

## BOOK REVIEWS

### PALMER: THE PARLIAMENTARY YEARS

BY RAYMOND RICHARDS  
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#### I. INTRODUCTION

I have a couple of disclosures to make in commencing this review. First, I am a former student of Richards', aware of his keen interest in Palmer and the long gestation of this book. Second, I have since my first year as an LLB student been fascinated with Palmer, both as a scholar and law reformer. The constitutional law course I studied in 1999 was replete with references to Palmer: the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, and MMP reforms all bore his stamp. Later, I undertook research looking at his role as an "organic intellectual" in relation to the Bill of Rights Act; and attempted to place his early scholarship within a wider social and academic context.<sup>1</sup> For these reasons, I have been looking forward to this book for some time, and these perspectives have influenced my reading of it, including my belief in the appropriateness of a political biography appearing in a law journal. I believe Palmer's role as a scholar, a law reformer, and (it could be said) the architect of our modern constitution make his biography not just important reading for historians, but for lawyers, legal scholars and law students as well.

#### II. BEGINNINGS

Richards begins the narrative with events of 19 January 1985, with an American warship of a type that could be loaded with nuclear weapons, seeking approval to visit New Zealand. Richards briefly traces Palmer's background and the circumstances leading to the Deputy Prime Minister effectively refusing permission for a vessel that may or may not have been

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1 See Thomas Gibbons "An American in Parliament: Geoffrey Palmer and the New Zealand Bill of Rights Act in Context" in Paul Havemann and Wayne Rumbles (eds) *Prospects and Retrospects: Law in History: Proceedings of the 20<sup>th</sup> Annual Conference of the Australian and New Zealand Law and History Association* (University of Waikato, Hamilton, 2001); Thomas Gibbons "The Early Jurisprudence of Sir Geoffrey Palmer", unpublished paper, 2002 (copy on file with author).

nuclear powered or nuclear armed to visit New Zealand, concluding that David Lange has received credit for an initiative that was largely Palmer's. This crisp chapter, written in a readable and fast-moving narrative, sets the tone for the book. But reading the book as a lawyer, at first reading this episode did not seem the best with which to begin the book. What about the passage of the New Zealand Bill of Rights Act 1990, which for many lawyers might seem Palmer's most prominent achievement: the debates of the time vividly illustrate that constitutional matters can be very political? Or what about the constitutional crisis of 1984 that led to the passage of the Constitution Act 1986? Or the refusal to appeal the *NZ Maori Council* case?<sup>2</sup> But on reflection, Richards' choice is entirely apposite. The particular issues of January 1985 generate a wealth of insight and attention to Palmer's interests, including international environmental law, his association with the United States, the proper role of a Deputy Prime Minister in relation to the Prime Minister, caucus, and Cabinet (that is, public law), and Palmer's internationalism. One thing this episode does not do is consider Palmer's legal scholarship, though Richards even comments on this lack of influence.

After this first chapter, the book goes back in time, traversing Palmer's family background, and his youth in Nelson, where his father was a newspaper editor. It moves through his time at Victoria University, his involvement in university journalism, the death of his parents, his marriage, his time as a law clerk, and his travels to the United States, where he earned a JD (Doctor of Jurisprudence) degree from the University of Chicago – then the home of Coase, and shortly the home of Posner - in one year. Around this time he also published his first academic article, on the General Agreement on Tariffs and Trade, or GATT. This again points to Palmer's internationalism. Richards argues that Palmer was strongly influenced by progressive politics in the US; Palmer has himself described his jurisprudence as that of American legal realism,<sup>3</sup> though in some ways Palmer's translation of legal and procedural issues into practical politics suggests he may be closer to the policy science jurisprudence which came to succeed legal realism.<sup>4</sup> Palmer's scholarship on his return to New Zealand is discussed, including his then-opposition to a Bill of Rights for New Zealand.

After some work on ACC reforms, Palmer returned to the United States, where he developed his interest in personal injury and tort reform, but (as Richards notes at p. 69) eschewed the "law and economics" framework being developed by Richard Posner and others in the early 1970s. Richards then brings Palmer back to New Zealand as a Professor of Law at Victoria,

2 *New Zealand Maori Council v Attorney-General* [1987] 1NZLR 641.

