

BOOK REVIEW

SEEING THE WORLD WHOLE – ESSAYS IN HONOUR OF SIR KENNETH KEITH, edited by Claudia Geiringer and Dean R Knight (Victoria University Press, 2009) paperback rrp NZ\$60.

It is without any sense of hyperbole that the Rt Hon Judge Sir Kenneth Keith ONZ KBE QC is referred to on the back cover of the book as “one of New Zealand’s most eminent jurists”.¹ This collection of essays in honour of Sir Kenneth is published by Victoria University Press (in association with the New Zealand Centre for Public Law and with the assistance of the Law Foundation) to mark his retirement from the New Zealand Supreme Court, to honour his distinguished career as an academic, law reformer legal advisor, international advocate and judge, and to celebrate his appointment to the International Court of Justice – the first and only New Zealander ever to be so appointed. Any book which seeks to honour an individual with such a varied and outstanding career would run the risk of providing a disparate array of material on topics that are not necessarily able to be discussed within one volume. This book, based on essays that were prepared for a conference, “From Professing to Advising to Judging: A Conference in Honour of Sir Kenneth Keith” held in August 2007, manages to fulfil its brief by honouring Sir Kenneth with a collection of scholarly works that divulge no hint of disconnectedness. It is probably somewhat unusual because it is a book in which academics, law reformers, legal advisors, international advocates and judges, as well as law students, will all find something of interest.

Many of the contributors to the book begin their remarks or essays with an anecdote about their (often long-standing) relationship with Sir Kenneth Keith. In the same vein, this author will begin by noting that she has only had one point of contact with Sir Kenneth: in the context of a seminar on international courts and tribunals held in Wellington in 2004 Sir Kenneth gave a wonderful presentation on the litigation of disputes before the International Court of Justice. In the same context, the reviewer had the pleasure of meeting Sir Kenneth during a function at Government House. Other than sharing the same birthday, and an interest in international law, there is nothing much in common and the reviewer is certainly not qualified to assess his contribution to international law. Nevertheless, the opportunity of reading (and keeping) this book could not be passed up and so the following comments are humbly offered. The book is broadly divided into nine sections, within each of which there are several remarks and/or essays authored by a virtual “who’s who” of the New Zealand legal fraternity as well as several notable scholars from abroad. The first section consists of a Mihi from Paul Meredith² and an opening address from Dame Sian Elias.³ The Chief Justice refers to Sir Kenneth’s early writings on constitutionalism, sovereignty, human rights and the relationship between international law and domestic law. In her eloquent address, the Chief Justice observes that “one of the gifts Sir Kenneth has is to see connections where

-
- 1 Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at rear cover.
 - 2 Paul Meredith “Mihi” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 2-3.
 - 3 *Ibid.*, at 3-13.

others see divisions.”⁴ Although that observation is a reference to the connections Sir Kenneth saw between international and domestic sources of law, it is a pithy summary of the overarching theme of the book. The Chief Justice ends her opening address by suggesting that Sir Kenneth’s work in life has been “To demonstrate where the constitution is to be found, how international law impacts on domestic law, and to speculate about where it is heading.”⁵

The second section is called “Constitutional Foundations”; it includes brief remarks from Sir Ivor Richardson⁶ and essays by David Feldman,⁷ Janet McLean⁸ and Claudia Geiringer.⁹ Each of the essays is an impressive scholarly contribution in and of itself. Professor Feldman’s essay discusses constitutionalism in international law with an interesting analysis of the growing tension between United Nations agencies, member states and regional organisations over constitutional standards; Professor McLean explores the meaning of “the Crown” with an historical and a contemporary analysis, using a reference to “the Crown” by former Associate Minister of Māori Affairs, Tariana Turia, as her starting point; and Geiringer provides a close examination of Bill of Rights Act methodology with a particular emphasis on section 6 of the New Zealand Bill of Rights Act 1990 and the decision of *R v Hansen*.¹⁰ Within the section there is, fittingly, a mixture of international and domestic constitutional law issues. Although all three essays have been published elsewhere¹¹ their reproduction fits well with the theme of the book and an additional airing of such scholarly works, exposing them to a wider audience, is valuable.

