

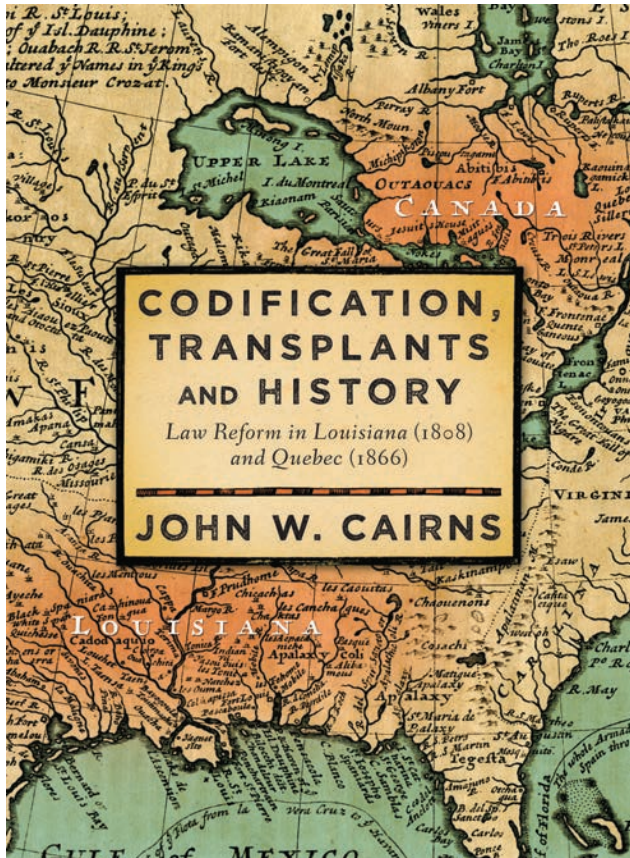
CANADIAN LAW AND CONSTITUTIONAL HISTORY

July 15, 2020



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Codification, Transplants and History

Law Reform in Louisiana (1808) and Quebec (1866)

John W. Cairns

When Louisiana enacted its Digest of the Civil Laws in 1808 and Quebec its Civil Code of Lower Canada in 1866, both jurisdictions were in a period of transition — economic, social and political. In both, the laws had originally been transplanted from European nations whose societies were in many ways different from theirs.

This book offers the first systematic and detailed exploration of the two new codes in light of social and legal change. Cairns examines the rich, complex, and varying legal cultures — French, Spanish, Civilian and Anglo-American — on which the two sets of redactors drew in drafting their codes. He places this examination in the context surrounding each codification, and the legal history of both societies.

Cairns offers a detailed analysis of family law and employment in the two codes, showing how their respective redactors selected from a defined range of sources and materials to construct their codes. He shows that they acted relatively freely, attempting to inscribe into law rules reflecting what they understood to be the needs of their society, from an essentially intuitive and elite perspective. While not propounding a universal theory of legal development, Cairns nonetheless shows the types of factors likely to influence legal change more generally.

The addition of Dr. Cairns' comparative work *Codification, Transplants and History* greatly enriches the scholarship of Louisiana legal history and can serve as a fruitful starting point for newcomers. Cairns first explored the relationships of legal and social change in comparing the early codifications of Louisiana and Quebec through the lens of Alan Watson's "legal transplants" theory in his University of Edinburgh PhD thesis completed in 1980. Renewed interest in this work afforded Cairns the opportunity to build on that foundation and add his own well respected approach to this welcome contribution. His excellent introduction is required reading for anyone interested in Louisiana legal history.

