# *Book Reviews*

**Australian Maritime Law**, by MWD White QC (ed), The Federation Press, Annandale, New South Wales, 1991, xxxv + 356 pp (including index).

Reviewed by PA Myburgh*

This book attempts to provide an overview of Australian admiralty jurisdiction and maritime law. Its chapters, which have been written by different contributors, cover an impressive range of topics. They focus on, in the following order: the history, constitutional context and jurisdiction of Australian admiralty courts; actions *in rem*, ship arrest and maritime liens; sea carriage of goods and bills of lading; marine insurance; charterparties; ship mortgages; collisions and groundings; salvage, towage, wreck and pilotage; limitation of liability; and prize, prize salvage, bounty and ransom.

The book is important for at least two reasons. First, it adds to the slim collection of texts which chart the development of distinctive, independent maritime laws in those jurisdictions formerly governed by the Colonial Courts of Admiralty Act 1890 (Imp) and its predecessors. Secondly, it represents a conscious effort to give Australian maritime law its own voice; to give due recognition to local content by examining Australian maritime statutes and case law in their own context (vii). This effort is to be welcomed. Although maritime law in Australia and New Zealand has definitely come of age, there remains a tendency to turn, uncritically and without hesitation, to English texts, English precedents and arbitration in London in order to solve local maritime law issues. Further, despite the fact that our nations' livelihood depends on ocean trade, some persist in viewing maritime law as an esoteric, romantic and consequently peripheral subject (iii), rather than as a significant specialist aspect of commercial law. The editor, fully aware of these attitudes, expresses the hope that "by this and other Australian publications on maritime law some maturity will be brought to the Australian practice and teaching of the subject" (vii). The book will undoubtedly contribute to the realisation of that hope, by providing a comprehensive summary of the subject's general principles, and a useful analysis of the not inconsiderable body of Australian maritime cases and statutes.

There are, however, two aspects of the book which are slightly disappointing. The first is that scant reference is made to the other two ground-breaking Australian maritime law texts by Hetherington[1] and Davies and Dickey.[2] Several chapters of the book would, without doubt, have been enhanced by discussing the treatment of relevant issues in these texts, or even by adding more comprehensive cross-references to them in the footnotes. Intellectual dialogue and debate amongst commentators is a vital ingredient in the development of any legal discipline. There is a particular need for this

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1 S Hetherington *Annotated Admiralty Legislation* (Law Book Co Ltd, Sydney, 1989).

2 M Davies and A Dickey *Shipping Law* (Law Book Co Ltd, Sydney, 1990).

type of debate and dialogue in Australian maritime law, so that an integrated body of authoritative commentary on the subject may be established. The book could have provided a very useful impetus in this direction. Instead, for the most part it makes a quite separate contribution. As mentioned above, one of the stated aims of the book was to support the intellectual development of Australian maritime law. It is a pity that this task was perhaps perceived rather narrowly - extending in the main to an examination of the primary sources of Australian maritime law only, rather than embracing a critical analysis of existing Australian academic texts as well.

The second cause for some disappointment stems from another of the book's aims: to provide a fairly general introduction to the more important principles of Australian maritime law. In any work of this nature, the editor inevitably has to juggle the three competing imperatives of maximum coverage of general principles; detail and depth of treatment of material; and the marketable length of a legal text. The requisite balance between these imperatives can be achieved, or at least improved, by efficiently structuring the text, rigorously selecting the material to be examined, and managing the amount of detail in which it is discussed. On the whole, the book under review tends to favour coverage, sometimes at the expense of treating the issues in depth. That is not a cause for criticism in itself. However, it would appear that more rigorous editing could have achieved the same coverage more effectively, allowing for either a slimmer volume or more detailed analysis. There is some quite unnecessary repetition in the text, primarily in the form of overlaps between chapter topics: for example, a general discussion of maritime liens may be found at 31-35, 59-60, and again at 166-169. Similar overlaps in respect of, amongst others, discussions of jurisdiction under the Admiralty Act 1988 (Cth), priority of maritime claims, and general average could also have been edited out. The repetition of basic material could further have been reduced by rearranging the order of some of the chapters: the chapter on charterparties, for example, probably fits more happily somewhere amongst or alongside the general discussion of sea carriage of goods and bills of lading; similarly, the discussions of actions *in rem*, maritime liens and ship mortgages could bear some rationalisation into a general discussion of the major types of claims against the ship or fund arising from an action *in rem*.

