Book Reviews

Putting Salmond Back On The Menu

SALMOND: SOUTHERN JURIST by Alex Frame, Victoria University Press, Wellington, 1995, 294 pp.

Professor Sir John Salmond remains New Zealand's most influential legal theorist, jurisprudential scholar, and jurist. Alex Frame's account of Salmond is an important and long overdue addition to the painfully small but slowly growing corpus of New Zealand legal history and biography.

It was a curious brand of jurisprudence espoused by John Salmond the scholar; a blend of "cool, elegant positivism",[1] coupled with an infusion of a pragmatic genus of natural law, understandable from the son of a theologian.[2] More curious still is why John Salmond's home-spun jurisprudence, with its roots firmly in Temuka, would have such a profound significance in virtually every common law legal system except his own. Even today Salmond does not appear on the menu of undergraduate courses in New Zealand in either jurisprudence or legal history. While Frame's insightful account of the development of Salmond's jurisprudence does not make Salmond a main course, it certainly provokes enough intrigue to introduce New Zealand's leading jurist as a substantial entree into the study of early twentieth century legal and social philosophy.

Legal biography is a difficult art. Alex Frame has made the task that much easier by not really writing a biography.[3] Instead, Frame invites the reader to consider the life and times of his subject and reflect on the questions that John Salmond posed to himself and to his community through his writings. Frame takes the reader on a voyage of irony where the only answers are questions and where only the briefest of glimpses are permitted of the man that once prompted Sir Fredrick Pollock to send a note of caution to Oliver Wendell Holmes warning of challenges to the traditional seat of jurisprudence from "[t]hat young New Zealander Salmond".[4]

The book is divided into fifteen chapters arranged, not surprisingly, largely in chronological order. A group of well-reproduced black and white illustrations appears near the middle of the book. Among the usual judicial and diplomatic photographs is a hand-written draft of a few sections of the Samoa Act 1921 which

1 Brown, "Catching Salmond" (1996) 32 Quote Unquote 28.

2 See Salmond, *The First Principles of Jurisprudence* (1893), 10.

3 Frame acknowledges as much in his introduction, at 11.

4 Mark De Wolfe Howe (ed), *The Holmes - Pollock* (1942), 41.

works to add a human aspect to Salmond's role of legislative draftsman. The book is well-footnoted; notes at the bottom of each page prove far easier to use than the unfortunately growing practice of inclusion at the end of each chapter, where they are sure to remain unread. Three superb appendices are included which cover Salmond's published writings, reported judgments, and source notes. An excellent and widely cross-referenced index completes what is a very professionally produced book that is both functional as a research tool and pleasing as an aesthetic work in its own right.

The first chapter, *Concerning Origins*, is refreshingly short, providing a brief account of the arrival and settlement of Minister William Salmond and the Salmond family in Otago in 1876. The book proper begins with Chapter Two, *Scholar Becomes Lawyer*. The following four chapters chart the genesis and evolution of Salmond's particular brand of jurisprudence from the student halls of University College, London, to Temuka, and then to his professorial capacities at the University of Adelaide and Victoria College in Wellington. This part of the book, which occupies less than fifty pages of the nearly 300, is its real strength. It covers the theoretical period of John Salmond's life: his influential early *Essays in Jurisprudence and Legal History* [5] and *The First Principles of Jurisprudence* [6] were published while he was in Temuka, and his seminal work *Jurisprudence: or the Theory of the Law*, was published in 1902 while at Adelaide.[7] The first edition of *The Law of Torts* appeared when Salmond was in his last year at Victoria College.[8] Ninety years later the twentieth edition still graces many reading lists in torts classes around the common law world.[9]

Frame displays a sensitivity to Salmond during this jurisprudential period, perhaps more so than in any other period in the book. Frame has an observable empathy for his subject and a keen sense of the nature of the debates in which Salmond was immersed at the time. Frame's own background as a lecturer in jurisprudence allows him to traverse Salmond's theories and pepper them with tangential excursions into competing or sympathetic theories that may have influenced Salmond. The process is largely rewarding, while at the same time somewhat irrelevant.

