Book reviews

RECOGNITION AND ENFORCEMENT OF JUDGMENTS AND ORDERS AND THE SERVICE OF PROCESS WITHIN THE COMMONWEALTH.

A Report of a Working Meeting held at Basseterre, St. Kitts, 24-26 April 1978, published by Legal Division, Commonwealth Secretariat, London 1978, ix + 354 pp. Paperbound. Available on request from the publishers. Reviewed by A. H. Angelo.*

This substantial document is a set of materials as much as a text. The conclusions of the St. Kitts' meeting occupy little space and the bulk of the publication is taken up by the working papers prepared for that meeting. The main subjects of the papers are service of process out of the jurisdiction, recognition of grants of administration, maintenance orders, and money judgments; the problems associated with international custody disputes are touched upon but held over for detailed consideration at a later date.[1]

The working papers were prepared by Professor McClean of the University of Sheffield and Professor Patchett of the Caricom Secretariat in Guyana. In 1975 these professors wrote a preliminary report[2] on the question of the reciprocal enforcement of judgments within the Commonwealth for the Commonwealth Law Ministers' meeting in Lagos. That report was completed and extended in a further report[3] presented to the 1977 meeting of the Commonwealth Law Ministers in Winnipeg. This latter report dealt with bankruptcy matters and dissolution and winding-up of corporate bodies in addition to the other topics of money judgments, maintenance orders, arbitration awards, grants of administration, and service of process.

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1 It was further noted that this topic is likely to be on agenda for the 1980 session of the Hague Conference.

2 *The Reciprocal Enforcement of Judgments within the Commonwealth,* published with the 1977 Report. Cp. n.3 infra.

3 *The Recognition and Enforcement of Judgments and Orders and the Service of Process within the Commonwealth* (London, 1977).

The publication under review, the 1978 report, largely takes up and repeats the material that was being developed in the earlier reports. It is the culmination of the detailed and enterprising study of Commonwealth practice in this field of law initiated by the Law Ministers in 1973. It therefore supersedes the earlier reports to a significant degree.

The *Report* records the move away from reciprocity for enforcement within the Commonwealth, and also documents the relevance and application to the Commonwealth situation of the Hague and United Nations conventions on judgment enforcement. The increasing interest of the Commonwealth states in the work of the Hague Conference and Unidroit is to be welcomed and the explanations and analysis of the international activity that is going on in the conflicts field that this report provides cannot but promote greater Commonwealth involvement at an international level with states of a different legal heritage.

Contact with non-Common Law jurisdictions inevitably of course gives rise to translation and comprehension problems. The words are different and frequently the concepts represented have no equivalents in the Common Law world. In its discussion of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 1965 the *Report* faced these difficulties as the following quotation shows:[4]

> In some civil law countries, service is or may be effected by the courts or related judicial authorities in the local area within which the defendant is to be found. The *police judiciare* may be involved, and the offices of the local *procureur* (public prosecutor), despite the civil nature of the action. In France and in some other countries, the defendant will be invited to attend at a court office or police station to collect the documents.

This quotation is, it is submitted, misleading without some explanation of the role of the French institutions referred to[5] and, arguably, incorrect in its treating *procureur* and "public prosecutor" as equivalents.

In addition to the descriptive material on the Commonwealth systems the *Report* also looks at the writ system, judicial assistance and various reform difficulties and proposals.

The discussion of the writ system, its availability for Commonwealth and non-Commonwealth countries, and the problems to which it gives rise is of particular interest in the light of *My* v. *Toyota*[6] and the associated confusions. Though unfortunately details of state practice are not given the *Report* does record that some Commonwealth countries have, in an endeavour to resolve the difficulties of the writ system, recently abolished the writ system.