It must also be said that some topics in the book have been given coverage that does not seem entirely warranted by their relative significance; whereas other, perhaps more important issues have been discussed in passing, or omitted entirely. The final chapter on prize, prize salvage, bounty and ransom falls into the former category. This brief chapter does contain material of some historical interest, rendered rather more topical by the Australian Law Reform Commission's report on these matters which, amongst others, proposes the abolition of prize bounty, prize money, prize salvage and ransom.[3] But prize jurisdiction cannot be described as a burning issue of maritime law - the audience of students and practitioners for whom the book was written might more profitably have been introduced to, for argument's sake, the legal rules pertaining to marine pollution, or maritime industrial relations. Another example of unevenness of

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3 See the Australian Law Reform Commission *Report No 48: Criminal Admiralty Jurisdiction and Prize* (Australian Government Publishing Service, Canberra, 1990).

focus is to be found in the discussion of maritime liens in the chapter on ship mortgages (167-169). The significant and controversial issue of recognition and priority of maritime liens recognised at the *lex causae*, but not the *lex fori*, is disposed of in two sentences:[4]

> The courts have not extended the categories of claim which constitute a maritime lien even though such a lien is recognised under foreign law. The Privy Council has held that there is no exception where a maritime lien exists under a foreign law which is the proper law of the contract.

Setting aside the question as to whether the second sentence accurately reflects the ratio of the majority opinion in *The Halcyon Isle*,[5] these statements leave a number of important questions unaddressed, the most obvious of which are: what is the basis for the Privy Council decision in *The Halcyon Isle*; what was the reasoning in the minority opinion; is it settled that the majority opinion represents the law in Australia?[6] By contrast, nearly a page (168-169) is then taken up with a detailed description of the maritime lien status of bottomry and *respondentia* bonds,[7] both of which have essentially been obsolete for more than half a century. The conclusion is reached that these bonds were omitted from the definition of maritime liens in section 15(2) of the Admiralty Act 1988 (Cth) because they have been wholly superseded by more modern financing methods.[8] An exhaustive discussion of the status of bottomry and *respondentia* bonds seems a luxury more sensibly reserved to a specialist text on maritime liens — particularly as there has always been profound consensus on this issue amongst maritime lawyers.

These criticisms aside, all of the chapters in the book provide a useful and accessible overview of the relevant legal principles. Some achieve considerably more than that. Chapter 1, written by Zelling, deals with the history and constitutional context of Australian admiralty courts. In this chapter, the author takes us on a tour through the maze of Imperial legislation which was constructed during the era of the Vice-Admiralty

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4 There is another, more incisive treatment of the same issue at 33-34.

5 *Bankers Trust International Ltd* v *Todd Shipyards Corp (The Halcyon Isle)* [1981] AC 221.

6 Most of the submissions made to the Australian Law Reform Commission, at any rate, seem to think that it is not, or should not be: see the Australian Law Reform Commission *Report No 33: Civil Admiralty Jurisdiction* (Australian Government Publishing Service, Canberra, 1986) para 123, p 91.

7 Bottomry (derived from the Dutch *bodem*, signifying the keel of the ship) and *respondentia* bonds were forms of security taken, respectively, against the vessel itself or its cargo, in situations where a master needed to raise funds in a foreign port and could not communicate with the shipowner. The bonds were rendered extinct as telexes, faxes and cell-phones became ubiquitous.

8 It is stated (at 169, n 80) that s 1(1)(r) of the Administration of Justice Act 1956 (UK) still provides a statutory basis in English law for the exercise of admiralty jurisdiction in the case of bottomry bonds. This provision is, in fact, no longer in force, having been replaced by the equivalent s 20(2)(r) of the Supreme Court Act 1981 (UK).

and Colonial Courts of Admiralty; and provides an insightful analysis of the questions which surround the vesting of "admiralty and maritime jurisdiction" by section 76(iii) of the Australian Constitution, and the constitutional ramifications of the Admiralty Act 1988 (Cth).[9] One of the strengths of this chapter is the comparative historical study of Vice-Admiralty Courts and the constitutional grant of admiralty and maritime jurisdiction in the United States, which offers the reader a fresh perspective on the interpretation of the Australian material. New Zealand maritime lawyers are likely to find this chapter less directly relevant than the others, but solely because the constitutional background to admiralty jurisdiction on this side of the Tasman is considerably more straightforward. I imagine that Zelling's discussion would, however, be of definite interest to New Zealand students of Australian and comparative constitutional law. I would further venture to single out chapter 3 on sea carriage of goods and bills of lading, by Philippides and Grime; and chapter 9 on limitation of liability, by King, as providing particularly erudite, well-crafted discussions of the relevant topics.

