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## Hugh Kindred and the Teaching of International Law in Canada

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*The casebook, International Law, Chiefly as Interpreted and Applied in Canada under the general editorship of Hugh Kindred, which first appeared in 1987, was a milestone in the teaching of international law in Canada. It was an important teaching tool that made international law accessible to students. Seeing international law through the eyes of Canadian practice, Canadian materials and Canadian experience, the book was an introduction to the fundamentals of the field and to the developments and debates of contemporary international law. Engaging on the editorial board Canadian academics from different law schools, Hugh Kindred has been able to provide a book that over the years has become a mirror for understanding how Canadian international lawyers think about international law, as well as a basic introduction to some important Canadian international legal scholarship. Occupying a central position in the teaching of international law in Canada, the book is an important part of Hugh Kindred's legacy to the field of international law.*

*Le recueil de jurisprudence International Law, Chiefly as Interpreted and Applied in Canada (Le droit international tel qu'il est interprété et appliqué au Canada), sous la direction de Hugh Kindred, publié pour la première fois en 1987, est à bien des égards un incontournable dans l'enseignement du droit international au Canada. C'est un outil didactique important qui met le droit international à la portée des étudiants. Le livre place le droit international dans la perspective de la pratique au Canada, dans le contexte canadien et à la lumière de l'expérience canadienne, et il présente les éléments fondamentaux du domaine ainsi que les développements et les débats du droit international contemporain. Faisant appel, pour composer le comité de rédaction, à des universitaires canadiens de différentes facultés de droit, Hugh Kindred a pu offrir un ouvrage qui, au fil des ans, est devenu essentiel pour comprendre comment les avocats canadiens qui pratiquent le droit international pensent au droit international; il sert aussi d'introduction à d'importantes recherches en droit international au Canada. Le livre occupe une place centrale dans l'enseignement du droit international au Canada; c'est une importante partie de l'héritage que laisse Hugh Kindred au domaine du droit international.*

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In 1969, two graduate students met at a function at the British Institute of International and Comparative Law in London. One was studying at Cambridge and the other at the University of London. Apart from the fact that they were both studying international law what they had in common was that they were both going to the United States the following year to further their studies. It was a chance encounter and something that was unlikely to be repeated. Yet, barely three years later, in 1972, they met again, in Ottawa at the first annual conference of the new Canadian Council on International Law. By this time, Hugh Kindred was teaching at Dalhousie Law School and I was teaching at the University of British Columbia.

In short, after our studies in the United States, both Hugh Kindred and I ended up teaching international law in Canada where we have both remained and continued our careers in the field of international law. Thus, our acquaintance and professional association go a long way back, and they have continued through regular meetings at the annual conferences of the Canadian Council of International Law, at law of the sea meetings in Halifax and elsewhere, and through work on the Editorial Board of the Canadian Yearbook of International Law. Our common interest in the law of the sea has made that association closer, although we have never taught at the same institution or collaborated in common research endeavours.

Hugh Kindred and I arrived in Canada on the eve of an explosion in legal teaching and scholarship in common law Canada. At that time there was not the range of either casebooks or monographs focusing on Canadian statute law and judicial decisions that one finds today, and English or American materials were often used in classrooms. But in the 1970s, both texts and casebooks focusing on Canadian law appeared in the basic areas of contracts, torts and property. From this emerged a publishing industry, which in the past had concentrated on legal practitioners, but gradually focused more and more on the work of legal scholars and on material for students. Hugh Kindred was to play an important role in this development.

In many respects, international law was no different from other fields of law in Canada.<sup>1</sup> There were, it is true, well-established Canadian international legal scholars—Cohen, Bourne, Morin, Macdonald, Pharand and Castel, and before Hugh Kindred and I arrived other international lawyers had come to Canada, including McWhinney, Green and Johnston. There was also an active group of international lawyers in government—

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1. For a survey of international law teaching in Canada, see R St J Macdonald, "An Historical Introduction to the Teaching of International Law in Canada" (1974) 12 *CYIL* 67, (1975) 13 *CYIL* 255 and (1976) 14 *CYIL* 224.

