some adjustment. The book has relatively few implications for political development and those it does have seem rather obvious—Canada West's desire to open the new west in Manitoba, for instance, because of the lack of room to expand within the colony itself. More fundamentally, however, Gagan is demonstrating the fascinating internal mechanics of the society by dispelling the popular myth that life in 19th century rural Canada was arcadian, simple, and static, without the tensions or concerns of urban society. Others should be able to build even more sophisticated concepts on the basic data he provides. For those of us who are archivists, Gagan's work, which is coherent and lucidly explained, can give an appreciation of the new uses to which familiar sources are being put and help us to better serve our clientele. It could well help us to better appreciate the use of quantitative and statistical sources, an appreciation many of us have been slow to develop. Careful reading of the book may well suggest a need to revise our methods of describing such material, providing more on the provenance (and hence possibly the accuracy) of such sources as the census, providing more detail on the continuities and gaps in such series of statistics and highlighting novel features—unique questions or divergent interpretations of questions—which may help guide historians to particularly useful sources. Finding aids which serve the needs of genealogists may not be of equal use to historical demographers.

Bruce G. Wilson,
Public Archives of Canada

Essays in the History of Canadian Law. Edited by DAVID H. FLAHERTY. Toronto: University of Toronto Press for the Osgoode Society, 1981. Volume 1, xvi, 428 p. ISBN 0-8020-3382 bd. $35.00.

Representing the first volume of a two volume series, this collection of essays can only augur well for the future of legal history in this country. As a pioneering effort in a new field of Canadian history, this volume suffers from very few of the flaws one might expect. With almost no exceptions, the essays in this volume achieve a high standard of scholarly excellence, which indicates not only the quality of the scholars contributing but also the presence of a skilled and intelligent editor.

For the archivist involved with legal records, this volume is both interesting and useful. For years legal and court records have been gathering dust inside and outside archival institutions; this volume is a witness to the change in this situation. It will be important for archives, especially provincial archives responsible for provincial court records, to be aware of the research possibilities of the records within their jurisdictions. This volume can act as the archivist's guide to those possibilities. On a practical level, for those interested, it supplies a useful guide to the secondary literature already available in the field.

David Flaherty's introductory article, "Writing Canadian Legal History: an Introduction" is intended as a blueprint for further work in Canadian legal history. Canadian legal history, he believes, can only become a viable field of study if it begins with a comprehensive approach. To be comprehensive, Canadian legal history must begin with a clear idea of the distinction between "external" and "internal" legal history. Conceding the necessity of "internal" studies into legal procedure, the legal profession, legal education, and law reform, Flaherty concludes that "the best research will necessarily deal with the external aspects of the interaction of law and society." In short, the legal system should be studied in its relationship to the historical development of a society.

Furthermore, Canadian legal history should be comparative. As well as being comprehensive in terms of law and Canadian history, Canadian legal historians should also seek to discover the English, American and French influences on Canadian law while also making comparisons of the differences and similarities between these legal systems. To facilitate this comparative approach Flaherty suggests that initial efforts in Canadian legal history should focus on nineteenth century Ontario: a focus justified by the age and influence of the Ontario bench and bar.

Although there might be some disagreement with the priorities in Flaherty's program, it is hard not to applaud the ambitiousness of his outlook which urges Canadian legal historians to produce work which will "reflect peculiar Canadian problems and issues while remaining comprehensive, comparative, and in touch with the concerns of other historians of the Western legal tradition." It is also worth noting that Flaherty purposely includes numerous references to availble secondary literature in his article. As a result, his article is an excellent starting point for the reader interested in legal history.

As might be expected, the articles in this volume—with the obvious exception of Margaret Banks' bibliographic essay—for the most part represent the comprehensive and comparative approach to legal history as far as is possible at this early stage. Common issues that emerge in the three most interesting articles in this collection are the nature of Canadian judicial conservatism and the extent of Canadian deference to English legal authority. This subject was first raised by Bora Laskin's *The British Tradition in Canadian Law* (London, 1969). Three of the articles—by Richard Risk, Jennifer Nedelsky, and, Constance Backhouse—approach these issues of conservatism and deference through different time periods and fields of law: Risk studying law and the economy from 1840-1860, Nedelsky examining nuisance law from 1880-1930, and Backhouse reviewing custody law from 1830-1890. All three concede the 'conservatism' of the Canadian judiciary. They disagree, however, concerning the extent of the judiciary's deference to English authority.

