# BOOK REVIEWS

## ESSAYS ON THE CONSTITUTION

***Edited by Philip A Joseph, Brooker's, Wellington, 1995, pp xxx 411. Price $110 (+ GST) (hardcover), $57.78 (+ GST) (softcover)***

***Reviewed by A H Angelo****

This collection of essays by 15 distinguished authors does, as the Preface states, provide "a unique record of our constitutional and political life".[1] In dealing with the issues of Maori sovereignty claims, proportional representation, republicanism, the abolition of appeals to the Privy Council, the New Zealand Bill of Rights Act, CER, and judicial control of Parliament, the book clearly illustrates the richness of New Zealand constitutional developments in the 1990s. From the reviewer's point of view, the only comment on the coverage of the essays is that there is nothing on pre-Treaty New Zealand constitutional law. That area has been much in focus, particularly during the writing of this book, and would have given background to the material on Maori sovereignty claims. Few of the essays are purely descriptive. Most present a new view, and most propose or indicate reforms for the future; importantly, in the case of public figures, most tell as much about the author as about the chosen topic. The essays are certainly stimulating, if not provocative. The style is mostly measured, but includes the more vigorous polemics of McHugh in the chapter on the historiography of New Zealand's constitutional history.

The authors have their views and present them strongly. Their eminence and experience ensures that there is little, if anything, of a factual or legal nature with which one could take issue as a matter of correctness. This is not to say that there are not many matters with which the reader would disagree. There is much to argue with as a matter of policy. For

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1 The Preface also states that we are living in interesting times. That was in May 1995. An interest of the times was the Moutua Gardens in Wanganui, and at that stage New Zealand was sharing interesting times with the inhabitants of French Polynesia as a result of the resumption of French nuclear testing in the South Pacific. Not many months later the editor of *The Capital Letter*, with uncharacteristic vagueness, wrote that he was unsure if the related salutation (may you live in interesting times) was of Yiddish, Canadian, or Chinese origin! 18 TCL 32 (832) p 1 and 18 TCL 33 (833) p 3.

instance, the Attorney-General's statements about the desirability of an inner bar[2] assert a view with which many would disagree. Equally, it is the Attorney-General's opinion that New Zealand is fortunate to have an unwritten constitution.[3] And there is the Chief Justice's piece on the role of the Privy Council in New Zealand's past and whether or not it has been an inhibiting factor on the development of a New Zealand law.[4] As the Chief Justice indicates, not everybody would agree with his assessment or indeed with a Law Lord's reported assessment of the Privy Council's role in New Zealand law.[5] In particular, it is possible to query the interpretation the Chief Justice gave to the Privy Council's decision in *Haldane v Haldane*,[6] especially when it is compared with the later decision in *Reid v Reid*.[7]

The chapter by Professor Taggart provides most timely material for all interested in the role of the State-Owned Enterprises in New Zealand and their future as providers of monopoly or near-monopoly services.

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2 Pages 202-203.

3 Page 212.

4 Page 112.

5 Page 128. The Law Lord is reported to have remarked that "from time to time the Privy Council had saved New Zealand law from going off the rails."

6 [1976] 2 NZLR 715, cited at page 122. The Privy Council held that by virtue of ss 5(3) and 6 of the Matrimonial Property Act 1963 there was a discretion to award a share of the capital assets of either the husband or the wife to the other party and that non-financial contributions could be considered in exercising this discretion. The non-financial contributions of the wife were held to have freed the husband to do the work that increased his assets and she was awarded a share on this basis. In England at the time it was common to use one third of the capital assets as a starting point for deciding what share should be awarded to a spouse (see *Wachtel v Wachtel* [1973] Fam 72). The New Zealand statutory provisions appear, if anything, to have given a wider discretion than those in England (ss 24 and 25 of the Matrimonial Causes Act 1973). The share awarded to the wife by the Privy Council in *Haldane v Haldane* amounted to less than one fifth of the husband's assets, ie less than the English starting point, and less than the equal sharing proposed by the New Zealand Matrimonial Property Act 1976, which was at that time before Parliament. Although an improvement on the amount awarded in the Court of Appeal, this decision could be argued to be something less than "correctly in tune with the ultimate direction taken regarding assessment of spousal contributions".

7 [1982] 1 NZLR 147. Here the Privy Council upheld the decision of the Court of Appeal on the division of matrimonial property saying "This is essentially the sort of issue where the Courts of the society to which the spouses belong are in a position far superior to that of their Lordships in forming a judgment". Sixty per cent of the matrimonial property was awarded to the husband, essentially on the basis that the amount of money he had made in the course of the marriage was large. Considering the equal sharing principles of the Matrimonial Property Act 1976 and the fact that s 18(2) of the Act says that "there shall be no presumption that a contribution of a monetary nature ...is of greater value than a contribution of a non-monetary nature", the Privy Council seems to have abandoned any progressive stance on matrimonial property that it may have taken in *Haldane* v *Haldane*.

Professor Harris makes a number of strong suggestions about the role of the judiciary in New Zealand, and picks up a theme found in many of the essays which is identified in part at least with the difference of views about the exercise of judicial powers, encapsulated on the one hand by the statements of Sir Robin Cooke[8] and on the other by Sir Michael Kirby.[9] MMP may be a signal which suggests much about the future role of the judiciary and its relation to the community. That indication would appear to be, as Professor Harris states, along the lines of more democratic control rather than judicial fiat.[10] In the same context, one might hope that future Governors-General would be selected and perform their constitutional roles with similar principles in mind. In the publicity surrounding the appointment of Sir Michael Hardie Boys as Governor-General, it was suggested among other things that the appointment reflected the need, with the coming of MMP, to have a distinguished lawyer in the role of Governor-General. In the interests of greater democratic participation in the government of the country, it might on the other hand be hoped that the appointment of Sir Michael Hardie Boys was made on the basis that he was the appropriate person who just happened to be a lawyer, rather than the other way round. The imagined constitutional role of the new Governor-General should be one which proceeds on the basis of sound common sense founded in a deep experience of New Zealand public affairs. The activities of the Governor-General at this level should not be explicable on the basis of the exercise of knowledge of some arcane points of constitutional law. The decision of the Governor-General to exercise the reserve powers should be a decision which pre-eminently and self-evidently is a decision comprehensible as the proper decision by the majority of New Zealanders.[11]

Professor Harris speaks of the "flat rejection of Professor Palmer's entrenched Bill of Rights."[12] That is one assessment of the situation. The Bill of Rights was not a matter of extensive public debate or of public decision. There was undoubtedly a lack of public interest and support for that Bill, but that may well be attributable to other more basic, less

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8 Page 269. Refer to the cases cited in footnote 21.