For example, Frame resurrects from infamy the social statics of Herbert Spencer. The only connection with Salmond is that Spencer represented the height

5 (1891) Aware of the difficulties of writing legal history so far away from its traditional source, Salmond apologises in the preface for any shortcomings consequent on having written the works "at the ends of the earth".

6 (1893) Frame notes that this work, while largely neglected, "contains the essential features of Salmond's fundamental thought concerning the nature of law", at 44.

7 The work continued to its seventh edition in 1924 with Salmond's control, and is now in its twelfth and likely final edition, titled *Salmond on Jurisprudence: or the Theory of the Law*, edited by P J Fitzgerald and published in 1968.

8 *The Law of Torts: a Treatise on the English Law of Liability for Civil Injuries* (1907).

9 Heuston and Buckley (eds), *Salmond and Heuston on the Law of Torts* (1992).

of ethics and its scientific basis for right and wrong, an approach rejected by Austinian positivism and the command theory. Salmond, it will be recalled, rejected the command theory in favour of his own brand of positivism. Notwithstanding the tenuous connection, Frame gives a fascinating account of Herbert Spencer's formulation of a scientific table of weighted advantages to determine whether he should migrate to New Zealand or remain in England.[10] The outcome of the table is resoundingly in New Zealand's favour yet Spencer never came to New Zealand. Frame wisely leaves hanging the obvious question as to whether New Zealand could ever have made a difference to the man Oliver Wendell Holmes was to pillory in his famous Supreme Court dissent in *Lochner v New York*,[11] but this reviewer at least is thankful for the ramble through this most interesting byway.

Chapters Seven and Eight introduce Salmond's roles first as counsel for the Office of Legislative Drafting and then as Solicitor-General, setting the scene for Chapters nine and ten which explore in detail Salmond's handling of matters Maori. Frame is again in familiar and clearly comfortable territory as he gently chastises Salmond's assimilationist policies that were implicit in his Native Land Act 1909 and its application in the case *Tamihana Korokai v Solicitor-General*,[12] in which Salmond appeared for the Crown. Frame explores a range of revolutionary and evolutionary theories of constitutional development, dips into the Magna Carta and international law, and essentially delivers a lecture on Treaty jurisprudence. Unfortunately, the debate is out of context and serves only to locate the biographer in the place that should be occupied by his subject. Transposing contemporary social mores onto historical actors of distant times is generally an unrewarding process. Salmond comes out much cleaner than Frame would have us believe.

Chapters Eleven to Thirteen introduce Salmond the diplomat. Frame explores Salmond's part in the 1913 Wellington waterfront strike, his role in enacting "despotic" war legislation, as Frame aptly terms it,[13] and the League of Nations mandate for Western Samoa. These chapters lay a foundation for Frame's final two chapters which follow Salmond to the Washington Conference on the Limitation of Armaments between 1921 and 1922, and his appointment to the Supreme Court in 1920.

The final chapter hints at sadness. Much is expected of Justice Salmond and his untimely death after only four years on the bench robs the nation and the historian of the opportunity to chart the progress of the jurisprudence of John Salmond the scholar into the law of Mr Justice Salmond. Frame observes that Salmond does cart some "philosophical baggage" with him to the bench,[14] but none of it permeates in any substantive way to the surface of judicial law.