The book contains a comprehensive index, and tables of cases and statutes. These are set up so that they refer the reader to chapter and subheading, rather than page numbers. The attractions of this format, from the editor and publisher's perspective, are obvious - the index and tables need not await pagination, but can be completed at the same time as the main text. This format can occasionally reduce their usefulness, however; for example, to find a case discussed in "8.5" the reader may have to search through five pages of text. This is something which could perhaps be reconsidered for future editions. The appendices, containing the text of the Admiralty Act 1988 (Cth) and Admiralty Rules, examples of standard-form time and voyage charterparties, and the Australian Mediation and Arbitration Clauses, provide the reader with a very handy set of source material. The book unfortunately contains rather more than the usual sprinkling of typographical errors and incorrect case references.[10] Apart from this, the text is well-presented and the book is handsomely bound in navy blue, the almost obligatory hue of maritime law books.

In his preface, the editor notes with regret that it was not possible to extend the scope of the book to include any analysis of New Zealand maritime law, and mentions that this may well be attempted in any subsequent editions (viii). A discussion of New Zealand law would certainly add a valuable comparative dimension to the text, especially with respect to admiralty jurisdiction and practice. Even without this, however, the book serves as a extremely interesting and useful reference text for New Zealand and Australian practitioners and students of maritime law.

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9 See also HE Zelling "Of Admiralty and Maritime Jurisdiction" in WK Hastings (ed) *FS Dethridge Memorial Addresses 1977-1988* (Maritime Law Association of Australia and New Zealand, Wellington, 1989) 35-47; "Of Admiralty and Maritime Jurisdiction" (1982) 56 ALJ 101; "Constitutional Problems of Admiralty Jurisdiction" (1984) 58 ALJ 8.

10 For example, the footnotes on 32 and 33 give four different references for *The Bold Buccleugh* and *The Monica S.*

**Fundamentals of Commercial Activity: A Lawyer's Guide**, by JF Dolan, Little, Brown & Co, Boston, 1991 + Supplement, xxxvi + 789, US $95.

Reviewed by A Mugasha*

Commercial law teachers and scholars are acutely aware of the importance of understanding the commercial practices that form the substratum of the legal rules they study or teach. Such knowledge enhances the teacher's own understanding of the rules and makes it easier to explain the rules to others, particularly the students.

Commercial law teachers and scholars also know the desirability of a broad background in commercial law. At law school, often students learn only one or a few areas of commercial law such as sales, secured transactions, negotiable instruments or international trade. Yet in the real life of teaching and scholarship - in the cases we read or teach, and the practical problems we advise upon - the disparate areas of commercial law are intertwined, not discrete. Thus, one commonly encounters a court case or a practical problem that deals with legal aspects of more that one area of commercial law. Examples abound. *Re Charge Card Services Ltd*[1] analysed issues in sales, payment systems, and secured transactions. *International Ore & Fertilizer Corp* v *East Coast Fertilizer Co*[2] *discussed the interaction between sales and secured transactions.* And *Aotearoa International Ltd* v *Westpac Banking Corp*[3] dealt with both payment systems and secured transactions.

Professor Dolan's *Fundamentals of Commercial Activity* is a one-stop guide that will assist the commercial law teacher or scholar in understanding the industry practices that underlie the broad field of commercial law. Although the intended and clear focus of the book is United States commercial law activity, much of the discussion equally applies to other common law jurisdictions.

According to the author, the book is a primer on commercial activity. Its objective is to provide sufficient introduction to commercial activity that is covered by the legal rules of the Uniform Commercial Code. The target audience is that of the conscientious lawyer or judge who deals with the rules of the Code but may not know enough about the activity that is governed by the rules.