3 Geoffrey Palmer "The Provision of Legal Services to Government" (2000) 31 VUWLR 65 at 67; see also the reference to Karl Llewellyn (one of the most prominent legal realists) in Geoffrey Palmer *New Zealand's Constitution in Crisis* (John McIndoe, Dunedin, 1992) 26; and Geoffrey Palmer "Will jurisprudence become a behavioural science?" [1968] NZLJ 204.

4 See Neil Duxbury *Patterns of American Jurisprudence* (Clarendon Press, Oxford, 1995), ch 3; see also Palmer *Crisis*, *ibid* at 28.

considering this time a “road to Parliament”.<sup>5</sup> This is a fair assessment, as Palmer was involved in political matters – most notably the “Citizens for Rowling” campaign – soon after his return. His marriage of politics and law is illustrated in that, while seeking a seat for Parliament, Palmer was an active scholar in the field of tort law, before publishing *Unbridled Power?*, which was launched on the day he was nominated as Labour candidate for Christchurch Central. Richards discusses the issues raised by the book and how it was received, but given the importance of the book as a “manifesto” for later reform, the discussion is somewhat short: that is, the shift in Palmer’s scholarly interests from tort law to constitutional law deserves more attention.

### III. PALMER’S POLITICS IN OPPOSITION

Palmer often seems to be thought of as a poor politician – and as Richards records at p. 246 (and elsewhere), this was a contemporary view as well; he has been criticised by political commentators for being too much of a lawyer, through many lawyers might see him as being too little of one.<sup>6</sup> However, good history can challenge prevailing myths, and reading Richards’ book should banish any thoughts that Palmer was not successful in politics: the alacrity with which Palmer proceeded from being a new MP (elected in a by-election in 1979) to being the Deputy Leader of the party (in 1983) is, depending on one’s outlook, either outstanding or alarming. Richards recognises that we should see Palmer’s rapid progress as an important achievement, and comments on the nature of this advancement: “Palmer’s rise from backbencher to deputy leader of the Labour Party just three and a half years after entering parliament testified to his intelligence, skills, and hard work”.

As to this intelligence, Palmer raised constitutional issues upon being elected an MP, and was immediately challenged as belonging to an “ivory tower” and being a “quasi-intellectual”. Richards comments, as he should, on this sense of anti-intellectualism in New Zealand politics of the time; and the broader context of changes in the composition and nature of the Labour party. Richards also makes the point that “Palmer quickly became prominent in Parliament because he arrived with an agenda”. This amplifies the importance that a book like *Unbridled Power?* played in setting out this agenda, particularly around reform of Parliamentary procedures. Richards also notes Palmer’s opposition to the National Development Bill, and the impact it could have on both democracy and the environment. This, and Palmer’s later concerns about the Clyde Dam, usefully foreshadow his later interest in environmental matters.

5 The title of chapter four of Richards’ book.

6 While Palmer pursued a successful career as a lawyer upon co-founding the firm Chen Palmer in 1994, he recognised the limits on his ability to practice certain kinds of law: see for example Palmer “The Provision of Legal Services to Government”, above n 3 at 66.

One of the more interesting parts of the book is an extract from Hansard showing the comments of National MP Jim McLay, who observed that Palmer had “one speech ... on all law reform measures... I wrote down a list of words such as ‘fundamental’ ... and marked them off as he used them”. This raises the point of Palmer’s emphasis at times on “fundamentals”, as though these were apolitical, when Palmer was clearly more a political animal at this time than a scholar. Muldoon similarly thought Palmer’s constitutional principles to be “politically flexible”. But it is clear Palmer continued his learning, with Richards suggesting that a visit to Canada in 1984 before the election helped Palmer gain insight into the Canadian Charter of Rights and Freedoms, and that this influenced the Bill of Rights Palmer later proposed. This continued after Labour won the 1984 election, with Richards noting that in the law-making process, Palmer was “regularly accused” by the opposition of “wielding unbridled power”; later, when Palmer sought to pass legislation under urgency, he was accused of hypocrisy. In the modern context, when Palmer is often treated as something of an apolitical figure, it is an important and useful contribution of Richards to remind us of the political nature of many of the reforms effected by Palmer, and how he did not always live up to his own principles.