10 At 34.
11 198 US 45 (1905), 75.
12 (1912) 32 NZLR 321.
13 At 165.
14 At 220.

Nonetheless, three judgments stand out for their illustration of Salmond's unique utilitarianism. In *Lodder v Lodder*[15] Salmond was required to interpret the new discretionary grounds for divorce under the Matrimonial Causes Amendment Act 1920. He concluded that it was the court's role to weigh up the private benefit of divorce against the public mischief of the lessening of responsibility and fidelity and find the appropriate balance. An outcry led to an amendment to the legislation.[16] In *Park v Minister of Education*[17] Salmond struck down regulations empowering the Minister of Education to cancel teaching certificates on the grounds of immoral conduct. *Taylor v Combined Buyers*[18] will be well known to commercial lawyers and students. In that case, Salmond gave extensive consideration to the Sale of Goods Act 1908 and its "implied conditions" provisions. Salmond drew on "partially forgotten logic" to explain what "description" meant within s 16(b) of that Act.[19]

In the end, Salmond lacked the time and reflection required to grow into his judicial robes. He left us with a mere taste of his curious blend of jurisprudence. However, those that return to his seminal jurisprudential works will be rewarded with a fresh, even brash, brand of positivism unshackled from the command theory of John Austin that bridled English legal scholarship of the time. Frame correctly observes that H L A Hart's own scholarship owes much to Salmond's, a debt which Hart himself acknowledges.[20] In many ways, Hart's own Rule of Recognition cannot improve upon Salmond's thesis.[21]

Frame's work is a serious and important one. Much can be made of his own interpretation of Salmond's impact on Treaty jurisprudence, but to do so would draw attention away from what was the heart of John Salmond, his contribution to legal theory. Salmond was fallible and Frame is right to tell us where and why, but he wisely does not dwell there. Instead the focus is on Salmond the thinker and his thoughts. In a time when too seldom are the words 'thought' and 'law' used conjunctively, Frame's *Southern Jurist* rings loud and long. Lamentably, its readership is unlikely to reflect the value it contains.

Frame's motivation for *Southern Jurist* was the "surprise that so little is known of the life and work of New Zealand's most influential and renowned jurist".[22]

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15 [1921] NZLR 876.

16 The outcry actually followed a similar case of *Mason v Mason* [1921] NZLR 955 which Salmond heard on appeal. Salmond applied the principles he had earlier set down in *Lodder*.

17 [1922] NZLR 1208.

18 [1924] NZLR 627.

19 Ibid, 640.

20 Hart, "Positivism and the Separation of Law and Morals" (1958) 71 Harv L Rev 593. Hart recognises Salmond as "[o]ne of the first jurists ... to break with the Austinian tradition ...", 605.

21 In *The Concept of Law* (1961) Hart states that his Rule of Recognition closely resembles that set out in Salmond's *Jurisprudence*, although perhaps uncharitably suggests it was "insufficiently elaborated", 245.

22 At 11.

Even if his book does not achieve the readership it deserves, we have Alex Frame to thank for putting Salmond back on the menu of New Zealand legal scholarship.

David Knight

A New Zealand Legal History?

A NEW ZEALAND LEGAL HISTORY by Peter Spiller, Jeremy Finn and Richard Boast. Brookers, Wellington, 1995. xl and 308pp.

There is an old saying, undoubtedly true, that one should never judge a book by its cover. In this case it is rather the title that might be considered misleading: a New Zealand legal history this book is not, though that is the subject of the collection of essays therein.

Although the preface to the book admits that the authors "are conscious that this work is not a comprehensive account",[1] a book of this size (less than 300 pages) is simply not capable of comprehensively covering New Zealand legal history. While the authors are clearly up to the task — indeed, given Professor Spiller's impact on the field of legal history in New Zealand a book of this nature with his name on it was all but inevitable — attempting to address the topic in one slim volume is simply too ambitious.

In those chapters where there is an attempt to cover all the material from a wide subject area, as in Jeremy Finn's chapter *Development of the Law in New Zealand*, the treatment is at times without sufficient depth, overly descriptive, and with insufficient analysis of the relationship of the law to New Zealand's wider history. Conversely, where specific material is covered in depth, it is at the cost of any real coverage of the wider subject. An example is the excellent discussion of Maori land law in Richard Boast's chapter *The Law and the Maori*, which limits serious analysis of wider issues, save the briefest of treatments of the Treaty of Waitangi, and a synopsis of papers on Maori Law.