Gotlieb, Beesley, and Fitzgerald—all making contributions to both practice and the legal literature. Indeed, the 1970s were a heyday for Canadian government international lawyers through their work at the Third United Nations Conference on the Law of the Sea. The *Canadian Yearbook of International Law* was an important vehicle for legal scholarship and practice and both academics and practitioners contributed to it.

As far as the teaching of international law was concerned, there was little in the way of Canadian material. Norman MacKenzie, when teaching at the University of Toronto in the 1930s, had produced with Lionel Laing *Canada and the Law of Nations*, an early casebook on international law.<sup>2</sup> Jean-Gabriel Castel had edited a voluminous collection, *International Law, Chiefly as Interpreted and Applied in Canada*, drawing on the title of the Hyde volume in the United States.<sup>3</sup> It was an impressive collection, but a daunting work for students facing the area for the first time. Many other teachers prepared their own material for classroom.<sup>4</sup>

The publication of the magisterial work edited by Macdonald, Morris, and Johnston, *Canadian Perspectives on International Law and Organization* was a watershed in international law in Canada.<sup>5</sup> The objective of the editors was to provide the first “comprehensive Canadian conspectus on current issues and developments in international law” and a “fairly complete reflection on Canadian approaches to international law.”<sup>6</sup> Thirty-eight international lawyers from academia, from government, and from private practice contributed to the volume, and the work remains an important statement on a range of issues of particular concern to Canada or of concern to international lawyers in Canada. In this respect it is a valuable account of international law in Canada as it was perceived and practiced some forty years ago.

A deficiency in Canadian international scholarship identified in 1974 was a lack of theoretical perspectives or of interdisciplinary work. International lawyers were concerned with pragmatic issues, particularly those that affected Canada as a nation. In a study published some ten

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2. N MacKenzie & LH Laing, eds, *Canada and the Law of Nations* (Toronto: Ryerson Press, 1938).

3. J-G Castel, *International Law, Chiefly as Interpreted and Applied in Canada*, 3d ed (Toronto: Butterworths, 1976); Charles Cheney Hyde, *International Law: Chiefly as Interpreted and Applied by the United States* (Boston: Little, Brown and Co, 1922). The Castel volume used the term “applied in” rather than “applied by” as the Hyde volume had used.

4. When I arrived at UBC in 1972, I used the mimeographed materials, CB Bourne & LG Jahnke, eds, *Cases and Materials on Public International Law*, 3d ed (Vancouver: University of British Columbia, 1972).

5. R St J Macdonald, Gerald L Morris & Douglas M Johnston, *Canadian Perspectives on International Law and Organization* (Toronto: University of Toronto Press, 1974).

6. *Ibid* at xix.

years later, it was suggested that the lack of theoretical perspectives was not as bad as had been perceived, but that nevertheless the body of scholars concerned with international legal theory was small and there was a tendency to focus on specialized areas.<sup>7</sup> Interdisciplinary work with international relations scholars was limited and few international relations scholars had developed any particular interest in international law.

This was the environment in which Hugh Kindred began the substantive part of his career as a teacher and scholar of international law. It was of great benefit to Hugh to be teaching at the Dalhousie Law School, a place where by the early 1970s the law of the sea had become a prominent issue and Dalhousie was to become a leader in the field. Moreover, for a significant part of his career Hugh was able to work alongside Ronald St. John Macdonald, Douglas Johnston, and Edgar Gold, all leaders in international law generally or in the law of the sea. In turn, Hugh taught individuals who in their own right were to become leading scholars and teachers in the field of international law, including Ted McDorman, Aldo Chircop, Phillip Saunders, Craig Scott, and Karen Knop.

Hugh quickly became an active teacher and scholar in the field of international law, writing on a variety of international legal issues. He was also an early teacher in the field of trade law. In 1987 the casebook *International Law, Chiefly as Interpreted and Applied in Canada* appeared under the general editorship of Hugh Kindred with editors from four other law schools in Canada.<sup>8</sup> This was an important milestone in the teaching of international law in Canada. The volume and its subsequent editions remain as a testament to the contribution of Hugh Kindred to international law teaching and scholarship in Canada.

