Book reviews

COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS, edited by R. Blanpain, Kluwer, Deventer, 1987, 3 ed., xiii + 527 pp. (including indexes). Reviewed by M. Vranken.*

The growing need for comprehensive, up-to-date and readily available information on labour law and industrial relations in different countries led to the publication of what has now become a real classic, the *International Encyclopaedia for Labour Law and Industrial Relations.*[1] The book under review goes one step further than the *Encyclopaedia* in that it adopts what has been referred to in the Preface as a truly comparative and "integrated thematic" approach. By this is meant that the comparative method in general, and the comparison of labour laws and industrial relations systems in particular, involves more than merely setting side by side summaries of legislation from different countries on a given number of subjects. In order to compare what is in fact comparable, one needs to focus on the various functions institutions perform, rather than the institutions themselves. Similar institutions (e.g. works councils, union delegations, or labour courts) may perform different functions in different countries. Furthermore, since comparativism aims not only at discovering similarities and differences but also at explaining why different systems operate the way they do in a given country, it is clear that a particular problem can only be studied within the overall context of the industrial relations system or the society taken as a whole both in its contemporary and historical dimension.

It is thus obvious that such an integrated thematic approach to comparativism can only be fully obtained in rather exceptional circumstances e.g. within a framework of group collaboration or collective scholarship. That is precisely what the authors of the book under review set out to achieve. The result is undoubtedly impressive. This work is not just a set of national papers written by individual authors. It is the product of lengthy discussions, careful evaluation and co-ordination of the collaborative efforts of twenty prominent contributors.

The stated goal of the book is to describe the salient characteristics and the trends in labour law and industrial relations. This edition also aims to serve as both a reference work and a textbook for teachers and students alike. Further, the authors hope that the book will provide labour practitioners with the insights necessary to cope with a world which is becoming increasingly internationalised. The book is a rich source of information in that it gives access to material which usually is not readily available in

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1 R. Blanpain (editor in chief), Kluwer, Deventer. To date approximately fifty international and national monographs have been published.

the English language. *Comparative Labour Law and Industrial Relations* constitutes an indispensible addition to the national monographs in the *Encyclopaedia.*

Compared to the first edition (1982), the published material has grown in volume by some 100 pages or 25 per cent. While some of the original chapters have been omitted, five new ones have been added in this updated edition. The new chapters clearly reflect a desire to pay more attention to the special characteristics of developing countries as well as to the public sector. Also, an effort has been made to strike a better balance between labour law and industrial relations.

The book is structured around three major sections and twenty-three chapters. The introductory section contains chapters on Comparativism, Documentation, the Advanced Market Economies and the Third World. The chapter on Labour Law and Industrial Relations in the Third World is by Schregle, a former Director of the Industrial Relations and Labour Administration Department at the I.L.O. His text is most interesting in that it purports to show which factors must be taken into account when considering labour law and industrial relations phenomena in developing countries. The author distinguishes between general factors (national development policies, scope and coverage of labour law, cultural factors as well as outside influences) and regional factors (Latin America, Africa and Asia). Especially noteworthy is that Schregle appears to question the so-called convergence theory, according to which industrialisation gradually brings labour relations sytems closer to one another. The author concludes however, with the qualification that, while there is a need for developing countries to work out labour relations systems which are in line with their own development needs, "Africanisation" or "Asianisation" of labour relations must not be used as a pretext to bring the existence and furtherance of universal workers' and trade union rights to a halt.

The second section groups five chapters under the heading International Developments. It covers such issues as international labour law, conflicts of (labour) law, the European Communities, guidelines for multinational enterprises, and the international trade union movement. Prima facie the purpose of this intermediate section may not be entirely clear. Its inclusion is fully warranted, however, if one bears in mind that the most extensive use of the comparative method has traditionally been in the formulation and the application of international labour standards by such organisations as the I.L.O. It may be a good idea formally to acknowledge the presence of the chapters on international labour law in the title of a next edition of the book.