Opening remarks from Alison Quentin-Baxter,¹² in which she discloses her role in introducing Sir Kenneth to the realm of international law in 1959, and a closing commentary by Gerard van Bohemen,¹³ in which he discusses Sir Kenneth’s contribution to the relationship between international and domestic law, as well as summarising changes in treating-making from a Ministry of Foreign Affairs perspective, bookend the third section, International Foundations. In between

4 Right Honourable Dame Sian Elias “From Professing to Advising to Judging: Open Address” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 4.

5 *Ibid.*, at 13.

6 Sir Ivor Richardson “Remarks from the Chair” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 16-17.

7 David Feldman “The Role of Constitutional Principles in Protecting International Peace and Security through International, Supranational and National Legal Institutions” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 17-47.

8 Janet McLean “Crown Him with Many Crowns: The Crown and the Treaty of Waitangi” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 48-68.

9 Claudia Geiringer “The Principle of Legality and the Bill of Rights Act: A Critical Examination of *R v Hansen*” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 69-99.

10 *R v Hansen* [2007] 1 NZLR 1 (NZSC).

11 (2008) 6 NZJPIL 1, 35 and 161, respectively.

12 Alison Quentin-Baxter “Remarks from the Chair” in ‘International Foundations’ in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 100.

13 Gerard van Bohemen “Commentary: Sir Ken’s Contributions to the Making of International Law - Observations from a Practitioner” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 145-148.

those two individuals' comments are essays by Benedict Kingsbury,¹⁴ Treasa Dunworth¹⁵ and John McGrath.¹⁶ Professor Kingsbury discusses the concept of "global administrative law"¹⁷ and argues that national courts will and should give more weight to rules or decisions produced by external entities providing those entities meet requirements of "publicness".¹⁸ He envisages "publicness"¹⁹ to include considerations such as the principles of legality, rationality, proportionality as well as the rule of law and human rights. Essentially, he is focusing on the extent to which a court can or cannot review the actions of an institution which is not part of the legal system of the court and he is (I think) putting forward a conceptual framework, a "publicness criteria",²⁰ which domestic courts can utilize. Treasa Dunworth's essay delves into the earlier academic writings of Sir Kenneth and focuses on two key pieces which he wrote in the 1960s regarding the relationship between international and domestic law. Dunworth's essay begins by summarising usefully what Sir Kenneth wrote before going on to observe that Sir Kenneth's thinking was "ahead of its time".²¹ Dunworth focuses on two themes that were a constant feature of Sir Kenneth's work and which she says remain relevant today: "the need to see the international/domestic relationship holistically and the equivocal nature of dualism".²² The third and final essay, by McGrath J, provides more than just commentary on the preceding two essays by Kingsbury and Dunworth. McGrath J provides valuable insight into Sir Kenneth's judicial legacy in the context of discussing three seminal cases, namely, *Attorney-General v Transport Accident Investigation Commission*²³ (the *Air Line Pilots' Association* case), *Wellington District Legal Services Committee v Tangiora*²⁴ and *Sellers v Maritime Safety Inspector*.²⁵

The fourth section of the book is entitled "Methodological Foundations". The opening remarks from Dr George Barton QC²⁶ allude to the process by which Sir Kenneth was poached from the Ministry of External Affairs and appointed as a junior law lecturer at Victoria University; he also refers to the "hopelessly academic topic"²⁷ that Sir Kenneth chose for his LLM. 'Methodological Foundations' reflects on Sir Kenneth's contribution to the way that law is taught in New Zealand

14 Benedict Kingsbury "Global Administrative Law: Implications for National Courts" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 101-125.

15 Treasa Dunworth "Law Made Elsewhere: The Legacy of Sir Ken Keith" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 126-135.

16 John McGrath "Commentary: International Law's Recent Influence on Domestic Court Decisions in New Zealand" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 136-144.

17 Benedict Kingsbury, above n 14, at 101.

18 Ibid, at 103.

19 Ibid.

20 Ibid.

21 Treasa Dunworth, above n 15, at 129.

22 Ibid.

23 *Attorney-General v Transport Accident Investigation Commission* [1997] 3 NZLR 269 (CA).

