spirits and a tradition of pride, but not overweening pride, in the School carried it through adverse times. Changes took place slowly but never too slowly to adjust to the times and meet the challenges.

Accordingly, in 1957, when the new arrangements between the Law Society of Upper Canada and Ontario universities opened the way to the eventual establishment of a total of six well funded academic law faculties, Dalhousie may have seemed in danger of being swamped as Ontario poured its great resources into the enterprise. But Dalhousie had begun to amass its own resources a few years earlier in the form of aid from Viscount Bennett, Sir James Dunn and the province of Nova Scotia itself through the concern of Premier Angus L. Macdonald. It accelerated its growth in the late 1950's and the 60's to meet the challenge to maintain a position as a leading law school. Here we encounter the reviewer's only disagreement of any consequence with Professor Willis: the 1957 agreement in Ontario was not a "minor revolution" as Willis states (pp. 151-52), at least in the sense of being a minor event. It was an important change for legal education both in Ontario and the rest of Canada. It almost doubled the number of common law faculties in Canada, thus adding substantially to the total resources available for legal education, to the opportunities for students to obtain that education and to the career opportunities in law teaching. In terms of population and resources, before 1957 legal education in Canada "had one arm tied behind its back"; the 1957 agreement freed that other arm.<sup>2</sup>

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2. An important aspect of the 1957 developments in Ontario was the final achievement of full portability for Dalhousie's, as well as other schools' LL.B. degree. Willis discusses this change at pages 185-6, as follows: "What this change meant for the School was something that everyone now takes for granted. Using Ontario as an example (it is in practice the most usual one), since 1957 a Maritimer who wants to practise in Ontario can, without suffering any penalty, do his law school work at Dalhousie and an 'Upper Canadian' who is proceeding to the Ontario Bar does not have to go to an Ontario law school but can, again without suffering any penalty, come, if he wants to, to Dalhousie. They could not do that before 1957. For Dalhousie Law School which, as has always been the case, 'must

The importance of this change is well illustrated by Dalhousie's position before and after it. Until the emergence of the law school at the University of British Columbia and the "renegade school" at Toronto in the 1950's, Dalhousie even with its very modest resources was the clear leader in legal education in common law Canada, established as it was in a university home with an ever supportive provincial bar. From 1957 onward, if it had failed to change it would surely have dropped to a minor position. However, even the great resources poured into the School could not maintain its primacy. It has had to share its position as a front rank school with several others. Even to do this is a noteworthy (but not unexpected) feat for a school removed from the major centres of population and in a region which remains economically poor compared to most of the country.<sup>3</sup>

To return for a moment to the theme of continuity and consistency, after discussing the important events that led to the founding of the School in 1883 with Weldon as its first dean, and recounting the two brief tenancies of two years each in temporary quarters, Professor Willis describes the move to the Forrest Building in 1887 and then says:

With minor changes in the curriculum and in aims, [the School] remained almost exactly the same until shortly after the end of the First World War. . . Even as late as the end of the second World War, it would still be recognizable as the same, despite an increase in the number of full-time faculty . . . and an increase in the normal student body . . . It could indeed be said that it was not until after the School moved to its fifth and present home in the Weldon Building that 'anything really happened', so that this history might well end here in 1887 and begin again in 1966. So well and truly did the founders of Dalhousie Law School lay its foundation (p. 45).

Willis is, of course, exaggerating; otherwise he could not have filled the next 160 pages so interestingly. Still there is a point: the School remained in the same location with very little change in space for sixty-five years! And when in 1952 it did move to the Studley building, built for it thirty years earlier but "temporarily"

*export or die,' this innovation is easily the most important of all that came about in 'Changing,' the years 1945 to 1966'* [italics mine].