The book is divided into four parts each of which deals with one of the four important areas of the Code: sales, secured lending, payment systems and transport and storage. Each part consists of several chapters of text, one chapter containing a glossary of participants, concepts and other terminology, and a bibliography. Within the chapters, the text is further explained by diagrams and illustrated by documents generated in practice. In all there are 39 chapters, 4 bibliographies, over 100 illustrative documents, and a comprehensive index.

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1 [1986] 3 All ER 289 (Ch D).

2 [1987] 1 NZLR 9 (CA).

3 [1984] 2 NZLR 34 (HC).

The book benefits from the author's experience in both the practice of law and academic scholarship. The coverage is broad and the discussion comprehensive, gently guiding the reader through commercial law lexicon. This reviewer, for example, found the discussion on bulk sales, bailments, pledges, and international shipping very helpful. Without a doubt, different readers will be challenged or attracted to different parts of the book, depending on their background, interests or tasks. The author's familiarity with the subject of the book, a good sense of humour, and an easy-to-read writing style makes reading the book a refreshing exercise.

On many occasions the author has hints for the practitioner on what to do or what to avoid. On other occasions he candidly points out undesirable trends, particularly those that are adverse to the health of commercial activity or the proper development or understanding of commercial law. For example, he notes, and decries, that some courts and scholars have in the past viewed some important commercial arrangements and innovations with hostility. He teaches, in a message that recurs in the book, that an important distinction should sometimes be made between the consumer setting on the one hand, and the commercial setting on the other hand, of commercial law. In the latter, the commercial function should guide the legal function, rather than vice versa.

In short, *Fundamentals of Commercial Activity* truly edifies and is remarkably successful as a pedagogical tool. Law teachers and students (in addition to the lawyers and judges targeted by the author) should find that the book immensely facilitates their different tasks. Furthermore, the book should be valuable in other common law jurisdictions - far beyond the geographical boundaries of the United States

**New Zealand Bill of Rights Reports**, 1990-92, Vol 1, Oxford University Press, Auckland, 1992, NZ $250 (per volume).

Reviewed by D E Paterson*

It is not often that a reviewer is presented with such an enjoyable task as that which fell to the lot of the present reviewer of Volume 1 of the New Zealand Bill of Rights Reports 1990-1992. The editors and the publishers, and all who contributed to this publication, are to be congratulated on an excellent production.

From the attractive dark green cover with gold lettering on the outside, opening to the very comprehensive tables of cases reported, cases cited, legislation and international instruments referred to, and other authorities and sources cited, at the beginning of the volume, through its contents of reported cases, fully headnoted, to the very comprehensive subject index at the back of the volume, the journey of the reader and the researcher has been made as pleasurable and informed as possible.

The editor in chief has stated in the Preface that a primary aim of the Reports is to make the law, and the sources of law, available, and this has certainly been achieved. For not only are the judgments of the cases set out fully and clearly, but headnotes have been included which highlight the key facts, and the holdings of law in a way which is both detailed and readily comprehensible. In addition, there is for each decision a detailed and comprehensive list of materials referred to, and these have been consolidated in a way which enables a very easy and quick overview of the decisions reported in the volume.

Special mention should be made of the very detailed editorial work that has been done by the editors of this volume. Each decision is preceded by very full catch-lines and headnotes and very detailed summaries of the holdings of the decision, including in the case of decisions in which there has been more than one judgment holdings of individual judgments and summaries of observations, or obiter dicta contained in the judgment. These are followed by lists of references, subdivided into references to the New Zealand Bill of Rights Act 1990, New Zealand statutes, other statutes, international instruments, New Zealand cases, other cases, and other authorities and sources cited. Where a judgment referred to was later appealed, this is helpfully noted by the editor in footnotes. Thus the fact that *R* v *Butcher and Burgess*[1] and *R* v *Edward*,[2] , which were both referred to in the judgment of the Court of Appeal in *R* v *Kirifi*[3] were both appealed, was noted by the editor on p 30 of the volume.

The Subject Index at the back of the volume is also very complete and provides a very useful guide to the person who wishes to obtain quickly and easily a knowledge of

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1 High Court, Auckland T 2/91, 11 June 1991.

2 (1990-92) 1 NZ BORR 37.

3 (1990-92) 1 NZ BORR 29.

the particular aspects of human rights dealt with in the decisions which are reported in the volume. Anyone wishing to know whether a particular matter relating to human rights has been the subject of decision in New Zealand should have no difficulty in ascertaining this from the Subject Index.