As mentioned earlier, there had been two Canadian-oriented collections of materials on international law. The first, dating from 1938, was Mackenzie and Laing, *Canada and the Law of Nations*, which was a collection of Canadian and international judicial decisions.<sup>9</sup> The second, published first in 1965, was Castel, *International Law, Chiefly as Interpreted and Applied in Canada*, a far more comprehensive collection of Canadian material.<sup>10</sup> However, as Maxwell Cohen was to point out in his review of the Kindred casebook, neither was satisfactory as a casebook in the North

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7. John E Claydon & DM McRae, "International Legal Scholarship in Canada" (1985) 23 Osgoode Hall LJ 477.

8. Hugh M Kindred et al, eds, *International Law, Chiefly as Interpreted and Applied in Canada*, 4th ed (Toronto: Emond Montgomery, 1987) [Kindred].

9. MacKenzie & Laing, *supra* note 2.

10. Castel, *supra* note 3.

American tradition.<sup>11</sup> Castel's collection was an invaluable reference tool, a place one would look in starting any research on international law and Canada, but not, to use Cohen's terms, "a useful classroom tool."<sup>12</sup> There was also available at the time a volume by Leslie Green, *International Law Through the Cases*, but it had no particular Canadian orientation.<sup>13</sup> It, too, was a casebook in the English style—a collection of cases to supplement a textbook. It too was not a North American-style teaching tool.

The third edition of Castel's casebook was published in 1976. The following year Hugh Kindred reviewed it in the *Dalhousie Law Journal*.<sup>14</sup> While welcoming the "wealth of Canadian experience and example" whose importance, he said, "cannot be overemphasized," he nonetheless went on to point out a number of disadvantages that reduced the utility of the book as a casebook.<sup>15</sup> These included size, repetition and duplication of material, unevenness in the provision of editorial comment and the lack of questions and comments designed to direct students' reading. He concluded that the work was a "goldmine of contemporary international law for Canadians but demanded too much hard digging by both teacher and student alike."<sup>16</sup>

Hugh Kindred did not just criticize. He did something about it. His casebook came out some ten years later as a fourth edition of Castel's volume *International Law, Chiefly as Interpreted and Applied in Canada*, and Castel was himself one of the editors. But, as reviewers of the time pointed out, it was a new book, a casebook in its own right. It drew on Castel's work but refashioned it, making it more of a teaching tool and making international law more accessible to students.<sup>17</sup> The Castel tradition of seeking to see international law through the eyes of Canadian practice, Canadian materials, and Canadian experience remained, but the

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11. Maxwell Cohen, Book Review of *International Law, Chiefly as Interpreted and Applied in Canada*, 4th ed by Hugh M Kindred et al, eds (1988) 33 McGill LJ 444.

12. *Ibid*.

13. LC Green, *International Law Through the Cases*, 3d ed (London: Stevens & Sons Ltd, 1970).

14. Hugh M Kindred, Book Review of *International Law, Chiefly as Interpreted and Applied in Canada*, 3rd ed by J-G Castel (1977) 4 Dal LJ 233 at 233, 235-236 [Kindred, Book Review]. Similar critical comments were made in the same issue of the *Dalhousie Law Journal* by Claude C Emmanuelli, Book Review of *International Law, Chiefly as Interpreted and Applied in Canada*, 3rd ed by J-G Castel (1977) 4 Dal LJ 236 [Emmanuelli, Book Review].

15. Kindred, Book Review, *supra* note 14.

16. *Ibid* at 235-236. Similar critical comments were made in the same issue of the *Dalhousie Law Journal* by Professor Claude Emmanuelli, *supra* note 14.

17. Kindred, *supra* note 8 at iii. The separate nature of this book from Castel's book is noted at least implicitly in the preface to the 4th edition, where Hugh Kindred as general editor said: "much gratitude is owed to one of our number, Jean-Gabriel Castel, who pioneered three previous editions under the same title. *We often had cause to refer to his work in the course of preparing this volume.*" [Emphasis added.]

so-called fourth edition was no longer an encyclopedia—it was designed less for reference and more as an introduction to the fundamentals of the field and to the developments and debates of contemporary international law.