"Judicial Assistance" was one of the principal subjects of discussion at the Lawasia Conference in Seoul in 1977. The group of papers presented on that topic highlight the importance of this *Report* to the Commonwealth and bear silent witness to Professor McClean and Patchetts' statement that[7]

4 Page 74 para. 25.
5 See David & de Vries, *The French Legal System* (New York, 1958) 20-21, and Brown and Garner *French Administrative Law* (London, 1967) 63.
6 [1977] 2 N.Z.L.R. 113.
7 Page 85 para. 8.04.

> The law and practice on this point within the Commonwealth jurisdictions has received very little previous attention. The subject is too "practical" to receive much treatment in treatises on the conflict of laws; but, because it does raise issues in the field of the conflict of laws, is equally shunned by writers on practice and procedure.

Fortunately, with the *Report* a major step has been taken to remedy this deficiency.

On a somewhat less positive note are the observations made relating to the attitudes of some legislatures and lawyers. There is for instance the suggestion that mooted reforms though desirable might not be welcome in some quarters because the relevant body of law had only recently been revised, and in other quarters because any scheme that simplified procedures and reduced costs was likely to be opposed.

Many of the working papers in the *Report* deal at length with legislative drafting problems, patterns and models. As a consequence of these papers, model legislation on maintenance orders and money judgments is to be prepared by the Commonwealth Secretariat and circulated to Law Ministers during 1979. This will provide an incentive and example to parliamentary counsel and parliamentarians throughout the Commonwealth to give the greatest possible attention not only to policy and substantive matters but also to the stylistic and linguistic aspects of law-making. In particular the *Report* enters a caveat against the prolixity of the legislation of the United Kingdom.

In the law reform area the *Report* comes at a time when it will be of especial value for New Zealand. The Rules of the Supreme Court in the Code of Civil Procedure are currently under review[8] and the Family Proceedings Bill 1978 is now being considered by Parliament.[9] Both these bodies of law involve matters researched and discussed in the *Report;* it is to be hoped that the New Zealand legislator will give due weight to the arguments for reform presented in the *Report* so that the application of the law both locally and internationally may be improved.

The material in this *Report* is of an intensely practical nature, has been prepared to the best of research standards, and is presented clearly and well. It is of a range and degree of detail that will be appreciated by all conflicts lawyers and proceduralists and is wholeheartedly recommended to practitioners and academics with those interests.

8 Aspects of this revision are commented on on p. 86 para. 8.06 of the *Report.*

9 Although not specifically stated it appears clear from references to the U.N. Convention on the Recovery Abroad of Maintenance in the Bill that New Zealand intends to become a party to that convention.

LEGAL SERVICES FOR THE COMMUNITY by Michael Zander, Temple Smith, London, 1978, 403 pp. plus index. Reviewed by R. C. Crotty.*

At the 1978 triennial New Zealand Law Conference at Auckland Michael Zander made important contributions to business sessions about the profession, legal services and legal education. This book examines those topics from a U.K. prespective although he is often able to refer to developments in many other countries. He gives the results and benefit of many years of personal participation in the debates and changes in the U.K. He is no armchair theorist. He reports on field research personally carried out or supervised by him, including, for example, a project that asked people about their legal problems and needs and whether they thought they had been met and how.

Legal services are the subject of attention world wide. Zander shows that it is the advent of state funding of legal services through legal aid schemes that has produced state and public concern about whether lawyers are providing money's worth. The U.K. has its Royal Commission on Legal Services, appointed in March, 1976. New Zealand has had its Royal Commission on the Courts and now has its Justice Department Working Party on proposals for review of legal assistance schemes in New Zealand. To date there is precious little field research data on legal services in New Zealand. This makes Zander's book particularly valuable as a guide to what might be done, given appropriate funding. Also, the similarities between the U.K. and New Zealand legal systems are more striking that the differences in regard to the topic of legal services. The book discusses evidence about what is actually happening in the U.K. in the private profession, law centres and citizens' advice bureaus, the quality and costs of legal services, the unmet needs, and alternative methods of avoiding or supplementing lawyers with para-legal advisers or do-it-yourself methods. That legal aid is there to stay in the U.K. is evidenced by the fact that the Bar draws about half its income from state funds.

