

Book Reviews

The French Legal System, by C Dadomo and S Farran, Sweet and Maxwell, London, 1993, 240 + xxxii pp (inclusive of index). Price £18.50.

Reviewed by AH Angelo*

The purpose of this book, the authors say in the Preface, is:

to familiarise the reader with sources of French law, the structure of the courts and professions, and the characteristics of the legal process, while at the same time indicating some of the main differences between the English legal system and the French.

Although the book is directed at the non-French reader, French terminology has been retained. Where possible, English translations or conceptual summaries are given, either in the text or by way of a footnote.

This is a useful book even for an antipodian because of its clear presentation of background data necessary properly to understand French legislation, French court decisions, and French legal process.

Lord Slynn, who contributed the Foreword to the book, states that he found "this a highly informative book" and in a useful promotion of comparative legal studies says "Law students and practitioners should certainly read it unless they are absolutely committed to not seeing beyond our shores". The same might well be said for lawyers in New Zealand. Effectively New Zealand's closest foreign neighbour is New Caledonia, and there is significant tourism and trade relations not only with New Caledonia but also with French Polynesia. France is a major political and cultural force in the South Pacific as well as in Europe.

The book which is dated 1 July 1993 contains a useful array of tables and has chapters on the sources of law, the court structures, the legal professions, and judicial proceedings. Further, the book deals with the reforms of criminal procedure that were introduced in 1993 and, by way of Addendum, deals with the important constitutional amendments of mid-1993.

The opening chapter gives an historical background, deals with the French conception of law and with the classification of laws including the distinction between public and private law and its historical background. Under the heading sources of law the modern codes are dealt with as are also the other forms of legislation. The chapter on the court structure deals with all the courts - ordinary, administrative, and specialised courts as well as the Constitutional Council. The full range of law professionals is

* Professor, Faculty of Law, Victoria University of Wellington.

dealt with in chapter four and interestingly that includes, in respect of criminal process, the nature and role of the French Police systems. In the chapter on judicial proceedings a substantial part deals with each of civil procedure, criminal procedure, and administrative procedure.

This book will serve the needs of the novice as well as the professional with some experience of the French legal system. Keeping up with a system of law is never an easy matter. That difficulty is accentuated when accompanied by political and geographical distance and cultural and language differences. It is therefore very helpful to have in an up-to-date compendious form an English statement of the processes and institutions of the French legal system.

Constitutional and Administrative Law in New Zealand By Philip A Joseph, Published by The Law Book Company Limited 1993, 951 + lvi pp, price NZ\$141 (soft cover) and NZ\$211 (hard cover).

Reviewed by AH Angelo*

Some people are known for their little red books, others for big red books, and others still for big blue books. This is a big blue book and it sets out to provide a comprehensive examination of New Zealand's constitutional law and practice.

In the Preface the author states that this book was written as a student text. It is undoubtedly useful for that (though it is perhaps a little expensive for the average student). It is however much more than a student text because it provides an historical conspectus of the New Zealand law on the subject and a great deal of historical, conceptual and practical data which, as the Preface suggests, will serve "to furnish insights and arguments of relevance for legal practitioners".

In some respects the book is reminiscent of the early chapters of Robson's *New Zealand: The Development of Its Laws and Constitutions*.¹ For many, those introductory chapters on historical development and the constitution, or more recently the Yearbooks,² were the points of ready reference for historical and other data on New Zealand's constitution.

Inevitably this book does not cover every matter that might be conceived to be within the range of New Zealand constitutional law. The text limits its discussion to the laws as they relate to metropolitan New Zealand - that is to say it does not deal with constitutional arrangements relating to the Cook Islands, Niue, Tokelau, or the Ross Dependency; it does not develop in a modern constitutional context possible

* Professor, Faculty of Law, Victoria University of Wellington.

1 Published in the Stevens *The British Commonwealth* series - second edition 1967.

2 Eg *New Zealand Official Yearbook 1993* (Department of Statistics, Wellington, 1993).

relationships with Australia; it does not deal with the electoral system. The book deals with a constitution in its historical context and in the historical continuum of transition³ from one constitutional arrangement to another. The speed of that transition can vary. It is interesting to note that this text which is dated October 1992 was too early to deal with, for instance, the Electoral Act 1993 (providing for mixed member proportional representation), the Privacy Act 1993, the Human Rights Act 1993.

This is one of four books on constitutional law in the Pacific region recently received by this reviewer. The others are Chen and Palmer,⁴ Ntummy⁵ and Palmer's *Constitution in Crisis*.⁶ The four books are all very different in style, scope and role and are to a degree complementary. A comparison of their approaches casts light on the subject and makes for interesting reading.