GEORGIA CHADWICK
Director, Law Library of Louisiana

Featured Titles

John Cairns' *Codification, Transplants and History* may be the most important book about the origins of the Louisiana Civil Code ever published. Originally written in the late 1970s as his Ph.D. thesis for the University of Edinburgh under the tutelage of Alan Watson, Cairns' study provides a detailed analysis of the methods and sources used by the first codifiers of Louisiana and Quebec Civil Law and the legal, political and social context in which they worked. In particular, Cairns' analysis of the drafting of the 1808 Digest of the Territory of Orleans resolves, to a greater extent than any work published to date, the famous debate between Robert Pascal and Rodolfo Batiza over the sources, purposes and meaning of Louisiana's first attempt at codification. Moreover, with its insightful, newly drafted historiographic introduction, Cairns' book explains why resolution of that debate cannot be marginalized as an obsession of scholars enthralled by Louisiana exceptionalism but rather remains central to any complete understanding of Louisiana legal history. Cairns' comparative account of codification in Louisiana and Quebec will also be the starting point of all other comparative studies of these two important North American mixed jurisdictions for years to come.

JOHN A. LOVETT

De Van D. Daggett, Jr. Distinguished Professor,
Loyola University New Orleans College of Law

Completed in the era of fountain pen, typewriters and snail-mail, this book is a major contribution to legal history and to legal theory. Professor Cairns shows that in Louisiana (1808) and in Quebec (1865), codifiers enjoyed a remarkable degree of freedom when restating the former law or, in the second case, suggesting amendments. His painstaking analysis of the rules they needed to consult allow him to deduce the reasons for the choices they made. He argues that a variety of factors explained innovation or stasis, such as legal or conservative ideologies, political considerations and socio-economic changes. Therefore, he considers lawmakers to be essentially social actors, instead of skilled technicians.

MICHEL MORIN

Faculty of Law, University of Montreal

Legal historians in Louisiana and Quebec will experience an epiphany in reading this masterful study. Though written and researched more than thirty five years ago, it deals with timeless questions and ancient debates and seems as fresh and relevant as if it had been penned yesterday. Cairns brings to historical controversies such as the Pascal-Batiza debate over legal sources what has been essentially missing from that debate all along. Instead of unproven assertions and unhistorical assumptions, he examines core codal ideas through a comparative conceptual lens and brings to the debate all the light that comparative law and legal history can shed. This work is sophisticated, meticulous and immensely illuminating.

VERNON VALENTINE PALMER

Thomas Pickles Professor of Law, Co-Director, Eason Weinmann Center for
International and Comparative Law, Tulane Law School

author of *Through the Codes Darkly: Slave Law and Civil Law in Louisiana*, *The Louisiana Civilian Experience: Critiques of Codification in a Mixed Jurisdiction* and *Louisiana: Microcosm of a Mixed Jurisdiction*

At last, this classic is widely available. John W. Cairns reminds us of the complexity of codification, a process intensified in the pluralist and rapidly changing North American jurisdictions of Quebec and Louisiana. A crackling review of the recent literature of codification, including the 'New Louisiana Legal History', adds to the work's relevance.

BRIAN YOUNG

James McGill Professor of History (emeritus), McGill University,
author of *The Politics of Codification: The Lower Canadian Civil Code of 1866*

JOHN W. CAIRNS is a graduate of the University of Edinburgh, where he now occupies the Chair of Civil Law. He has taught at the Queen's University Belfast (1980–1984) and served as a Visiting Professor at Southern Methodist University, Dallas, and the University of Miami, Florida. He was elected a Fellow of the Royal Society of Edinburgh in 2007. His research has focused on the history of Scots law (particularly legal literature, legal education, and the legal profession in the eighteenth century) slavery and the law (particularly in the eighteenth century) and the legal history of Louisiana and Quebec.

The Canadian Constitution in Form and in Fact

William Renwick Riddell

Originally published: New York: Columbia University Press, 1923
[x], 77 pp.

Text of four lectures delivered in Kent Hall at Columbia University in April and May, 1923 by a well-known Canadian Supreme Court justice and legal historian.