Richard Risk's article, "The Law and the Economy in Mid-Nineteenth Century Ontario" is a reprint of his 1977 article for the *University of Toronto Law Journal.* By itself, the article appears decidedly speculative compared to the articles by Nedelsky and Backhouse which deal specifically with nuisance and custody law. It should be kept in mind, however, that Risk's article was originally written as the concluding article in a series dealing in detail with the law of business corporations, the market, and property in nineteenth century Ontario.

Based on material from these three previous articles, Risk concludes that the Canadian courts constituted a "legal colony" tied to English precedent. As a group, Canadian judges were "deferent to apparent authority, unwilling to initiate change, and inclined to consider issues in terms of precedent and doctrine." While American judges were willing to make and change law according to the needs of economic conditions, Canadian judges were not. Unlike their American counterparts of a similar period who developed a creative, 'instrumental' approach to the law, Canadian judges considered the task of creating new law to be a legislative function rather than a judicial function. By so doing, at a formative stage in the emergence of the Ontario courts as major and mature institutions, they removed any creative element from the Canadian legal tradition. They opted for a conservatism that believed that faithfulness to English precedent was an obligation "supported by loyalty, habit and convenience."

Canadian judicial conservatism is seen in a different light in Jennifer Nedelsky's "Judicial Conservatism in any Age of Innovation: Comparative Perspectives on Canadian Nuisance Law, 1880-1930." Nedelsky challenges the view of Canadian courts as 'passive followers of English precedent'. Nedelsky argues that the conservatism of the Canadian judiciary during this period was a principled belief in the limited role of the courts: changing law was a legislative prerogative not a judicial one. Thus far, she does not differ significantly from Risk

whose Canadian judicial conservatism can also be labelled "principled". Where they differ is that Nedelsky offers substantial evidence of a period and area of the law in which Canadian judges differed significantly from their English mentors.

After examining reported cases dealing with nuisance law, Nedelsky concludes that Canadian judges were less willing than either American or English judges to abridge traditional common law rights to accomodate the needs of industrialism. Canadian courts held a more conservative, "pristine", "pre-industrial" view of nuisance than their English counterparts—a view that would look surprisingly progressive to modern environmentalists. Despite previous English decisions which allowed for some flexibility towards nuisance cases, Canadian judges supported traditional nuisance law" by avoiding rather than following English precedent." Canadian judicial decisions, unlike English decisions, reflected a "consistent adherence to the principle that the role of the judiciary was to protect established rights by applying existing law, not to create new law." This contradicts the view of the Canadian judiciary as a legal colony slavishly following English precedent.

This reluctance of the Canadian judiciary to abridge common law rights—with less progressive implications—is also described in Constance Backhouse's "Shifting Patterns in Nineteenth Century Canadian Custody Law." Judicial conservatism in custody law, she believes, was the result of Canadian judges; adherence to the common law supremacy of pattern rights in custody cases. Changes in custody law came from the legislature not the judiciary: a pattern of deference to the legislature also found by Risk and Nedelsky.

In a fine article benefitting from the new research on the family in the nineteenth century, Backhouse is able to argue that legislative changes in custody law favouring women were the result of industrial society's elevation of childhood to a significant and important stage of life. This changed view focussed on the welfare of the child: women gained new importance as guardians of the family. With the judiciary showing an unwillingness to change the law to reflect this new outlook, the legislature enacted new custody legislation. It is interesting to note that Backhouse shows the judiciary reacting unsympathetically to legislative changes in custody law rather than changing as the laws changed. All of which seems to point to the eclectic nature of the Canadian judiciary's response to change in different areas of the law.

