

REFORM OF THE CONSTITUTION, by O. Hood Phillips, Q.C. Chatto & Windus Ltd., Charles Knight and Co. Ltd. London, 1970. 162 pp. New Zealand price \$5.55 (bound), \$2.10 (limp).

CONSTITUTIONAL LAW IN NORTHERN IRELAND: A STUDY IN REGIONAL DEVELOPMENT, by Harry Calvert, LL.M. Stevens and Sons Ltd. and Northern Ireland Legal Quarterly Inc. Belfast, 1968. xxi and 399 pp. (including index). New Zealand price \$13.30.

Professor O. Hood Phillips has written a convincing book under the title *Reform of the Constitution*, in a series designed by the publishers to satisfy an increasing need to examine British governmental institutions, many of which are failing to discharge their traditional tasks under the stress of fundamental change, the general direction of which is revolutionary. Critical and informed appraisal of the general situation is necessary as a preliminary to action to preserve constitutional government. The author needs no introduction in New Zealand where so many lawyers have been nurtured in Constitutional Law upon his writings.

When a scholar who is an acknowledged master writes a compressed exposition of his subject the resultant work is usually more astringent and vital than a large and extensive dissertation. This is a compressed book; it is penetrating and stimulating, and it gains strength from the requirement of brevity in each book of the series, which is designated "The Reform Series".

It may be stressed at once that we have a special interest in these pages because they carry a relatively large proportion of material upon New Zealand constitutional problems. This emphasis stems in part from the author's recent visit to this country, and an attendant exchange of ideas. We are indeed fortunate to have our Constitution, which is but a debilitated shadow of its former Colonial self, overhauled by such a specialist!

Perusal of this book confirms misgivings that all is not well with the system of government in Great Britain—that the venerable constitutional edifice is showing alarming cracks and fissures, and is revealing subsidences in its foundations. The author, as a consulting architect, advises the adoption of a written constitution in the hope of shoring up the structure. It is this aspect of his thinking which is so topical in New Zealand, where the absence of a written constitution is regarded by thoughtful commentators as a political and legal peril to good government.

The author is particularly informative on the subject of constitutional entrenchment, upon which he comments:

The proposition that Parliament cannot bind itself or its successors appears to some people to express a paradox. If there is something Parliament cannot do, they ask, how can we speak of its legislative supremacy? But the paradox is verbal only. If the proposition is put in the form, "Parliament is not bound by its predecessors", the difficulty vanishes.

Many of us will agree. The problem is essentially semantic, and may be expressed by the proposition, "Parliament is not Parliament if it is not unfettered". This proposition, which would not appeal to logicians, may be illustrated by a remark made in 1670 (in *Bushell's Case* 6 St. Tr. 999) by Chief Justice Vaughan: "Therefore we must take off this vail and

colour of words, which make a shew of being something, and in truth are nothing”.

There are comments upon New Zealand which are of particular interest as coming from an acknowledged authority. Professor Hood Phillips discusses in some detail the concept of a Declaration of Rights with power of judicial review, which most post-war Constitutions of Commonwealth countries have included, e.g. India (1950), Nigeria (1960), and others later. He traverses the rejection in New Zealand by a select Constitutional Reform Committee, of the late Mr J. R. Hanan's Bill of Rights, as to which he comments that many in Great Britain “today are beginning to share Mr Hanan's view”. He outlines the arguments put forward in support of the Bill by the Constitutional Society of New Zealand, and agrees with the Society's view that such a Bill is no substitute for a written Constitution protected by a bicameral Legislature. Professor Hood Phillips also discusses in some detail the difficulty of entrenchment of a Bill of Rights by the Canadian and New Zealand Parliaments which he affirms are like the United Kingdom Parliament in being incapable of binding themselves in future or their successors. From this examination he proceeds in his final and most important chapter to emphasise the need in Great Britain for a written Constitution, defining as far as possible the main institutions of government, their relations among themselves and between them and the private citizen. These provisions would include a Second Chamber and regulated procedure for constitutional amendment. He advances a far-reaching scheme for bringing into being a “New” Parliament which would owe its existence to a Constitution not enacted by itself. He envisages the transference by Parliament of its powers to a Constituent Assembly, at the same time abolishing itself. His outline of the next steps to be taken to arrive at a new Constitution are technically of great interest, as are his comments upon the use of the referendum as a constitutional process, and the judicial review of legislation. The foregoing paraphrase of the author's remarks is inadequate and could be misleading. Those interested must read the full “solution” which occupies the last few pages of this compressed book.