This book begins with the positive and challenging statement that "New Zealand is a constitutional monarchy deriving from the oldest of all temporal sovereignties". It had this reviewer wondering who the contenders might be - What precisely was meant by "temporal" or "sovereignties"? What of the Emperor of Japan, or the Co-Princes of Andorra?⁷

There are inevitably a number of tantalising matters about which any reader would wish to hear further from the author. Suffice it here to deal with some hobby horses of this reviewer. The book does not fully explain why the Bill of Rights 1688 (England) was "presumed to apply"⁸ in New Zealand. The Chief Justice in *Fitzgerald v Muldoon*⁹ did not reason¹⁰ legally to his conclusion. However satisfying that conclusion, the precise steps of legal justification for holding that the Bill of Rights 1688 was New Zealand law are nowhere spelled out.¹¹ Of a similar nature is a concern about the Letters Patent. The Letters Patent are discussed, and at some length, in this text but are they law or contract or both? The Letters Patent themselves in article XXIX say that they are "part of the law of the land". The question, which is perhaps answered

3 Page 5.

4 *Public Law in New Zealand* (OUP, Auckland, 1993).

5 *Administrative Law of Papua New Guinea* (Pacific Law Press, Hobart, 1992).

6 John McIndoe, Dunedin, 1992.

7 And what might all this longevity tell about feudalism!

8 Page 14.

9 [1976] 2 NZLR 615.

10 He simply said, at page 622 of the report, "it is not disputed that Bill of Rights is part of our law". He also stated that "no modern instance of its application was cited in argument". It is by way of contrast interesting to note that in *A Selection from the Acts of the Imperial Parliament apparently in force in New Zealand and of general interest and importance* (Government Printer, Wellington, 1881) prepared by the Commissioners under the Revision of Statutes Act 1879, the Bill of Rights and the Act of Settlement were included with the annotation "Although the two Acts following have little practical application, it was deemed desirable that they should be inserted on account of their historical interest".

11 Might the question even be asked whether the reference to the Bill of Rights was essential to the decision in *Fitzgerald v Muldoon*.

indirectly in the book but nowhere explicitly, is why are they "part of the law of the land"?

The range and treatment of subjects is reminiscent of De Smith's *Constitutional and Administrative Law*. One difference is that De Smith clearly identifies his audience. He describes the British constitutional system from within to anybody who is interested to know about it. This book varies its vantage point - at times the writer appears to be describing the New Zealand system from within to the world at large, at other times (indicated often by the phrase "in New Zealand") the impression is given of an external commentator describing the New Zealand system. It may be better for the author to be clearly located within the system. There is of course no doubt that this book will have an extensive external audience.¹²

The text is well documented and there is an extensive Table of Cases and Table of Statutes and appropriate footnotes.¹³ Additionally there is a subject matter Index and a lengthy Appendix which includes key New Zealand constitutional documents such as the Bill of Rights 1688 (England), the Constitution Act 1986, the Letters Patent, and the New Zealand Bill of Rights Act 1990. It would have been appropriate to have included the statutory version of the Magna Carta.¹⁴ The Magna Carta is of similar standing in the system to the Bill of Rights 1688 and would complete the historical dimension of this book in a useful way.

This is a good book. It is compendious. It is well presented. While constitutional law and practice will change continually, this book will have lasting value for its treatment of New Zealand's constitutional development and for its analysis of New Zealand's constitutional system. It is therefore a book which will have considerable use as a reference text. The author is to be congratulated on the book and the publisher, The Law Book Company Limited of Australia, for the publishing initiative.

¹² For that audience the translation of *tapu* as sacred is not appropriate. It may even be misleading.

¹³ The book contains no bibliography. Perhaps one is not necessary but it would be useful to have more information in the footnotes as to publisher and place of publication of several of the books and documents referred to there. Overseas readers in particular will need that information in order to access the documents referred to. It is curious that in Chapter 20 on judicial review there is no mention of the text by Taylor (*Judicial Review. A New Zealand Perspective* (Butterworths, Wellington, 1991)) nor the earlier one by Paterson (*An Introduction to Administrative Law in New Zealand* (Sweet and Maxwell, Wellington, 1967)).

¹⁴ The Magna Carta is referred to both in the subject matter Index and in the Table of Statutes (though with different references). The Bill of Rights 1688 on the other hand is not listed in the subject matter Index but is in the Index to Statutes.