3. At page 239, in discussing curriculum innovation in the late 1960's, Willis acknowledges how much activity had shifted westward: "The move [curriculum changes] drew its inspiration from Ontario, where there had been a positive ferment of ideas on legal education ever since universities in that province were in 1957 for the first time allowed . . . to enter the field . . ."

occupied by the Faculty of Arts, it was less of a change than might have been expected — the building was already too small the day it was occupied. The change was from utterly cramped and inadequate quarters to somewhat less cramped and less inadequate ones. The fact that the School was still “recognizable” says much for continuity but understates the amount of change that had in fact taken place in those sixty-five years: in curriculum (major changes after Weldon retired in 1914, with a series of additions in the 1930’s and ’40’s); in the relative roles of fulltime faculty (increased from one and a half to five) and downtown lecturers; and in the size of the student body (from forty-odd to one hundred and fifty or so). Indeed, Professor Willis takes care to point out the importance of large increases in numbers of staff and students at various points in his story.

He also points out that the pace of change began to quicken in the mid 1950’s. It accelerated even more between 1960 and the point where the story ends, 1976, so that in the latter period it changed more than it had in its entire previous history. He spends more than a quarter of the book on this period and justifiably so; not only did more happen, but more of immediate interest and relevance for more readers. Thus, in speaking of the major changes in the curriculum during the last decade and a half he notes:

. . . the striking changes made in the curriculum of the School during this period are not peculiar to it; they are similar, with local modifications, to those made in all the other common-law schools in Canada; they belong more to a history of legal education in Canada than to a history of Dalhousie Law School (p. 237).

The author concludes on a note of careful optimism about the Law School of the late ’70’s, and adds:

Has the School, with all these changes, become ‘just another law school’? I do not think it has. Its claim to fame among ‘outsiders who know’ has always been that it takes its students very seriously, in the sense that it spends more time and trouble on its teaching than do most other Canadian law schools. It still does (p. 245).

Professor Willis’s history is bound to stir many memories for anyone who had a firm connection with the School. For instance, to the students of the immediate post Second World War period, Angus L. Macdonald was a giant of a man — a consummate politician who could chat as easily with a south shore fisherman as with a New

York financier and yet remain a humane man and a first class scholar as well. In September of 1952, when the School held a symposium marking its move to the “new” building on the Studley campus, I was an articled student in Halifax. My enlightened principal, in the tradition of the Halifax bar, freed me to attend the sessions. While taking nothing away from such luminaries as Dean Griswold of Harvard and Dean Curtis of the University of British Columbia, nor from so brilliant an orator as former Dean Mr. Justice MacDonald — all of whom gave major addresses — it is my strong recollection that in virtually everyone’s opinion “Angus L.” gave the most stimulating and worthwhile contribution to the proceedings. It was something to marvel at, to see a politician of his stature perform as a first class scholar on that occasion, more than twenty years after he had left academe.

And Professor Willis’s careful appendix on “How the Dalhousie LL.B. Degree Became Portable” reminded me of my own experience with portability. After being called to the Nova Scotia bar in 1952, I spent a year in business before applying for transfer to Ontario in 1953. It was during a confused transition period, when the Law Society of Upper Canada was moving from imposing a purely financial barrier to transfer to an as yet undetermined educational qualification. The Law Society worried about any accusation of applying new 1953 rules retroactively to someone who had qualified under the old 1952 financial rules. So it decided to give me a choice: pay \$1500 or serve 15 months under articles — “\$1500 or 15 months” as the judge would say in criminal court! (I chose 15 months because I could not earn anything approaching an extra \$100 per month by obtaining my call earlier.)

Professor Willis has told the story of the Law School with clarity, unfailing frankness and good humour. We should not conclude without sampling a few typical comments:

The depression was, on the whole, kind to the School. It brought two full-time teachers, Curtis and Willis, who probably would not have come there in the first place if they had had anywhere else to go, and, what is more important, kept each of them there for eleven years; result — a fairly stable faculty (p. 117).