Apart from the Justice Department review, of particular relevance at present to the New Zealand situation are Zander's discussions on group legal services, funding of legal aid and duty solicitor schemes, and the importance of active pressure groups. In the latter regard an organisation called CLAW that used to be of some influence in New Zealand appears now to have disintegrated. The neighbourhood law office at Grey Lynn has funds to last until mid-1979 and then will survive only if the Government allows it to by providing further funds.

The message in the book for the private profession is that the U.K. experience shows that properly funded and well organised state legal assistance schemes are a benefit both to the profession and the public. This book records Zander's major contribution to the proper administration of legal services in the U.K. It is hoped that those responsible in New Zealand for reviewing and making decisions in these matters will constantly refer to this book for reference and comparative material.

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INVESTMENT INCENTIVE PROGRAMS IN WESTERN EUROPE by Raymond J. Waldman and B. Thomas Mansbach, International Division, Chamber of Commerce of the United States, Washington D.C., 1978, 450 pp. Looseleaf-binder format. U.S.$95.

According to the publisher's information sheet, this text is "[d]esigned for corporate managers, individual investors and business planners increasingly concerned with the profitability of Western European operations. [It] provides accurate information about the entire range of available incentives in Western Europe in one comprehensive source". The range is extensive; the countries and systems covered are Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, Yugoslavia, and the E.E.C. In all, 500 different incentive programmes are dealt with.[1]

For the purposes of the text an incentive is defined as "any measure provided or instituted by a government . . . to attract and/or influence the location and level of investment". And within that definition, financial, fiscal and factor incentives are investigated and explained.

Each country and the E.E.C. is dealt with briefly in an Introduction where an indication of the main incentives used in that jurisdiction and the purpose for which they are used is described. Then there is a subsequent chapter devoted individually to each country and the E.E.C. with practical information on the incentives and how they may be obtained by investors. The table of contents and the material covered for each area is standard. It takes the form of an overview of the economic and developmental situation in the country, a description of the available investment incentive programmes, and a special chapter on financial incentives, another on fiscal incentives, and finally one on factor incentives.

Of interest not only to businessmen and business lawyers, but also to comparatists, is the inclusion of Yugoslavia, which, because of its socialist system, does not admit of any foreign ownership of Yugoslav property, but which, because of its unique form of industrial management within the socialist camp, is otherwise set apart from the other Eastern European socialist states. Yugoslavia makes significant endeavours to attract foreign investment and the nature of these endeavours is indicated in the text along with a discussion of problems particularly related to investment in a non-capitalist state.

This text is in the nature of a compendium — a check-list or catalogue — of incentive possibilities. It is in fact a mine of practical information, both at the specific level of Western Europe and at a more general level in terms of types of incentive schemes in use in the world today. In this latter context, it may well be of use to New Zealand economists in their work with the national economy.

The text has been prepared with the assistance of expert contributors from the various countries covered, and the information included is easily found and clearly presented.

1 The O.E.C.D. estimated that the E.E.C. countries plus Norway, Spain and Sweden in 1974 spent US$1.4 billion attracting industrial investment to their underdeveloped regions.

WINDING UP ON THE JUST AND EQUITABLE GROUND by F. H. Callaway, Law Book Co. Ltd., Sydney, 1978, xxvii + 131 pp. including index. Australian price $16.50. Reviewed by R. A. Green.*

Mr. Callaway's book is the first volume in a series entitled "Monash Studies in Law". In his introduction to the series Professor Waller expresses the hope that " . . . the establishment of this series of occasional publications will encourage research and writing on specific themes, including some which may not come within the scope of general Australian textbooks on traditional legal subjects". Winding up on the just and equitable ground is covered in general textbooks but one can hardly deny that the description "specific theme" is properly applicable to a book of some one hundred and twenty pages on one short paragraph of what is universally a lengthy statute.