#### IIV. PALMER’S POLITICS IN GOVERNMENT

Palmer became Deputy Prime Minister in 1984. Muldoon’s refusal as outgoing Prime Minister to agree to a currency revaluation created something of a constitutional crisis, with Richards indicating that the difficulties of this time highlighted to Palmer the problems of New Zealand’s constitutional arrangements; though Palmer would by this time have been aware of many difficulties (that was part of the reason for *Unbridled Power?*, and Richards notes that Palmer’s portfolios “placed him ideally to introduce measures he had been advocating for years”), Richards is correct that events such as this must have sharpened Palmer’s focus. Richards also makes the point that Palmer was an effective and loyal deputy Prime Minister, and Palmer’s role in defending the budgets of Roger Douglas is given some attention. This again reminds us that Palmer was a *politician* as much as a law reformer, though other reforms, such as reforms to standing orders, do reflect an emphasis on process and procedure – constitutional fundamentals – over strictly political considerations. In this sense, Richards effectively balances the two roles of Palmer: one as a partisan politician, the other as a principled reformer. In some cases, these roles could intermingle, as with Palmer’s international duties. Richards cogently makes the point that “[m]ore than is commonly realised, the State-Owned Enterprises Act 1986 was his [Palmer’s] creation”, a Palmer-driven legal framework for achieving significant reform. The implication of this line of argument is that Palmer’s stamp was more embedded in the economic reforms of the 1980s than many people realise. Other reforms, such as the Quango Abolition and Reform Bill, are also suggested to reflect

a desire for deregulation as well as principle-driven reform. Palmer's success as a politician is reinforced in Richards' comment that the "two winning issues" for Labour in the 1987 election "were the ban on nuclear weapons and Rogernomics ... Palmer was a central figure in both, although this was not widely recognised". On the other hand, Richards argues that the 1987 stock market crash "doomed the fourth Labour government", but "[i]ronically, because most New Zealanders did not know about Geoffrey Palmer's role in shaping and enacting the economic reforms, the damage to his reputation was limited".

After 1987, Palmer became Minister for the Environment, alongside his roles as Minister of Justice and Attorney-General. Various reforms over Labour's second term that might otherwise be forgotten, such as the Sale of Liquor Bill, and the Disputes Tribunals Bill, are discussed. Richards emphasises Palmer's hard work by commenting that Palmer was known as the only minister to read the Royal Commission on Social Policy's 4,000-page report in its entirety. Shortly afterwards, however, we are reminded of a darker side of Palmer: one that could talk of Jim Bolger's "lack of intelligence", and refer to Bolger as a "McCarthyite". Again, this is a reminder that Palmer was a political animal.

These reminders might be seen as Richards' greatest achievements: that Palmer was not just a supporter of economic reform, but one of its architects; that Palmer's interest in constitutional matters was not entirely impartial or independent, but also embedded in his politics; and that Palmer must be seen, by almost any measure, as a highly successful politician – at least until his appointment as Prime Minister.

For, as senior relationships within the fourth Labour government broke down, Palmer came to be seen both as a peacemaker, and as more of a leader. On 8 August 1989, following the resignation of David Lange, he was elected leader of the Labour Party and became Prime Minister. Richards immediately draws attention to the fact that some of Palmer's strengths as Deputy were weaknesses as Prime Minister: the perception of Palmer as a verbose workaholic, an "over-earnest intellectual" who spent his holidays reading government reports. The parts of the book that relate to Palmer's tenure as Prime Minister give significant attention to international and diplomatic matters, as well as political issues concerning Maori fisheries, the economy, and the introduction of the New Zealand Bill of Rights Act. But it is at this juncture that Richards is most stern:

His rush to implement his agenda led Palmer to breach his own principles. In *Unbridled Power?* he had complained that New Zealand passed too many laws too quickly, but by the end of 1989 his government was passing laws at a record rate... In the first half of 1989 the House sat under urgency about one-third of the time ... If a bill was hurried back from select committee and urgency taken, sometimes there was no time for printed copies to be made available for MPs for at least part of the ensuing debate. The government also evaded the scrutiny of select committees by not leaving enough time for adequate consultation.

