

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

was awarded the degree of Doctor of Laws by the University of Melbourne.

Because of Sir John's personal qualities, and because the publication by members of the judiciary of papers containing critical scrutiny of the issues underlying sentencing policy is not common, the appearance of *The Courts and Criminal Punishments* is greatly to be welcomed. The book contains three lectures on penal policy, a subject to which the author rightly refers as "emotionally charged and intellectually complex". In spite of the difficulties of the topic the style is lucid and economical; Sir John expresses his views most cogently.

The book is dominated by a realistic, hard-headed approach. Sir John firmly reasserts that punishment for criminal behaviour is a proper and necessary concept. He quotes with approval Sir Leslie Stephen's reference to the need for suppression of offenders by punishment, reminds us of the fundamental importance of retribution (Mr Justice Oliver Wendell Holmes described the "pay back" impulse as "a felt necessity that suffering should follow wrongdoing") and describes the criminal law as "the regulated brute force of the community". He does not claim that the retaliatory features of the criminal law are necessarily good or morally acceptable, but he does argue that we should not delude ourselves about the essential characteristics of the system. This does not mean that he supports the theory of deterrent severity, or urges a return to harsh, repressive measures. He is, for example, well aware of the way in which prisons neutralise innovations, so that hopeful programmes wither and die in the deadening atmosphere of institutions dominated by unimaginative conservatism. He refers to penal systems "crippled by the burden of century-old walled prisons which are massive monuments to penological theories long exploded and abandoned."

Thus Sir John's attitudes are conservative but realistic. As a judge of wide experience he reminds us that we must not lose sight of the fundamental assumptions underlying our penal policy.

However, one wonders whether he does not, at times, over-state his case. Is the punitive philosophy in fact under serious attack? It seems to the present writer that there is not, today, so much unthinking commitment to the reformatory ideal as there was a few years ago. Criminologists have come to recognise how limited are the capabilities of penal measures. It is accepted that we must not over-estimate our knowledge of therapeutic techniques: bland talk about "reform" must not be allowed to obscure the extent of our ignorance. Can "reform" be imposed in a coercive setting? How appropriate is the language of therapy in a prison which, by definition, deals with unwilling patients? Criminologists who are aware of the realities of the penal system are asking questions such as these, and, in addition, are accepting that the concept of retribution is, in our present state of knowledge, a necessary one, for it is inseparable from our idea of justice. Great theoretical and practical difficulties stand in the way of the creation of a treatment-oriented penal system, and responsible criminologists do recognise the existence of these problems. Penology has passed through many phases, and it is the present writer's opinion that today, instead of talking in abstract terms about "reform", penologists are tending to seek more modest goals such as the development of alternatives to imprisonment.

No doubt views will differ as to the level of sophistication displayed by those who write about penal policy. Perhaps there are a substantial number of criminologists who are still adopting an over-simplified

approach to their analysis of the aims and potentialities of the penal system. If so, Sir John's comments will serve as a timely reminder of the need for realism.

The best of the three lectures is that entitled "Judicial Sentencing or Treatment Tribunals?" In this the arguments are most effectively marshalled, and the case for the retention of the existing sentencing procedure is most convincingly argued. Again, however, one feels that the points might be over stated. Today there do not seem to be many writers who would argue in favour of the wholesale transfer of the sentencing function to an administrative tribunal. The debate about sentencing powers tends rather to be concerned with methods of achieving a sharing of control by the bench and correctional authorities. Sir John seems to concede this, but deals only briefly—in his discussion of parole legislation in Victoria—with experimentation in this area.

Nevertheless, the analysis is most valuable; the only comment which should be made on the author's arguments in support of judicial sentencing is that the present writer would have welcomed more positive recommendations as to means of assisting judges and magistrates to learn more about the operation of penal measures. Sir John agrees that "judges ought to know something about criminology, and that they should also know something of the organisation and working of the prison system," but he seems satisfied with a situation in which it is "not uncommon" for judges to visit prisons. He expresses support for the holding of judicial conferences on sentencing, but does not enlarge on the topic.

In conclusion, however, it must be stressed that all the points mentioned in this review are merely matters of emphasis. *The Courts and Criminal Punishments* is an informed and effective statement of the judicial point of view.

J. A. Seymour