Finally, where a more reasonable balance is struck, such as in Jeremy Finn's other two chapters, *The English Heritage* and *Colonial Government, Colonial Courts and the New Zealand Experience*, the subject matter is necessarily limited in scope. Thus, two of the six chapters, fully one quarter of the book, is spent establishing the context of our legal history, rather than considering the substantive history itself. While these chapters and their emphasis are commendable, in a book of this size they must be considered excessive.

1 At xv.

The result is to leave great gaps in the coverage of New Zealand's legal heritage. Notable by its absence is any treatment of constitutional issues, of the history of punishment, of Maori law, of women and the law, and perhaps most significantly, of the place of the law within the more general framework of New Zealand society.

However if this work as a whole is perhaps flawed, it must be emphasised that the material in the individual chapters generally is not. If one accepts that the work is only an introduction, as claimed in the prologue, then the quality of research, the comprehensive footnoting and the obvious knowledge of the authors give the book a practical utility that in the final analysis outweighs its structural deficiencies.

The opening chapter, *The English Heritage*, is a comprehensive yet concise account of the development of English law. This is clearly the only logical starting point for a New Zealand legal history given the inescapable pedigree of our legal system, despite Lord Cooke of Thorndon's remarks to the contrary in the foreword.

Similarly, the next chapter, *Colonial Government, Colonial Courts and the New Zealand Experience* is a logical and perhaps no less important progression from the first. This chapter places New Zealand in the context of the colonial experience as a whole. There is valuable comparative material here that adds much to our understanding of our own legal institutions, which makes it surprising that this area has not been more comprehensively covered in the past. These two chapters flow together perfectly and, in a longer book or one more limited in scope, would have comprised an excellent introduction.

Finn's third and last chapter, *Development of the Law in New Zealand*, suffers, as noted above, from the sheer weight of material that must be covered. Even so, Finn does a commendable job of establishing his thesis of five distinct chronological periods of New Zealand legislation. However, size limitations preclude any real in-depth examination of the various influences on our legislative history, particularly social, racial and political concerns. The chapter is at times dry, due in part to an almost constant stream of names of various enactments. Nonetheless, there is more than enough well-footnoted material here to facilitate further enquiry into any aspect touched on in the text.

The fourth chapter, *The Law and the Maori*, is more disappointing. As noted above, Boast's treatment of the development of Maori land law is particularly good, but this is at the expense of any examination of the wider relationship between Maori and the law. The only other area really considered at length, the Treaty of Waitangi, does little more than add to the already comprehensive debate in this area. Finally, his brief summary of materials on the subject of Maori law only demonstrates the need for a separate chapter in a larger work.

Professor Spiller's two chapters are perhaps the most readable of the book, and flow together well. However, like Finn's chapters, the subject matter of each is relatively narrow. The first, *The Courts and the Judiciary*, comprehensively covers the three layers of courts in New Zealand and the most significant judicial actors within them. The last chapter of the book, *The Legal Profession*, covers all aspects of that subject, from law reporting and the various law societies, to legal education and 'modern' trends in legal practice. Professor Spiller's knowledge

and ability are once again amply demonstrated in this material.

While welcoming the wealth of new and valuable material in these individual chapters, one cannot help but feel that in publishing this book in its present form an opportunity has been lost. The authors are undoubtedly the correct ones for the job, but the size of this work is inadequate for a project of this importance. One solution would have been to publish a first volume of a two or three part set, the remainder be produced at leisure. The unfortunate reality is that scholars of both law and history who may have been excited by the publication of this work, must resign themselves to once more await the production of a truly coherent and comprehensive New Zealand legal history.

Warren L McIntosh

Improvements in Commercial Law

BUTTERWORTHS COMMERCIAL LAW IN NEW ZEALAND, edited by A. Borrowdale, Butterworths, Wellington, 3rd edition 1996, lxxxiv and 875pp.