9 Page 270. See also *Building Construction Employees and Builders' Labourers Federation of NSW v Minister of Industrial Relations* (1986) 7 NSWLR 372, 401-406 per Kirby P. See also the views of Lord Irvine of Lairg in "Judges and Decision-Makers: The Theory and Practice of *Wednesbury* Review" [1995] Public Law 59.

10 Pages 280-281.

11 On this issue see the article by Dr Andrew Stockley in *The New Zealand Herald* 1 April 1996, p. 6. See also Caroline Morris' article "The Governor-General, the reserve powers, Parliament and MMP: A new era" (1995) 25 VUWLR 345. Happily, for the reviewer, it appears from the report of the Governor-General reported in 19 TCL 19 (867) that the view here expressed is consistent with the view of the Governor-General.

12 Page 275.

particularised, and less legal thought. More pertinent may be the comment about "the apathy of the majority".[13]

The relationship of the work of the judiciary to the quality of legislation passed by Parliament is highlighted both in the chapter by Professor Harris and in that of Sir Ivor Richardson. Those interested in human rights matters will be assisted by the paper by Sir Ivor Richardson. What the chapter indicates indirectly is the relative dearth of information on human rights matters in New Zealand. How much, for instance, is known of the United Nations human rights case law?[14] And how many people know how many cases have been before United Nations Human Rights Committee in which New Zealand has been or is a party? Or what the fate of those cases has been?[15] There is, as Sir Ivor Richardson also points out, the future problem of satisfactorily balancing group and community rights against the selfishness of unchannelled individual rights.[16] In this context, it is interesting to note the balancing provisions of the Universal Declaration of Human Rights[17] and the still present though somewhat muted provision in the International Covenant on Civil and Political Rights[18], and the absence of such a provision in the New Zealand Bill of Rights. In

13 Page 276.

14 The full reports of the UN Human Rights Committee decisions are held in the Parliamentary Library. Reports are also held by the Human Rights Commission and some public libraries. Little publicity is given to these reports or to the fact that New Zealanders are entitled to take a claim to the Committee. The Ministry of Foreign Affairs and Trade can provide information on request but does not publicise either the work of the UN Human Rights Committee or the Optional Protocol. The Human Rights Commission deals only with claims in New Zealand.

15 The only New Zealand case to have been dealt with by the Committee is 475/1991 (*SB* v *New Zealand*) which was held to be inadmissible. Further cases may be pending but remain confidential until they have been dealt with.

16 Pages 61-62.

17 Article 29 states that "(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

18 Para 5 of the Preamble states that "the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant".

the 1994 statement of the New Zealand position on the Draft Universal Declaration on the Rights of Indigenous People[19], the matter is presented in a direct form.[20]

And what of polygamy, which Sir Ivor believes could be excluded from freedom of religion in the public interest?[21] Is it outside the realm of s 5 of the New Zealand Bill of Rights Act?[22] The White Paper[23] on the New Zealand Bill of Rights has a similar statement on religious freedom and polygamy. Unexpressed is the already well developed role of polygamy in the New Zealand conflict of law rules[24] and the potential in the obiter dicta in *Hassan v Hassan*.[25]

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19 This declaration emphasises group rights.

20 The New Zealand government's position is that "The new declaration must be in harmony with the existing United Nations human rights instruments" and "The declaration should be compatible with national laws". *Mana Tangata-Draft Declaration on the Rights of Indigenous Peoples 1993 - background and discussion on key issues* (Te Puni Kokiri, Wellington, 1994) 7.

21 Page 78.

22 This section provides for the rights and freedoms in the Act to be subject to "such reasonable limits prescribed by law as can be reasonably justified in a free and democratic society." Does this mean that the values of the majority will always prevail and if so how does that fit in with the provisions for religious freedom and the rights of minorities? For what reason does freedom of religion not include the right to a polygamous marriage, eg for Muslims? Islam is a long established religion in large parts of the world and polygamy is clearly acceptable in Islamic belief. Part IV-3 of the *Koran* (trans A Yousouf Ali, Lahore, 1934) states "Marry women of your choice, Two, or three, or four." If New Zealand is a secular state, it is not apparent why the human rights principles should represent only Christian principles.

23 *A Bill of Rights for New Zealand: a White Paper* (Government Printer, Wellington, 1985) at paragraph 10.61 says "No doubt many other existing limits - such as on polygamy - would be upheld without difficulty against arguments based on religious freedom".

24 The definition of marriage in the Family Proceedings Act 1980 says that polygamous marriages are valid if they were valid according to the law of the domicile of the parties at the time of the marriage.

25 *Hassan* v *Hassan* [1978] 1 NZLR 385. This case upheld the validity of a Moslem Talak divorce (a husband can divorce his wife by saying "I divorce you" three times in the presence of witnesses) performed in New Zealand. At all relevant times the husband was domiciled in Egypt and the wife was probably domiciled in New Zealand (and was a New Zealand citizen). They were married in Athens in accordance with Islamic law. Somers J held that the validity of the marriage could not be decided by the court as its matrimonial jurisdiction did not extend to polygamous or potentially polygamous marriages and the marriage contract signed by the parties included a clause allowing the husband to take further wives. However, he held that the validity of a divorce could be decided even though the validity of the marriage was not proved. He then went on, obiter, to suggest that capacity to marriage could be governed by the law of the intended matrimonial domicile. He believed that the marriage here was not governed by New Zealand law although the wife was domiciled in New Zealand and they spent most of their short married life in New Zealand. He based this belief on the husband's claim that they intended to live in Egypt. If this dictum were to be followed to its logical conclusion it would mean that a New Zealand domiciliary could enter into a polygamous marriage by declaring an intention to be domiciled in a state that allows polygamy and celebrating the marriage in a way would be valid by the law of that state.

A good description of this book is provided by its Introduction.[26] There is little point in repeating that material, suffice it to say for the interested browser that the self-description is accurate. The book itself is compendious and essential reading for those with a special interest in New Zealand political life — constitutional lawyers, political scientists, politicians and public servants alike. The editor and publishers are to be congratulated on another excellent[27] publication.

