

The main problem with these essays is the attempt of most to cover too much ground. The most successful essays focus on particular issues over a relatively short historical period. Fewer contributors, with more space, would have been preferable. More attention might have been given to the early decades of Australian settlement. The index could also have been more complete—it omitted mention of the Tasmanian feminist Edith Waterworth (see Paisley's chapter), for example, a significant figure whose achievements deserve greater recognition. Despite these qualifications, this book makes a worthwhile contribution to our understanding of how the law affected women in Australian history. It clearly shows that law reform might be a necessary condition to granting women full citizenship, to removing discrimination, exploitation and oppression, and to furthering the ends of justice, but is not sufficient in itself. The struggle continues.

*Stefan Petrow**

A New Zealand Legal History

**By Peter Spiller, Jeremy Finn and Richard Boast Wellington
Brooker's, 1995, pp xxxviii, 308, NZ\$65 (pbk)**

In recent years, lawyers and historians have shown increasing interest in the legal history of New Zealand and this book will provide a very good introduction for any person seeking 'to understand the major themes of New Zealand's legal development'. As the book provides a systematic overview, it will also no doubt stimulate research into 'particular areas of legal history in greater depth'. Jeremy Finn authored the first three chapters and stresses how the English legal system 'exercised both an institutional and an intellectual influence' on the legal system of New Zealand. Governors, bureaucrats and lawyers 'largely derived their perceptions of law from the English system. There was a common conceptual framework, a set of shared assumptions as to what the role of law in society was and ought to be'. Finn admirably summarises the development of English law and institutions from 1066 to the nineteenth century in 54 pages, drawing on leading textbooks listed in an appendix. Whether Finn needed to go quite so far back is a moot point but students should find his sum-

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mary a valuable introduction to English legal history, albeit with an old-fashioned gloss.

Despite the importance of the English heritage, Finn argues New Zealanders did not uncritically accept that English institutions could be reproduced 'irrespective of the different colonial circumstances'. Where adherence to English practice was deemed inappropriate, impractical or undesirable, New Zealanders drew on Australian models. Australian precedents were 'very influential in the early New Zealand court structure' and in 'the development of New Zealand law generally'. Finn stresses that, from colonial times, the 'most significant changes have been made by the legislature, not the courts'. The development of 'a body of law with distinctive New Zealand characteristics' was 'the result more of reform by statute than of judicial activism'. The formative influences on legislation included the pressure of necessity, private members' bills and law reform agencies. In addition to British statutes, Finn notes North American influences and provides a particularly interesting discussion on the influence of the Australian colonies, including Tasmania. He illustrates how these factors influenced New Zealand law in the areas of family law, land law, statutory interpretation and criminal law.

Finn divides New Zealand's legal history into five periods:

1841-1853: the early years of Crown Colony Government

1854-1880: the early years of Parliament and a time when Provincial Councils produced legislation of 'varying quality and importance'

1881-1914: a period characterised by 'reformist legislation and the first major involvement of the state in society and economy'

1914-1960: in this period law reform was minimal and overwhelmingly based on English developments, which 'to some extent reversed the nineteenth century trend toward a distinctively New Zealand character and legal identity'

1960 to the present: here we find 'a new wave of individuality and reform during which many institutions, and many areas of the law, have been the subject of far-reaching change'. Marked features were 'a willingness to experiment with indigenous ideas' and a 'more independent and innovative development of New Zealand's case law by the judiciary'.

In three chapters, Finn makes good use of material from New Zealand and Australian archives and the Colonial Office series, as well as secondary sources.

Much the same could be said of Richard Boast's chapter on the relationship between Maori law and the law of the New Zealand state. He limits his discussion to three aspects. First, the place of Maori law in the law of New Zealand: this remains unclear but 'the usual practice of the courts has been to ignore Maori rules unless they have been expressly incorporated by statute'. Secondly, the Treaty of Waitangi, the guarantees of which had been of 'marginal significance' to official law until the 1980s when the Waitangi Tribunal gave the Treaty new life. Thirdly, 'the evolution of the law relating to Maori land tenure'. This is emphasised because New Zealand made its 'most original contribution' by inventing 'a new kind of freehold tenure' and establishing a special court, the Maori Land Court.

Peter Spiller wrote chapter five on the courts and the judiciary, and chapter six on the legal profession. His approach is more descriptive than explanatory. He briefly describes the precursors to magistrates' courts and charts the developing status and jurisdiction of magistrates' courts in the twentieth century. In 1980, magistrates' courts were upgraded in status and renamed 'district courts', out of which grew family, youth and disputes' courts. Spiller dutifully catalogues who became district and High Court judges. His survey of the High Court (known as the Supreme Court until 1899) and the Court of Appeal ends with a discussion of the modernising reforms of Chief Justice Thomas Eichelbaum after his appointment in 1989. The Court of Appeal has established a high reputation since it was separated from the High Court in 1958, and is well placed to become the court of last resort if the movement to abolish appeal to the Judicial Committee of the Privy Council succeeds. Appeal to the Privy Council is however strongly supported for a number of reasons, not least that Maoris value the right of appeal 'as a form of access to the Sovereign in her capacity as a party' of the Treaty of Waitangi (the text of which appears in Appendix B).

In chapter six, Spiller describes the organisation of the legal profession in major centres of population, the role of the Attorney-General and Solicitor-General, the slow emergence of barristers leading to the formation of the New Zealand Bar Association as late as 1989, and the development of law reporting, especially after the New Zealand Law Reports appeared in 1883. In his survey of legal education, Spiller fails to satisfactorily explain the emergence of high-standard modern academic law schools from the 1950s, the development of which New Zealanders can feel justifiably proud. He ends by providing a brief section on law firms, the changing nature of legal work, and the composition of the profession, which, despite the strides of the 1980s, under-represents women and Maoris.

Spiller concludes by commenting that the legal profession has reached 'a crucial phase in its development', partly because the public perceives lawyers to be too expensive and unworthy of trust. We are, however, rarely given much insight into public attitudes toward the legal profession, the courts and the law, and it is incongruous to raise such an important point in the last paragraph. I hope future editions will attend to the social dimension, attempt to situate New Zealand legal developments more firmly in the changing society in which they occurred and break away from the inward-looking approach that dominates an otherwise commendable book.

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Treaty-Making and Australia: Globalisation Versus Sovereignty

Edited by Philip Alston and Madelaine Chiam

The Federation Press, 1995, pp x, 309, \$29.95 (pbk)

No provision of the Australian Constitution has generated more public interest and ire than section 51(xxix), the external affairs power. The use of the power through the World Heritage Convention by the Commonwealth to unilaterally resolve the Franklin Dam dispute in 1983, the confirmation of that use by the High Court in *Commonwealth v Tasmania*¹⁰ and its subsequent use in other environmental disputes such as the Lemonthyme, Southern Forests¹¹ and Daintree¹² have ensured that this placitum, above all others, has a fixed and permanent place in the popular mind. More recently, the decision in *Minister for Immigration and Ethnic Affairs v Teob*¹³ has created significant publicity regarding the impact of international conventions upon the operation of Australian law.

This work, edited by Philip Alston and Madelaine Chiam, seeks to explore the relevance of international instruments to Australian law from a surprising variety of sources. Partly drawn from the proceedings of a significant conference held in Canberra in May 1995, the book brings together a complete range of views on the role and im-

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¹⁰ (1983) 158 CLR 1.

¹¹ *Richardson v Forestry Commission* (1988) 164 CLR 261.

¹² *Queensland v Commonwealth* (1989) 167 CLR 232.

¹³ (1995) 183 CLR 273.