This is the third edition of the highly successful text *Butterworths Commercial Law in New Zealand.* As the editor, Andrew Borrowdale, notes in the preface, "[a] text of this size assumes a course and momentum which an editor can only modestly affect in a single edition."[1] Indeed, this is a substantial book, both in length and subject matter. However, notwithstanding these impediments and Borrowdale's opening remarks, there are a number of worthwhile improvements to this edition's presentation and content.

The most obvious change is the improved layout. In particular, the use of bold type headings and paragraph breaks has greatly improved the book's readability. Unfortunately, these changes do not appear to have been consistently applied. Chapters One to Eighteen have benefited most from the changes, in part because they deal with largely unchanging, fundamental aspects of the law. This has allowed them to be refined in each new edition.

An area of the law which has rapidly evolved over recent years is covered in Chapter Thirty-seven, titled *Aspects of the Commerce Act 1986.* This evolution is well documented in a logical fashion within the chapter. Further, the chapter highlights crucial points of law with which the courts and commercial world are presently concerned. For example, the discussion of the varying approaches to the meaning of "use" in s 36 of the Commerce Act 1986 is precisely what the diligent student or practitioner is looking for.[2] However, the length of the chapter makes it somewhat overwhelming. Earlier in the book, individual chapters deal with specific aspects of the Sale of Goods Act 1908, and it is likely this approach would have clarified the discussion of the Commerce Act.

One area of disappointment was the footnoting. While some have been introduced, "to alert readers to useful literature",[3] they are too infrequent to be of

1 At vii.
2 At 704.
3 At vii.

any real use. Further, it is unfortunate that footnoting has not been used to lighten the text of lengthy lists of case law authority [4] and other information which is relevant, but nevertheless superfluous to the issue discussed.

Clarity of language is yet another improvement to the overall readability of the book. This improvement is most evident when comparing the introductory passages of this edition with those of its predecessor. For example, the chapter relating to the Credit Contracts Act 1981 in the second edition begins: [5]

> Credit may be provided in an infinite variety of ways but credit transactions fall basically into two categories; namely deferred payment sales and loans.

In contrast, the third edition opens by stating that: [6]

> The Credit Contracts Act 1981 is a consumer-orientated statute which was introduced to reform the law regulating the provision of credit.

The language in the new edition can be seen to be clearer and more concise. Further, some of the historical passages which prefaced the discussion of the law in the previous edition have been removed or repositioned. Thus, while the introduction to the Sale of Goods Act 1908 does contain some historical commentary, its length has been reduced and it has been repositioned so that it is no longer the focus of the introduction.[7] In terms of the book's content, Borrowdale states that: [8]

> The chapters on credit contracts, hire purchase, insurance, bailment and carriage of goods have been written completely afresh. The chapters on sale of goods and insolvency have been substantially rewritten or revised.

These chapters are not a huge departure from those of the previous edition, but in any event this was not called for. Instead, chapters have been altered to accommodate new legislation or case law. The result is a comprehensive discussion of significant aspects of commercial law.

The major development regarding the book's content is the completely new chapter on the Consumer Guarantees Act 1993.[9] As one would expect, it is a thorough and well-ordered commentary, which makes good reference to the relevant Sale of Goods Act provisions replaced by the Consumer Guarantees Act. There is also ample discussion of Saskatchewan case law and legislation, on which much of New Zealand consumer guarantee law is based. The only

4 For example, at 460-461.

5 Farrar and Borrowdale, *Butterworths Commercial Law in New Zealand* (1992) 309.

6 At 333.

7 At 217.

8 At vii.

9 Chapter 19, at 295.

suggestion is that the opening three pages of the chapter would benefit from a tighter structure of introduction, definitions, and then commentary.[10] At the moment it is slightly awkward and confused.

Overall, this edition has introduced some significant improvements. The second edition was already well-established and the improvements that Andrew Borrowdale has overseen in this latest edition has guaranteed that *Butterworths Commercial Law* will remain a valuable reference text for students and practitioners alike.