As the editor in chief of the volume has pointed out in the Preface, the New Zealand Bill of Rights Act 1990 has already given rise to a burgeoning jurisprudence in relation to human rights and freedoms in New Zealand, and this is amply displayed from the pages of this volume of New Zealand Bill of Rights Reports.

For this reviewer, the aspects of this jurisprudence which were probably of most interest, were, first, the clear confirmation by the Court of Appeal, spelling out the words in the preamble of the Act, that the rights and freedoms described in the Act are not created or brought into existence by the Act, but are merely recognised and affirmed by the Act.[4]

Also of general jurisprudence interest is the holding by the courts that the words of the Act are not to be interpreted narrowly and strictly, but are to be interpreted generously and purposively, along the lines adopted by the Privy Council in *Minister of Home Affairs* v *Fisher*[5] with regard to the provisions relating to rights and freedoms in written constitutions of the Commonwealth.[6]

A third aspect of general jurisprudential importance disclosed by these reports is the ruling by the courts that some rights and freedoms at least, such as the right to consult a lawyer when arrested or detained, may be waived, provided the waiver is based upon an informed understanding.[7]

It is clear from this volume of New Zealand Bill of Rights Reports that there are also some decisions by the New Zealand courts, which, although of more specific importance, are nevertheless of very considerable practical and jurisprudential importance. The ruling by the Court of Appeal *R* v *Kirifi*[8] and *R* v *Butcher and Burgess*[9] that the term "arrested" in section 23(1) of the New Zealand Bill of Rights Act 1990 includes not only a formal arrest but also a de facto detention, in respect of which the right to consult a lawyer applies, is clearly highly significant from the point of view of the practice of police and traffic officers and from the point of view of human rights. Equally significant is the ruling by the Court of Appeal that a breach of some rights and freedoms at least, such as the right to consult a lawyer, and be treated with

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4 *Noort* v *Ministry of Transport; Curran* v *Police* (1990-92) 1 NZ BORR 97.

5 [1990] AC 319.

6 *Flickinger* v *Crown Colony of Hong Kong* (1990-92) 1 NZ BORR 1; *R* v *Butcher and Burgess* (1990-92) 1 NZ BORR 59; *Noort* v *Ministry of Transport; Curran* v *Police* (above, n 4).

7 *R* v *Biddle* (1990-92) 1 NZ BORR 84; *Ministry of Transport* v *Batistich* (1990-92) 1 NZ BORR 406.

8 Above n 3.

9 (1990-92) 1 NZ BORR 59.

humanity and dignity, when arrested or detained, should be redressed by excluding evidence which has been obtained following such breach even although there is no express statement to this effect in the Act.[10] Also of jurisprudential as well as practical importance is the ruling by the courts that the right of a person who is arrested or detained to consult a lawyer is a right which is to be exercised within reasonable limits. It includes the right to telephone one's lawyer freely, and if one's lawyer is not available, to telephone one or two others, but it does not include the right to delay further in the search for a lawyer.[11] In these three respects it may well that the New Zealand Bill of Rights Act 1990 has had an impact and effect that is rather different from what was envisaged at the time that it was enacted.

There are obviously many aspects of the jurisprudence relating to common rights and freedoms which still have to be developed by New Zealand courts, and which one looks forward to being revealed in subsequent volumes of the New Zealand Bill of Rights Reports. For this reviewer, one of the most interesting aspects of human rights and freedoms which will no doubt be elaborated upon in subsequent volumes of the New Zealand Bill of Rights Reports is whether all rights and freedoms may be waived and, if not, which cannot be waived.

Another important and fascinating aspect of the jurisprudence of human rights and freedoms is the exact scope of justified limitations - what are described in section 5 of the New Zealand Bill of Rights Act 1990 as "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." This has been touched upon in some judgments reported in this volume of New Zealand Bill of Rights Reports, especially in *Noort* v *Ministry of Transport; Curran* v *Police*[12], but clearly much more needs to be explained by the courts, and one looks forward to seeing the results of this in subsequent volumes of the Reports.