The third and final section is labelled Comparative Studies. It constitutes the main body of the book and contains fourteen chapters, most of which form part of what is commonly known as collective labour law in that their emphasis is in on the relationship between management and organised labour. Discussed are, successively, freedom of association, the labour relations parties, employee participation and the quality of working life movement, collective bargaining, disputes of rights and disputes of interest, and industrial conflict. However, three chapters are specifically devoted to issues of individual labour law or the contract of service. These issues are the different categories of workers and employment contracts, discrimnation in employment, and employment security. The last chapter of the book deals with labour relations in the public sector.

From a strictly New Zealand perspective, the limited focus on individual employment law is to be regretted. It is true that collective labour relations are often of much more societal significance than is the case with individual labour law. And it is equally so that many of the detailed terms of any given individual employment contract nowadays are incorporated from collective agreements or awards negotiated on behalf of the individual worker. Yet, any labour law system is also inseparably linked to the ultimate question as to the protected status of the individual employee. It is in answering this fundamental question that legal systems based on the Common Law (notably in this context, New Zealand) tend to differ most profoundly from legal systems belonging to the continental or civil law family. While the former systems resolve the issue by rules which focus heavily on unions, thus strengthening the role of organised labour in the life of the individual worker, countries belonging to the latter category provide comparatively extensive direct statutory employee protection. A more extensive, comparative coverage of the individual employment relationship in the book under review might have opened up a whole new world to the New Zealand student of comparative labour law.

The critical observations notwithstanding, this third edition of *Comparative Labour Law and Industrial Relations* is to be welcomed. It is a most valuable introductory textbook for scholars and students in the field. It deserves a central spot on the bookshelves of everyone interested in the subject.

JUDGES AS ROYAL COMMISSIONERS AND CHAIRMEN OF NON-JUDICIAL TRIBUNALS, Two views presented at the Fourth Annual Seminar of the Australian Institute of Judicial Administration, by The Honourable Sir Murray McInerney Q.C. and Garrie J. Moloney and by The Honourable D. G. McGregor Q.C., edited by Glenys Fraser, Australian Institute of Judicial Administration, Canberra 1986, vii and 110 pp. Reviewed by Glen Luther.*

Should Judges serve as Royal Commissioners and chairpersons of non-judicial tribunals? To some the answer to this question is self-evident. For example, the Salmon Commission[1] in England thought it so clear that they suggested the relevant English legislation be amended "so that the Chairman of any Tribunal set up under the Act *shall be* a person holding high judicial office".[2] To others not only should it be permissible to appoint a non-judicial chairperson, but further, judges should be disqualified from membership on such commissions and tribunals.

In 1985 The Australian Institute of Judicial Administration Incorporated (A.I.J.A.) asked Sir Murray McInerney Q.C. and the Honourable Douglas McGregor Q.C. to

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1 *Royal Commission on Tribunals of Inquiry* (1966; Cmnd. 3121).

2 Ibid. 29.

prepare opposing papers on this issue and present them at its annual seminar. The papers are now available in a 110 page booklet published by the A.I.J.A.

Upon opening the booklet one is immediately struck by the complete unevenness in length of the two papers. The paper by Sir McInerney and Garrie Moloney entitled "The Case Against" runs to 64 pages with 24 pages of Appendices while that of D.G. McGregor, "The Case For", runs to only 15 pages. As is stated in the short Foreword by A.I.J.A. Chairman, Dennis Mahoney, "The Case Against" has been supplemented by "a great deal of research" that was not presented at the seminar (this presumably explains the imbalance to some extent). It is this research which is the most useful and fascinating part of the booklet. McInerney and Moloney show very well the different approaches of different countries to the issue. In New Zealand and Canada, for example, the approach has been to invariably appoint superior court judges as Royal Commissioners. In the United States the Bench has successfully, with some notable exceptions, resisted such appointments. As well some Australian states, most notably Victoria, have experienced strong resistance by the Bench to such appointments. In 1923 the then Chief Justice of Victoria, Sir William Hill Irvine, argued:[3]