Willis’ students of the vintage 1933-40 . . . were not on the whole very good students, “excepting always a few outstandingly able ones . . . Too many of them were unable to read or write, using those words in the university sense. And they were surprisingly ill-informed; so that looking back at the things I



talked to them about in order to put the 'law' I was giving them in perspective, I shudder at the contemptuous reception I should get from Dalhousie law students now if I dared to assume they did not know them" (p. 140).

[In the early 1960's] Edwards is experimental: he tries, without success of course, to get going in Halifax an interdisciplinary institute of criminology . . . (p. 198).

He [Dean MacKay] was not, however, afflicted by excessive conservatism which had made Read [in his last years as dean] so ready to fall in with the penny-pinching of President Kerr (p. 204).

[In 1967 the students] . . . organized and held at the School a cross-Canada student conference on the crisis in Confederation (on which no faculty member had written anything) . . . (p. 210).

And finally, in describing the new mix of students in the 1970's, Willis says they include

. . . more than a handful of unmotivated refugees from other disciplines, people who do not really want to become lawyers but have drifted into law because of the disheartening job prospects of the graduate schools where they would really like to be (p. 234).

This book should be read by all graduates of the School, and indeed by anyone interested in Canadian legal education and how it has arrived where it is today.

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*Philosophy and Social Issues: Five Studies.* By Richard A. Wasserstrom. Notre Dame: University of Notre Dame Press, 1980. Pp. x, 187. Price: \$15.95.

Wasserstrom needs no introduction to the realms of jurisprudence.<sup>1</sup> A prominent legal scholar, his works in sociological jurisprudence

1. See for example, Wasserstrom, *Racism, Sexism and Preferential Treatment*, 24 U.C.L.A. L. Rev. 581 (1977); Wasserstrom, *The University and the Case for Preferential Treatment*, 13 Am. Phil. Quar. 165 (1976); *The Obligation to Obey the Law*, 10 U.C.L.A. L. Rev. 780 (1963); Wasserstrom, "Some Problems with Theories of Punishment" in *Justice and Punishment* (ed. J.B. Cederblom and

combine his skill as a lawyer with his perceptions as a social scientist. He ably provides the reader with a framework in which the utility of legal institutions can be measured against the familial and cultural fabric of American society.

This book, *Philosophy and Social Issues*, consists of a collection of articles. These include: Racism and Sexism, pp. 11-50; Preferential Treatment, pp. 51-82; Punishment, pp. 112-151; Conduct and Responsibility in War, pp. 152-187. Each article comments upon very real social concerns. Each analysis considers such salient questions as the interrelationship among law, racism and sex discrimination, the effect of preferential treatment upon law reform and the nature of individual responsibility in times of war. All the articles share these common features. They postulate that the development of law should respond to the evolution of social-cultural values. The reform of criminal law should be based upon the realities of criminal behaviour. The extent of preferential treatment should respond to the character of preferential need, while the legal regulation of sex and race should reflect the extent of sexual and racial differentiation in society.

Wasserstrom's approach towards social-legal problems is illuminating in various respects. For instance, in rejecting the traditional foundation of sex discrimination, Wasserstrom proposes that biological differences between male and female do not justify, in and of themselves, the restructuring of sex roles in society. Thus physical differences between the sexes, while differences of fact, fail to carry an implication of female subordination. Nor does physical distinction suggest a subservient or limited societal function for women. Wasserstrom pointedly identifies the questionable importance that is attached to physical strength in determining male and female roles in society. He demonstrates a sensitive awareness of the flaws underlying social and cultural precepts. Equally significant, he reflects upon the key distinctions between differentiation and discrimination in the social-legal framework (see especially pp. 41-43).

