

the Governor-General, government departments, public corporations or local government in the constitutional structure of New Zealand.

Turning to the contents of the individual chapters, undoubtedly each contributor has on the whole written in accordance with the stated aim of the panel, and has endeavoured to relate legal development to social changes and to emphasise those aspects where there has been the greatest change. But there are still some areas where the relationship between society and the law does not seem to have been depicted as clearly or as firmly as one might have hoped. For instance in the first chapter there are several paragraphs which describe the extensive extent to which United States decisions were used in New Zealand courts earlier this century; these paragraphs conclude with the sentence: "[t]he citation of American decisions, however, is not now as frequent as it was". No reason is given for this, and inevitably the reader must ask, Why? Is it because the economic, social, legislative and judicial developments in the two countries have become excessively divergent, or is it because the reported American decisions have become so numerous that most New Zealand law libraries are unable to stock a sufficient number of reports to enable the New Zealand courts to form an accurate view of American decisions, or is there some other reason? Again although passing reference is made in the chapter on the judicial system at page 78 to the fact that the English courts from which the New Zealand Supreme Court originally derived its jurisdiction, included admiralty and ecclesiastical courts, there is no express statement as to what extent, how, and why the Supreme Court succeeded to their respective jurisdictions and/or adopted principles evolved by those courts. (Incidentally it may be remarked that there is much in the section on judicial precedents contained in the chapter on the judicial system which must now be read with qualification, but this is a result of developments that have occurred since the contributors ceased their labours in January 1966.) This reviewer would also have expected that the topic of licensing of occupations was sufficiently pertinent to the aim of the contributors to have merited some discussion, and that the topic of town planning would have been sufficiently important to have warranted more than a bare seven lines of text and a complete omission from the index.

Looking at the volume as a whole, however, it is a most useful and worthwhile contribution to New Zealand legal writing, and it is a great pity that the opportunity was not taken, as with the volume on Nigeria, to publish it in a paperback form, because it is too good a book not to be possessed by as large a number of students and practitioners as possible.

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COMMONWEALTH AND COLONIAL LAW, by Sir Kenneth Roberts-Wray, G.C.M.G., Q.C., M.A. (Oxon.). First edition. London. Stevens and Sons. 1966. liv and 1008 pp. (including appendices and index). New Zealand price \$22.80.

When in 1931 Kenneth Roberts-Wray joined the staff of the Legal Adviser to the Dominion and Colonial Offices, he found that there was a dearth of published material to assist him in the course of his duties in

relation to the changing Commonwealth and Empire or to provide guidance for those members of the Commonwealth and Empire who were desirous of effecting change. When he was promoted in 1945 to the position of Legal Adviser he felt this lack equally keenly and resolved to do what he could to remedy the situation. Until his retirement, however, the burdens of his official duties prevented Sir Kenneth from doing other than to provide contributions to publications and journals, but after his retirement in 1960 he was able to devote his full energies to the production of a comprehensive treatment of the constitution and constitutions of the Commonwealth and Empire. The end result of those labours has now been published under the title *Commonwealth and Colonial Law*. This book truly represents the product not only of six years' research and writing, but of a whole working life at the very centre of the matters that he is describing. It is not surprising that Lord Denning in his Foreword commented: "at last we have the book to tell us all we need of the laws of the Commonwealth and Colonies. Sir Kenneth is to be thanked and congratulated."

The book, after an introductory chapter explaining the meaning normally to be attributed to some of the more significant words arising in this field, discusses in broad terms the significant characteristics of the Commonwealth today, including such topics as the divisibility of the Crown and the right of members to secede. Sir Kenneth lists six primary principles of the Commonwealth, including these: one member will not normally intervene in, or comment upon, the domestic affairs of another member; there are normally no specific obligations as between members; there are few, if any, subjects on which there can be said to be definite Commonwealth doctrine or policy. It is a pity that Sir Kenneth with his wealth of practical experience did not elaborate upon these principles so starkly expressed, and indicate what circumstances have provided, or have nearly provided, exceptions to the normal practice. It is also unfortunate, though no fault of Sir Kenneth, that the events in Rhodesia which have involved these principles in an acute form, occurred too late for consideration by him in the text, although an outline of the first few months after the Unilateral Declaration is contained in the Addenda and Corrigenda section.

In the third and fourth chapters Sir Kenneth turns his attention to the acquisition and transfer of sovereignty within the Commonwealth, and these are in effect supplemented by chapter 14 which distinguishes between sovereignty and title to land. For New Zealand readers the main interest in these chapters lies in Sir Kenneth's comments upon the legal effect of the Treaty of Waitangi and of the Order in Council constituting the Governor-General as Governor of the Ross Dependency, and this interest is heightened by the fact that in the course of his comments Sir Kenneth expresses disagreement with views that have been enunciated in New Zealand by Dr N. A. Foden, Professor I. L. M. Richardson and by certain members of the Court of Appeal in *Re The Bed of the Wanganui River* [1962] N.Z.L.R. 600, and *Re the Ninety Mile Beach* [1963] N.Z.L.R. 461.

