made almost as if with one voice: we still await, with lively expectations enflamed by excellent articles from Dr Williams' hand in the *Criminal Law Review* and other journals, *The Special Part*. The great value of such a work may be safely assumed by every person who reads this book.

PETER L. WALLER*

The Citizen and the Administration: The Redress of Grievances, A report by JUSTICE. (Stevens & Sons Ltd, London, 1961), pp. i-xv, 1-104. Australian price 14s. 9d.

JUSTICE is an all-party association of lawyers in the United Kingdom concerned with upholding and strengthening the principles of the Rule of Law in territories for which the British Parliament is responsible, and with assisting in the maintenance of the highest standards of the administration of justice and in the preservation of the fundamental liberties of the individual. Since its inception in 1957, it has sponsored research leading to the publication of important reports on the problems of contempt of court, the need for revaluation of legal penalties, and the preliminary investigation of criminal offences. The present Report is the fourth in the series.

Some years ago, as a result of a piece of official maladministration which became known as the 'Crichel Down affair', the British Government set up a Committee, under the chairmanship of Sir Oliver Franks, to examine and suggest improvements in the machinery for appeal against decisions in disputes between individual citizens and official authorities. It was generally supposed, at the outset, that the purpose of this Committee was to prevent a re-occurrence of Crichel Down. But when the Committee examined its terms of reference, it decided that problems of that kind lay outside its competence. For, applying the literal rule of construction, you cannot examine the non-existent, nor can you improve it. And the trouble at Crichel Down arose because no machinery for appeal against or review of the official decision existed. The Committee apparently did not consider that to suggest the creation of needed machinery where none exists is perhaps to suggest an improvement—it probably thought it had enough to do if it stayed strictly within its terms of reference. At all events, its Report on Administrative Tribunals and Enquiries left untouched the problem of obtaining review of administrative decisions where no statutory procedure for review already existed. Shortly after the Franks Committee had reported, Professor F. H. Lawson, a member of the Council of JUSTICE, suggested that research into the institution of the Swedish *Ombudsman* (Parliamentary Commissioner for Civil Administration) might prove profitable. Ultimately, Sir John Whyatt Q.C., formerly Attorney-General for Kenya and Chief Justice of Singapore, was appointed Director of Research and a small Committee was asked to make a report. Its terms of reference were

> . . . to inquire into the adequacy of the existing means for investigating complaints against administrative acts or decisions of Government Departments and other public bodies, where there is no tribunal or other statutory procedure available for dealing with the complaints; and to consider possible improvement to such means, with particular reference to the Scandinavian institution known as the Ombudsman.

* LL.B. (Melb.), B.C.L. (Oxon.); Senior Lecturer in Law in the University of Melbourne.

Sir John carried out the task and prepared a Report, in which the Committee concurred. The Council of JUSTICE in turn endorsed it and put it out for public discussion, governmental study and eventual Parliamentary action.

The Report divides the complaints which come within its terms of reference into two categories—complaints against discretionary decisions and complaints of maladministration. It does not touch the first of these, save to recommend that, unless there are very special reasons for not doing so, discretionary decisions should be made appealable to a Tribunal, either existing or to be created. As regards complaints of maladministration, it takes the view that Parliament must 'remain the most important channel for making representations to the Executive about grievances'. At present members of Parliament perform this function by using Questions, or Adjournment Debates, or Debates on Supply. None of these procedures, as Sir John points out, is effective if the Executive decides to stick to its guns. He therefore proposes the creation of a new official, to be known as the Parliamentary Commissioner, to deal with the problem. This functionary would be appointed by Parliament, and would be irremovable except on an address of both Houses. He would receive complaints of maladministration, but only from members of Parliament, although it is suggested that at a later stage the possibility of his being authorized to receive complaints direct from members of the public should be considered. Before investigating a complaint against a Department, the Parliamentary Commissioner would notify the Minister concerned; the latter would be able to veto an investigation, but it is hoped that a convention would be established that he would use this power only in exceptional circumstances. The investigation would be informal, and the Commissioner would have access to the governmental files and reports, with the exception of the internal minutes passing between one official and another. It would seem that he could recommend a course of action to the Minister concerned, but the Minister would decide whether to follow it. The Commissioner would make an annual report to Parliament, and it may be supposed that in doing so he would draw attention to any case in which his views had proved unacceptable to the Minister.