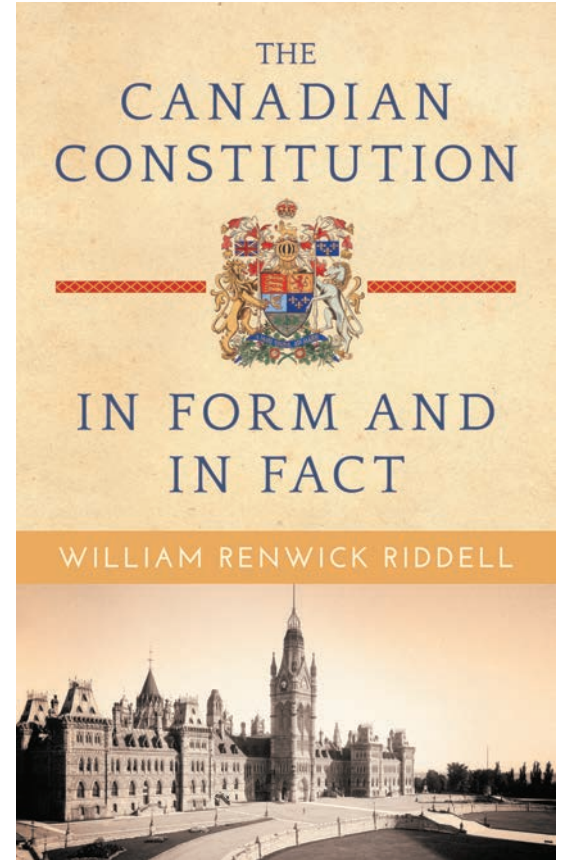
The four lectures are:

- I. The Constitution
- II. The Executive and Legislature
- III. The Elected Legislative Houses
- IV. The Judicature.

With an index.

Mr. Justice Riddell's lectures, delivered in 1923 at Columbia University, aim at bringing out the essentially democratic character of the constitution of Canada, despite the traditional monarchical form of the government. Apart from their immediate object, they have a more general appeal as a result of the elaborate notes which illustrate and support the statements of the text. The exposition is, of course, of great interest and value as representing the views of one immediately engaged in the interpretation of the Dominion Constitution.

A. Berriedale Keith
*6 Journal of Comparative Legislation
and International Law 3d ser. 174 1924*

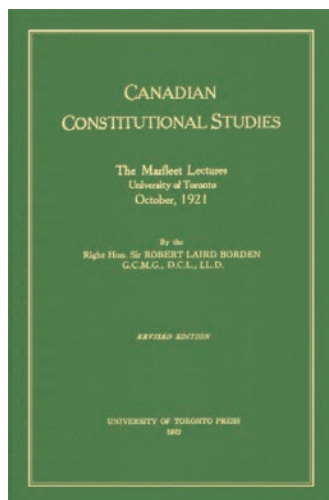


Hardcover 2015
ISBN 978-1-58477-962-9
\$24.95

Paperback 2015
ISBN 978-1-61619-472-7
\$14.95

William Renwick Riddell [1852-1945], a native of Hamilton Township, Ontario, was a lawyer, judge and prolific historian of Canadian law. He was appointed to the bench of the Supreme Court of Ontario in 1906 and promoted to the appeal division in 1925. He was the author of more than 1,000 reviews, pamphlets and books, including *The Legal Profession in Upper Canada in its Early Periods* (1916), *The Constitution of Canada in its History and Practical Working* (1917) and *The Bar and the Courts of the Province of Upper Canada or Ontario* (1928).

Selected Titles



Sir Robert Laird Borden

Canadian Constitutional Studies

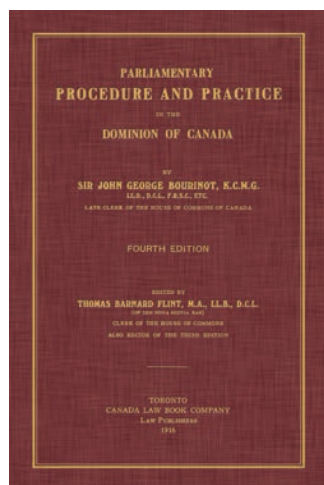
The Marfleet Lectures, University of Toronto, October, 1921. Revised Edition

Originally published: [Toronto]: University of Toronto Press, 1922
163 pp.