The author nevertheless recognizes that differentiation, as distinct from discrimination, may be justified in terms of the political and economic interests of society. For example, he argues that

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W.L. Blizek, Bollinger Pub. Co., 1977); Wasserstrom, *The Laws of War*, 56 *The Morist I* (1972); Wasserstrom, "The Responsibility of the Individual for War Crimes" in *Philosophy, Morality and International Affairs* (ed. V. Held et al., Oxford University Press, 1974).

programmes which give preferential treatment on grounds of race or creed are often warranted by reason of history, morality and justice. Even more importantly, such preferential programmes may be necessary in order to promote an efficacious and viable social-legal order in which preference is a means towards community progress. In questioning the *Bakke*<sup>2</sup> decision, Wasserstrom adds that law reformers are often obligated to evaluate the benefits of preferential programmes, more in order to assess their operative efficiency than to challenge their existence as social-legal institutions.

Wasserstrom's analysis does have deficiencies. In particular, differentiation and discrimination are not wholly distinguishable forces in human interactions. So long as groups of people are viewed differently, discrimination is a likely by-product of such differences. Thus differentiation on the basis of social or cultural affinity may well accentuate, rather than suppress, discrimination in terms of racial identity or political affiliation. If history has taught one lesson, it is that the art of distinction and the inclination towards prejudice are seldom far apart in human affairs.

Wasserstrom, in this book, undoubtedly provides a valuable addition to the literature in jurisprudence. His analysis depicts the complex role that must be played by a legal system in its attempts to regulate social prejudice and cultural bias. His study identifies the interdisciplinary forces that affect collective progress. His synthesis reflects upon the reasons behind social-legal regression and community advance.

Wasserstrom does not offer any magic solution to the ills of conventional society. He does not tell us precisely how the common law should face up to conventional stresses in a world of conflict. Nevertheless, Wasserstrom does offer a most valuable facility. He offers social-legal awareness as a means towards self-illumination and community development in human affairs.

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2. *Regents of the University of California v. Bakke*, 98 S. Ct. 2733, 2755 (1978).

*Land Use Planning: Techniques of Implementation.* By T. William Patterson, New York: Van Nostrand Reinhold Company, 1979. Pp. xix, 342. Price \$25.95

Francis Bacon pointed out long years ago that only a few books are to be thoroughly chewed and digested. Others need or deserve a lesser degree of mastication. In these times of impractically large volumes of reading material, Bacon's perspective should be borne in mind. Even we in the academic community ought not to feel guilt over not digesting all new works reaching our libraries; if we did, neurosis would surely follow since the all-consuming nature of the task would distract us from other worthy pursuits.

In this context book reviews become of some consequence since they hold the capacity to acquaint their readers quickly with the level of epicurean interest appropriate to the book at hand. Not all bring the same perspective, and so, to carry the gastronomic analogy further, one man's meat might prove to be another's poison. The decision to read or not, and if so, with what degree of diligence, ultimately lies with the prospective reader. The task of the reviewer is to disclose enough of the book to facilitate the potential reader in the decision-making process.

What of Patterson's book? In short, if you desire a tightly compartmentalized academic description and evaluation of techniques for implementing land use plans, it will more than repay the effort of reading. The organization of the book makes it easy as well for those whose appetite dictates picking and choosing from the morsels contained therein.

Mr. Patterson is, according to the publisher, a planner with both practical and academic experience. He presently teaches urban planning at Purdue University. The book itself forms part of the Van Nostrand Reinhold Environmental Engineering Series.

This Series is "dedicated to the presentation of current and vital information relative to the engineering aspects of controlling man's physical environment" (p. vii). The relevance and importance of the way we use land to our "physical environment" is obvious, the relationship of techniques of implementation to "control" shows something about the way the central focus of the book fits into the Series' objectives, and the emphasis on "engineering" says volumes on the approach and style of the book. It is not apparent to this engineering layman, though, as to how that discipline embraces and has particular application to land use planning, and this book

does not suggest an answer to my difficulty, except in its style of presentation. The book is redolent with engineering-like directness and crispness. Mr. Patterson, if not one himself, seems to bring an engineer's delight in order and structure to his organization of the subject matter. He introduces subjects with a general overview before proceeding to the specific and follows a chronological sequence where appropriate. These features add to the book's utility.