The notion of the Parliamentary Commissioner is modelled in part on that of the Scandinavian *Ombudsman,* and in part on that of the existing office of the Comptroller and Auditor-General. It will thus be seen that Sir John Whyatt has been careful to stay within his terms of reference, and he cannot be criticized for so doing. Even so, his proposals are, I believe, unnecessarily modest. The Parliamentary Commissioner, unlike the Swedish *Ombudsman,* is to be subject to Ministerial veto. It is largely owing to Ministerial refusal to co-operate with individual members of Parliament that the present difficulties have arisen; why, then, should it be supposed that Ministers will suddenly decide to co-operate with a Parliamentary Commissioner? Again, the Swedish *Ombudsman* receives complaints from the public, is in daily touch with the Press, and can, as a last resort, institute proceedings against a civil servant. The Parliamentary Commissioner is to have no such powers. Even his access to government files is to be limited, for he is not to be allowed to see the internal minutes. Yet these minutes are almost certainly the best evidence available for ascertaining the true grounds for the decision which is to be investigated.

There is, however, to my mind a more basic vice inherent in these

proposals. This is the belief, implicit in the terms of reference under which Sir John Whyatt worked, that the fault springs from defective machinery. Hence the search for new machinery and the appeal to foreign models. At one time it was thought that the *Conseil d'Etat* would prove the means of salvation; more recently, attention has been focussed on the *Ombudsman*. Yet such institutions have, in their own countries, developed over a long period of time, and it may be doubted if they would continue to flourish when abruptly transplanted to an alien environment. Their success, I suggest, springs not from the machinery itself, but from the men who work it.

I believe that it is in the latter direction that we should look for reform. At the beginning of this century, the materials were at hand with which the courts could fashion an adequate system for reviewing administrative decisions. It is true, as Sir John Whyatt notes, that it is currently understood that the courts cannot review executive, as opposed to quasi-judicial, decisions. But this distinction was not part of our legal heritage; it has been made by judges, and quite recently. If this proposition is doubted, one need only compare the action of the Privy Council in *Nakkuda Ali v. Jayaratne,*[1] with that of the South Australian Supreme Court in *James v. Pope;*[2] or the action of the Divisional Court in *Regina v. Metropolitan Police Commissioner, Ex parte Parker,*[3] with that of O'Bryan J., of the Supreme Court of Victoria, in *Rex v. City of Melbourne, Ex parte Whyte.*[4] It is pointless to multiply instances. It is enough to say that time and again in the last three or four decades the English courts have been presented with opportunities for developing an adequate system of administrative law, and have refused the offer.

So also with Parliament. If it be true that Parliament can no longer control the Executive, to what is this due other than a voluntary abdication by members of their traditional functions? And why should it be thought that the interposition of an additional gear in the box will remedy the breakdown?

Within his terms of reference, Sir John Whyatt has done his work well. His Report is informative and pleasant to read. To those who believe that the solution lies along this path, I can confidently recommend it. But I must express my own belief that the path is a wrong one.

PETER BRETT*

International Law: Cases and Materials, by WILLIAM W. BISHOP JR, Professor of Law, University of Michigan Law School (Little, Brown & Co., Boston, 1962), 2nd ed., pp. i-xlvi, 1-964. Price not stated.

This leading American law school case-book in international law has just been brought out in a new edition, nine years after its first. Although it has appreciably grown in size this is mainly due to the addition of new material and cases which these last years have brought. The author has maintained his policy of selecting cases and materials according to the value which American practice would attribute to them. A number of British authorities are also included, but only very brief mention is given to authorities from other countries. The reviewer feels that the leading decisions of the Permanent Court of International Justice, and its present-

[1] [1951] A.C. 66. [2] [1931] S.A.L.R. 441. [3] [1953] 2 All E.R. 717.
[4] [1949] V.L.R. 257.

* LL.B. (Lond.), LL.M. (W.A.), S.J.D. (Harvard); Barrister-at-Law; Senior Lecturer in Law in the University of Melbourne.