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# KOREAN LAW IN THE GLOBAL ECONOMY

***by Sang-Hyun Song (ed), Bak Young Sa Publishing Co, Seoul, 1996, 1500 + viii pages (including index), US$197 (including airmail, tax and handling)***

***Reviewed by Luke Nottage****

This book is a key reference text edited by a leading scholar, Professor Sang-Hyun Song of the Law Faculty of Seoul National University. It covers virtually all aspects of Korean law relevant to New Zealanders today. It belongs in every New Zealand library – not just law library – which may be called upon to answer questions on contemporary Korea. Although the book aims to provides an up-to-date and comprehensive introduction to Korean law, it also contains a wealth of information on institutional and socio-economic context. Adding the latter, however, gives rise to some interesting questions of interpretation, and what "line" to adopt in approaching Korean law in general.

Professor Song presented an excellent series of seminars on Korean law for the Centre for Asia-Pacific Law and Business at Victoria University of Wellington on 21-23 July 1994. Materials for those seminars were published.[1] They have been included, some in updated or slightly revised form, in Chapters 1-7 of this book.[2] Some materials have also

26 Pages 1-27.

27 The reference to the "Untied Nations" on page 207 was undoubtedly made tongue in cheek.

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1 S H Song (ed) *The Law of Korea* (Centre for Asia/Pacific Law and Business, Wellington, 1994).

2 The CAPLAB materials are currently out of print. Sponsorship is currently being sought for a reprint, as such a shorter collection of Korean Law materials would retain its value, for instance as student materials for classes

been reprinted from Professor Song's earlier edited work, *Introduction to the Law and Legal System of Korea*.[3] However it is indicative of the growth of English language studies on Korean law that so much is new to this book. Many of those studies, however, have appeared in unlikely or inaccessible places - unpublished theses being a prime example. This book is invaluable in bringing them together in one volume. Further, where there remain gaps in the literature, Professor Song has added his own succinct commentaries.

The book itself provides useful background on the editor. In Chapter 4, James West's study of legal education in Korea reinforces the élite status of the Seoul National University Law Faculty.[4] However, the reader can deduce that Professor Song is unusual in several respects. Obviously, he was not dissuaded from the study of international and comparative law, unlike many Korean law students who continue to find it more rewarding to concentrate their efforts on domestic law topics in preparation for the difficult bar examination.[5] Nor, as can be seen by the law schools outside Korea at which he has subsequently taught, has Professor Song been dissuaded from developing an interest in common law legal systems, rather than civil law jurisdictions like Germany or Japan which were once more favoured.[6] Finally, as witnessed by the inclusion of his and others' affidavits sworn for an actual court case regarding jurisdiction and evidence-taking in transnational matters before Korean courts, Professor Song has retained an interest in the operation of law in practice, unlike other law professors in Korea whose focus on exegesis and conceptual arguments can seem so "formalist".[7] Professor Song is therefore eminently qualified to introduce Korean law to a wide international audience.

Four recent examples should suffice to show both the contemporary relevance of Korean law to a New Zealand audience, and the comprehensiveness and usefulness of this book.

First, on 9 May 1996, Seung-Jin Choi returned to Seoul, whereupon he was promptly arrested. Mr Choi, an attaché at the Republic of Korea's Embassy in New Zealand, had been accused of altering an official document and leaking it to Opposition politicians in

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on Korean law such as the Honours seminars on North Asian Law being taught at Victoria University in the second trimester of 1996.

3 Kyung Mun Sa, Seoul, 1983.

4 As West puts it, "A Seoul National University law professor is something of an Olympian in the public eye" (page 388).

5 Pages 393-394.

6 Pages (i), 395-396.

7 Pages 388-392. Although this is not evident from this book - paragraph 1 of his first affidavit having been discreetly excised (page 469) - Professor Song is exceptional among Korean law professors in having passed the bar examination.

Korea. He had gone into hiding and applied for permanent residence in New Zealand on the grounds that he was a political refugee; but his appeal to the Refugee Appeal Authority was not upheld. This coincided with the visit of Prime Minister Bolger to Seoul on 10 May 1996. For government officials, legal advisors, and those with an interest in human rights or Asian politics, these events threw into sharp relief the broad question of whether the rule of law is now entrenched in Korea.[8] Chapter 4 of this book, on "Constitutional Reforms in Korea", show how constitutional upheaval and uncertainty have remained features of Korean society since the present reviewer lived in Seoul during the Third Republic (1969-72).[9] More specifically, questions arise as to the nature of criminal procedure in Korea; whether Mr Choi will be represented by lawyers versed in human rights and constitutional law; the role and discretion accorded to public prosecutors; and the role and independence of the judiciary.[10] Chapter 5, on "Korean Legal Institutions" again provides a starting point.[11]

The potential political ramifications of Mr Choi's case temporarily overshadowed the growing economic links between South Korea and New Zealand.[12] Assisted by a bilateral Air Services Agreement concluded in May 1993 (expanded in September 1994), South Korea has become New Zealand's fastest growing market for inbound tourists.[13] Similarly dramatic is the growth in immigration. From July 1993 to June 1995, 8357 residence visas

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8 Information on Mr Choi's case is now publically available from the Ministry of Foreign Affairs and Trade under the Official Information Act 1982, particularly in the form of the Briefing Paper prepared for the Prime Minister ("ROK: The Choi Case", May 1996). For a discussion of the relevant principles of New Zealand immigration law, see generally R Haines *The Legal Condition of Refugees in New Zealand* (Legal Research Foundation, Auckland, 1995).

9 Pages 197-284.

10 See especially pages 296-299, 330-332, 313-314, and 285-305 respectively.

11 Of course, that introduction cannot hope to provide an end-point. Cf D K Yoon *Law and Political Authority in South Korea* (Boulder/Seoul, Westview Press/Kyungnam University Press, 1990) especially at 79-83, 124-126, and 134-147, where Dr Yoon is more critical of both the historical role of public prosecutors and lack of judicial independence. However, even at the time of writing (1990), he expressed some hope for improvements in those areas. See also the review of the latter text by V Taylor (1992) 26 Int Lawyer 1131.

12 See also the report in *NZ Herald* (29 May 1996) that one of Korea's largest banks, Kookmin Bank, had just opened a representative office in Auckland. (Note, however, that the report is incorrect in stating that Korea is New Zealand's *fourth* largest export market and source of foreign tourists.)

