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Jean-Gabriel Castel: An Appreciation

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Introduction

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Jean-Gabriel Castel: An Appreciation

JEAN-GABRIEL CASTEL: AN APPRECIATION[©]

BY HARRY W. ARTHURS*

When Jean Castel retired in June 1999, I had known him for almost exactly forty years. We met first in late 1959, shortly after I returned from Harvard with my LL.M. It was a momentous occasion, at least for me. Dr. Castel, the editor of the *Canadian Bar Review*, told me that he would publish my article, thus pretty well determining what would be my life's work. But more than that: when I was admitted briefly to his presence in an impressive office at the north end of the old law school building at Osgoode Hall in downtown Toronto, I got a glimpse of what it meant to be a distinguished, senior academic. Crammed bookshelves lined the walls; manuscripts littered most horizontal surfaces. Castel's personal style was austere, preoccupied. He was type-cast, I thought, as the powerful editor of Canada's foremost legal periodical.

In this, as in much else about Jean Castel, I was wrong. Jean Castel was not as senior as all that: in 1959, his Harvard doctorate was barely a year old (true, it was awarded after a decade of advanced study and professional formation in France and the U.S.) and he had been editor of the *Canadian Bar Review* for only two years. Nor was he as austere and preoccupied as he seemed that day: as I was to learn, Jean Castel possesses an alarming array of talents ranging from sport to gossip, from carpentry to conspiracy; and he is un-preoccupied enough to find time not only for scholarship but for family, church, community and the public affairs of two countries—France and Canada—both of which have bestowed high honours upon him. Nor did his editorship of the *Canadian Bar Review* bring him power: instead it brought him 27 years of intermittent trench warfare with the profession's rednecks and budget cutters, 27 years of ministering to the egos and ambitions of an increasingly fractious legal academic community, 27 years of worrying about whether anyone really cared enough to make it worthwhile

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* University Professor and President Emeritus of York University, former Dean, Osgoode Hall Law School. I would like to acknowledge my debt to John McCamus, former Dean, and Peter Hogg, present Dean of Osgoode Hall Law School, who shared with me their own tributes to our colleague Jean-Gabriel Castel.

carrying on. But carry on he did: year after year of unremitting and often thankless toil.

Unremitting and thankless toil: but not unproductive. During his editorship, the Canadian Bar Review maintained its place as a leading law journal, despite the proliferation of law school-based, professional and special interest legal periodicals. Young scholars making their debuts, senior scholars displaying their wares, lawyers in search of new ideas, courts seeking authoritative analyses of the law: all benefitted from Jean Castel's tenacious commitment to producing a first class journal.

The question is whether he himself benefitted from this enormously time- and energy-consuming task. For some very distinguished previous editors, the Canadian Bar Review became virtually the exclusive focus of their scholarly exertions. Not for Jean Castel. During all the years he served as editor of the Canadian Bar Review, and in the years before and since, he has been a veritable *Stakhanovite* of academe, exceeding not only production norms but any reasonable anticipation of what one human being could possibly publish. As of 1999, he had published well over 100 articles, 13 books and a plethora of teaching materials (and is still hard at work). Nor has he remained cloistered in the office where I first met him, or in the fourth floor corner office to which he adjourned after the law school moved to York University. Jean Castel has been an academic visitor in Canada, Australia, France, Holland, the United States, New Zealand, and Japan—with brief sojourns in Romania, China, and Mexico. He has served on arbitration rosters in the United States, Italy, Egypt, France, Canada, Malaysia, and Mauritania. And he has represented and provided opinions and reports to governments, law firms and private clients in more countries than are found in the average trade pact or tourist itinerary.

This prodigious outpouring of academic and professional writing has covered a wide swath of subject matters from the Civil Code to biomedical science and technology to human rights to libel to the Rule in Shelley's case—the last representing an early but non-recurring excursion into the backwaters of common law property. However, the length and depth of this vast river of learning has its source in Jean Castel's passion for public, and especially private, international law. Here he is truly in his element. His monumental three volume *Canadian Conflicts of Laws* has appeared in four editions and several supplemental editions between 1975 and 1997, while the companion *Introduction to the Conflict of Laws* appeared most recently in its third edition in 1998. Framing up this magisterial work were two early books—*Foreign*

Judgments (1956) and *Private International Law* (1960), a later work of some 1100 pages, *Droit international privé québécois* (1980) and, of course, scores of learned articles and book chapters, commissioned reports and public lectures. His colleagues in the Canadian Council on International Law paid tribute to the erudition, scope and authority of this great *oeuvre* when they awarded Jean Castel the Read Medal in 1999.

Yet, to be honest, if anyone had asked I might at one point have said that Jean Castel's writing drifted a little out of the mainstream of scholarship as it developed in Canadian legal academe during the forty-odd years that he was a member of it. He is a doctrinal scholar *par excellence*, but doctrinal scholarship no longer dominates the field as it once did. Critical and feminist scholarship, socio-legal scholarship, postmodern scholarship have perhaps acquired a greater cachet amongst legal academics. Scholarship for the here and now tends to engage many of the best and the brightest amongst Canadian law professors—*mea culpa!*—not the production of a great multi-volume multi-edition treatise, standard text or casebook. And international law—especially private international law—is a subject which has been out of fashion in Canadian academic circles for some time. It had, we felt, a whiff of effete Oxford common rooms about it, of *grandes salles* in Geneva or The Hague, not the high drama of *Charter* litigation or the high stakes of tax policy or the high emotion of sexual harassment suits. But any such judgment about Jean Castel and his work would have been as seriously misconceived as my own was when I first met him. In fact, Jean Castel was not out of fashion: he was ahead of it.

Only in recent years have we begun to come face to face with globalization and its discontents, with the sudden, shocking revelation that the reach of domestic law is limited, that what goes on in those *grandes salles* in Geneva or The Hague, on the stock exchanges of New York or Hong Kong, in Chilean mining projects or Indian chemical factories is part of our immediate social, economic and legal world. Jean Castel recognized this long ago: he was global *avant le mot*. He thought about, wrote about, constructed, implemented and administered the law of global business before most of us were even aware of its existence.

In 1999, forty years after I first met Jean Castel, and five or six years after first beginning to work on these problems myself, I initiated an advanced seminar entitled *Globalization, NAFTA and Labour*. As I planned the seminar, it became clear to me that we would have to address the difficult problems which arise when transnational corporations integrate their productive processes across national boundaries, when peripatetic technicians, professionals and executives

are sent hither and yon around the world by their employers, when unions and social movements organize boycotts of goods produced abroad with sweated labour, when professional players' associations go on strike in two or more countries simultaneously, when aeroplanes and ships ply international routes carrying national colours but owing obligations to a great multi-national *mélange* of creditors, customers, employees, and regulators. It became clear to me as well that I would have to ask Jean Castel to give my students (and me) a short course in the conflicts of laws. I am glad I did. He responded with alacrity and good effect, and treated me to my first-ever opportunity to hear him teach. And he did more than that: he told me that the issues I had asked him to talk about would be reflected in the next edition of his treatise.

Retired he may be, but recumbent Jean Castel is not. He is still working away—in the office next to mine now—still the doctrinal scholar, still the consummate craftsman, still the patient builder of a great Gothic cathedral of a book, still engaging with some of the most powerful forces shaping our world, still doing what he has been doing since I first met him forty years ago, still as austere and preoccupied as he ever was—no more, no less; but now indisputably senior and certifiably distinguished.