The pragmatic nature of the work is apparent from the outset. Following the classical approach to the study of international law, Castel's volume had started with the nature of law and of international law, the basis of obligation in international law and the sources of international law. Kindred's casebook started with states, the legal persons who made up the system, before turning to the issues of sources, focusing in particular on treaties and the body of rules applicable to them. This is not to suggest that the book is not fairly traditional in the subject matter covered. Rather, there was an attempt in the book to introduce students to the subject by using material with which they would be more familiar—states and the treaties they enter into. And, as Maxwell Cohen pointed out in his review of the casebook, although the headings may have been traditional, the nuances in the material indicated that this was a book that looked at contemporary issues regardless of the framework.<sup>18</sup>

The avowed object of the editors was to design a book “for our students, and others like them, who experience the world from a Canadian perspective.”<sup>19</sup> As a result the materials drawn on were extensively from “the practice of international law chiefly as interpreted and applied in Canada.”<sup>20</sup> The effect of this was not so much the presence of Canadian material on the core issues of international law, but rather a focus on issues that arise in Canada's external relations—law of the sea and the arctic, extraterritoriality—as well as the reception of international law into Canadian law. Reviewers from outside of Canada commented favourably on this aspect of the casebook. They saw the material as useful for those from other jurisdictions who wished to gain some insight into issues concerning Canada and how they are approached.<sup>21</sup>

In this regard, a particular Canadian influence can be detected in the final chapter entitled “From Sovereignty to Common Interest.” This part of the book draws on Wolfgang Friedmann's concept of the international law of cooperation, and includes such matters as shared resources and

18. Cohen, *supra* note 11 at 446.

19. Kindred, *supra* note 8 at iii.

20. *Ibid.*

21. Sydney Picker Jr, Book Review of *International Law, Chiefly as Interpreted and Applied in Canada*, 4th ed, Hugh M Kindred et al, eds (1988) 14 Can-US LJ 327 at 330; Richard Plender, Book Review of *International Law, Chiefly as Interpreted and Applied in Canada*, 4th ed, Hugh M Kindred et al, eds (1990) 39 ICLQ 487 at 488.

the new international economic order, the protection of the environment, international rivers, and collective disarmament.<sup>22</sup> The notion of common interest, as opposed to sovereignty, reflected Canadian approaches to a number of areas of international relations, particularly those included in this chapter. It is interesting to note that subsequent editions of the casebook have developed and elaborated on the material in this area, particularly in relation to the protection of the environment.

The composition of the board of editors for the casebook also ensured that this would be truly a work that reflected how Canadians viewed international law. As already mentioned, the editors included Castel himself, but also professors from Toronto, Osgoode Hall, McGill, and the University of New Brunswick. All were scholars active in teaching and scholarship in international law, with experience in the practice of international law as well. One member, Bill Graham, was later to become the Foreign Minister of Canada. Two members, Armand de Mestral and Sharon Williams, had already produced an introductory text on international law to which frequent mention is made in the casebook. The text, *An Introduction to International Law, Chiefly as Interpreted and Applied In Canada*, used the same sub-title, and was in some sense a companion volume to what became known as the "Kindred Casebook."<sup>23</sup>

The eclectic coverage of editors from across law schools in Canada for subsequent editions has ensured the breadth of appeal of the work as well as the diversity of views within the materials. The most current (7th) edition of the casebook, published in 2006, includes editors from Dalhousie Law School, Osgoode Hall Law School, the University of Toronto, McGill, the University of Alberta, the University of British Columbia, and the University of Victoria.<sup>24</sup> These editors are scholars with diverse interests and expertise in the field as well as practical experience. This has no doubt had an impact on the content of the casebook and its coverage.

How then has *International Law, Chiefly as Interpreted and Applied in Canada* evolved over the years? The 7th edition published in 2006 is, not surprisingly, much more substantial than its 1987 counterpart—1219 pages excluding index as compared to 958 pages with index, and Hugh

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22. W Friedman, *The Changing Structure of International Law* (New York: Columbia University Press, 1954) at 60-66 in Kindred, *supra* note 8 at 820-822.