In this final chapter there is a pertinent reference to section 189 of our Electoral Act of 1956 which the distinguished commentator attributes to the possibly guilty conscience of the New Zealand Legislature, following upon its abolition of our Second Chamber in 1950 and its inability to devise a substitute. His view is that this section (which purports by entrenchment to make the repeal or amendment of the Act exceptionally difficult) constitutes merely a moral sanction.

It should be enlightening to us to find that the constitutional problems of our own country have received such attentive study by so eminent an authority, and that the manifest defects of our mutilated constitution can be used to point a moral for Great Britain. While we may gain little credit for stumbling into a leading place in the easy descent to Avernus, our example may become an incidental adornment to a tale of the decline and fall of a once powerful Empire. There is in this book an abundance of thought-provoking ideas of the utmost importance to constitutional lawyers and political scientists. It may well serve as a secure base for an attack upon the political ignorance and incompetence which has placed New Zealand upon the Gadarene slope that leads swiftly and inevitably to mob rule—a type of government dignified in its Greek form by the word ochlocracy.

From our own country and the imminent possibility of an expanded Single Chamber becoming an ochlocracy, we direct our attention to the constitutional position in Northern Ireland, which unhappy country seems to have been able to arrive at dangerous mob violence, but to have been saved from complete mob rule by its written and carefully entrenched Constitution, and the firm deployment of armed force within the rigid framework of legal direction by the civil Government accompanied by the maintenance of law and order by the Courts. Mr Calvert's book was published in 1968. Writing from the Queen's University of Belfast he launches his attacks under the encouragement of the Lord Chief Justice of Northern Ireland, Lord MacDermott, who in his introduction to the book, provides an umbrella cover for the operation. Lord MacDermott's opening sentences are worth quoting:

As a nation the British have no great interest in either the institutions or the principles of law which determine the structure of their society and the means whereby it may change and develop In Northern Ireland we have not escaped this shortcoming. Indeed, we suffer from it to a marked degree; and that despite the fact that we have, on our doorstep, a unique opportunity of studying the whole machinery of government in a compact and perceptible form.

Lord MacDermott's remarks carry great weight, not only because of his high office as Lord Chief Justice of Northern Ireland but also because of the part he has played in developing much of the doctrine with which the book is concerned, and as Chairman of the Committee which has presented its report, in March 1970, upon the Supreme Court of Judicature of Northern Ireland. Mr Calvert has been unfortunate as an author in that recent events in Northern Ireland now call for some revision of his text. Nevertheless, his main positions are unaffected, and his well documented volume has its value for scholars. It would be a loss to the study of law and politics in New Zealand, if Mr Calvert's book were to be neglected here. His work reveals the instability of institutions and the difficulties which arise when language becomes inadequate to convey the subtleties of conceptual analysis, more particularly when applied to Parliament and its powers, its institutions, the interlocking of institutions, the structure of government, and constitutional balance.

It may be stated in general that the constitutional histories of the British colonies and dominions exhibit a progress towards independence and territorial power and authority, whereas in Northern Ireland the general trend has been towards a closer rather than remoter attachment to an Imperial centre based on London. The close connections with Westminster have resulted, says the author, in less "judicial elaboration of constitutional doctrines than might be expected to be the case".

Mr Calvert in his preface maintains without equivocation his views upon the need for "protective institutions hitherto disdained by the traditions and conventions of parliamentary democracy at Westminster". As he states, his book consists of arguments rather than judgments. He writes for many classes of readers. His book increases our knowledge of comparative constitutional law for, as he asserts, "Northern Ireland's is in some ways a unique system of government, although its social structure is not so". It is unfortunate that lack of space precludes us from the more extensive discussion which Mr Calvert's book certainly merits. Its study in New Zealand will illuminate many of the constitutional issues which confront us.

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