A third aspect which has particular interest for this reviewer is the scope of persons who are required to observe human rights and freedoms. The New Zealand Bill of Rights Act 1990 imposes this duty upon "the legislative, executive and judicial branches of the government of New Zealand" and "any person or body in the performance of any public function, power or duty conferred or imposed ... by or pursuant to law." Writing from within a region where customary and social leaders exercise very great powers over individual persons, and frequently not in accordance with the Universal Declaration of Human Rights 1948, and where the question of whether the duty to respect human rights which is recognised by the written constitutions is one which applies to such leaders has in most countries not been determined, this reviewer will eagerly await further volumes of the New Zealand Bill of Rights Reports to see whether there has been any judicial discussion in New Zealand on the topic of who

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10 *R* v *Kirifi* , above n 3; *R* v *Narayan* (1990-92) NZBORR 89; *Noort* v *Ministry of Transport; Curran* v *Police* above n 4; *Ministry of Transport* v *Entwisle* (1990-92) 1 NZ BORR 374.

11 *Noort* v *Ministry of Transport; Currant* v *Police* (above n 4); *Ministry of Transport* v *Entwisle* (above n 10).

12 Above n 4.

should be required to respect human rights and freedoms which will provide some guide in other jurisdictions.

That there are these, and no doubt other, aspects of human rights and freedoms that remain to be disclosed in subsequent decisions and volumes of the New Zealand Bill of Rights Reports, in no way detracts, of course, from the collection of cases which appears in Volume 1 of the Reports. It is clear that this collection has been very comprehensive. Thus the volume contains not only reports of decision of the Court of Appeal, High Court and District Courts of New Zealand, but also of a decision of the Indecent Publications Tribunal and of the Commissioner for Children.

The great value of these Reports is that they hold up a mirror to New Zealand society today reflecting the extent to which human rights are, and are not, recognised and respected, and they must surely help to heighten public awareness of the significance of human rights, and hopefully, to increase respect for them. Although the New Zealand Bill of Rights Reports are obviously intended primarily for use by the judiciary and by the legal profession, it would be a great pity if the lessons which they provide were confined to those sections of New Zealand society. Certainly those involved with law enforcement in any capacity, whether as police, customs officers, transport officers, or school teachers, could all profit from the cases that are so clearly disclosed in these reports, so that the inhumane treatment dealt out to a motorist which was depicted in *Ministry of Transport* v *Entwisle*[13], and the degrading treatment of the strip search to which schoolboys were subject which was described in *Re Strip Search at Hastings Boys High School*[14], may be avoided in future.

This volume of the New Zealand Bill of Rights Reports has set a very high standard in law reporting, and it is to be hoped that the standards that it has set will be matched by its successors - it is difficult to think in what way they could be surpassed.

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13 (1990-92) 1 NZ BORR 374.
14 (1990-92) 1 NZ BORR 480.

**Public Law in New Zealand**, by M Chen and GWR Palmer, Oxford University Press, Auckland, 1993, 1044 pp, NZ $119.95.

Reviewed by D E Paterson*

To prepare for publication a volume of cases and materials with commentaries and questions for the teaching of the basic Public Law course in New Zealand universities is indeed a daunting task, and the editors of this volume, *Public Law in New Zealand,* are very warmly to be congratulated, and greatly to be admired, for their efforts in producing such a comprehensive and relevant volume, comprising some 1016 pages of text.

The editors in their Preface make it clear that the purpose of their volume, *Public Law in New Zealand,* is to serve for the teaching of Public Law in New Zealand universities by the Socratic or class discussion method, but they also envisage that it will be useful for public servants, law practitioners and local government officials.

They also make clear two other important general points about the book: first that it is designed to relate to the realities of the New Zealand public law system as it currently functions, rather than to the formalistic aspects as to how it should, or used to, operate, and secondly, that it is not intended to be a work of reference, or completely comprehensive or exhaustive, but it is intended to contain sufficient to stimulate students to think about questions and problems.

The editors recognise that "the sprawling mass of reality with which Public Law deals in New Zealand is not easily contained, nor is it simple to organise in a coherent manner." The manner of organisation which the editors have adopted is to divide the subject into six Parts, each with a number of component chapters.

The Parts, which represent the basic organisation of the materials, are: Part I the Constitution: Structure and Concepts; Part II The Maori Dimension; Part III The New Zealand Bill of Rights Act 1990; Part IV Parliament: Procedure, Process, Legislation; Part V Public Law Tools; Part VI Administrative Law and Process.