Philip Crump

Rights and Freedoms: A New Zealand Critique

RIGHTS AND FREEDOMS: THE NEW ZEALAND BILL OF RIGHTS ACT 1990 AND THE HUMAN RIGHTS ACT 1993, edited by Grant Huscroft and Paul Rishworth, Brooker's Ltd, Wellington, 1995, xxx and 546 pp.

Rights and Freedoms is comprised of eleven chapters, primarily relating to the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The book is not only of legal significance, but is also an incisive modern history of New Zealand law and politics. The editors and main contributors Paul Rishworth and Grant Huscroft, are Auckland University lecturers of some distinction for their interest in matters concerning human and civil rights. The list of contributors also includes such notable commentators as Dr Rodney Harrison QC (specialist in constitutional law, university lecturer), and Professor Margaret Bedggood (Professor and Dean of Waikato Law Faculty and former Chief Human Rights Commissioner).

The introductory chapter is an interesting walk down the road that led to the adoption of a Bill of Rights in New Zealand. This background material gives interesting insights into the social and political climate of New Zealand in the 1960s and 1970s. Rishworth explains, for example, that when he attended law school in 1974, scholars poured scorn on the idea of a Bill of Rights, denouncing the concept as overtly American.[1] However, a number of events in the Muldoon era showed the extent to which the rule of law could be ignored by the government if there was no set prescription as to the rights of citizens. Examples of the Muldoon Government's disregard for law and process were the purported suspension of the national superannuation scheme, the fast-tracking of planning procedure for "think big" projects, and the wage/price/rent "freezes" under the Economic Stabilisation Act 1948.[2] This background material sets the scene for a rigorous discussion of rights and freedoms.

10 At 295-297.
1 At 1.
2 At 10-11.

Chapter Two deals with international human rights law. Part of the essay is dedicated to discussing the debate over cultural relativism in human rights legislation in the New Zealand context. Its conclusions are astute and realistic: that contemporary international human rights reflect the political traditions of western democracies; that international human rights are relatively new and underdeveloped although important for standard-setting; and that it is at the national level that international human rights can be most effectively implemented.

Chapters Three and Four mainly discuss the interpretation of the New Zealand Bill of Rights Act. Chapter Three, by Rishworth, contains a useful step-by-step guide to interpreting the Act, and includes his highly respected analysis of the correct balance between ss 4 and 6. Chapter Four, by Huscroft, focuses on the Attorney-General's role in reporting to Parliament legislation that could potentially conflict with the Bill of Rights.[3] Huscroft includes suggestions aimed at improving the effectiveness of this provision. In this chapter, he also examines an argument that the Attorney-General should be entitled to intervene in private litigation where Bill of Rights issues are raised. He concludes that although the intervention of the Attorney-General in litigation might cause practical problems, those who seek to invoke the Bill of Rights to their advantage cannot expect to exclude considerations of public interest as represented by the Attorney-General.

In Chapter Five Huscroft discusses freedom of expression not only in an abstract philosophical sense, but also in relation to such specific issues as defamation and race relations. There are several examples of the style foreshadowed in the introduction of the book, of analysis within the modern historical context of New Zealand. For example, Huscroft explains the freedom of expression issues involved in the infamous "kill a white" comment made by Hana Te Hemara to a group of law students.[4] The issue at the time was the extent to which the Auckland Star should have reported the incident, and the proper role of the Race Relations Conciliator in resolving the disharmony that ensued. The Race Relations Conciliator, Walter Hirsh, objected to the publication by the newspaper of the remark. He considered that the matter should have been dealt with on the Marae and that the Auckland Star had based its report on "hearsay" because no reporter had been present at the time of the incident. Huscroft finds Hirsh's attitude surprising given the recognition of freedom of the press in a free society. Huscroft considers it undeniable that the press and not bureaucrats should determine what is newsworthy. While Huscroft is obviously correct in principle, he is perhaps a little harsh on Hirsh given that it was the words of the Race Relations Act 1971 that appeared to lack recognition of freedom of expression, not Hirsh himself, who appeared to be acting within his role as defined by that Act.

