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Book Reviews

ISSUES OF SELF DETERMINATION - edited by William Twining, Aberdeen University Press 1991 xvii and 163 noted by A H Angelo*

This is a collection of twelve essays on self determination with a joint preface by Neil MacCormick and William Twining. The essays in the volume were produced for the 14th World Congress of the International Association for Philosophy of Law and Social Philosophy which was held in Edinburgh in August 1989. Five hundred participants attended from forty countries and focused their papers, prophetically, on the theme "Enlightenment, Rights and Revolution".

This volume is the fourth in a series each dedicated to a specific theme which brings together selected papers of the Conference on that particular theme. While the Conference was being held the Solidarity based government was formed in Poland and since then much that few could have anticipated has happened on the self determination front. It is equally clear that much is still happening and will continue to happen for some time yet. There are a vast range of self determination issues which are only now becoming the focus of sustained debate in the context, amongst other things, of the rights of indigenous peoples. This volume is timely therefore also because of the declaration by the United Nations of 1993 as the International Year for Indigenous Peoples.

This is an excellent volume. It brings together a great number of philosophical and political perspectives on self determination and also considers the validity of theories against a number of historical and actual examples. The African experience and the African Charter are considered as are the issues that arise in respect of the Basque people, Puerto Rico, and Greenland. There are papers specifically on the definition of self determination as well as on the important issue of the relationship of material well-being to human rights (the obligations of affluent nations to the poor).

For the Pacific region of particular interest is the essay by Bhalla on the "Right of Self-Determination in International Law" where the view is presented that self determination is acceptable as a legal principle only in its application to the liberation of colonial territories and that "the right rests only in indigenous peoples as such, not in whoever happens now to inhabit colonised territories alongside of the original indigenous population". There is also an analysis of the New Zealand situation by Ian Macduff in chapter 9: "Bi-culturalism, Partnership and Parallel Systems: the context of Maori Rights".

This is a well written, well edited, timely text devoted to one of the more perplexing issues of our time.

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* Professor of Law, Victoria University of Wellington.

AN INTRODUCTION TO NEW ZEALAND GOVERNMENT BY J B Ringer, Hazard Press, Christchurch, 1991. pp 335 $37:50. Reviewed by A H Angelo*

This is a major and highly useful text. It has a Foreword by Sir Geoffrey Palmer, twenty-one chapters, five appendices and an extensive index.

In the introduction it is stated:[1]

> Each chapter in this book gives a concise introduction to one aspect of the history, institutions and procedures of government in New Zealand, describes where and how to find further information and lists significant or representative published sources for further reading. The final chapter offers additional guidance to readers who wish to undertake their own research.
>
> Special attention is paid to ... major official publications ... .
>
> *An Introduction to New Zealand Government* is designed to serve as a handy reference tool for - among others - librarians, lawyers, researchers, political activists, politicians, and teachers at all levels. It will be of particular value to students of law, politics, librarianship and journalism. Above all, it will be useful to ordinary citizens who want to know something about how their government works, and how to find information on it.

Professor Palmer in his Foreword to the book says:[2]

> The material in this book enables people to track down virtually everything written on any aspect of the New Zealand system of government. Before, that was only possible by going through the effort that Mr Ringer has now performed for us all.
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> A lot of people have laboured in this particular vineyard; but this is the first time, I think, that we have had the contribution of a librarian. And it turns out that an extended bibliography, sensitively arranged, exhaustively researched and accompanied by interpretative essays, is just what we needed.

It is not always the case that one can with confidence say that the goals of the author have been fulfilled in a book. This is such a case. The text is written and presented in a clear and businesslike manner and though it is intended primarily as a reference text it is in fact very readable. It is further enlivened with cartoons by David Fletcher which are scattered through the book at appropriate points.

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* Professor of Law, Victoria University of Wellington.

1 At 13.

2 At 9.

There is little to comment on or query, but two matters of parochial, if not general interest, are mentioned here. The first is that it is rare for the author to refer to unpublished material but he does so on two occasions in the early part of the book. The fact that the text referred to has not yet appeared confirms the ever present danger of mentioning texts which, at the time of writing, are not in press. The author might just as well or perhaps even better have referred to a foreshadowed third edition of Palmer's *Unbridled Power.*[3] Secondly at page 255 a number of "significant" local histories are listed. It would have been hoped that the substantial volume on the history of Hastings by Mary Boyd would have found a place in this list.[4]

In the field of government more than any other, the ability to get access quickly and reliably to the great volume of ephemeral material, unbound materials and limited run material is very important. This book enables the researcher to get quickly to the information that is required. The field is also one where changes and developments are frequent and often significant. For that reason it is to be hoped that further editions of this work will be produced on a regular basis.

This book is a must. It should be on the bookshelf beside the dictionary and is a text that will be used frequently by all who have copies of it.

MEDICAL LAW IN NEW ZEALAND by David B Collins, Brooker & Friend Ltd, Wellington, 1992. 311 + xxix pp. NZ price $85.75 + GST. Reviewed by W R Atkin*

The boundaries of legal thought and practice are constantly being pushed outwards. The wide impact of law on society and social intercourse means that law creeps more and more often into areas which have thought to be the preserve of other professions. At the same time, however, the process affects lawyers and law-makers by this being exposed to different sets of problems and to different ways of thinking. Medical law illustrates these points. Although lawyers have for long been involved in cases with medical aspects, it is only recently that medical law has been regarded as a discrete branch of the law, worthy of study in its own right. The major law schools all teach law and medicine in some guise or another. The event which focussed the public mind on the interdependence of the professions was the Cartwright Inquiry[5] which brought the

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3 *Unbridled Power: An interpretation of New Zealand's Constitution & Government* (Oxford University Press, Auckland, 1987).