24 *Wellington District Legal Services Committee v Tangiora* [1998] 1 NZLR 129 (CA).

25 *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA).

26 Dr George Barton "Remarks from the Chair" in 'Methodological Foundations' in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 150.

27 Ibid.

through essays contributed by John Burrows,²⁸ Ben Keith²⁹ and Dean Knight.³⁰ Professor Burrows begins his contribution with an anecdote about teaching an LLM course at Canterbury in international law at the age of 24 and having his international law exam paper externally assessed by Sir Kenneth (Professor Burrows self-deprecatingly remarks that he did not subsequently teach international law). As with all the contributors to the book, Professor Burrows comments on Sir Kenneth's "breadth and depth of knowledge"³¹ but he also provides interesting analysis on the importance of teaching statute law in law schools. He argues forcefully for a compulsory first year course in legislation. Harvard Law School has recently revamped its curriculum to include such a course. There is much in his essay that should cause all law teachers to pause and reflect, including his statement that "studying statutes in the context of a specific subject is not the same as the study of statutes as a type of law".³² The title of Ben Keith's essay, "Seeing the World Whole"³³ was appropriated by the editors for the overall book. The essay is subtitled "Understanding the Citation of External Sources in Judicial Reasoning."³⁴ Its focus is explained by noting that Sir Kenneth:³⁵

has been associated to a substantial, and arguably unique, degree with the citation of international and comparative law and, more broadly, with the invocation of external material in legal reasoning.

Ben Keith remarks that "Sir Kenneth has repeatedly exhorted lawyers to see the world 'steadily and see it whole.'"³⁶ As with the other contributions, justice cannot be done to this excellent essay in such a confined space. The section on 'Methodological Foundations' is brought to a close with an article on administrative law by Dean Knight. He poses the question: What is the appropriate standard of review that the courts should adopt when reviewing decisions of public bodies and officials? To cut a long story short, his conclusion is that "a sliding-scale of reasonableness or different standards of review for matters of substance represents, or soon will represent, the orthodox approach in New Zealand."³⁷

The three sections of the book that broadly mirror the three areas of Sir Kenneth's working life professing, advising and judging, are preceded by a "Special Address" from Rt Hon Sir Stephen Sedley,³⁸ which discusses the constitutional ideas of the Levellers in the English Civil War. This address, to paraphrase Glazebrook J, speaks to Sir Kenneth's interest in everything and everyone

28 John Burrows "Legislation as a Degree Course" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 151-162.

29 Ben Keith "Seeing the World Whole: Understanding the Citation of External Sources in Judicial Reasoning" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 163-179.

30 Dean R Knight "A Murky Methodology: Standards of Review in Administrative Law" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 180-215.

31 John Burrows, above at n 28, at 151.

32 John Burrows, above n 28, at 152.

33 Ben Keith, above n 29, at 163.

34 Ibid.

35 Ibid, at 165.

36 Ibid, at 166.

37 Dean R Knight, above n 30, at 181.

38 Sir Stephen Sedley "The Sparks in the Ashes: The Constitutional Ideas of the Levellers in the English Civil War" in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 219-228.

and his ability to draw connections between the past and the present that might escape the notice of others.³⁹ Out of the three following sections of the book, the one of particular interest to this reader was the section devoted to ‘Professing.’ There are some introductory remarks from Tony Smith⁴⁰ followed by essays from Peter Hogg,⁴¹ Joanna Mossop,⁴² Jacinta Ruru⁴³ and Michael Taggart.⁴⁴ At the risk of neglecting the equally important sections on Advising and Judging, some of the points raised in the Professing sections are worthy of closer attention. Professor Smith mentions, inter alia, the role of the law faculty within the university academy more generally and the extent to which governments control universities. Professor Hogg’s essay reflects on the ways in which law schools have changed in relation to fees, funding, enrolment, curriculum and degree structure. Joanna Mossop’s article examines the place of international law within the law schools’ curriculums as well as the role of women in New Zealand legal education. Aside from those two specific areas, she raises a number of questions which require further examination. In discussing the wider community role of the legal academy, Mossop asks whether legal academics could, and should play a greater part in public debates and pursue a more proactive relationship with the media. The first thing that came to this reader’s mind when reading Mossop’s call for a “more proactive relationship with the media”⁴⁵ was an opinion piece published in a Sunday newspaper by Steve Braunias in which he mocked an academic at another law faculty for his (in Braunias’ view) too frequent contributions to legal issues via the media. Carving out a greater role in public debates for law academics has to be a two way street: if the media, or certain people within it, are unable to see academics’ comments for what they are (an attempt to contribution to greater public understanding?) then it is probably unlikely that law lecturers will rush en masse to take up Mossop’s call and pursue a more proactive relationship with the media.