One is left wondering what the Palmer of 1983 would have said about the Muldoon government behaving in this way – would he perhaps have used words like “fundamentals” in his criticism, as McLay suggested above. Richards says little about contemporary criticisms of this process, focusing instead of criticisms of Palmer as a politician, rather than Palmer as a lawmaker. This makes it difficult to assess if critics of Palmer’s rapid law reform process actually existed: we must presume they did. On the other hand, despite his “questionable use of Parliamentary procedure”, Palmer is still seen as a visionary, with the Resource Management Bill an attempt to base resource law on “common principles”. This again forces us to reflect that Palmer was both a principled law-reformer and a pragmatic politician.

As the narrative moves to 1990, we see Palmer facing difficult times – high government debt, high unemployment, a faltering economy, strong social debate about the role of the Treaty of Waitangi, political difficulties within the Labour Party, and a resurgent National Party waiting for its turn in government. A programme of economic reform continued, including asset sales, and we see Palmer struggling to achieve what is now known as a work-life balance. By this time, Palmer was bearing the brunt of an electorate very critical of Rogernomics, and we get a sense from Richards that Palmer, as Prime Minister, had “nowhere to hide”. Environmental issues continued to receive Palmer’s attention, though the Resource Management Bill stalled; Richards notes that “[w]ith time running out, the Palmer government continued to pass laws at a record rate ... MPs had little chance to consider legislation, and the debates were token”. Richards records that urgency tactics “outraged” National MPs, but does not record their words in the same way Palmer’s were recorded earlier in the narrative. This unfortunately leads to more weight being placed on Palmer’s criticism of Muldoon, than on (say) Bolger’s criticism of Palmer. What Richards does do – quite cleverly – is to link frustrations over certain legislative failures to Palmer’s resignation as Prime Minister, suggesting that the political challenges Palmer faced may have been secondary to failures of law reform in leading Palmer to resign.

#### IV. ASSESSING PALMER

On Palmer’s resignation, Richards comments that Palmer “had long felt he was a law professor in politics, and that the academic aspect was more important to him than the politics”. This can be accepted as a statement of how Palmer may have felt, but should not be treated uncritically. As we have seen, Palmer was a *politician* as well as a professor-like law reformer, and often did not meet the procedural or constitutional ideals he would have held as an academic. One suspects – though perhaps it is not shown in any source – that Palmer’s sense of detachment also allowed him to save face in a difficult situation. He was deservedly praised for his dignity. But Palmer’s resignation shortly before the 1990 election is an important part of his legacy: as Palmer himself later said, he is the only Prime Minister of recent times to

have neither won nor lost an election,<sup>7</sup> and this has helped him be seen as less of a political animal than this history shows he often was. Richards records that contemporary commentators were kind about Palmer's personality and principles, but unkind about his lack of political success, with one describing him as "wooden". In assessing matters, it seems that even those of the time de-emphasised Palmer's political success, seeing Palmer as a failed Prime Minister – and so a failed politician – rather than a successful politician who was promoted rapidly, reached the pinnacle of New Zealand politics, and then faced a difficult role in particularly challenging times. Put another way, we may be able to honestly assess Palmer as an unsuccessful Prime Minister, but cannot and should not assess him as an unsuccessful or unwilling politician.

Labour promptly lost the election, and Richards moves on to an assessment of Palmer's legacy, writing of the "hugely influential Resource Management Act", later descriptions of Palmer as our most successful Deputy Prime Minister ever, and Richards' own assessment of Palmer as the "chief legislator in the most reforming government in New Zealand history". Richards focuses on Palmer's legacy in environmental and Maori matters; some may flinch at Richards' assessment that "Palmer was mostly right on the issues. The New Zealand economy needed Roger Douglas's strategy", but this remains the current wisdom. However, Richards records that Palmer "believed the changes came too fast"; it is difficult to know whether this Palmer is the Palmer of 1987, or of 1990, or of 2010. Palmer was certainly a proponent of rapid procedural and constitutional reform at the time.