4 M B Boyd *City of Plains: A History of Hastings* (Victoria University Press for the Hastings City Council 1984).

* Reader in Law, Victoria University of Wellington.

5 *The Report of the Committee of Inquiry into Allegations Concerning the Treatment of Cervical Cancer at National Women's Hospital* (Government Printing Office, Auckland, 1988) commonly called the Cartwright Report after the person appointed to be the committee.

rights of patients to centre stage. Now, with the publication of Collins' *Medical Law*, there is also a major New Zealand text on the subject.

Collins' book is essentially about the relationship between the law and doctors. It is not particularly concerned with nurses or other para-medical personnel, although much of the law is common. It also does not deal with the health system, the pharmaceutical industry or with intransigent moral issues such as abortion, euthanasia and new birth technologies, except where there is specific law on these matters. The book is in many ways a conventional analysis of the law, but, that said, one has to agree with Professor Deutsch in the Foreword that "medical law ... incorporates a wide range of legal subjects stretching from constitutional law to accident compensation"[6] and any book on the subject calls for lateral thinking and extensive research. This are evident in Collins' book. While sensible limits have been placed on the scope of the book, the author nevertheless calls in aid a vast number of fields of law - among them contract, torts, constitutional law, family law, criminal law - as he pieces together his subject. Key issues are dealt with at length - patient confidentiality, informed consent, exceptions to the need for consent, research, accident compensation, medical malpractice, criminal proceedings and, of increasing importance, medical disciplinary proceedings.

Certain developments of fairly recent origin make the New Zealand legal position rather different from overseas jurisdictions, such as Britain and Australia from which a number of principles can still be derived. Perhaps the single most significant development has been the accident compensation system which removes the right to claim civil damages for personal injury including medical misadventure in favour of automatic no-fault compensation. The system relieves doctors of much potential liability, with the result that in some respects the common law has lacked the opportunity to innovate (eg, as Collins says, it has "stifled the development of the duty of doctors to inform patients"[7]). At the same time it has led to a doubling of complaints to the Medical Practitioners Disciplinary Committee over the past decade.[8]

Another change in the law, the major impact of which has yet to be felt, is the Bill of Rights which contains two provisions which affect doctors, one which gives everyone the right to refuse to undergo medical treatment and another which gives every person the right not to be subjected to medical experimentation without that person's consent.[9] The latter is narrower than the Helsinki Declaration on medical experimentation and may have "the undesirable effect of frustrating medical advances by curtailing medical experiments on persons unable to consent to their participation in experiments. Patient automony should be promoted, but not necessarily to the

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6 P ix.

7 P xxvii.

8 See the Table on p 219. Collins notes that a consequence of the post-Cartwright case of *Green* v *Matheson* [1989] 3 NZLR 564, in which the Court of Appeal held civil claims to be barred by the Accident Compensation Act 1982, "is to render professional disciplinary bodies as the only likely forum to sanction doctors who do not supply adequate information to patients" (p 59).

9 Sections 11 and 10, New Zealand Bill of Rights Act 1990.

exclusion of society's wider interests in advancing medical standards and knowledge".[10] With respect to the former provision, there are many statutory exceptions to the rule that consent is needed before treatment can proceed and the Bill of Rights cannot be used to strike out a plainly inconsistent enactment. Thus the long list of situations where compulsory treatment can occur, ranging from mental health patients to those suffering from venereal diseases, remains extant.

A further difficulty facing an author on medical law is that "it is changing at a rapid pace".[11] Already the accident compensation system has been radically revised with the passage of the Accident Rehabilitation and Compensation Insurance Act 1992. The original version of this legislation had the potential to open up the medical malpractice can of worms to civil proceedings but wisely it was redrafted to exclude almost all such claims. Nevertheless a new definition of "medical misadventure" gives lawyers extra opportunities to exercise their analytical faculties. New mental health legislation, after languishing in the parliamentary machine for several years, is finally seeing the light of day but Collins foresaw this and has included a discussion of the new approach.

Case law on law and medicine continues to abound. Perhaps some of the most interesting involve children. In England there is the mystifying decision in *Re B (a Minor)*[12]which distinguished the landmark House of Lords' case of *Gillick* v *West Norfolk and Wisbech AHA*[13] by stating obiter that where a child of sufficiently maturity refuses to consent to treatment such consent can nevertheless be given by the child's parents. In New Zealand, the High Court felt constrained to override the wishes of parents who were relying on traditional Samoan medicine to treat their seriously ill daughter.[14] As the judge pointed out, the case concerned a "vivid" conflict of cultures and attitudes to medicine, which admitted of no compromise. It is reminiscent of the cases where Jehovah's Witnesses parents have refused to consent to blood transfusions.[15]

Collins' *Medical Law* is essential for all doctors. It is an excellent resource for students and for lawyers who have medical clients. It will rapidly become the standard text on law and medicine in New Zealand.

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10 P 140.
11 P xxix.
12 [1992] Fam 11.
13 [1986] AC 112.
14 *Re M* (Auckland High Court, M 2796/91, 20 Dec 1991, to be reported in [1992] NZFLR).
15 The most recent example is *Re P* [1992] NZFLR 94.