In another section of her essay, Mossop asks whether law schools are servicing the needs of the profession in training future lawyers. She observes that in the United States, clinical legal education is an important part of law schools. She also notes that:⁴⁶

while [clinical courses] are popular with students and provide excellent training, one problem is that clinical law professors are often considered to be inferior to traditional law professors in terms of status and salary.

39 Right Honourable Susan Glazebrook “Remarks from the Chair” in ‘Special Address’ in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 218.

40 ATH Smith “Remarks from the Chair” in ‘Professing’ in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 230-232.

41 Peter W Hogg “Legal Education at Victoria University of Wellington” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 233-235.

42 Joanna Mossop “International Law, Practitioners, and Women in New Zealand Legal Education” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 236-242.

43 Jacinta Ruru “Legal Education and Maori” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 243-249.

44 Michael Taggart “Some Impacts of the PBRF on Legal Education” in Claudia Geiringer and Dean R Knight (eds) *Seeing the Word Whole – Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008) at 250-259.

45 Joanna Mossop, above n 42, at 240.

46 Ibid.

She has touched on an important issue since focusing on clinical legal education is undoubtedly part of the law schools' core business, yet in a PBRF environment, law lecturers who focus on clinical legal education may expose themselves to a career path which provides less scope for publication, and hence, promotion.

One of the matters Mossop touches on is the under-representation of women in senior ranks within New Zealand universities. She refers to her own faculty at Victoria, where only one out of eight law professors are women, but she does not take the issue further and compare all law faculties across New Zealand which would have been interesting. A cursory glance at academic staff listings on websites shows that the number of women in the senior ranks differs markedly from law school to law school. At Canterbury University, for example, none of the five professors are women; three out of five of their associate professors, four out of nine senior lectures and two out of four lecturers are women.⁴⁷ At the University of Otago and the University of Auckland, it is more difficult to assess the numbers at each rank since the listings of academic staff are organized alphabetically rather than according to "rank".⁴⁸ At the University of Waikato's Faculty of Law, women are represented fairly well in the senior and junior ranks: two out of five professors, two out of three associate professors, six out of twelve senior lecturers and six out of seven lecturers are women.⁴⁹

Mossop's essay is followed directly by a contribution from Jacinta Ruru who focuses on legal education and Māori. She singles out the University of Waikato Faculty of Law for both approval and criticism. She states that "Waikato is probably the best of the bunch"⁵⁰ but communicates a feeling that it is also deficient in meeting the needs of Māori law students. Without wanting to take direct issue with Ruru's statements and sources, statistics provide information which may be relevant to the debate which she is seeking to have. Māori Student Profile Statistics, generated by the University of Waikato, show that in 1997, seven per cent of the total number of law students at the University of Waikato Faculty of Law identified themselves as Māori.⁵¹ That figure has risen gradually over the past decade: from 2000-2005 it was nine per cent, in 2006 it was ten per cent, in 2007 it dipped to nine per cent and in 2008 it was back at ten per cent. These figures cannot be a basis for comparison without figures from other law schools, but they demonstrate that Māori students have faith in this Faculty of Law and are willing to come here (often from outside the region) to study. Another statistic that provides some degree of comfort is that, when compared to all other schools at the University of Waikato, the Faculty of Law has the highest re-enrolment rates for Māori students (and is twenty per cent above the overall average rate for Māori re-enrolment at the University of Waikato).⁵² The final statistic mentioned here is the pass rate for Māori law students compared with all domestic students at the University of Waikato: in 2008, Māori law students had an 87 per cent pass rate compared with a university average of 81 per cent. This relatively high pass rate may be due in part to the Faculty of Law's genuine commitment to biculturalism and its desire to assist Māori law students which presently includes a Māori Mentoring

47 University of Canterbury, School of Law, Academic Staff, <www.laws.canterbury.ac.nz/people/academic.shtml>.

48 See University of Otago, Faculty of Law, Staff Profiles, <www.otago.ac.nz/law/staff/index.html> University of Auckland, Faculty of Law, Academic Staff, <www.law.auckland.ac.nz/uoalaw/about/staff/academic_staff.cfm>.