The major strength of the book lies in the extent to which it passes beyond the standard techniques of implementation to discuss innovations and beyond the descriptive to evaluate each technique. In this context, it is chapter 7 which may be of most interest and importance. After canvassing the major issues in chapters entitled "The Context for Plan/Policy Implementation", "Zoning", "Subdivision Regulations", "Supplemental Regulations and Tax Policies", "Financial Planning and Capital Improvement Programming", and "Special Districts and Public Authorities", the author modestly introduces "Toward More Effective Implementation of Land Use Plans". This chapter is the meat of the book taking up 116 pages. It introduces us to and focuses on what is variously termed "land use guidance systems" or "growth management systems" or "growth guidance systems". The "systems" approach is thought to be the most helpful as it seeks to recognize and reconcile the complexities of the task; the "growth guidance" notion is a recognition that plans do not make things happen and that the best we can do is guide the forces that impose change. Thus, we should focus on such matters as the "control of the location and timing of new development and redevelopment and the provision of the necessary infrastructure for both in accordance with adopted land use and financial plans and policies" (p. 195). A more detailed exposition of the components of the land use guidance system takes up about 3 pages (p. 194-97).

The bulk of this chapter then presents a description and an evaluation of a great many proposals and efforts pertinent to land use guidance. These begin in chronological order with those by professional planners and urbanists (Fagin, Chapin, Reys, Bain, So, and Canty) followed by those recommended by government and professional organizations (including the American Law Institute's Model Land Development Code of 1975), and ending with separate sections on innovative state reforms and innovative local (i.e. the City and county level) guidance systems. The task of bringing

together information of a descriptive nature in relation to these various approaches would alone justify the book. Professor Patterson's efforts to integrate and evaluate them represent a very valuable contribution to the planning literature.

Taking the evaluative approach a step further, the book ends with a chapter suggesting workable directions for future reforms and innovations in the means for carrying out land use plans in urban areas.

From the standpoint of a neophyte to land use planning, this book ought to prove particularly helpful (this is not to say that it would not be valuable to those "students" who have graduated and are professionally occupied in the field). There is a short (2½ pages) introduction that capsulizes the history of land use planning (from the City Beautiful through the Garden City movements, from physical planning into broad non-design fields), and each chapter has introductory overviews before moving on to the details. Students are as well likely to find that the tight structure gives a semblance of order to this abysmally complex subject.

Are there not shortcomings in the book? Yes, some. For one, the author's writing style is not uniformly good. At one point (p. 316) this long, difficult sentence appears:

Private and public developmental expenditures can become more mutually supportive through careful scheduling of development in land use planning implementation programs which carefully link financial planning and capital improvement programming, with stage-development plans and other land use controls as exemplified by some of the experimental growth guidance systems described previously.

This sentence is followed by a new subtitle and this even more distressing statement:

While the use of special districts, especially single-purpose districts, should be avoided as contributing to the fragmentation of government and compounding the coordination difficulties in the implementation of area-wide land use plans and policies, however, in the absence of consolidated area-wide government, multi-purpose districts, such as those established to serve umbrella multijurisdictional organizations charged with the responsibility for and empowered to coordinate the planning and development related activities of many otherwise independently acting units of local government can be a very useful organizational means for carrying out area-wide plans (as exemplified by the Twin Cities Metropolitan Council).

All of this makes 316 quite a page!

Economists as well might take issue with the author's understanding in this area. In a section entitled "Planning and the Urban Land Market" Mr. Patterson states: "The ideal market presumably would result in the most equitable distribution of the goods being traded, at least from an economic point of view" (p. 18). Does he not realize that the ideal free market of economic theory results in efficiency, i.e. the optimal allocation of resources, and not in an equitable distribution of resources? Indeed, some economists, notably of the so-called University of Chicago school, feel that economics and economists properly have, and should have, nothing to say about questions of equity.