The introductory chapter is divided into two parts. The first part is a brief historical analysis and this analysis is supplemented by the comments of Mr. Justice Aickin in a Foreword which emphasises historical developments and the inter-relationship between the law of companies and the law of partnership. The ejusdem generis construction which eventually ceased to be applied to the winding up provision in the Companies Act, and which apparently was never applied to the equivalent Partnership Act provision, is referred to by both writers. However, it is interesting to note that the extract from *Lindley on Partnership* quoted by Lord Cozens Hardy in *In re Yenidje Tobacco Co. Ltd.*[1] as being applicable to the just and equitable ground in the Companies Act, was in fact written with reference to "the mutual confidence ground" of the Partnership Act[2] and not the just and equitable ground of that latter Act.[3] In a sense, therefore, the just and equitable ground in the Companies Act, while not read ejusdem generis with the earlier paragraphs of the Companies Act itself, was read ejusdem generis with another paragraph of an entirely different Act — a point not fully explained at pages 89-90 of the text under review.

The second part of the introduction is concerned with what appears to be in the author's view the underlying rationale of the just and equitable provision — the contractual analogy. The book is replete with references to contractual matters. For example, discharge on account of breach, discharge by frustration, selected contractual remedies, and even promissory estoppel are prayed in aid. The contractual analogy is applied not only to the terms of the memorandum and articles but also to what proves to be a key element in the author's analysis — the 'general intention or common understanding".

In my opinion the heavy emphasis on the contractual analogy has resulted in parts of the book lacking clarity and being very difficult to read. This is especially true of Chapter 4, "New Members". Moreover, that chapter fails to distinguish clearly between shareholders who acquire shares from the company and shareholders

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1 [1916] Ch. 426, 430.
2 Section 38(d) of the 1908 New Zealand Act.
3 Section 38(f) of the 1908 New Zealand Act.

who acquire shares from third persons. In Chapter 3, as in Chapter 9, sub-headings might have been useful for clarification. Similarly, Chapter 8 on "Hardship" is difficult to follow and is not totally convincing. At the conclusion of the discussion of the contractual analogy in the introductory chapter the author concedes that there are limits to that analogy and that there is room for the operation of the just and equitable ground beyond concepts of breach and frustration. Notwithstanding that concession, in Chapter 8 it seems that the author reverts to contractual analogies in order to establish a residual ground of hardship. If my view of Chapter 8 is correct, it is difficult to see why, as well as the reference to *Blomley* v. *Ryan*,[4] reference is not also made to the broad doctrine of inequality of bargaining power expounded in *Lloyds Bank Ltd.* v. *Bundy*.[5] Furthermore, in the context of a lack of legal advice giving rising to hardship, the New Zealand case of *Re North End Motels (Huntly) Ltd.*,[6] which is referred to in a different context at page 87, could have been mentioned.

One could not disagree with the statement on page 26 to the effect that a detailed examination of breach of directors' duties and fraud on the minority is beyond the scope of the book. Nevertheless, the author properly recognises the need to outline the basic principles. Having done so some reference could have been made to the fundamental conflict between two of the authorities cited in the text, *In re Smith and Fawcett Ltd.*[7] and *Howard Smith Ltd.* v. *Ampol Petroleum Ltd.*[8] Again, although the law is stated as at 1 May, 1977, and several cases reported in 1976 are cited, there is reference neither to *Clemens* v. *Clemens Bros. Ltd.*[9] in which broad equitable principles were applied nor to *Winthrop Investments Ltd.* v. *Winns Ltd.*[10] Finally in relation to Chapter 3 the title of the chapter "Quasi-Partnership" and the general tenor of the subsequent analysis in those terms might be thought to be rather inappropriate having regard to the views of Lord Wilberforce in *Ebrahimi* v. *Westbourne Galleries Ltd.*,[11] as quoted in the text at page 38:

> To refer, as so many of the cases do, to 'quasi-partnerships' or 'in substance partnerships' may be convenient but may also be confusing . . . . A company however small, however domestic, is a company not a partnership or even a quasi-partnership . . . .

