EDITOR'S PREFACE

"You look a little shy: let me introduce you to that leg of mutton," said the Red Queen. "Alice — Mutton: Mutton — Alice."

Law reviews, like legs of mutton, are generally expected to speak for themselves, by the quality of their product. However, occasionally a short introduction is called for. We believe this to be such an occasion.

This is the inaugural issue of an annual supplement to the Alberta Law Review published by the Centre for Constitutional Studies at the University of Alberta. The Centre was founded in 1987 to pursue the interdisciplinary study of constitutional matters. In view of the series of rapid changes to the Canadian constitutional scene since the late 1970's, the Centre was seen as a vehicle through which scholars of varying disciplines could make sense of constitutional developments. The product of these efforts would be distributed amongst the academic and government communities, and the public-at-large, on a national basis.

With the participation of representatives from the Departments of History, Political Science, and the Faculty of Law, and with the financial assistance of the Alberta Law Foundation, the Centre has set out to accomplish an ambitious array of activities. These include the centre newsletter "Constitutional Forum Constitutionnel", the annual McDonald Constitutional Lecture, which was first delivered by Professor Ronald Dworkin and is reproduced herein, and the Centre's annual national constitutional conference, two of which have been held to date. It also includes the publication of a scholarly, interdisciplinary, bilingual journal devoted to constitutional studies. We are pleased that the Alberta Law Review has joined us in this latter venture.

Few issues have preoccupied constitutional scholars as much as the attempts at reconciling judicial review with conceptions of majoritarian democracy. Ronald Dworkin sets the tone for this first issue by presenting his case for judicial nullification of legislative acts under constitutional regimes. Dworkin constructs a communal conception of democracy that sees such judicial review as strengthening the bonds of democracy by promoting the equal rights of citizens to participate fully in democratic life. In Canada, this tension has been resolved in favour of the supremacy of the majority will. This supremacy is constitutionally recognized in the reasonable limits clause (s.1) and enshrined in provisions for legislative override found in the "notwithstanding clause" (s.33) of the *Canadian Charter of Rights and Freedoms*. Dean John Whyte explores the reasons why s.33 could safely be removed from the *Charter* without threatening, and all the while being consistent with, Canadian democratic values.

More cynical commentators have found the notwithstanding clause as the thin layer of defence to judicial tyranny. In partial response to these commentators, Lorenne Clark explains why women can look to a liberal-constitutional regime, such as that enshrined in the *Charter* to advance women's equality rights. She advances this view notwithstanding her recognition that the *Charter* empowers the judiciary to re-shape social welfare legislation, which could have the effect of undermining advances obtained by women in the legislative field. These fears are not totally unfounded, as the evidence presented by F. L. Morton, G. Solomon, et al. indicates the extent to which Courts of Appeal are invoking the *Charter* to

nullify legislative acts. With this activism in mind, Bruce Elman suggests some reasons why courts may be willing to be more activist under the *Charter* than they were under the Canadian *Bill of Rights*.

The raw text of constitutional language is often insufficient to explain why courts decide matters the way they do. Dale Gibson identifies a number of non-legal factors which courts may be utilising and calls for greater judicial candour in reasons for judgment when courts engage in acts of constitutional nullification. Professor Gibson's invitation to the courts is meant to empower the citizenry to best respond to this type of judicial activism.

Two articles explore the nexus between the criminal law and the constitution. Alberto Cadoppi surveys the Italian criminal law, some aspects of which have been entrenched in the Italian constitution. He draws striking parallels between the Italian and the Canadian constitutional-criminal law and alerts us to very recent developments in Italy where the constitutional court has recognized the defence of mistake or ignorance of the law. Isabel Grant surveys the implications to the criminal law in the light of the Supreme Court Canada's decision in *R.* v. *Vaillancourt* which struck down the *Criminal Code* constructive murder provisions. Professor Grant discusses recent developments in Canada and examines whether the courts may be in the process of sanctioning constitutionally less than a subjective standard of *mens rea*.

John Law analyses two recent Supreme Court of Canada decisions, one, *R.* v. *Nelles* which qualifies the scope of Crown-prosecutorial immunity, the other, *MacKeigan* v. *Hickman* which sanctifies judicial-testimonial immunity. Professor Law sees *McKeigan* as part of a larger judicial trend of using the *Charter* to constitutionalize a concept of judicial independance.

Margaret Banks explores Canada's experience in giving effect to monarchical succession and suggests a process whereby Canada could constitutionally recognize an abdication by the Queen of England in favour of the Prince of Wales. Without such constitutional recognition we would be left with the anomaly of the Queen, and not the new King, continuing to reign in Canada. Norman Lewis reviews recent events in Great Britain which have tended toward undermining the effectiveness of democratic institutions. He makes a case for the entrenchment of a bill of rights for Britain which, if it had been in place, could have short-circuited a number of, what he considers, centralising and undemocratic developments.

We welcome your comments, suggestions, and your contributions, in either official language, for further issues of Constitutional Studies/études constitutionnelles. Many thanks to this edition's contributors, the Centre's Board of directors, the editors of the Alberta Law Review, Christine Urquhart, and the financial assistance of the Alberta Law Foundation.

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