John D. Blackwell's "William Hume Blake and the Judicature Acts of 1849" examines the early legal and political career of a "new largely forgotten Irishman" in the process of giving a straightforward account of the events leading up to the Judicature Acts of 1849 and their aftermath. Blake, as a distinguished Chancery lawyer and later as Solicitor General for Canada West, was the mastermind and driving force behind these Acts. Concluding his article, Blackwell refers to Richard Risk's assertion that Blake, along with John Beverley Robinson, is a major figure in any comprehensive study of the Canadian judiciary. Assessing Blake's work in the law reform acts of 1849, Blackwell agrees with Risk's description of the man as the judge who distinguished himself by his desire to shape the law to Canadian needs. Yet Blackwell adds that Risk's subsequent generalization of the Canadian judiciary as a legal colony is misleading. He suggests instead that Ontario's legal identity was "synthetic"; it neither "aped the English judicial and legal scheme" nor did it ignore developments in the United States. In that, according to Blackwell, lies its distinction.

Paul Craven's "The Law of Master and Servant in Mid-Nineteenth Century Ontario" is the first installment of a two part study of the "legal and social history of the employment relationship during the transition to industrialism." This first essay is meant to give an account of the passage of the first Master and Servant Act in Ontario, its administration, and eventual repeal. This sounds deceptively straightforward. In fact, Paul Craven has undertaken a task which might daunt lesser researchers.

Unlike other legal historians in this volume, Craven does not limit his research to the readily accessible volumes of reported cases. Most employment cases before the courts under

the Master and Servant Act are to be found in the unreported cases contained in the records of the lower courts—the police courts and the courts of General (Quarter) Sessions. Craven is one of the first to attempt to use the primary sources available in court records to collect his data—with all the attendant frustrations of that task. His first tentative examination of one such source, the Galt (Ontario) Police Court records, leads him to conclude that the law "favoured the employer and dealt harshly with the employee," a conclusion neither he or his readers would find surprising. What is important is that supposition is being replaced by hard evidence.

The remaining articles in this collection are more limited in scope but are interesting in their own right. Graham Parker's "Origins of the Canadian Criminal Code" provides an interesting guide to the passage of the Canadian Criminal Code of 1892. Unfortunately, it suffers in places from a lack of proper referencing and at times strays from the main focus of the article. Kathryn Bindon's "Hudson's Bay Company Law: Adam Thom and the Institution of Order in Rupert's Land, 1839-1854" describes not only the irascible and problematic Scot responsible for the territory's first judicial system but also Thom's subsequent misuse of that system, a misuse that initially politicized the Métis in the Northwest with direct results in the later Métis Rebellion in the 1870's. Jennifer Stoddart's examination of Quebec's Dorion Commission on women's rights from 1929-1931 serves as a reminder that law reform organizations can be created to act as apologists for the status quo while appearing to consider fundamental change. In this case the status quo to be defended was the discrimination against women in the Civil Code.

The final article in this volume, Margaret Banks' "Annotated Bibliography of Statutes and Related Publications: Upper Canada, the Province of Canada, and Ontario, 1792-1980", is a welcome and invaluable guide to the maze of statute books, session laws, proclamations, regulations and other publications which make up the law in Ontario. It is especially useful for the period prior to 1867 for which there are no fewer than twelve collections of statutes available. Banks also lists and describes the various Indexes and Statute Annotations, and the Statute Citator available to assist legal research. For anyone, archivist or otherwise, faced with the task of doing statuatory research, this article is a necessary companion.

In conclusion, this volume is highly recommended as a starting point for understanding legal history. Of necessity, within the limited scope of a book review complete justice cannot be done to all aspects of the research presented in this volume. Perhaps enough has been said to demonstrate the value of this book to all archivists who must deal with legal and count records. This volume is also a vindication of past efforts to collect and preserve such records.

Catherine Shepard
Archives of Ontario

National Register of Archives and Manuscripts in New Zealand. Wellington, National Library of New Zealand, 1979-1981.

Archivists and researchers in many disciplines will welcome the publication of the most recent instalment of the *National Register of Archives and Manuscripts in New Zealand.* This register is being compiled and edited at the Alexander Turnbull Library and the National Archives of New Zealand. The first instalment was issued in 1979. The editors plan to include all archives and manuscripts held in New Zealand libraries, museums, historical societies,