23. SA Williams & Armand LC de Mestral, *An Introduction to International Law, Chiefly as Interpreted and Applied in Canada* (Toronto: Butterworths, 1979).

24. Hugh M Kindred, Phillip Saunders, Jutta Brunée, Robert J Currie, Ted L McDorman, Armand LC de Mestral, Karen Mickelson, René Provost, Linda C Reif, Stephen Toope, Sharon Williams, eds, *International Law, Chiefly as Interpreted and Applied in Canada*, 7th ed (Toronto: Emond Montgomery, 2006) [Kindred 7th ed].



Kindred has been joined as co-general editor by Phillip Saunders.<sup>25</sup> The introduction has changed significantly. Rather than relying on a lengthy extract from Brierly's *The Law of Nations* for an explanation of the binding nature of international law,<sup>26</sup> the new introduction, titled, "The Roles of International Law and International Lawyers" covers the historic and contemporary literature relating to international legal obligation, an introduction to contemporary theories about international law, including feminist approaches, and the intersection between international law and international relations.<sup>27</sup> It ends with a challenge to students to join those international lawyers who "can imagine and seize opportunities to build up the normative framework of international relations, to aspire to justice."<sup>28</sup>

Within the book there have been changes in emphasis. The 1987 volume contained a fairly substantial treatment of maritime boundaries, a matter of particular Canadian interest at the time. No doubt in recognition of the fact that the field has become so vast and not easily dealt with in the context of an introductory course, the 7th edition has a small section on maritime boundaries and does not provide extracts from the case law. By contrast, the area of international criminal law, a field for which there was no separate chapter in the 1987 book, has a full and substantial chapter to itself in the 7th edition. A significant change in emphasis is the loss of the title (and the chapter) "From Sovereignty to Common Interest." Instead, there are simply separate chapters on the protection of the environment and the limitation on the use of force. Both of these contain substantially more material than the 1987 volume. The section on the international law on cooperation has disappeared and some of the material has been interspersed into other parts of the book.

The book has thus reflected the changes that have occurred in thinking about international law and the substantial practice that has developed in certain areas of international law. Indeed, some of these changes were present in the 5th edition of 1993 and are not just recent developments. This notwithstanding, the 7th edition has the aura of a very modern casebook reflecting international law as it is practiced and understood today but also as seen in the context of contemporary scholarly perspectives. In a sense, Brierly and Friedmann have been replaced by Allott and Koskenniemi. The stamp of a new group of editors who themselves reflect in their own

25. The index to the 7th edition is available only online.

26. JL Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, 6th ed by Sir Humphrey Waldock (Oxford: Clarendon Press, 1963).

27. Kindred 7th ed, *supra* note 24 at 1-2. In 1987 the title of the chapter was simple "Introduction to International Law," Kindred, *supra* note 8 at 1-9.

28. Kindred 7th ed, *supra* note 24 at 12.

work new and creative approaches to understanding the role and effect of international law is apparent in the 7th edition. Over the years, then, *International Law, Chiefly as Interpreted and Applied in Canada* has offered a window on the way in which international law is perceived and the discipline understood by Canadian international lawyers. In this regard, it is interesting to look at how the discipline and scholars' perception of it has changed in the years since the 1987 edition.

In 1985 John Claydon and I offered an assessment of the state of international legal scholarship in Canada. We did so as part of a series of studies on Canadian legal scholarship in response to the "Arthurs Report,"<sup>29</sup> which criticized legal scholarship in Canada as too heavily oriented towards traditional analytical methods and too reliant on the professional priorities and the value structures of the practicing bar and government law reform.<sup>30</sup> Our assessment, which came some ten years after *Canadian Perspectives on International Law and Organization*, was perhaps rather pessimistic. We saw international legal scholarship as largely doctrinal with little interdisciplinary work, a lack of research institutes, and an academy that was small in numbers with several scholars leaving the field for private practice or elsewhere.

