First Committee of the U.N. General Assembly on the Extent of Canadian Coastal State Jurisdiction (at page 309); Canadian Practice concerning Lump Sum Agreements (at page 314), etc.

In the succeeding section to the above, comprising the *Digest of Important Canadian Cases Decided in 1966*, edited by J. G. Castel there are summaries of: *Lazarovitch* v. *Consult Général de Grece et Papas*[9]— on jurisdictional immunity; *Gronlund et al.* v. *Hansen*[10] relating to extra-territorial application of Canadian legislation where a seamen was killed as a result of negligence out at sea; *Makoon-Singh* v. *Makoon Singh*[11] the question of whether the domicile of choice could be acquired in Nova Scotia in a divorce procedings based on cruelty; *Fedeluk* v. *Fedeluk*[12]— a case also on domicile where an expressed desire to go in some two years time to the U.S. was held by the Alberta Supreme Court as not constituting an abandonment of a previous domicile; etc.

The volume also has some seventeen pages on some eight Book-Reviews. This reviewer found some of these particularly helpful as a guide and in light of the importance of the *Canadian Yearbook* to those involved in the international law field in Canada, the very brief review of *British International Law Cases*, Volume VII, edited by Dr. Clive Parry, comprising some 1,300 pages, does less than justice to him.

These annual volumes are without any doubt a valuable source, not only for the legal scholar and practitioner but also, for the growing numbers of political and other social scientists who favour a multi-disciplinary approach to academic pursuit. It is also a tribute to Professor C. B. Bourne and Professor J. Y. Morin who have, since the inception of the series in 1963, been consistent in keeping a high standard in the selection of the contributions and have admirably lived up to "the possibilities of a Yearbook of International Law for Canada, somewhat after the fashion of the British Yearbook"[13] of International Law. The great expansion of Canadian teaching and writings in international law since then is evidenced by the fact that a large number of the contributors—most of them Canadian—have had more than one previous showing in the *Canadian Yearbook of International Law*.

—*Mohamed Ali Adam**

9 [1968] C.S. 486.
10 (1968) 69 D.L.R. (2d) 598.
11 [1968] C.C.L. 69.
12 (1968) 63 W.W.R. 638.
13 MacKenzie, *Foreword*, (1963) 1 Canadian Yearbook of International Law at 7.

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THE PROSECUTOR. AN INQUIRY INTO THE EXERCISE OF DISCRETION. By Brian A. Grosman. University of Toronto Press. 1969. Pp. 114. $7.50.

The reader of Professor Grosman's impressionistic work is struck time and again by the apparent lack of understanding and concern embodied in the Criminal Justice system, and personified by the personnel responsible for its daily operation. It is portrayed as a system carried along by historic momentum and totally lacking in goals and the orientation implicit in goals. By any contemporary humanistic standards the system is a wretched thing.

The work begins with a historical sketch of the office of a prosecutor in England, the United States, France, and Canada. Having performed his historical chores, the writer then considers the prosecutorial office in the City of Toronto and from this geographical area the bulk of his empirical material is drawn. In fluent and pleasing prose the reader is led through chapters dealing with the initiation of prosecutions, pre-maneuvering, administrative pressures on Criminal Courts, professional attitudes and relationships, conflict resolution, and reform.

A suggestion made at an early point in the work deserves approbation and repetition:

> The employment of part-time prosecutors has become untenable in the face of growing urban crime and the resulting administrative demands. Familiarity with the system and a certain expertise is coming to be expected from the Crown prosecutor. It is now generally accepted that only with a permanent Crown prosecutor and a permanent Crown prosecuting structure can these new demands be adequately answered in urban areas.

In far too many locations in Canada the use of these part-time and inadequately oriented prosecutors perpetuates a most unsatisfactory state of affairs. In many large urban areas of Canada the prosecution of all drug offenders is left to a part time politically selected prosecutor, who is paid on a piece work basis. This situation as it has become known, has contributed to the growing criticism of the entire Criminal Justice system.

The practical impossibility of prosecutorial control over the initiation of prosecutions under present arrangements which exist between police, and the prosecuting staff in a large urban area, are emphasized. The discretion whether or not to prosecute rests for all practical purposes in the hands of the police. This is of course, contrary to popular legal myth, which insists that this discretion is in the hands of the prosecutor. Not so, as Professor Grosman ably demonstrates.

Pre-trial maneuvering by prosecutors and defence counsel is ably discussed. Negotiations over pleas and charges, and the motives for them, are analyzed and evidence presented in support of the conclusion which Professor Grosman draws. He makes a most significant point when he states:

> Advocacy by defence counsel at the pre-trial stage may more significantly affect the eventual outcome than his advocacy at the trial itself.