From a New Zealand point of view one would have liked to have seen *Tench* v. *Tench Bros. Ltd.*[12] referred to among the cases covering the possibility of a winding up petition being an abuse of process (Chapter 9, page 104). *Tench* v. *Tench* is referred to in the text but only as authority for propositions concerned with the nature of small companies. It could be noted that use of the winding-up petition might very well decrease if the oppression section is extended in application as in section 234 of the new Canada Business Corporations Act and as has been proposed in clause 65 of the 1978 Companies Bill in the United Kingdom. Both of those provisions are expressed in terms of conduct being "unfairly prejudicial" to the interests of certain individuals.

4 (1956) 99 C.L.R. 362. 5 [1975] Q.B. 326. 6 [1976] 1 N.Z.L.R. 446.
7 [1942] Ch. 304. 8 [1974] A.C. 821. 9 [1976] 2 All E.R. 268.
10 [1975] 2 N.S.W.L.R. 666. 11 [1973] A.C. 360, 379. 12 [1930] N.Z.L.R. 403.

In terms of the overall worth of the book most of the above points are but relatively minor irritations. In my view the book will be useful to practitioners and to others. The book is well set out and nicely bound. The proof-reader does not appear to have nodded too often and it is pleasing to see that the footnotes are at the foot of each page rather than at the end of each section. It is to be hoped that the future volumes in the series will maintain the standard set by the first issue.

ADMINISTRATIVE LAW AND THE JUDGES. The Pritt Memorial Lecture, 1978, by J. A. G. Griffith. Haldane Society of Socialist Lawyers. 1979. 23 pp. 50 Pence. Reviewed by K. J. Keith.*

For 30 years or more Professor Griffith has been a close observer and careful critic of English public law. The readers of his scholarly work and of his many columns in the *New Statesman* have long benefited in different ways from the exposition and criticism. In the past two years he has published three thought provoking overviews of public law, three attempts to determine the present and proper roles of the judges in the political and constitutional system. The major one is to be found in the *Politics of the Judiciary* published in 1977, the others in two lectures, the Chorley Lecture on "The Political Constitution" delivered on 14 June, 1978[1] and the Pritt Memorial Lecture, "Administrative Law and the Judges" delivered on 22 November, 1978, the subject of this review.

Professor Griffith sees the great power of the central government bureaucracy as the outstanding characteristic of the British constitution. That is hardly a remarkable insight. Indeed it is that opinion (or variants which see the balance between the politicians and the permanent officials differently) which is the basis for the increasing debate about the reshaping of the constitution and especially about proposals for the restricting of that great power. It is Griffith's contribution to that debate which is interesting — even remarkable. He does not want power taken from the politicians. In particular, he is opposed to a significant role for the judges. Not for him a judicially enforced Bill of Rights as proposed by many of all political persuasions. Indeed he objects to the courts' recent activism in controlling government action, an activism which many have welcomed. Rather, political decisions, he says, should be taken by politicians. They are removable. Their responsibility and accountability to those they rule should be real and not fictitious. The principal, indeed the sole, method of enhancing this responsibility and accountability is in greater openness: " . . . the only way to reform lies in

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1 (1979) 42 M.L.R. 1.

constant exposure, in continuous demystification, in repeated attacks on all forms of secrecy"[2] and " . . . the best we can do is to enlarge the areas for argument and discussion, to liberate the processes of government, to do nothing to restrict them, to seek to deal with the conflicts which govern our society as they arise."[3] A full statement and review of this argument requires a book. This review limits itself to a brief consideration of recent developments in the courts' power to control executive power and relates those developments to Griffith's emphasis on openness.