There were important exceptions to this. There had been theorizing about international law by scholars like Cohen and McWhinney as well as by Macdonald and Johnston, and for a period in the 1970s and early 1980s the field of the law of the sea had seen some important interdisciplinary collaboration. Yet we did not see much scope for interdisciplinary work in the future and saw legal professionals (the "glass tower") as challenging the academics (the "ivory tower") in certain fields, such as economic law and telecommunications law.

Although the basic parameters of what Claydon and I were saying in 1985 were correct, we did not anticipate the dramatic changes that were to occur in international legal scholarship on Canada. We saw the numbers of academics as small and likely to remain so, but the substantial number of Canadian legal scholars writing in the field of international law today belies this. We saw Canadian scholarship as being predominantly doctrinal, yet today scholars with a wide variety of different perspectives, including

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29. *Law and Learning* (Consultative Group on Research and Education in Law, 1983, chaired by HW Arthurs). The volume of the Osgoode Hall Law Journal referred to in Kindred, *supra* note 8, contained this series of studies.

30. See generally JD McCamus, "After Arthurs—A Preface to the Symposium on Canadian Legal Scholarship" (1985) 23 Osgoode Hall Law Journal 395.

feminist scholars,<sup>31</sup> are active in the field. Moreover, some of the leading scholars on the application of international relations theory to international law are Canadian academics,<sup>32</sup> and third world approaches to international law are articulated in the works of new scholars in Canada.<sup>33</sup> Moreover, while Canadian academics often maintain strong links with governments,<sup>34</sup> a more critical literature is also emerging from the scholarly community.

Furthermore, the prediction that Claydon and I made that the “glass tower” might lead legal scholarship in some fields, in particular that of economic law, has turned out to be only partially correct. It is true that the impetus for the development of international trade law as a scholarly discipline in Canada was probably the actions of practitioners in both government and private practice through the development of the Canada–US Free Trade Agreement, the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO). However, a substantial amount of the scholarship that has developed in the field of international trade law has come from the “ivory tower.” The leading text by Trebilcock and Howse, *The Regulation of International Trade* bears evidence of this.<sup>35</sup> Equally, the field of international investment law which has been driven in part in Canada by legal practitioners who have contributed to the development of the jurisprudence of NAFTA Chapter 11 and the interpretation of bilateral investment agreements more generally, has also given rise to important scholarly works by Canadian academics at both the doctrinal and theoretical levels.<sup>36</sup>

However Claydon and I did correctly foresee the interaction of academics and practitioners in the economic law field, although perhaps not the way in which this would occur. In fact, practitioners contribute to scholarly literature and academics engage in the development of the law through sitting as panel members and arbitrators in both trade and investment disputes. The website developed by Professor Andrew

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31. See for example, Nicole Laviolette, “Commanding Rape: Sexual Violence, Command Responsibility and the Prosecution of Superiors by the International Criminal Tribunals for the Former Yugoslavia and Rwanda” (1998) 36 CYIL 93; Dora Buss & Ambreena Manji, eds, *International Law: Modern Feminist Approaches* (Oxford: Hart Publishing, 2005).

32. See for example, Professors Jutta Brunnee & Stephen Toope.

33. See for example, Obiora Chinedu Okafor, “Newness, Imperialism and International Legal Reform in Our Time: A TWAIL Perspective” (2005) 43 Osgoode Hall LJ 171.

34. International law professors frequently spend a year or more as an academic-in-residence in the legal bureau of the Department of Foreign Affairs and International Trade of the Canadian government.

35. Michael J Trebilcock & Robert Howse, *The Regulation of International Trade*, 3d ed (New York: Routledge, 2005).

36. See for example, Andrew Newcombe & Lluís Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (The Hague: Kluwer Law International, 2009); Gus Van Harten, *Investment Treaty Arbitration and Public Law* (Oxford: Oxford University Press, 2007).

Newcombe of the University of Victoria<sup>37</sup> is an indispensable source for both academics and practitioners in the field of international investment law.