Hardcover 2005
ISBN 978-1-58477-586-7
\$29.95

This compact introduction traces the constitutional development of Canada from 1760 to the early twentieth century. Also included is a brief sketch of the governmental system that existed during the French regime from 1608 to 1760 and a look at problems that Canada faced in the author's lifetime. Borden [1854-1937] was the Prime Minister of Canada from 1911 to 1920.

Classic Canadian Treatise on Parliamentary Law



Sir John George Bourinot

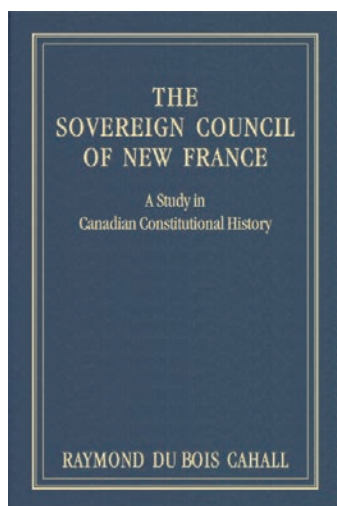
Parliamentary Procedure and Practice in the Dominion of Canada

Fourth Edition. Edited by Thomas Barnard Flint

Originally published: Toronto: Canada Law Book, 1916
xx, 693 pp.

Hardcover 2008, 2014
ISBN 978-1-58477-881-3
\$49.95

Reprint of the fourth and final edition (first published in 1884). "The object which the author has had cons n view...is to give such a summary of the rules and principles which guide the practice and proceedings of the Parliament of Canada as will assist the parliamentarian and all others who may be concerned in the working of our legislative system. (...) It is, moreover, been the writer's aim, not only to explain as fully as possible the rules and usages adopted in Canada, but also to give such copious references to the best authorities...as will enable the reader to compare Canadian with British procedure" (xi).



Raymond Du Bois Cahall

The Sovereign Council of New France

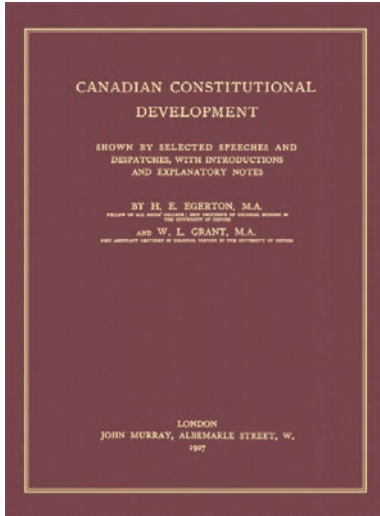
A Study in Canadian Constitutional History

Originally published: New York: Columbia University Press, 1915
274 pp.

Hardcover. 2005
ISBN 978-1-58477-467-9
\$29.95

The Sovereign Council was a governmental body established by France in 1663 to administer its colony in the St. Lawrence Valley. Unusually powerful for a colonial government, the council was the primary legislative and legal authority of New France. It had the power to select judges and minor officials, control public funds and commerce with the mother country, regulate the fur trade and set policy on local affairs. Cahall treats the council's history, organization, procedure and functions, assesses its effectiveness and evaluates its achievements and failures. This valuable study was originally published as Volume LXV, Number 1 in Columbia's series Studies in History, Economics and Public Law.

Selected Titles



*M.A. Egerton and W.L. Grant,
Editors*

Canadian Constitutional Development

Shown by Selected Speeches and Despatches,
with Introductions and Explanatory Notes

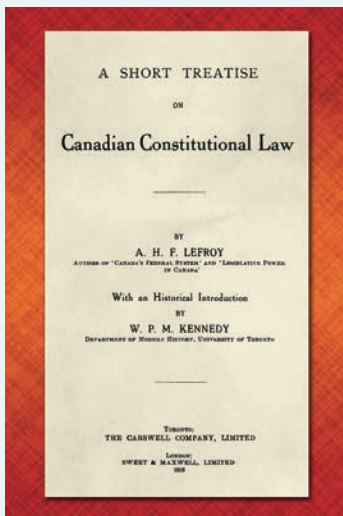
Originally published: Toronto: The Musson
Book Company Limited, [1907]
xxii, 472 pp.