Chapter Six is comprised of equally piquant material. The subject of freedom of religion is in a sense the very sort of thing that comes to mind for most when thinking about civil rights. Rishworth considers that religion is relatively uncontroversial in New Zealand because our heritage lacks the spice that, for

3 New Zealand Bill of Rights Act 1990, s 7.

4 At 195-196.

example, the United States enjoys. However, Rishworth predicts that the issue will become increasingly important for three main reasons: [5] increased immigration of people from a diverse range of cultures; the emergence of religious-based political parties; and an emerging "rights culture" in New Zealand brought about by the new rights legislation. If Rishworth is correct, which he would appear to be, New Zealand will become an increasingly interesting place in the next few years.

Chapter Seven, by Auckland University lecturer Janet McLean, is a philosophical discussion about the ideals and goals of rights legislation. McLean asks whether equality and anti-discrimination are the same thing, and if they are not, then which is preferable for a free society. McLean's argument impliedly poses a troubling question to the reader: which is better, a colour-blind world in which race matters no more than eye colour, or a world where all races are free to positively accentuate their differences. McLean also discusses some issues arising from the structure and implementation of the Human Rights Act 1993. One of her chief concerns is that the case-by-case method of deciding equality cases provides little opportunity to establish consistent principles in advance. Naturally this creates uncertainty for the parties involved, who have little guidance in evaluating genuine justifications for the conduct in question.[6] This chapter provides a greater intellectual challenge than others in the book, no doubt because it gets to the crux of rights and freedoms issues.

Chapter Eight, by Auckland University lecturer Scott Optican, deals with the law of search and seizure, and its new and changing boundaries. This chapter is one of the more focused essays in that it deals with one relatively discrete area of law, as opposed to broader principles of rights issues. The discussion is very complete given the magnitude of the subject. Optican draws on old and established cases to show that there is a recognizable jurisprudence on search and seizure at common law. He then moves efficiently to post-Bill of Rights cases to concisely outline the relevant law, with emphasis on evidential issues. This chapter is the most recent précis of the law of search and seizure available in New Zealand. It mainly describes the present law and its past evolution but also provides some insight into how the law might develop. The chapter is written in a user-friendly style and provides astute observations about developments in the law. Extensive footnotes either explain points at more length or provide references for further research.

Chapter Nine, by Andrew Butler, lecturer at Victoria University, deals with the distinction between regulatory offences and true crimes and examines whether the distinction should be recognised. Butler outlines the arguments on either side of the debate, looks at some related issues, and examines the impact of this debate on substantive law in different jurisdictions. While this chapter is certainly useful to lawyers and law students, it moves away from the pleasant style of the other chapters in favour of a far more dry, analytical essay.

In Chapter Ten, Dr Rodney Harrison QC discusses the remedial jurisdiction for breach of the Bill of Rights Act 1990. The following chapter, by Richard

5 At 226.

6 Section 97 of the Human Rights Act 1993 empowers the Complaints Review Tribunal to exempt as genuine justifications what would otherwise be unlawful conduct.

Mahoney, considers the exclusion of evidence as a remedy for a breach of the rights contained in that Act. Both chapters complement earlier chapters dealing with particular rights. Mahoney's chapter is probably most useful as an addition to Optican's chapter on search and seizure. Harrison's chapter discusses the relatively new concept of monetary damages for breach of rights, which is applicable to many of the areas discussed earlier in the book. Monetary damages first emerged in *Baigent's* case.[7] It is now an exciting possibility that the courts might award monetary damages to complainants in Bill of Rights cases to adequately compensate them when exclusion of evidence is not an appropriate remedy.

In conclusion, Rights and Freedoms is both a fascinating read and an eminent research tool for lawyers, political scientists, and modern historians. The style of writing in the essays is appealing, and the anecdotes about New Zealand law and politics are quite enlightening.

Bree Taylor

7 Reported as *Simpson v Attorney-General* [1994] 3 NZLR 647 (CA).