13 For the year ending December 1995, tourist arrivals from Korea had reached 104,389. This represented an increase of 70% on 1994 and of 382% on 1993, and made Korea already the fifth largest source of tourists. See Ministry of Foreign Affairs and Trade, "Country Paper: Korea" (unpublished MFAT briefing paper, available from the North Asia Division, April 1996) 10, Appendix ("International Visitor Arrivals").

were issued to Koreans, and in 1994-5 New Zealand was the second most popular destination after the United States.[14]

However, people bring with them their own ways of doing things, and do not necessarily adjust quickly even to new legal norms. By way of second example, on 2 May 1996, Television New Zealand broadcast a documentary on a tendency for groups of Korean tourists, organised primarily by Koreans, to be directed to "tied" souvenir stores during their stay in New Zealand. The reporters questioned this way of doing business, including whether any percentage on sales made at such stores which might later be paid to tour operators could breach the Secret Commissions Act 1910.[15] However, another interesting question is whether such practices were common in Korea itself. Korean anti-competition laws and their enforcement are relevant. Chapter 14 of this book, on "Administrative and Economic Regulations", provides the general framework.[16]

Third, in May 1996, the son of the first Korean Ambassador to New Zealand announced that he was assisting in bringing together a consortium of Korean investors to bid for Forestry Corporation. This consortium is centred on Hansol, the twenty-second largest company in Korea. In February, Mr Park had also been instrumental in concluding a $50 million investment by Hansol, to plant and manage a pine plantation on 10,000 ha of Ngati Porou land.[17] Korean investment in New Zealand had previously been confined to relatively small holdings in fisheries ventures and the processing of hides and skins.[18] The current trend is related to broad economic developments in both countries. On the one hand, economic restructuring in New Zealand continues to provide opportunities for foreign investment. On the other, Korean investment overseas has increased overall, in the context of more relaxed foreign exchange regulation described in Chapter 8 of this book.[19] To advise Korean investors, New Zealand advisors will also need a basic understanding of

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14 Above n 13, 11.

15 TVNZ "Assignment" (2 May 1996).

16 Especially pages 1284-1285 and 1249-1251.

17 *National Business Review* (10 May 1996). Further, the *NZ Herald* (11 April 1996) reported that Daewoo Corporation will provide design and construction services, and finance, for Pacific Development and Investment Corporation's $54-71 million proposal to the Auckland Regional Trust for development of the Auckland waterfront, in preparation for the next America's Cup challenge. According to the latest Bank of Korea data (unpublished, as at May 1996), Korean investment into New Zealand since 1990 had been approved totalling US$12,818,527 (excluding the Daewoo transaction), of which US$3,695,000 had already been committed. Ironically, fuller data on Korean investment in New Zealand is available from the Bank of Korea, rather than the Overseas Investment Commission in Wellington, which only deals with investments involving over NZ$10 million or certain interests in land.

18 Above n 13, 11.

19 Especially at pages 809-810.

Korean corporate law and corporate governance; practices and institutions involved in banking law; differences in securities regulation; and the tax system, including interpretation and practices regarding double tax treaties such as the one in force between Korea and New Zealand from 1 April 1981.[20] These areas are outlined in Chapters 7, 9, 10, and 11 respectively.

The outstanding growth in bilateral trade remains the most tangible evidence of increasing contact. New Zealand exports exceeded $1 billion in 1995, over 5% of total exports, making Korea its fifth largest market. Imports have grown to over $360 million.[21] Maintaining smooth trade flows will require a basic understanding of Korean contract law and, to a lesser extent, security interests. This is provided in Chapter 13, on "Domestic Commercial Law". Thus, by way of fourth example, the tantalisingly brief reference to the Consumer Protection Act (as amended on 31 December 1986) could be very significant for New Zealand exporters. The Act requires a manufacturer, distributor or importer of certain products, including food products, to attach a warranty to the products which will hold for at least six months from the day of purchase by the consumer. The goods must be exchanged, refunded or repaired, and the consumer's medical expenses paid in the event of personal injury, if the goods are found to be defective during the warranty period. Cautious Korean importers, potentially caught by this law, may well seek to pass on the extra risk to New Zealand exporters by seeking a corresponding indemnity. Whether New Zealand exporters give such an indemnity, or instead reduce their price to some extent, must ultimately be decided "in the shadow" of the full set of potentially applicable legal rules. However, even the brief summary of the Act and other relevant parts of this book at least provide some of the parameters for further investigation and negotiations in this regard.[22]

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20 Double Taxation Relief (Republic of Korea) Order 1983 (1983/5), s 2.

21 Above n 13, Appendix.

22 A similar issue arises from the more comprehensive product liability legislation in force in Japan since July 1995. See L Nottage *Law in Japan Today: A Changing Interface with Business and Government* (VUW Press for CAPLAB, Wellington, 1995) 12-14.

A question which then springs to mind is whether Korea will develop similar legislation. Another important question for New Zealanders is whether Korea will soon accede to the UN Convention on Contracts for the International Sale of Goods, in force in this country since 1 October 1995. In his Preface (page ii), Professor Song notes that the book is directed more to "the constitutional or fundamental aspects" of Korean law, rather than detailed implementing rules and regulations for business which change so rapidly, to avoid "rapid obsolescence" of the book. However, by not addressing certain global developments such as the trend towards strict liability product liability or uniform sales law - even if the short prognosis by such an informed observer is that there will be no development along such lines in Korea in the immediate future - he may inadvertently have destined parts of the book to some obsolescence. At the least, this works against the book's goal of understanding "the impact of rapid globalization, international economic interdependence and the struggle of Korean legal institutions to cope with that" (idem).

The rest of New Zealand's "invisibles" trade is also important, for instance in the form of technology transfer, treated in Chapter 12 together with intellectual property law more generally. Furthermore, as New Zealand's economic relations overseas continue to expand and diversify, it is worth bearing in mind that aspects of Korean law can arise in a transaction involving primarily New Zealand and a third country. In a recent case, a New Zealand manufacturer had established a distributorship in Japan. The former suspected that the distributor had passed on trade secrets in the products to a Korean competitor. The dispute was primarily one between the New Zealand manufacturer and the Japanese distributor, under Japanese law. But further issues were whether the Korean competitor with a presence in Japan could be sued there for breach of the Japanese Unfair Competition Prevention Law (as amended in 1990), and the judgment then enforced in Korea, and what alternative dispute resolution procedures could be put to the Korean party. Chapter 6, on "Dispute Resolution", addresses the relevant Korean law issues in considerable detail.

Other chapters covering specific areas of Korean law deal with telecommunications law, labour law, women's status and family law, and environment law (Chapters 15, 16, 17 and 18 respectively).