49 Waikato Law Faculty Staff Directory, <www.waikato.ac.nz/law/staff/>.

50 Jacinta Ruru, above n 43, at 247.

51 University of Waikato Planning, Policy and Information Office "Māori Student Profile Statistics 2008", 16 September 2008, on file with the author.

52 *Ibid.*, at 11.

programme and a Māori Liaison Co-ordinator (Kaitakawaenga Māori) on the Faculty of Law staff. Statistics cannot tell the full story, but there is a debate to be had here and figures such as these can help inform that debate.

The final chapter in the ‘Professing’ section is written by Professor Taggart. It is an illuminating discussion of the impacts of PBRF on legal education in which Taggart identifies some of the concerns he has as a result of his experience on the PBRF’s Humanities and Law panel. Amongst many other things, he questions the effect of PBRF on the quality of research being published: he draws upon overseas studies which suggest that the number of publications may have increased (there) but the overall quality has declined. Although he does not state that PBRF has had the same effect in New Zealand, he leaves that inference open. Professor Taggart also discusses some questions of etiquette and ethics whilst lamenting the lack of discussion or writing about academic legal ethics. He observes that there is “increased competition for good material from books of essays, published conference proceedings, Festschriften and other memorial volumes, which contain almost as many contributions each year as the well established law journals”. Professor Taggart then proceeds to tackle the impact of PBRF on teaching and administration. He says:⁵³

Providing incentives to do more research – something that many legal academics want to do - does cut across teaching...Promoting research over teaching - and let us make *no* mistake that is what the PBRF does “on the ground” – encourages (tempts) legal academics to cut corners on teaching preparation, course materials, care and concern for students and their learning, and supervisions.

It is simultaneously comforting to read this observation (since it validates coffee conversations that have presumably taken place amongst law academics across the country) and disconcerting. The disconcerting feeling was further amplified by Professor Taggart’s remarks about “the lowly book review, reluctantly admitted through the PBRF portal of ‘research’”.⁵⁴ Professor Taggart goes on to explain that “it is notoriously difficult to persuade academics to review law books”⁵⁵ and “[T]he incentives are to write your own book and not to delay by reviewing those of others, all the while hoping that someone will review your book when it is published”.⁵⁶

With a pressing need to bring this review to a close, it is necessary to observe that after the section on Professing there are two further sections on ‘Advising’ and ‘Judging’, followed by a bibliography of Sir Kenneth Keith’s work. Perhaps Victoria University Press will consider a volume(s) of Sir Kenneth’s publications as a stand-alone work, a suggestion made by Dame Sian Elias in her opening address.⁵⁷

In the Foreword, Claudia Geiringer and Dean Knight suggest that they want to celebrate Sir Kenneth as they thought he would most want to be celebrated – through advancing knowledge and understanding on the topics about which he cared. It is clear that they have fulfilled their brief (although one is left wondering what Sir Kenneth’s thoughts on PBRF would be).⁵⁸ This book is not only a fitting tribute to an outstanding academic but is an excellent source of scholarly work in

53 Michael Taggart, above n 44, at 255.

54 *Ibid.*, at 258.

55 *Ibid.*

56 *Ibid.*, at 258.

57 See Elias CJ “Opening Address” at 6: “I do hope that one day Sir Kenneth’s writings, or at least a representative collection of them, may be published as a collection.”

58 This question is posed in the essay by Professor Taggart, see M Taggart “Some Impacts of the PBRF on Legal Education” at 259.

its own right. It is respectfully submitted that this book is an all round excellent read which will be sought out by anyone who is interested in the law.

Myra Williamson*

* Former lecturer, Te Piringa – Faculty of Law, The University of Waikato.