For Canadian readers, there are some distracting references to features of the American scene unknown and unexplained to us. Examples of this include mention of "Common Cause" (p. 12), "Federal 701 planning funds" (p. 13), "A-95 review" (p. 13), "the Committee for Economic Development" (p. 14), and U.S. constitutional points of due process and the police power (p. 28).

To end on a positive note, which this book deserves, a very impressive aspect of this work is the knowledge and skill of Professor Patterson in drawing into his exposition the planning literature. References and examples are everywhere. Points made in other academic works are woven into the fabric of the discussion, adding strength to the author's comments and a sense of objectivity and credibility to the criticisms. A helpful bibliography takes up some 13 pages as the penultimate component to the book (an index is the final item). This volume, in short, is a cornucopia of integrated planning literature.

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*American Law of Medical Malpractice*, Vol. I. By Stephen E. Pegalis and Harvey F. Wachsman. Rochester, N.Y.: Lawyers Co-Operative Publishing, 1980. Pp. 515

The American medical malpractice "crisis" during the 1970's continues to produce books on the topic. The most recent entry is a practical multi-volume collection by two New York trial lawyers, Steven E. Pegalis and Harvey F. Wachsman. Thus far only one volume has been published.

In their preface the authors clearly state that the book is designed for *practising* malpractice lawyers. Although it may be of value to law students and academics as well, the structure and format are geared to the practitioner. Check lists, excerpts of professional standards and selected bibliographies in such areas as obstetrics and gynecology, emergency medicine, cardiology and internal medicine are included. The secondary resources listed would be useful to the members of the trial bar.

The first volume begins with a description of the medical malpractice "crisis" and the methods developed to combat it. The authors discuss the practice of physician countersuits and the so-called "conspiracy of silence" among physicians. Physician education and training and the legal duties of a doctor are examined. The proper use of diagnostic tools and skills, the duty of referral to specialists, informed consent and abandonment are included.

A considerable portion of this volume is devoted to hospitals. Hospital structure and accreditation standards are discussed along with the historical basis and development of American hospital liability law. Also examined is the hospital's vicarious responsibility for nurses, interns and residents.

Pegalis and Wachsman have provided the reader with an indepth analysis of the more common sources of medical malpractice. In this volume, two of the five chapters deal with obstetrics and obstretical malpractice. The authors provide an interesting mix of medical terminology and explanations of medical treatment with legal analysis, divided among the various stages of pregnancy and post partum care. Birth defects, amniocentesis, fetal monitoring, all key issues in American health law, are covered.

The volume concludes with a transcript of an actual obstretical malpractice case sprinkled with annotations on the preparation and conduct of the case. The footnotes throughout this chapter contain references to other Lawyers Co-operative publications, particularly



their practice series, *Am Jur Trials* and *Am Jur Proof of Facts*.

*American Law of Medical Malpractice* is a well-written, interesting and valuable aid in the practice of health law. Rather than competing with the Matthew Bender publication, *Medical Malpractice*, the Pegalis-Wachsman book complements it. The texts differ in content and emphasis. Both books are annually updated and thus provide current information presented in different formats.

No book or series of books can be all things to all people. Nonetheless, the *American Law of Medical Malpractice* deals with consent only briefly. Lawyers involved in consent cases must look to other works for assistance.

Similarly, the section on obstetrics, while quite detailed, does omit, at least in this volume, a consideration of gynecological malpractice. It is also not mentioned as a topic to be covered in future volumes. It is hoped that this topic will not be overlooked in view of the number of malpractice cases involving hysterectomy and cervical cancer.

The book, as the title suggests, is on American law. As such it is of minimal value to practising lawyers in Canada, except to learn from the approaches taken by American law. Indeed, Canadian lawyers should be cautioned that the professional and hospital accreditation standards in the U.S.A. may be very different from those of Canada. American tort law may also be at odds with Canadian precedent, or lack of precedent, particularly in the area of hospital liability.

Pegalis and Wachsman are to be commended for their valuable contribution to the American health law field. Students of the American scene will benefit from it, as will plaintiffs' and defendants' counsel in that country.

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