In 1985, Claydon and I described international lawyers as occupying a “fringe” status in Canadian law schools.<sup>38</sup> International law was not seen as important by their colleagues and there were relatively few occasions when domestic courts would be confronted with international legal arguments. This, too, has changed dramatically. Scholars in other areas of law enter the field of international law because of the relevance of international standards, as well as the impact of international treaties and of the developing jurisprudence of Canadian courts in relation to international law on their fields. Immigration and refugee law, criminal law, environmental law, national security law and other areas of public law all have growing international components. No longer can international law or international lawyers be regarded as “fringe” in the curriculum of Canadian law schools.

This obviously has implications for the use of international legal arguments in domestic courts and the interpretation and application of principles of international law by Canadian courts. Many of the cases used in the chapter on “National Application of International Law” in the 7th edition of *International Law, Chiefly as Interpreted and Applied in Canada* were decided after the 4th edition was produced. There has been an increasing interest in the way in which international law is being received and applied in Canada, an issue on which Hugh Kindred himself has made notable contributions.<sup>39</sup> In the 1970s Canadian international law scholars bemoaned the lack of opportunities for the treatment of international law by the Supreme Court of Canada. Today, the concern is not about the lack of opportunity, but rather the way international law arguments are being treated—scholars criticize the Court for the way it applies international law.<sup>40</sup>

In 1985, Claydon and I made no mention of international criminal law and there was very little reference to international criminal responsibility in the 1987 casebook. Any treatment of international crime was largely

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37. Andrew Newcombe, Investment Treaty Arbitration, online: Investment Treaty Arbitration <<http://italaw.com>>.

38. Kindred, *supra*, note 8 at 486.

39. See for example, Hugh M Kindred, “The Use and Abuse of International Legal Sources by Canadian Courts: Searching for a Principled Approach” in Oonagh E Fitzgerald et al, eds, *The Globalized Rule of Law: Relationships between International and Domestic Law* (Toronto: Irwin Law, 2006) 11.

40. See *ibid* and John H Currie “Weaving a Tangled Web: Hape and the Obfuscation of Canadian Reception Law” (2007) 45 CYIL 55-96.

incidental to other topics. Once again, the situation is fundamentally different today in both practice and legal scholarship. Canadian practitioners have been at the forefront of developments in the field of international criminal law,<sup>41</sup> and a substantial body of scholarship has emerged from Canadian law schools. Moreover, as in the economic field, there has been an interaction between the academy and practice. Professor Sharon Williams of Osgoode Hall Law School, an original and continuing editor of *International Law, Chiefly as Interpreted and Applied in Canada*, served as an *ad litem* judge on the International Criminal Tribunal for the Former Yugoslavia (ICTY). Valerie Oosterveld and Darryl Robinson, having served as foreign affairs officials in the development of international criminal tribunal regimes, are now academics and prolific contributors to international legal scholarship in this area.

In short, the Canadian international legal scholarly world that Hugh Kindred and I entered in the early 1970s is vastly different from the community of today. The pervasiveness of international law in the curriculum, the number of scholars, the diversity of scholarly approaches and the richness of the output all demonstrate the vitality of the subject in Canada. Any full assessment of the state of international legal scholarship in Canada at the present time would likely reach quite different conclusions from those proffered by Claydon and me almost 30 years ago.

These changes and developments have been to a large extent mirrored in the changing editions of *International Law, Chiefly as Interpreted and Applied in Canada*. Reflecting as it does the selections by a variety of Canadian legal scholars of what they find important in teaching a basic course on international law, the book is a microcosm of changing international law scholarship in Canada. This is evidenced both in the emphasis of the topics and the specific Canadian material, legislation, judicial decisions, and practice of the government of Canada in its foreign relations. This material, as stated rather elliptically by Hugh Kindred in the Preface to the 1987 volume, was designed for students and others “who experience the world from a Canadian perspective.”<sup>42</sup>

In his review of Castel’s third edition, Hugh Kindred elaborated on this objective more fully. He stated that the legal education of a student is likely to be limited to Canada or a provincial jurisdiction, and thus “examples of Canadian involvement in world affairs are frequently the best, if not the only, means to expand students’ horizons and understanding

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41. Most notably the role of Philippe Kirsch as the Chair of the Rome Conference, and of Louise Arbour as Chief Prosecutor for the International Tribunals for the Former Yugoslavia and Rwanda.