Hardcover 2006
ISBN 978-1-58477-613-0
\$34.95

This thoroughly annotated collection of source documents from 1760 to 1867 traces the evolution of Canada's constitution from the time of the British conquest to the confederation. The sections, which are arranged according to historical turning points, are:

- Instructions to Governor James Murray
- The Quebec Act
- The Constitutional Act of 1791
- Proposals for Union
- Lord Durham's Report
- Responsible Government in the Maritime Provinces
- Responsible Government
- The Annexation Movement
- The Tariff Controversy
- Federation

The foremost interpreter of the Canadian constitution in his day, Augustus H.F. Lefroy [1852-1919] was an important Canadian jurist who helped to draft several principal amendments to Canada's constitution.



A.H.F. Lefroy

A Short Treatise on Canadian Constitutional Law

With an Historical Introduction by W.P.M.
Kennedy

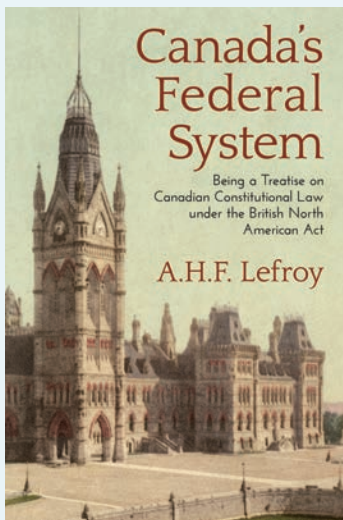
Originally published: Toronto: The Carswell
Company, 1918
xlvii, 322 pp.

Hardcover 2008
ISBN 978-1-58477-777-9
\$29.95

Conceived for non-Canadian lawyers and students at colleges and law schools, this is a treatise on the constitution that governed Canada from 1867 to 1982, when it achieved complete political independence.

Mr. Lefroy has written a valuable and informative book. (...) His work, on its scale, is a model for American lawyers to emulate.

H.J.L., *Harvard Law Review* 32
(1918-1919) 583



A.H.F. Lefroy

Canada's Federal System

Being a Treatise on Canadian Constitutional Law

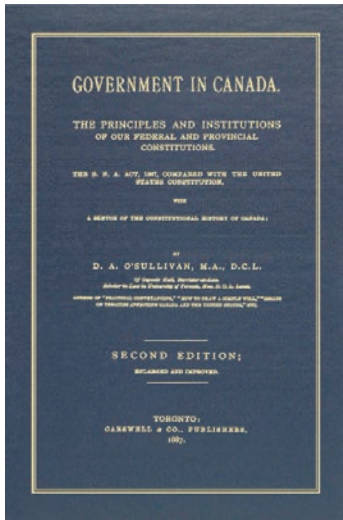
Originally published: Toronto: Carswell Co.,
1913 lxvii, 898 pp.

Hardcover 2006
ISBN 978-1-58477-591-1
\$59.95

This is a detailed commentary on the constitution that governed present-day Canada from its creation in 1867 under the British North American Act to 1982, when it achieved complete political independence.

Selected Titles

The First Study of Canada's Government Under the 1867 Constitution Act



D. A. O'Sullivan

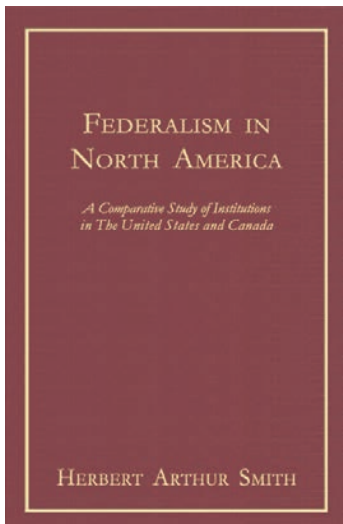
Government in Canada

The Principles and Institutions of Our Federal and Provincial Constitutions. The B. N.A. Act, 1867, Compared with the United States Constitution, With a Sketch of the Constitutional History of Canada. Enlarged and Improved

Originally published: Toronto: Carswell & Co., 1887
xix, 344 pp.