> The duty of His Majesty's Judges is to hear and determine issues of fact and of law arising between the King and the subject, or between subject and subject, presented in a form enabling judgment to be passed upon them and when passed to be enforced by process of law. There begins and ends the function of the judiciary. It is mainly due to the fact that, in modern times, at least, the Judges in all British Communities have, except in rare cases, confined themselves to this function, that they have attained, and still retain, the confidence of the people. Parliament, supported by a wise public opinion, has jealousy guarded the Bench from the danger of being drawn into the region of political controversy. Nor is this salutary tradition confined to matters of an actual or direct political character, but it extends to informal inquiries, which though presenting on their face some features of a judicial character, result in no enforceable judgment, but only in findings of fact which are not conclusive and expressions of opinion which are likely to become the subject of political debate.

The booklet is timely for New Zealand as it is clear that governments learn little from past problems in this sphere. Governments, of course, often rely upon Royal Commissions to diffuse political controversies and by appointing a judicial chairperson they clothe the Commission with the judicial hallmarks of impartiality, fairness and justice. Barely five years after the loss of Mr. Justice Mahon from the Bench as a result of the *Erebus Royal Commission* the New Zealand Government has appointed Court of Appeal Judge, Rt. Hon. Sir Ivor Richardson, to lead the *Royal Commission on Social Policy*. What is judicial about Richardson J.'s position on this Commission? The answer is "very little". While it is clear that he has much relevant knowledge and experience relating to the Commissions' brief his appointment misleadingly suggests

3 From: "Irvine Memorandum", a letter dated 14 August 1923 to Sir Arthur Robinson, Attorney-General and Solicitor-General of Victoria.

the Royal Commission will be extra-impartial or effective in deciding questions that are quite clearly non-justiciable. Furthermore, is it appropriate for a leading judge of, for most purposes, our highest court to absent him or herself from the Court for extended periods?

As governments will continue to seek them for such positions it is the judges themselves who, in practice, will have to decide their role. One should ask why the United States Supreme Court, the High Court of Australia, and the Supreme Court of Canada[4] all now take the position that their members ought not to be on Royal Commissions and yet our Court of Appeal continues to accept such appointments with apparently little debate occurring..

It is unfortunate (and it is perhaps not his fault) that McGregor's "The Case For" is not a more ambitious attempt to make its case. It quotes at great length an article by Mr Justice Brennan and indeed adds little if anything to that impressive effort.[5] All in all the booklet contains a useful discussion of an important, if often overlooked, topic. Unfortunately the imbalance between the papers and the somewhat spotty editing (for example, see the Contents page which refers to page 172 of a 110 page booklet) detract from the excellent work done by McInerney and Moloney.

LEGAL AID IN ASIA AND PACIFIC, edited by Han Lih Wu, Chinese Association for Human Rights Taipei (1987?), 284 pp. Reviewed by A.H. Angelo*

This publication records the activities of the Asian and Pacific Conference on Legal Aid which was held on 24 and 25 September 1984 in Taipei. It contains the record of the proceedings of the conference and the papers presented at that conference. A very distinguished body of contributors presented short general papers on aspects of legal aid and specific papers on legal aid in their jurisdictions. The specific jurisdictions described are Australia, the Philippines, the United States of America, Singapore, the Republic of China, New Zealand, Sri Lanka, Korea and Thailand. This is not a seminal publication. It does however provide a recent general survey of ideas and practices in the important area of legal services for the citizen and is therefore useful reading for those with interests in that area.

4 Recently eight of nine of the Judges of the Supreme Court of Canada, in an apparent change of view, have expressed themselves to be against the acceptance of appointments to Royal Commissions. See: *The National*, Canadian Bar Association, September 1987, 22.

5 Mr. Justice F. G. Brennan (of the Federal Court of Australia) "Limits on the Use of Judges" (1978) 9 Fed. L. Rev. 1

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