It remains, however, to consider the first three chapters, which effectively serve as a general introduction to Korean law in its historical and socio-economic context. These chapters are perhaps the most challenging part of the book, in setting the stage for the more detailed exposition of specific topics in Chapters 4-18. In particular, in approaching any issue touching on the law - whether as a legal advisor, researcher, or a government official - all, to varying degrees, must develop a "line" of thinking, a means of classifying more specific data. Although that may need to be rethought in the light of ongoing experience, it is clearly advisable to get it more right than wrong from the outset. Even given the self-imposed limitations of this book as an introduction – indeed, perhaps for that very reason – it would have assisted readers if Professor Song had made his own "line" clearer and more consistent, relating it to the materials included.

In Chapter 2 on "The History, and Social and Moral Backdrop" Professor Song includes his translation of a fascinating survey carried out in 1991 on "The Korean People's Attitude to Law". The results are important, both in gaining a further practical perspective on aspects of the four examples of the contemporary relevance of Korean Law for New Zealanders given above; and then in considering more generally what "line" on Korean law might be extracted from this further information.

First, it is surely relevant for the purposes of constitutional law and the opportunity for a fair trial that 82% of Koreans believe that the law is not well observed, primarily because they perceive legal procedures as complicated and too changeable (33% of that

82%) or that law is not strictly enforced (24%), responses interpreted in the survey as indicating widespread distrust of both the legislature and the executive.[23] So too, is a perception still held by some 94% of Koreans that power and wealth affect the outcome of Court judgments.[24] Secondly, regarding anti-competitive practices, the perception that the law is generally not strictly enforced must also raise doubts about the qualitative impact of the formal legal rules in this area in Korea, and hence the attitudes Koreans may bring with them - at least initially - to transactions in New Zealand. Consistently with this perception, 31% of Koreans still acclaim as someone "of ability" the person who breaks the law but who leads a successful life, although this proportion has decreased from 53% in 1972.[25] Thirdly, following on from that, 16% of Koreans see tax laws as "impractical", an attitude that may or may not carry over into transnational transactions affecting New Zealand.[26] Fourthly, and more concretely, it would be unwise for New Zealand exporters or their advisors to ignore that 49% of Koreans who purchase consumer goods like groceries which turn out defective would now demand for them to be exchanged; that 30% would resort to a Consumer Protection Center set up by statute; and that this attitude is particularly prevalent among the young, the educated, affluent, or politically liberal. Consistently, if "tried in court for money matters", 50% would be comfortable in being there to protect their rights, or justice and order.[27]

More generally, the "line" taken in this Survey is clear: "historically, there has been a lack of both law-abiding spirit and consciousness of rights among the Korean people, coupled with routine avoidance of legal procedures"; but modernisation has strongly promoted the rule of law.[28] Professor Song's line, on the whole, is similar. In Chapter 3, entitled "The Structure and Approach of Korean Legal Scholarship" but subtitled "Special Problems in Studying Korean Law", he points to the complex "double structure" of modern Korean society: a largely Confucian tradition of social ordering, on which a modern legal system was superimposed, and an advanced capitalist economic system erected.[29] As in the Survey, Professor Song goes on to stress the breaking down of the old ideas, particularly among the younger generation. He also argues that Korea, with its "successful political and economic developments, offers an excellent example for law and development studies".

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23 Page 153.

24 40% think it "affects absolutely; 54% think it "affects somewhat" (pages 136, 168-9).

25 Pages 135, 141.

26 Page 170.

27 Pages 160-162; 148-149.

28 Page 129.

29 Page 179.

However, he then explicitly relates these developments to "the blurring of traditional boundaries and political alliances, a new global economy, and revolutionary changes in transport and communications technology".[30]

Yet Professor Song's "line" then begins to waver. Pointing out the problems involved in Westerners studying the Korean language – no doubt, so – he asserts that "European languages are, in general terms, more logical and more ordered than Korean". Professor Song then speculates that "if it is true that human thought is determined structurally by the language which is used to represent it, there must be an inseparable relationship between law and language".[31] Yet, presumably, changes in the Korean language have not been as dramatic as the legal developments that Professor Song is at pains to explain. His speculation may appear to bolster his more general – and perfectly commonsensical – observation that "without an adequate knowledge of the Korean language, a knowledge of Korean law in its *true* form is *almost* unattainable".[32] However, as a theory of legal development, it is certainly inconsistent with his own thesis, and – no matter how well intentioned – it smacks somewhat of "essentialism".[33]

Further, the materials reproduced in Chapter 1 of this book themselves raise doubts as to the traditional non-litigiousness seemingly taken for granted by both the Survey authors and Professor Song. The essay by William Shaw, for instance, points out that "available records for the early part of the Yi period on through the seventeenth and eighteenth centuries suggest that where land, slave ownership or gravesite plots in particular were at stake, *Koreans of all classes possessed a strong sense of entitlement and in fact 'loved to litigate'*...".[34] Further, Pyong-choon Hahm mentions in passing that even after Japan annexed Korea in 1910, and increasingly used at least criminal law as a raw instrument of social control – creating, in his view, antipathy to the concept of modern law – civil cases at first

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30 Page 180. Cf F Upham "Speculations on Legal Informality" (1994) 28 LSR 233. Commenting on persistent informality in the modern Taiwanese legal system, Upham expresses doubts as to whether a formal legal system based on the "rule of law" contributes to economic development, and hence as to "globalisation" or "convergence" on such a basis.

31 Page 181.

32 Pages 181-2 (emphasis added).

33 See generally E Said *Culture and Imperialism* (New York, Random House, 1993).

Further, Y Noda (A Angelo, trans) *Introduction to Japanese Law* (University of Tokyo Press, Tokyo, 1976) 9-18, develops a remarkably similar line when discussing "Difficulties in the Study of Japanese Law". Specifically, he also suggests the possibility of "an inseparable relationship between law and language". However Noda explicitly refers to treatises on linguistics and social psychology; he also relates language to the character type of the Japanese, which he later examines in detail (13; 159-183).