Chapter 6 treats of the transition from a position of legal dependence to a position of legal independence both inside and outside the Commonwealth, and he traces the steps that have been taken to effect that transition. He discusses at considerable length the issue of autochthony and its inherent dangers, and New Zealand readers will be both interested and pleased to read Sir Kenneth's extensive and favourable com-

ments upon the manner in which an autochthonous constitution was achieved in Western Samoa with the minimum of legal hazard. Sir Kenneth then turns to consider the main constitutional organs in the various countries of the Commonwealth, and he deals in successive chapters with the executive, legislature, public service and judiciary. In the chapter relating to the executive (chapter 7) Sir Kenneth describes in some detail the roles of the Queen and the Governor-General. But from the point of view of the New Zealand reader this description is not perhaps as full or as helpful as it might be. For there is no discussion of the matters upon which or the extent to which the Queen should as a matter of practice accept the advice of the local Ministers, nor upon what matters or to what extent the Governor-General should accept such advice, nor any mention of the matter which so exercised the mind of the New Zealand Parliament that it passed a special Act in 1962 (Royal Powers Act 1962) especially to deal with it: the extent to which the Queen can undertake functions conferred by statute upon the Governor-General or the Governor-General in Council.

The chapter on legislatures (chapter 8) contains a lengthy discussion of the legislative competence conferred by the phrase "peace order and good government of . . ." which appears in section 53 of the New Zealand Constitution Act 1852, and New Zealand readers will also note with interest that Sir Kenneth appears at page 416 to support the view that the Constitution Act can since 1947 be amended and repealed expressly or by implication by any New Zealand Act: a point which was expressly left open by the Court of Appeal in *R. v. Fineberg* [1968] N.Z.L.R. 443. But the reader might have hoped for some discussion of the role of the Governor-General in the legislative process, and in particular of the issues that were raised in *Simpson v. Attorney-General* [1955] N.Z.L.R. 271 (which incidentally is not referred to at any stage in the book), such as when the Governor-General may assent to, or refuse to assent to, Bills passed by Parliament; the effect of the failure of a Governor-General to comply with the statutory requirements as to the summoning of Parliament; and whether the power of the Governor to assent to, or refuse to assent to, legislation is exercised by virtue of a prerogative power delegated to him or by virtue of a statutory provision which has removed the prerogative power. It would also have been of very considerable assistance to the reader if Sir Kenneth had indicated why, when he was discussing section 189 of the Electoral Act 1956 at page 417, he had said that he "doubted whether the section would be legally effective if it were entrenched". Again if he had discussed in some detail the way in which the Canadian and Nigerian courts have actually applied their respective statutory bills of rights, his outline of the form of these provisions would have been much more valuable; certainly one would like to know why he considered that "the judges in Nigeria have grasped this nettle fearlessly and with illuminating common sense".

For this reviewer the chapter on the judiciary (chapter 9) was amongst the most interesting chapters in the book. It contains, for instance, an outline of the principles upon which the Privy Council will intervene in criminal cases as to which Lord Denning in his Foreword remarked that never before had there been such a collection. Another section in this chapter of especial interest to New Zealand readers, particularly after the addresses delivered at the Third Commonwealth and Empire Law Conference at Sydney in 1965, and at the Centennial Conference of the New Zealand Law Society at Rotorua in 1969, is the

section in which Sir Kenneth comments upon the future of the Privy Council. Thirdly, there is a lengthy consideration of the statutory provisions protecting the independence of the judiciary, where Sir Kenneth takes the view that in the United Kingdom and in New Zealand there is power to remove a judge otherwise than upon an address from Parliament.

Another most interesting chapter is that which Sir Kenneth entitled Basic Law and this discusses the extent to which indigenous systems of laws remain, and the extent to which the English system of law is introduced, when British sovereignty is asserted over a country. In the course of this chapter he provides the reader with an illuminating commentary upon the binding nature of decisions of the House of Lords and the Privy Council, referring at some length to the very interesting decision of the Supreme Court of Ceylon in *Pesona v. Babunchi Baas* (1948) 49 N.L.R. 442 which is perhaps not as well known in this country as it might be.

The remaining chapters deal with miscellaneous matters such as legal proceedings (which includes an important discussion of state and diplomatic immunity), removal of persons, defence and financial matters, and then the balance of the text amounting to some 350 pages comprises one appendix containing some brief notes upon the most significant constitutional features of Commonwealth countries, a second appendix containing extracts from the most relevant British statutes, and a third appendix containing extracts from two dozen of the most significant judicial decisions.

The large volume is attractively printed and bound and singularly free of typographical errors—ironically the only one observed by this reviewer was in the section devoted to Addenda and Corrigenda. It is unfortunate that the volume is so large that it could not be produced as a paperback and that it must be sold at a price which places it far beyond the reach of students and practitioners. But in the shelves of the institutional libraries, such as those of the law societies, the universities and the government departments, *Commonwealth and Colonial Law* will have an assured place.

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THE COURTS AND CRIMINAL PUNISHMENTS, by Sir John Vincent William Barry. Wellington. Government Printer, 1969. 91 pp. New Zealand price \$1.50.

Sir John Barry died on 8 November, 1969. In an obituary notice in the *Australian and New Zealand Journal of Criminology* he is rightly described as an outstanding criminologist of international stature. The significance of his achievement lay in its dual nature: as a Judge of the Supreme Court of Victoria and Chairman of that state's Parole Board he was deeply involved in the practical administration of criminal justice. Yet he also made very substantial academic contributions in the field; he was President of the Australian and New Zealand Society of Criminology, Chairman of the Department of Criminology at the University of Melbourne, and a respected writer on criminology and criminal law. For his best-known work, *Alexander Maconochie of Norfolk Island*, he