No doubt in New Zealand universities, teachers of public law will differ as to the way in which it is best to organise "the sprawling mass of reality" of public law in New Zealand. Some might consider that the executive and the judiciary were sufficiently important to receive treatment as separate Parts of the volume, others might consider that the administration in the form of the public service was also sufficiently important as to warrant individual recognition in the basic overall design of the Parts of the volume. This is not to suggest that these aspects are not dealt with in this volume - they are, but as components of a Part.

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There would also no doubt be room for difference of view as to the order of the Parts. This reviewer found the positioning of Parts II and III rather unsettling, but this may be because of a certain lack of familiarity now with the current New Zealand scene.

Part I, The Constitution: Structures and Concepts opens with an excellent Chapter 1 designed to awaken the reader's mind to the kinds of public issues that may arise in New Zealand. This chapter contains material relating to *Fitzgerald* v *Muldoon*[1], the role of the Attorney-General in criminal prosecutions, and retrospective legislation, instanced by Superannuation Schemes Act 1976, Maori Prisoners Act 1880, and Indemnity Act 1882. To the reviewer, this chapter is so successful in arousing an awareness of public law issues generally that it could well stand on its own as an Introduction to the whole book rather than merely to Part I.

After the Introductory Chapter 1 of Part I, there follow chapters on the general aspects of the Rule of Law, the Separation of Powers, and Parliamentary Sovereignty. These are followed by a chapter on the Constitution Act 1986, followed by chapters on the Judiciary; Constitutional Conventions; Cabinet, Caucus and the Public Service; the Monarchy; and Comparative Constitutions.

In view of the importance which the editors state should be placed upon the role of Cabinet (in the respectful view of this reviewer quite rightly), it is perhaps disappointing that in Part I Cabinet does not receive more extended treatment. Some discussion and examples of the role played by Cabinet in New Zealand, and indeed in Australia or England, in recent times would no doubt be very instructive for the reader. Also, if it were possible, more materials, including examples, about the role of Caucus. Some readers may also feel that to reach the Constitution Act 1986 of New Zealand, only after having traversed four chapters and 172 pages, tends to give less prominence to the Act, which does provide, as the editors observe, "a basic framework upon which everything else rests", than it deserves. But this lack of prominence may be deliberate on the part of the editors in their desire to emphasise the realities of public law rather than the formalistic aspects.

After Part I The Constitution: Structure and Concepts follow two Parts which relate to issues of public law which are not dealt with in the Constitution Act 1986. The Maori Dimension in Part II and Human Rights in Part III. In Part II, there are chapters with the following titles: Annexation and the Signing of the Treaty of Waitangi; Customary Maori Rights; Waitangi Tribunal Claims; The Enforceability of the Treaty of Waitangi in the Courts; The Essence of the Treaty Debate. For this reviewer, the chapter on the Essence of the Treaty Debate could perhaps have more usefully followed the chapter on the Signing of the Treaty of Waitangi, and a reader might wonder why the two chapters on the Waitangi Tribunal and the Enforceability of the Treaty of Waitangi in the Courts were not included in the later Part relating to Public Law Tools, but presumably the editors wished to give the Maori issues an identity and significance

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1 [1976] 2 NZLR 615.

of their own, which, in the current state of public law as New Zealand, may well be a more appropriate approach.

Part III relating to the New Zealand Bill of rights Act 1990 contains chapters entitles How Do We Get Justice? The Proposed Entrenched Bill of Rights; The New Zealand Bill of Rights Act 1990; and International Law, Public Law and the New Zealand Bill of Rights. It is certainly appropriate to devote a whole Part of this book to the topic of human rights, and this reviewer found the materials in this Part of great interest. The final chapter of this Part on the international law dimension raises some interesting questions which are not confined to human rights, and so might well deserve a more extended treatment, and more general orientation, perhaps either as a separate Part or as a separate chapter within the Part relating to Public Law Tools.

Part IV, Parliament Procedure, Process, Legislation returns the reader to the core of the Constitution Act 1986, and it contains chapters entitled: What are Constitutions For?; Legislation; Select Committees; Reform of Parliament; What is Parliamentary Privilege. These are all very commendable inclusions in such a Part but there is no specific inclusion in this Part of material about the power of Parliament to control the Executive and vice versa, although this is adverted to in the chapter about the Reform of Parliament.

