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Book Review: Reshaping the Criminal Law, Essays in Honour of Glanville Williams, edited by P. R. Glazebrook; Textbook of Criminal Law, by Glanville Williams

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This collection of essays was undertaken to mark the retirement of Glanville Williams from the position of Rouse Ball Professor of English Law in the University of Cambridge and the contributors will need no introduction to those interested in criminal law and the administration of criminal justice. Sir Rupert Cross, J.C. Smith, Brian Hogan, Edward Griew, D.W. Elliott, Michael Zander, W.R. Cornish, Nigel Walker, Colin Howard, Norval Morris, Martin Friedland and John L.J. Edwards amongst many others, have contributed. The content of the writing spans historical perspectives, classical substantive law problems, procedural-evidential issues, sentencing theory and correctional practice.

It should be made clear that this book is not anecdotal, any temptation to make gratuitous references to the person in whose honour it has been written having been thoroughly resisted. Thus a teacher and writer who, in the words of Lord Edmund-Davies in his foreword, "has made great and enduring contributions to the study and development of English law" is rewarded by a testimonial in which the authors have attempted to make solid contributions to the fields which Glanville Williams himself has graced with his scholarly talents from his first published casenote in the Cambridge Law Journal (circa 1933).

There is a great deal in this collection of essays to be read and enjoyed by those who admire the type of doctrinal analysis which Glanville Williams, himself, has elevated to an art form. Indeed, those looking for evidence of vitality in modern criminal law exposition could be forgiven for saying that the very eminence of Williams in the field has spawned too many pale imitators and contributed, to some extent, to a reduction in the intellectual energy being expended on producing for this generation the fresh insights which their mentor produced for his. It is a pleasure, therefore, to note that both of the Canadian contributions tackle central dilemmas in the administration of criminal justice. Martin Friedland looks at the manipulation of the legislative process in "Pressure Groups and the Criminal Law" and John Edwards pursues the difficulties of political interference in the prosecutorial function in "The Integrity of Criminal Prosecutions—Watergate Echoes Beyond the Shores of the United States". These essays go some way towards openly facing the close connection between political power and criminal law enforcement at both the legislative and executive

1 P. 202.
2 P. 364.
levels. For this reader they provide a healthy balance to the essays concentrating on doctrinal analysis and procedural issues. The result is a well-rounded collection of essays which should provide hours of pleasure for criminal law aficionados and many others as well.

The apparently limitless energy and imagination of Glanville Williams is given no better testimony than the fact that, when his colleagues are busily writing essays in tribute to his retirement from a chair at Cambridge, he in turn is engaged in producing a major new work within a quite original framework. His latest tome, Textbook on Criminal Law, is unlike previous law books in that each section starts at an elementary level in question-answer format and then proceeds by degrees towards more difficult issues. This approach is assisted by the use of different type-heads so that one soon realizes that the larger the type the more general is the treatment of the topic. The text then proceeds to increasingly smaller type—and correspondingly more detail. The general reader knows immediately when to jump over a section, the more specialized reader continues on until his curiosity is satisfied or the limits of his understanding (or his eyesight) are reached.

All of the general part of the criminal law is here, together with the major non-consensual substantive offences. The aim is to provide a teaching tool but practising lawyers will find it of very great use as well. The major question is: does it work? After some initial irritation with the intelligent interlocutor’s quizzing of the master,—a format designed “to enliven the discussion” and in which the questioner is allowed “to talk naturally, and indeed racily”3 this reviewer was slowly convinced that the substantive content shines through and that the method of presentation does not detract from it. Whether it enlivens the presentation will have to be answered by “the general reader” for whose particular needs it was fashioned. Certainly a book of this size and complexity would normally dissuade any but the most dedicated general reader from pursuing its contents very far and the new format may prove to be a significant innovation in publishing law texts for an audience at quite disparate levels of prior knowledge.

These genuflections to the general reader should not, however, mislead the scholar or practitioner. All who have been impatiently waiting for the much delayed third edition of Glanville Williams, Criminal Law: The General Part, can be assured that, although this pearl is still promised as “in preparation” in the publisher’s list, much of the content of this new Textbook of Criminal Law will suffice for all but the most demanding of Williams’ followers. It is a prodigious work in the light of which most other textbooks in the field, by comparison, must pale. It is a pity that Canadian criminal law is diverging more and more from English law, not because the former should not find its own

3 Preface, p.v.
formula to meet essentially Canadian needs (which it should) but because it will inevitably reduce the number of occasions when Glanville Williams' views will be relevant. Even given the tendency of the two systems to diverge, however, this book will make an excellent addition to any criminal lawyer's bookshelf. Indeed, pending the appearance of the third edition of the Criminal Law: The General Part, one is tempted to say, an essential addition.

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This book demonstrates that exception clauses are repeatedly used in modern business as contractors seek to limit their responsibility in the face of performance impediments. Manufacturers employ exclusion clauses in order to escape responsibility for defects in their products. Carriers use exclusion clauses with the aim of limiting their liability in the event of transportation difficulties. While bailees adopt exclusion clauses as a means of restricting their culpability for damage to goods held in storage. Thus, exclusion clauses have evolved into an effective device for reducing the effects of performance risks upon the promisor's business affairs. At the same time exclusion clauses have grown into one of the most litigated arenas of English law.

Writing in a concise style, Mr. Yates establishes that exception clauses are not implicitly prohibited in law. As a product of consensual relations, they are both acceptable in many business circles and enforceable in law. What contractors agree upon is a reflection of their freewill, their bargain and their consensus ad idem, even when one party excludes his liability in terms of the contract. Yet the binding force of exception clauses becomes suspect in the absence of "true" free will, in instances of "unbargained" contracts and among "unequal" contractors. David Yates shows that, in such cases, English courts have grown increasingly willing to confine the scope of exception clauses for reasons of public policy, good morals, and most recently, the doctrine of fundamental breach.

Judges have fostered "justice" on the assumption that exception clauses sometimes violate the "essence"

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1 Yates makes reference to other types of exclusion provisions contained in clauses governing arbitration, liquidated damages, accepted perils and "promissory" warranties in insurance contracts (see pp. 23-29). However, clauses that except the promisor from liability for breach constitute the kernel of exclusion terms (see pp. 22-23).