## V. CONCLUSIONS

Richards' conclusion is that "[t]he achievements easily outweigh the limitations and flaws evident in Geoffrey Palmer's political career", but at the very point at which Richards comments that Palmer's tendency to try to "fix problems by legislating" was naive but "well-meant", he bluntly asserts that "[Palmer's] reforms enhanced people's lives". They may have – particularly those of law students, law professors, and those with constitutional (and perhaps environmental) interests – but empirical evidence for improved quality of life after Palmer's tenure is lacking. That said, Richards is entitled to his opinion, and in light of the book as a whole, it is a fair one.

At the conclusion, the reader is tempted to ask "what if?" What if Palmer had settled into an academic career in the United States? Would he have ever returned to New Zealand, ever have entered politics? What if Palmer had called an election upon assuming the role of Prime Minister in 1989? Would he have won, potentially have been Prime Minister until 1992, and stood again? Would he have returned to Victoria, or ever started Chen Palmer?

<sup>7</sup> Palmer *New Zealand's Constitution in Crisis*, above n 3 at 150.



Would he ever have been President of the Law Commission? Counterfactuals are difficult, and Richards may be right not to engage in them, but the questions remain.

The book is subtitled “The Parliamentary Years” and it ends with his retirement from Parliament because, as Richards says, “[h]istorians are wise to avoid addressing recent events”. However, it is perhaps unfortunate that events after Palmer left politics in 1990 are covered in only a few paragraphs. There is no analysis of *New Zealand’s Constitution in Crisis*, perhaps Palmer’s most revealing book, which contains his own assessment of the reforms passed during his time in Parliament, and his views on further desirable reform. Palmer was a Professor at Iowa and Victoria – old hunting grounds – and played a significant role in developing the field of international environmental law before moving outside the academy to found Chen Palmer, a specialist public law firm. As a lawyer, it would have been interesting to understand the circumstances leading to the founding of that firm: while these have been described by the founders,<sup>8</sup> an external perspective is necessary, though as the firm continues under Mai Chen’s leadership, Richards is probably correct to see this as “journalism” rather than “history”. That said, it was noted above that Richards’ states Palmer “had long felt he was a law professor in politics, and that the academic aspect was more important to him than the politics” (p. 394). We might pause to consider the correctness of this assessment when we remember that Palmer spent only four years as a Professor between leaving Parliament and commencing legal practice. It is plausible that Palmer was in fact less of an academic than Richards – or even Palmer – might think. Palmer’s other roles on the International Court of Justice, International Whaling Commission and New Zealand Law Commission also receive only cursory attention. From New Zealand, Palmer is sometimes seen as a failed politician with an academic bent. Internationally, his legacy may be very different.

Ultimately, Richards has written a brilliant history. He highlights Palmer’s legacy in a range of areas, including public law, torts, and environmental law. The narrative is detailed, but progresses at a good speed, driving the reader forward. Among the political analysis are less serious details, such as the menu at overseas luncheon, or light relief at Christmas. These details add a human touch to the history. The book is well-researched, using a range of primary and secondary sources. And as a history, it is *interesting*. There is little authorial intrusion. Richards assesses people and events, but largely does so unobtrusively, and in a balanced manner.

Those interested in biography will learn much about Palmer; those interested in recent New Zealand history will learn much about the Fourth Labour Government and its reforms. Those interested in public law will see a more balanced Palmer – and also a more political one. As noted above,

8 Palmer himself has described the firm being founded on principles set out in a law review article: Palmer “The Provision of Legal Services to Government”, above n 3 at 67.



perhaps Richards' greatest achievement is to rediscover Palmer as a politician, rather than simply a constitutional purist. This point also helps explain many of Palmer's "realist" tendencies as a scholar.<sup>9</sup> Palmer was a scholar before, during, and after his time in Parliament, and Palmer's scholarship awaits a broader study. This book will provide a useful framework for that effort. With or without this book, Palmer would have had a strong legacy, but this well-researched and readable book will undoubtedly help in clarifying, re-assessing, and enhancing that legacy.

9 At 67.