It is indeed unfortunate that mischarging and over-charging by the police, over-worked courts, and a super-abundance of penal laws, have created the administrative pressures which make justice according to negotiation a practical necessity. The solution surely is not to regularize justice by negotiation but to remove the causes of the pressures which make it necessary.

Police attitudes towards the function of the Criminal Courts is crucial to the successful operation of those Courts. Unfortunately, this attitude creates extreme hazards for the continuation of a decent system of criminal justice. The police attitude which threatens the system with ruin is summed up by Professor Grosman in the following words:

> Once they [the police] have made the assessment of the accused's factual guilt the legal protections, evidentiary requirements, and the presumptions favouring the accused at trial are seen primarily as obstacles to efficient law enforcement.

Perhaps it is this attitude which is at the root of so much discontent with the standards of Criminal Justice administration in Canada. The essential barbarism of such an attitude gives great offence to growing numbers of well educated and sensitive Canadians. To the extent that the attitude is seen to be general throughout the system, the less the faith in the system's ability to do justice according to law by those segments of the community who understand and appreciate the concept.

In discussing Professor Grosman's comments on professional attitudes one cannot do better than to set out some of the verbatim remarks of prosecutors whom he interviewed in the course of his researches. In the words of one quoted prosecutor:

> . . . You can become desensitized by magistrates' court and the assembly line procedure there and the officers shouting at the accused to keep quiet or to take the gum out of his mouth. This can be very influential on a young fellow when he sees these accused men herded into the dock and pushed together and treated like animals. If a young man is of an authoritarian or jackboot mind, he would think of these people in the docket as something a little subhuman. There are very few like that but it is the volume, the mass of people and the mass of cases, and the never-ending assembly line that can influence the outlook of a prosecutor. It is a strange system, and it's strange that it works as well as it does, and there isn't more injustice.

Another comment by a prosecutor quoted by Professor Grosman seems worthy of mention:

> . . . It attracts more of one type—more neurotics—more people who are not completely integrated in their social relationships, the people who are not particularly sensible and well-adjusted, more isolated types. The violence and dishonesty attracts certain people. It's a world of cunning, unlike the world that they are used to . . . . Also there is a certain sense of power and it may be a person who feels insecure and not particularly well adjusted in his social relationships, that the power in court helps to make up for this lack of security outside the courtroom.

The sense of Professor Grosman's remarks concerning the attitudes and personalities of those who fill the prosecutorial office are adequately conveyed by the foregoing remarks. There is much food for thought in them.

The relationship between the prosecutor and defence described by Professor Grosman emphasizes the diminishing role of the adversary procedure. The growth of the reciprocal relations between prosecutors and defence counsel provoked by administrative pressures within the system provide little opportunity for the protections of the adversarial form to operate. In Professor Grosman's words:

> Where the striving for the realization of expediting administrative values combines with strong reciprocal relationships the substantive decision-making process takes place before trial. In that event, the Courtroom forum merely serves a ratifying function and the players mouth words in a ceremony without real significance for the accused. The result is known before trial, either as a result of pre-trial prosecutor-defence agreement or prosecutor-defence-judicial agreement. The classic adversarial conflict is becoming less a part of the day-to-day functioning of the criminal justice system in North America. That is not to say that adversarial clashes at trial do not often take place, but that for the vast majority of those accused of crimes pure adversarial combat remains a last resort.

Professor Grosman makes a serious error when he concludes that conflict resolution by conciliation and adjustment is more satisfactory than adversarial resolution of conflicts of the kind which occupy the time of the criminal court. Penal law represents more than conflicts of interest. To use Professor Grosman's own dichotomy of interest conflicts, and value conflicts, it represents the latter. Where the conflict

is between values, compromise will not be accepted by the public as a fitting method of procedure. Values cannot be considered as mere interests, and still be reckoned as values. Values expressed in enacted laws are perceived as fundamental expressions of a society. They cannot be the subjects of a series of compromises by a class of professional jurists and remain values. Hence, a criminal justice system which is perceived as engaged in the business of compromising values will be suspect, and in danger of being viewed as corrupt in the public mind. For this reason, Professor Grosman's conclusion that conciliation and adjustment is superior to adversarial conflict is in error, if it be error, to advocate practices which weaken the public's trust in their law making and law dispensing institutions.

Recognition of the necessity for common objectives throughout all parts of the Criminal Justice system brings Professor Grosman's work to a close. Nothing matters quite so much as this, and nothing is so much missing.

—B. M. BARKER*

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