42. Kindred, *supra* note 8 at iii.

of the international legal system.”<sup>43</sup> But he apparently retained some doubts about preparing materials and teaching from a national perspective, for after noting that international law can only be understood in the light of opposing viewpoints of different states, he went on to say, “the doctrinal character of the subject, founded and still maintained on the basis of sovereign national authority, continues to demand, *perhaps regrettably*, that a national perspective be foremost.”<sup>44</sup>

In this respect, perhaps the title of the book and that of Castel’s beforehand, suggests too much. Is this really a book that is “chiefly” about international law as it is applied in Canada? Or is it a book that is about international law but which draws material from the way in which international law has been applied both in and by Canada? The point is perhaps a quibble, because providing Canadian international law students and others access to material derived from Canadian practice is a laudable objective. But, it does raise the question about which Hugh Kindred felt some diffidence in 1987: should international law be understood from a national perspective? Which of course raises a further question: if the alternative to a national perspective is an international perspective, what in fact is an international perspective in the teaching of international law? In this regard, it is interesting to note that while the editors of the 7th edition retain the words of “Canadian perspective” in the preface, the introduction to the book, while treating many contemporary and past perspectives about international law and the role it plays, does not return to the idea of a “national” perspective.<sup>45</sup>

What then is Hugh Kindred’s legacy to teaching international law in Canada? Clearly his contribution is immense in the substantive areas of maritime law and international shipping. But in the area of the teaching of international law it is both more generalized and specific. *International Law, Chiefly as Interpreted and Applied in Canada* remains as a casebook that is used in many law schools and by many faculty members. It has stood the test of time. And it has received the ultimate compliment of imitation by way of other published casebooks on international law emerging in Canada, which although different in part are inspired by similar objectives.

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43. Kindred, Book Review, *supra* note 14 at 234.

44. *Ibid* [Emphasis added].

45. In this regard, it is interesting to contrast the approach in *International Law, Chiefly as Interpreted and Applied in Canada* with the more recently published Canadian casebook *International Law, Doctrine, Practice and Theory*, which articulates what is clearly intended to be a “Canadian perspective” and approach to the material in its introduction. John H Currie, Craig Forcese & Valerie Oosterveld, *International Law, Doctrine, Practice and Theory* (Toronto: Irwin Law, 2007) at xxxi-xxxiii.

Hugh Kindred took the idea behind the Castel casebook—to provide an introductory casebook for international law students in Canada based to the extent possible on relevant Canadian material—and turned it into an effective teaching tool. That in itself was an important achievement and an important contribution to international law teaching in Canada.

But *International Law, Chiefly as Interpreted and Applied in Canada* is more than that. Hugh Kindred did not put a casebook together acting on his own. He engaged other Canadian academics from different law schools, and over time he has added new editors and the composition of the editorial team has changed. The coverage became truly national. In doing so, he was able to provide a book that reflected the views of different scholars in Canada about how international law was to be understood. The book has thus been a mirror for understanding how Canadian international lawyers think about international law, as well as a basic introduction to some important Canadian international legal scholarship. The changes in the various editions show how these approaches themselves change and develop. There is a stark difference between the introduction to the 1987 edition of the casebook and the 7th edition of 2006.

Providing access to material about Canada, to the views of the Canadian government on international legal issues, and to decisions of Canadian courts on questions of international law is, of course, a major contribution of *International Law, Chiefly as Interpreted and Applied in Canada*. Such material does in a way provide a Canadian perspective on international law. Providing a glimpse into the changing views of international law teachers in Canada about how their discipline is to be understood is a less direct, but no less legitimate, formulation of what might be termed a Canadian perspective on international law. And this, although perhaps an indirect consequence of *International Law, Chiefly as Interpreted and Applied in Canada*, is an equally important part of Hugh Kindred's legacy to international law in Canada. In a real but different sense, *International Law, Chiefly as Interpreted and Applied in Canada* under the general editorship of Hugh Kindred is the true successor to the 1974 Macdonald, Morris and Johnston, *Canadian Perspectives on International Law and Organization*.