In Part V, Public Law Tools, the reader is carried away from the Constitution Act 1986 and the formal framework of the constitution to focus on the agencies which affect the operation of public law in New Zealand. This Part contains, after an introductory chapter on the New Public Law, chapters entitled The Ombudsman; Official Information; The Media; Political Parties; Checks on Regulations. The editors are to be congratulated on emphasising the importance of these influences upon the operation of public law in New Zealand, and upon the wide range that is included. In view of the importance attached to the Law Commission in the introductory chapter of the Part, one is a little surprised to find that material relating to it is not included in this Part. Also surprising, at first sight, is the absence of any chapter relating to the courts as a public law tool. This is explained however in the introduction to the following Part, Part IV, Administrative Law and Process, in which it is indicated that the courts are indeed a public law tool, but are given separate treatment in Part VI. Perhaps a similar explanation at the beginning of Part V would be helpful.

Part VI, Administrative Law and Judicial Review contains chapters entitled Administrative Law and Judicial Review; A Case Study: The Overstayer with the Good Excuse (a full study of the departmental documents and the court judgments relating to *Daganayasi v Minister of Immigration,*[2] and More Judicial Review Cases, (containing judgments in *CREEDNZ Inc* v *Governor-General,*[3] *Jeffs* v *New Zealand Dairy Production and Marketing Board,*[4] *Bulk Gas Users Group* v *Attorney-General*[5]). This

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2 [1980] 2 NZLR 130.
3 [1981] 1 NZLR 172
4 [1967] 1 AC 551.
5 [1983] NZLR 129.

might seem at first to be a fairly small offering of court judgments relating to administrative law in New Zealand. But no doubt this is done deliberately by the editors in recognition first of the fact that there is a separate course on Administrative Law in the law degree programme in New Zealand universities, and secondly, of the desire by the editors to move away from the formalistic aspects of public law and place emphasis on the other tools, besides the courts, which in New Zealand are available for dealing with public law issues.

Having reviewed the content of this work, some comment should be made about the format or style of presentation. Most Parts open with a chapter which serves as an introduction to the topic of the Part, and the subsequent chapters of each Part contain relevant readings (mainly court judgments, extracts from official reports, articles) followed by Questions, and, sometimes Problems. This format, coupled with a larger font size for the commentary and questions, is both easy to follow and attractive in appearance. The editors have explained in chapter 1 of Part I that they have not included too many questions themselves "in order to allow instructors the opportunity to put their own stamp on the subject and to develop their own approach". An aspect of the format which this reviewer at first found rather confusing was the practice of placing footnotes to individual readings at the end of all the readings in the chapter as Endnotes, which has the result of removing the footnotes far from the text to which they relate. This reviewer was also puzzled by the appearance at the end of the volume of a Schedule containing voting papers for an Electoral Referendum, but no indication as to the pages to which they related. Further research indicated that they were in fact Appendix A referred to on page 681 in chapter 23 of Part IV. A closer physical relationship between the text and the Schedule would be helpful to the reader - either immediately after page 681 or at the end of chapter 23.

It would be very surprising in a volume of the size of *Public Law in New Zealand* (ie 1016 pages of text) if there were not some errors of a typographical nature. There are some such blemishes which will no doubt be tidied up by the editors in the next editions (eg page xv, line 2, compulsary; page 12 usurpa-tion; page 61 repetition of lines 4 and 5; page 175 line 5 of Questions, form; page 267fs 31 and 48, ch; page 776, f 10 statutes; page 923 f2 cs). But these are minor blemishes considering the quantity of material that appears in *Public Law in New Zealand.* It is therefore very unfortunate that the first of these appears in the very first two lines that the eyes of the reader light upon in the Preface, because it suggests a laxity in this regard which is not in fact borne out in the remainder of the book.

One could not conclude a review of *Public Law in New Zealand* without recognition of the great contribution that has been made to this topic by one of its editors, Sir Geoffrey Palmer. As a writer (extracts from many of his writings are included in this book), a practitioner (Prime Minister, Attorney-General and Minister of Justice, Leader of the House of Representatives) and a teacher (Professor of Law at Victoria University of Wellington, New Zealand, and Distinguished Professor of Law at University of Iowa, USA), Sir Geoffrey has clearly made a great contribution in recent times to the development of public law in New Zealand, and this volume stands as further testimony to that.