34 Page 42 (emphasis added).

instance increased from 34,737 cases in 1912 to 56,991 in 1924.[35] Even though it is unclear what proportion of these cases involved only Korean parties, and other variables such as population growth would have to be accounted for, this trend also suggests that the tradition of non-litigiousness may not have been as uniform as was previously believed.[36]

What alternative "line" might then be adopted on these early, and subsequent, developments in Korean law? One might be to consider whether in Korea, as in Taiwan prior to its occupation by Japan, the use of a variety of contract forms had already developed, to provide some commercial certainty, and whether the provisions of such contracts allowed for "self-enforcement" rather than external coercion through a formal court system we have come to expect in the West.[37] A second line might be to consider the institutional incentives affecting the invocation of court adjudication after the Japanese imposed a "modern" legal system in Korea, such as changing court costs and delays, or statutory intervention diverting cases to compulsory mediation proceedings.[38] This line, in particular, argues for a fairly strong instrumental rationality amongst Koreans, when they decide whether or not to bring suit through the courts.[39] But it receives some support from the Survey itself, as where 37% associated appearing in court for "money matters" with litigation being "expensive and time consuming".[40] A third line, not readily derivable even from the Survey but which this reviewer would be inclined to favour, could then take the "interpretive turn" in social sciences, and look closely at the process by which Koreans'

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35 Page 64. J H Jeong *Kankoku Minpo Hoten no Hikakuhoteki Kenkyu* [Comparative Research into the Korean Civil Code] (Sobunsha, Tokyo, 1989) 49-87, has argued convincingly that modern legal norms from Japan were introduced to Korea well before annexation, through a new training institution for judges, legal education generally, implementation of a system of representation by lawyers, and so on. This longer history may have contributed to the identified increase in the use of the formal court system.

36 However, accurate comparisons of a "propensity to sue" are impossible without an index to determine the number of disputes from which court cases are selected for suit. Cf C Wollschläger "Civil Litigation in Japan, Sweden, and the USA since the 19th Century: Japanese Legal Culture in the Light of Historical Judicial Statistics" in *Proceedings of the 1995 Annual Meeting of the Research Committee on Sociology of Law (International Sociological Association), Legal Culture: Encounters and Transformations* (Japan Committee for the RCSL95, Tokyo, 1995) Papers - Section Meetings III, 2.

37 See R Brockman "Commercial Contract Law in Late Nineteenth Century Taiwan" in J Cohen, R Edwards and F Chen (eds) *Essays on China's Legal Tradition* (Princeton University Press, 1980) 76.

38 In Japan, see J Haley "The Myth of the Reluctant Litigant" (1978) 4 Journal of Japanese Studies 359. For Koreans, a particular disincentive to invoking the formal legal system would have been its increasing "Japanisation". See Jeong, above n 35, especially 59-65, 103-139.

39 In Japan, this assumption is taken even further eg by M Ramseyer and M Nakazato "The Rational Litigant: Settlement Amounts and Verdict Rates in Japan" (1989) 18 Journal of Legal Studies 263.

40 Pages 148, 305.

initial perceptions regarding "disputes" come to be transformed as both formal and informal aspects of particular dispute resolution processes evolve.[41]

The possibility of adopting such differing lines, alternative readings of the materials in this book, should be seen as confirmation of its breadth and depth. However, it could have been capitalised on by a clearer initial exposition of the editor's own line and certainly, for instance, by including discussion questions after each reading or series of readings.[42] Professor Song, with his success and experience in teaching Korean law all over the world, is eminently suited to suggesting a range of promising avenues of future inquiry. It is hoped that this will emerge in his next compendium of Korean law materials.

In this book, Professor Song has undoubtedly succeeded in his aim of offering "the student, professor, scholar, current practitioner or government official *the means* to achieve a basic understanding of the Korean law and legal system as they operate in the real world".[43] As an excellent resource, it does however deserve one combined index, rather than a separate and cumbersome index for each individual chapter. Typographical errors are sometimes distracting; all the more so are the main font (unfamiliar to New Zealand readers), and sometimes the sheer variety of fonts used in this book.[44] However these are trifles, for a splendid 1500-page reference tool. If US$197 seems fully priced, remember that this includes airmail postage, and that Korean publishers – just like Korean law – are now part of the global economy.[45]

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41 See eg Y Wada "Rethinking Formality and Informality in Dispute Resolution", unpublished paper presented to the NZ Institute for Dispute Research and Resolution, and the NZ Society for Legal and Social Philosophy (Wellington, 12 June 1996).

42 Cf eg Y Yanagida et al *Law and Investment in Japan: Cases and Materials* (Cambridge MA, Harvard University Press, 1994).

43 Page i (emphasis added).

44 Page 831, for instance, uses six variations.

45 The book can be ordered directly from: Bak Young Sa Publishing Co, 13-31 Pyung-Dong, Chongro-ku, Seoul, Korea 110-102 (fax: +82 2 736-4818). ISBN 89-10-50335-1.

# THE GUARANTEES FOR ACCUSED PERSONS UNDER ARTICLE 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS: AN ANALYSIS OF THE APPLICATION OF THE CONVENTION AND A COMPARISON WITH OTHER INSTRUMENTS

***by Stephanos Stavros, published by Martinus Nijhoff, Dordrecht, 1993, 388 pp (including 3 appendices), price (hbk) £ 87.00***

***Reviewed by A S Butler****

This book is a detailed analysis of the case law of the organs of the European Convention on Human Rights on the interpretation and application of Article 6 of the Convention. That article guarantees fair trial rights in the determination of criminal charges and in the determination of civil rights and obligations. The scope of Dr Stavros' study is the rights of an accused under Article 6.

The book is comprised of four chapters. The first chapter concerns the scope of application of Article 6 under the criminal limb. The chapter examines the meaning of the concept of "criminal charge". As it is the trigger for the application of Article 6 its definition is of obvious importance to the supervisory work of the Convention organs. Stavros' chapter captures this importance, but, further, subjects the Convention case law to a rigorous critique. In particular, Stavros' critical analysis of the two leading cases of *Engel v The Netherlands*[1] and *Oztürk v FRG*[2] is well handled. These two cases have led to a number of incongrous results such that deprivations of parole for up to 180 days have not been classified as criminal charges while relatively minor traffic offences are. The coverage of the article is, therefore, uneven. Moreover, as Stavros notes administrative proceedings

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1 (1976) 1 EHRR 647.

2 (1984) 6 EHRR 409.

often fall through the net of Convention protection; many cannot trigger the (admittedly generous) definition of criminal charge, and their public law nature has been held by the Court to put them outside the civil right and obligations category. Stavros makes a strong case for the inclusion of public law and administrative proceedings under the criminal head where penalties or quasi-penalties are imposed.