In his lecture, Professor Griffith considers or mentions 40 decisions of the English courts given over the past 80 years. He does not mention any of the reforming legislation which has generally enhanced the courts' role. His criticism focusses on the courts' own contribution, first, to the review of ministerial discretion and, second, to the principles of natural justice.

The discretion cases that are the principal objects of his ire are *Prescott* v. *Birmingham Corporation*,[4] *Padfield* v. *Minister of Agriculture, Fisheries and Food*[5] and *Secretary of State for Education and Science* v. *Tameside Metropolitan Borough Council*,[6] in all of which the courts upset the administrative decision. The second, he says at page 20, decides that

> the courts may by reference to their interpretation not of the words of the statute, but of the policy that they believe lies behind it, conclude that the Minister is seeking to thwart that policy. A more blatant and arrogant assumption of power would be difficult to imagine.

The decisions were upset, not because the Ministers had acted ultra vires, but "because they had taken policy decisions on grounds which the courts disapproved of".[7]

Again, a proper consideration of these criticisms would require lengthier treatment than is possible here. That treatment might note the legislative reversal of the first decision and the fact that the decision in *Padfield* had no substantive consequences. It would certainly recall that the King's Bench as long ago as the seventeenth century laid down that "wheresoever a commissioner or other person hath power given to do a thing at his discretion, it is to be understood of sound discretion, and according to law, and that this Court hath power to redress things overwise done by them".[8] It would stress that, when properly applied, the exercise of the power must be — and often is — very sensitive to the legislative context; so it would compare with the intervention in *Padfield* the refusal of the House of Lords to intervene in *British Oxygen Co.* v. *Board of Trade*[9] in which the legislation did not provide any limiting purpose or criterion; and it would emphasise the narrow supervisory role of the Minister in *Tameside:*

2 Page 21 of book under review. 3 The Chorley Lecture, supra n.1, 20.
4 [1955] Ch. 210. 5 [1968] A.C. 997. 6 [1977] A.C. 1014.
7 Page 16 of the book under review.
8 *Estwick* v. *City of London* (1647) Style 42, 43. 9 [1971] A.C. 610.

he was not given a broad discretion to determine and implement policy. It would acknowledge, nevertheless, that the power to intervene for abuse of discretion is a flexible one which leaves a good deal to the temper of the court which can apply even the same "test" in very different ways (consider the varied applications of the judgment of Lord Greene M.R. in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*[10]). It would also acknowledge that the power to review exercises of discretion enables the court, more than does any other aspect of judicial review, to joust with the government on policy. It would also note that ministerial decisions have become much more vulnerable in the past 10 years and would pursue in detail the question whether that increased judicial intervention can be justified. Finally, it would link the court's power to the openness of government: the power cannot easily be invoked in the absence of evidence of the reasons for the disputed exercise of power (consider the central importance of the Minister's letters in *Padfield* and *Tameside);* the extent of intervention may therefore be in large part a matter of accident; and it will be enhanced by the increasing judicial willingness to reject the executive's claim to evidentiary privilege.

The last point in turn provides a link to Griffith's treatment of natural justice. The requirement that the public authority comply with natural justice means, after all, that the process of decision be more open than would otherwise be the case. As noted, Griffith's general theme is a call for greater openness. It might accordingly have been expected that he would have given a greater welcome to the increased willingness of the courts in the past 20 years to impose natural justice. He is rightly critical of the conceptual mess in which the courts buried themselves from the 1920s to the 1950s and, in particular, of the *Parker* and *Fry* decisions — but of the developments since then scarcely a word. Nor does he refer to the substantial contribution the courts have made in the same period to opening up the process of government through the narrowing of "Crown Privilege". (A reference to the liberal summing up of Caulfield J. in the Sunday Telegraph — Aitken Official Secrets trial might also have been included to balance that of Mars-Jones J. in the A.B.C. trial.)