Hardcover 2007
ISBN 978-1-58477-850-9
\$34.95

Reprint of the second and final edition. The British North American (BNA) Act of 1867 (known today as the Constitution Act) organized the Canadian colonies into a federal dominion and defined the operation of the Government of Canada. First published in 1879, O' Sullivan's was the first study of the recently formed government. It is also valuable for its insights into a system that was still in its early stages of development, and would eventually lead Canada to political independence in 1982.



Herbert Arthur Smith

Federalism in North America

A Comparative Study of Institutions in the United States and Canada

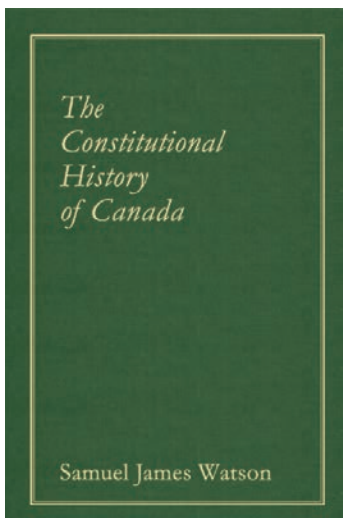
Originally published: Boston: The Chipman Law Publishing Company, 1923
v, 328 pp.

Hardcover 2005
ISBN 978-1-58477-624-6
\$34.95

This study compares the constitutions and federal governments of the United States and Canada. His scope also includes such influential extra-governmental institutions as political parties.

Mr. Smith's book, as a whole, is remarkably accurate and the author has compressed an immense deal of information and of sound, penetrating comment into small space. (...) Mr. Smith's book may be commended unqualifiedly as a careful, objective and valuable study in a field too much neglected in this country.

Henry M. Bates, *Michigan Law Review* 22
(1923-1924) 28



Samuel James Watson

The Constitutional History of Canada

Volume I (all published)

Originally published: Toronto: Adam, Stevenson & Company, 1874
157 pp.

Hardcover 2006
ISBN 978-1-58477-608-6
\$24.95

This compact history covers the period spanning the English conquest in 1760 to the union of the provinces in 1867. Though concerned primarily with governmental administration, it pays close attention to the influence of political and social developments. The legal aspect of these developments are explored in several chapters, such as "Laws of Inheritance--Detestation of Primogeniture," "Introduction of the Laws of England," "Revival of the French Laws" and "The Gift of Religious Liberty to Canada."

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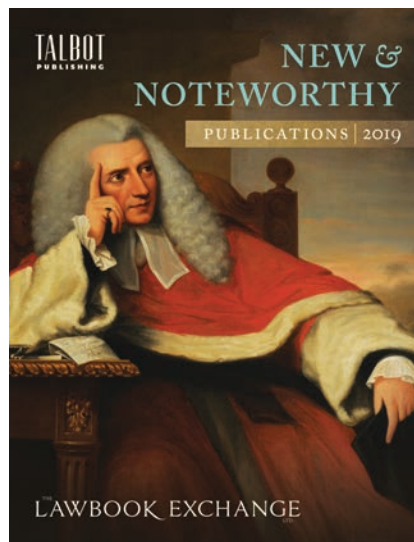
Although we have been publishing new original titles since 2003, we have issued them under the same imprint as our reprint editions: LAWBOOK EXCHANGE, LTD. In 2013 we divided our publication division into two units.

Our imprint, TALBOT PUBLISHING, presents new monographs of current scholarship in law and legal history.

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