The second chapter contains an extended analysis (over 250 pages in length) of the standard of fairness applicable within the "traditional field of application" of Article 6. In examining the standard of fairness applicable Stavros divides the chapter into ten sections, which deal with specific aspects of the rights delimited in Article 6 itself and by the Court and Commission in their jurisprudence. The sections follow the chronological order of a traditional criminal proceeding and this order facilitiates exposition greatly. A particularly prominent theme in this chapter is the failure of the Convention organs to take the presumption of innocence seriously and apply it throughout the criminal process. As Stavros convincingly argues the case law on self-incrimination,[3] adverse pre-trial publicity,[4] *mens rea* and the definition of offences[5] and sentencing[6] suffers from serious defects on this ground. Moreover, this chapter demonstrates that in large part the protections afforded under the New Zealand Bill of Rights Act 1990 and other statutory and common law rules are more thorough-going. Disclosure rules in Europe are weak;[7] the jurisprudence on "loss of time" orders (awarded in UK against those bringing unmeritorious appeals) has inexplicably escaped Convention censure;[8] and protections for those subjected to post-arrest questioning are extremely weak.[9] In addition, Stavros cogently argues that the Convention organs have quite often applied the important concept of "equality of arms" in a manner which can only be regarded as perverse; he points to a number of cases where the Court and Commission have relied on the concept to uphold national provisions which underprotect an accused's rights on the grounds that the prosecution suffers from a similar disability. This is odd as the purpose of the concept is to raise the floor of rights protection, not lower the ceiling.

Stavros advances a number of reasons for the minimal nature of the Convention protections. First, Stavros emphasises a number of times that the Convention organs are

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3 Page 70.

4 Page 157.

5 Page 224.

6 Page 261.

7 Page 181.

8 Pages 277-279.

9 Pages 74-76.

alive to the diversity among the membership of the Council of Europe. The case law reflects an (awkward) attempt to advance a minimum European content to the principles contained in Article 6, tempered by recognition that the effectiveness of European supervision depends to a significant extent on establishing the legitimacy of the Convention in the area. In turn this requires a softly-softly approach to the interpretation and application of the article. Second, the Convention organs have a limited role in reviewing the holdings of national courts as to law and fact. Adherence to this limited role has resulted in the Convention's narrow review of challenges based on a lack of disclosure, the partiality of courts, the discharge of counsel's duties, and so on. Third, the doctrine of "national margin of appreciation" has been recognised by the Convention organs and this has resulted in significant leeway for national authorities. These explanations are generally sound and are argued for in each individual case cogently and clearly.

The third chapter concerns the standard of fairness outside the traditional field of application. More concretely, the applicability of Article 6 to prison proceedings, professional association discipline, and military law is examined. The chapter illustrates the important point made by Stavros in his opening chapter that a broad definition of the concept "criminal charge" requires in turn a graduated, context-sensitive approach to the interpretation and application of the guarantees in Article 6. As Stavros observes this is a task which has posed significant problems to the Convention organs; the guarantees in Article 6 are quite specific and the language of the article does not readily admit of variation in the application of its provisions. Notwithstanding this, the Convention organs have attempted to do as much as is possible within the confines of the wording of the article. A final theme of this chapter concerns the potential application of Article 6 to the myriad of administrative proceedings. And a number of the guarantees of Article 6 could be usefully applied to such proceedings. (Stavros mentions impartiality as an example.) The European Court's response to this problem has been inadequate and is most confusing, and Stavros again exposes this weakness clearly and lucidly.

The final chapter contains the conclusions which the author draws from the material traversed. He brings together the threads of his argument that much of the explanation for the confusing development of Article 6 jurisprudence can be laid at the feet of the drafting of the article and the interpretational dilemma which its wording presented the Commission and Court. In addition, Stavros explains very clearly the problem of "spill-over" visible in the definition of the substantive rights of accused persons under the Convention. The problem is that the interpretation of a guarantee in one context has been applied to another situation where a broader guarantee would have been more appropriate and vice versa. However, Stavros submits that the problem of "spill-over" is not so great as some commentators and judges have feared and in light of the breadth of material which he has traversed it is hard to argue against him. The chapter finishes with a useful assessment of

the case law under the heading, "A Fair Balancing of the Rights of the Individual and the Interests of the States Parties in the Context of Article 6".

Let us step back from a description of the individual chapters to the merits of the book. The first thing that struck this reader was the thoroughness of the review of the case law. The book is encyclopaedic in its treatment of the case law. Second, there is frequent reference to other important international instruments of relevance, such as the American Convention and the International Covenant. Reference to the latter is of particular importance to the New Zealand reader bearing in mind the central role of the Covenant in the development of our Bill of Rights. Third, this book is not just a collection of cases. Rather it is a closely argued and keenly pointed critique of the extensive Convention jurisprudence. And while the argument revolves around a small number of major themes, the manner in which it is done raises the book above the level of a predictable dirge, to a convincing and tight critique. This relates to a further point. This book, which has grown out of a doctoral thesis, has obviously been a labour of love. The author's enthusiasm for his subject is apparent; the result is a treatise which is eminently readable. This is something which goes some way to blunt one of major criticisms of the book--the lack of an index.

When I first came across this book I was working on a case where reference to Article 6 material was likely to be of use. Unfortunately, I found the book virtually impossible to use on that occasion, due to the lack of an index. The only way for readers to get themselves around the book is reliance on the skeletal Table of Contents. But that table really tells little as to the substantive issues dealt with in each section. Even the List of Cases Cited contains no cross-referencing to the main text. For a practitioner this absence will be a serious drawback and will affect any decision to buy. And being candid, I do not understand how author or publisher can expect a person to part with the large sum of money with which this book is ticketed without providing a comprehensive index.

Another point of concern for the potential buyer relates to the currency of the book. Though the publication year is 1993, the case law stops well before then. For example, the latest decisions of the Human Rights Committee and the Inter-American Court referred to date from late 1989, and from the European Court and Commission, late 1991.[10]

Moving to matters of substantive content, there is an important omission from the book. While Stavros spends much time in considering the definition of a criminal charge and its

10 In the intervening period there have been notable developments of relevance to the issues discussed in the book. For example, the *Funke* (1993) 16 EHRR 297, *Cremieux* (1993) 16 EHRR 357 and *Miailhe* (1993) 16 EHRR 332 cases examine the right to a fair trial in the context of a statutory obligation to produce incriminating tax and customs related documents. There have been a number of bail related decisions of the Court and Commission which raise questions as to the presumption of innocence.

application to various quasi-criminal, disciplinary and administrative proceedings, the treatment of the important issue of the distinction between true crimes and regulatory offences is weak. Almost all of the states parties to the Convention operate such a distinction, and use it inter alia to justify lower constitutional rights protection in the case of the latter. While Stavros' treatise touches on the subject it does not really (in this reviewer's opinion) get to grips with it.