The natural justice law is relevant as well to Griffth's criticism of the courts for failing to develop a system of legal principle. As his discussion of this area of the law shows, that criticism could once justly be made. Indeed in 1963 Lord Reid declared that "we do not have a developed system of administrative law".[11] But it was, of course, in that very case that Lord Reid recalled and stated with great strength the long established principles for the application of natural justice. That process was carried forward in later cases such as *Durayappah* v. *Fernando*.[12] It is true that the principles are not certain in their application and that the uncertainty has increased with the "fairness" cases; but some uncertainty is inherent in all principles and it is of great importance that the law of judicial review allow the courts to take proper account of the great variety of statutory contexts in which claims to a fair hearing arise.

10 [1948] 1 K.B. 223 (C.A.).
11 *Ridge* v. *Baldwin* [1964] A.C. 40, 72.
12 [1967] 2 A.C. 237 (J.C.).

Is it wrong for the courts rather than the politicians to be developing these principles? It is, of course, clear that the politicians can and frequently do develop the principles: a great number of statutes now set out in detail the procedure administrators are to follow and specifically provide for a right of appeal. Indeed the courts will now sometimes agree that a statutory silence indicates that no procedural or substantive control is to be implied. But in other cases they have continued to "supply the omission of the legislature" by reading in procedural restraints which were not expressed in the statute. Is this not an area where the courts can move with some assurance on the basis of shared views within the community? While the warring interest groups in society may be in disagreement about *what* policy should be adopted is there such disagreement about *how* it is to be adopted? Does not the historical record show that there are long recognised procedural principles? And do not the courts have some expertise in relation to procedure?

That argument cannot be made of the review of the exercise of discretions by ministers and other public authorities. The controversy surrounding *Roberts* v. *Hopwood*[13] and the *Prescott, Padfield* and *Tameside* cases cited above is evidence that shared principles may not exist. The choice of a particular policy may be a matter of public dispute. Consider in New Zealand the decision of the Court of Appeal in *Rowling* v. *Takaro Properties Ltd.*[14]

While, again, this is not the place to pursue the matter it is possible to point to recent developments which give the law greater certainty than the earlier list of points suggests and to mention cases in which judicial intervention appears completely defensible. And, in any event, what remedy would Griffith provide to the individual who has suffered from an alleged abuse of discretion (and who, because of increasing openness, may well have the evidence of the abuse)? Surely it is not enough to refer in the general way that he does to the political process. It has long been accepted that that process by itself is not adequate for resolving individual complaints against the administration. But can it now be argued that statutory rights of appeal and review and the powers of the central and local government ombudsmen provide adequate relief and that the review powers of the courts are accordingly not needed? It may be that this is so. In the space of his lecture and given its emphasis, Professor Griffith could not, of course, test that proposition, but he does not even hint of the possibility.

Professor Griffith has served a signal purpose in this lecture and his other recent writings. He has raised basic questions about the appropriate extent of judicial review of administrative action rarely debated in Britain. Academic commentary tends to be descriptive and analytical. If it expresses a view of the cases it is generally approving of judicial activism. With reform — by the courts as well as by the legislation — so obviously a current issue the basic questions should be carefully debated. The debate needs to move beyond Professor Griffith's provocative general views to a close dissection of the cases: that dissection should pursue the questions raised here. It should also put them into a broader

13 [1925] A.C. 578.

14 [1975] 2 N.Z.L.R. 62 (C.A.).

context of the effectiveness of judicial review.[15] To suggest that is not, of course, to criticize Professor Griffith. On the contrary, it is to recognise the stimulation he has provided towards that examination.

15 For two suggestive examples, see W.H. Angus "The Individual and the Bureaucracy: Judicial Review — Do We Need It?" (1974) 20 McGill L.J. 177 and P.W. Hogg "Judicial Review — How Much Do We Need?" (1974) 20 McGill L.J. 157.

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