In addition, the exposition (though generally of an excellent standard) is confused in places. In the first chapter, for example, Dr Stavros examines the important *Ireland v United Kingdom*[11] and *Kaplan*[12] decisions. He criticises the approach of the Convention organs to the definition of "criminal charge" in those cases, and contrasts them unfavourably with the *Oztürk* decision, in such a way as to suggest that they are departures from *Oztürk*. As it happens of course these decisions pre-date *Oztürk* and so the terms of the critique are a little misleading.

Another potential criticism is that the book does not contain a sustained examination of the literature surrounding Article 6. However, the presence of such a literature review might well have dulled the sharpness of Stavros' critique of the cases themselves. And, in the reviewer's opinion, the close examination and critique of the Convention case law is the very strength of the book as a whole.

These comments aside, I would conclude by praising the author for providing an excellent exposition and critique of the case law on Article 6. The book is lucid and comprehensive in its coverage (subject to the date constraints noted above). The absence of an index is, however, a serious lacuna which affects my ability to recommend the book to practitioners, especially bearing in mind the book's price. However, its claim to scholarship of a very high standard cannot be denied. It is a must for law libraries. And those wishing to undertake any serious study of Article 6 will find it invaluable. I look forward to Dr Stavros providing us with a second edition of this book in a few year's time.

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11 (1978) 2 EHRR 25.

12 (1980) 21 D&R 5.

# JM KELLY'S THE IRISH CONSTITUTION

*by G Hogan and G Whyte, 3rd edition, Dublin, Butterworths, 1994, 1222 + cxxii pages (including index)*

*Reviewed by Andrew Butler**

New Zealand public law has been undergoing something of a spurt of interest of late. Several books on New Zealand constitutional and administrative law have been published recently. Interest has been kindled doubtless by the enactment of the Official Information Act 1982, the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, the MMP consultative referendum and subsequent legislation, the Privacy Act 1993 and other significant public law statutes. A noticeable feature of the commentary and jurisprudence on modern New Zealand public law has been the willingness to draw on comparative material. And among those jurisdictions consistently referred to is the system of the single transferable vote (a form of proportional representation) prescribed by Art 16.2.5° of the Irish Constitution.[1] Similarly, in a number of cases the courts have referred to Irish cases in determining the true scope of rights and freedoms guaranteed by the Bill of Rights. A series of Irish cases on constitutional torts was referred to by the Court of Appeal in the *Baigent* case,[2] while the Irish approach to the exclusion of unconstitutionally obtained evidence (the vindication approach) appears to have been influential in the formulation and operation of our prima facie exclusion rule.[3] Moreover, with the debate over republicanism gaining momentum, it is inevitable that proponents of a republic will be looking overseas for models of a presidency suitable to New Zealand. It may be that, as in Australia, the Irish model of a popularly elected president with certain limited reserve-style powers will provide useful. The question then facing the practitioner and academic interested in pursuing aspects of Irish law is choosing a text. As will become apparent, *Kelly's Irish Constitution* is to be commended.

Within a short time of its first appearance, *Kelly* had established itself as the leading text on the Irish Constitution. Authored by John Kelly, Member of Parliament, ex-Attorney-

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1 See the *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Government Printer, Wellington, 1986).

2 *Simpson v Attorney-General* [Baigent's Case] [1994] 3 NZLR 667; (1994) 1 HRNZ 42.

3 See *R v Goodwin* [1993] 2 NZLR 153; [1990-92] 2 NZBORR 214.

General, and professor of law, the book was a remarkable synthesis of constitutional jurisprudence and practice with an insider's insights on the practical workings of state institutions. That commendable approach was maintined in the second edition, and since Kelly's untimely death in 1993, has been continued by Messrs Hogan and Whyte in the third. Throughout, the background to cases and issues is disclosed so that readers have a good appreciation of the concerns which surrounded a particular decision. The level of analysis is generally excellent: it is both interpretative and purposive, a positive boon for the overseas reader who can separate matters of text from matters of substance rather readily, thereby making comparison much more straightforward.

The book follows an article by article approach. In many cases the discussion of a particular article or sub-article is broken down under useful headings. The comprehensiveness of the coverage of the relevant case law is the greatest strength which the book offers.

Hardly a relevant case or relevant dictum goes unnoticed. An especially useful feature of the book's presentation from the perspective of the practitioner-reader (and particularly the overseas practitioner who may not have ready access to the various Irish law reports) is the reproduction *in extenso* of extracts from judgments. These enable the reader to assess for themselves the validity of the commentary made by the authors (and for the overseas reader assist in direct quotation of authority).[4]

Users of the two previous editions will, in all likelihood, have shared the writer's frustration in consulting *Kelly* which the inadequate indexing created. Fortunately, in the latest version some attention has been paid to this important feature of the book and the result is a much more user-friendly and comprehensive index.

The current authors have expanded the extent of reference to overseas authorities. Apart from US authorities, a large slice of the case law emanating from the European Convention on Human Rights organs is referred to. Unfortunately, this development has not seen a great expansion in reference to Commonwealth authorities. Despite the large numbers of Canadian Charter decisions which relevantly touch upon many of the issues discussed in the text, few are cited by the authors.[5] Similarly, references to Indian and other

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4 The only difficulty in relation to the latter is that for some reason the authors do not supply the page references for any of the quotations provided in the book.

5 One example alone relates to the discussion of restrictions on the right to vote and on the ability of state officials to participate in political activity on which there are many interesting Canadian cases: see eg *Sauvé v Canada (Attorney General)* and *Belczowski v R* [1993] 2 SCR 438 (with references to the lower appeal court rulings) (prisoners' right to vote), *Re Hoogbruin and Attorney-General of British Columbia* (1985) 24 DLR (4th) 718 (right to absentee ballot), *Osborne v Canada (Treasury Board)* [1991] 2 SCR 69 (prohibition on public servants engaging in political work too broad).

Commonwealth jurisdictions are few. In addition, while there are references to a number of German cases one hopes that in any future editions the extent of such comparative work will be expanded in light of the fact that, despite language barriers, there is a growing amount of writing on the *Grundgesetz* in English and efforts by the Constitutional Court itself to make its judgments more accessible.

One disappointing feature of the book must however be mentioned. The publisher is Butterworths and one would have expected a higher standard of editing and proofing. There are simply too many typographical errors in the book, from repetitions,[6] to misspellings, to footnoting which does not correspond.[7] Hopefully, the next edition will be able to tackle difficulties in this area.

In conclusion, *Kelly* is a worthwhile purchase for anyone for whom it is necessary to have ready, comprehensible and comprehensive access to Irish constitutional law.

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6 See eg p 166.

7 See the chapter entitled "The Family and Education" p 989ff.