

THE MODERN COMMONWEALTH. By SIR WILLIAM DALE. [London: Butterworths. 1983. xxx + 346 pp. £33.00]

THE voluntary association of independent states of vastly differing sizes, disparate geographic locations and different levels of economic development to form the modern Commonwealth is a phenomenon of post Second World War international relations that merits legal analysis. The introduction by Butterworths of The Commonwealth Law Series is a welcome attempt to provide such an analysis. Sir William Dale's, "The Modern Commonwealth" is the first volume in this new series to be published; two others, J.D. McClean, "Recognition of Family Judgments in the Commonwealth" and K.W. Patchett, "Recognition of Commercial Judgments and Awards in the Commonwealth", are listed as having already been commissioned.

It is immediately obvious from these titles that this first volume is the most general, and is in effect to serve as an introduction to the series. In this book, Sir William Dale has undertaken the daunting but stimulating task of examining the status of the Commonwealth in public international and constitutional law. The latter topic is itself two-tiered for it comprises both the constituent elements of

the Commonwealth itself and the common features (and differences) of the internal constitutions and conventions of the member states. He succeeds admirably in presenting a wealth of information succinctly in a thorough and thoughtful volume of just 345 pages. This work will be of major value to lawyers throughout the Commonwealth who wish to know how their common legal heritage has evolved into twentieth century constitutionalism and how their state's Commonwealth membership affects their international legal relations.

Throughout this book the major problem has appeared to be the one of remaining sufficiently general to cover the very wide range of selected topics yet simultaneously providing sufficient detail to prevent it from becoming excessively abstract and divorced from the actual legal system in operation in any one state. This balance is on the whole effectively maintained, primarily through the organisation of the book into four parts and by the use of categorisation within the parts.

Part I gives a brief history of the formation of the Commonwealth up until 1949. It interweaves three basic themes, the adaptability of the Crown and of the royal prerogative, the role of discussion in the evolution of the Commonwealth and the cementing influence of the common law. These themes are explored throughout the first three parts of the book, giving it an overall consistency.

Part II places the Commonwealth Association in its international legal context from the perspectives of both member and non-member states. In particular, the status of the constituent declarations and agreements 1949-1981 and the position of the Commonwealth organs are analysed from both viewpoints. Sir William concludes that the former are not of an internationally binding character in the formal sense of treaties under the Vienna Convention on the Law of Treaties, nor are they internally part of municipal law. However since these statements do give rise to legitimate expectations as to future patterns of behaviour by member states they cannot be dismissed as being legally meaningless. He refers to the controversy surrounding the Springboks tour of New Zealand in 1981 in the light of the 1977 Gleneagles Agreement on Apartheid in Sport but does no more than comment that this demonstrated that member states have accepted that this Agreement does in fact constitute an agreement between them. This is one section where the brevity is regrettable for a fuller examination of the extent of the commitment and of possible legal reactions or counter actions to its violation by other member states would have been valuable in the light of continued sporting links with South Africa.

Part II also considers, *inter alia*, the implications of Commonwealth membership for states in their international relations with other member states and non-member states. The focus is on the traditional attributes of statehood: treaty making powers, membership of international organisations, the granting of immunities and privileges and dispute settlement.

Part III turns from the framework provided by international law to that of internal constitutional law and theory. Sir William examines the constitutional characteristics associated with the West-

minster form of government to see how they have been incorporated into the modern written constitutions of member states. The device of classifying all member states into four separate categories saves needless repetition and enables a great deal of material to be concisely covered. The classifications are (1) states where the Queen is monarch; (2) states where there is a national monarch; (3) Republics where governmental powers are vested in a President and Prime Minister and (4) Republics where governmental powers are vested solely in the President. In this section, examples are drawn from many different constitutions so that the volume avoids becoming too heavily associated with one, or one group of member states. One of the book's many strengths is that it does not concentrate upon the better known or more influential members of the Commonwealth but attempts to survey them all, seeking likenesses and disparities fairly across the total membership. However the corollary of this strength is inevitably that for more than just a brief comment on any one state's constitution the particular constitutional literature needs to be studied. Sir William uses, as far as possible, actual situations to illustrate the constitutional problems. For example, the Australian crisis of 1975 is used to amplify the section on the right to refuse or to compel Parliamentary dissolution. It is unfortunate that the Malaysian constitutional crisis of 1983 occurred too late for inclusion in the discussion on royal assent.

The constitutional protection of fundamental human rights is accorded special attention in this part. The relevant portions of the Constitution of Belize are reproduced with a comparative commentary on the laws and jurisprudence of other member states and of the European Commission and Court of Human Rights. This technique enables the author to consider also the impact of European development on the Commonwealth, through the dual position of the United Kingdom, a theme that is also briefly touched upon in the context of state immunity in Part II.

While specification of the fundamental rights typically formally protected through constitutional provisions is useful, this section would have been improved by the inclusion of the realities of judicial review (if any) in the member states. Listing of rights in a constitution may be of little practical effect to the population unless it is backed by effective review. In practice, the realities of protection may be different in states despite very similar constitutions. However any such study would have considerably lengthened the book so perhaps it is better left for some future consideration.

Finally, Part IV contains materials collected from each of the Commonwealth members themselves. It presents an overview of the political and legal structure of each state under the headings of: Constitution, Executive, Legislature, The Laws, Judicature, Law Reports, Fundamental Rights, Citizenship, Legal System, Legal Practice and Dependent or External Territories (if any). This provides a quick and easy source of reference but obviously again there can be little detail on any one state. One questions the usefulness of just over three pages of information on the legal systems of Canada or India; on the other hand there are very few books with nearly as much information on those of Kiribati or Nauru.

The book is completed by a valuable bibliography of works consulted, a table of the basic relevant statutes of each member state, and a map of the Commonwealth as of 1983.

The publication of this book with its focus on constitutional and international legal issues is timely. The U.S. intervention in Grenada, a Commonwealth member, in October 1983 alerted public and media interest to a number of issues of commonwealth law and legal relations. The Falklands crisis in 1982 did the same thing, as the United Kingdom had to weigh the reactions of her Commonwealth Associates, as well as those of the European Communities and her Nato allies to her actions in the South Atlantic. These recent incidents demonstrate that the external repercussions of membership of the Commonwealth can impact upon even the major powers while the constitutional position of a Governor General of a state such as Grenada has also received renewed attention. Sir William Dale provides much material that could be useful in considering the legal issues raised by such incidents; unfortunately, although certainly not surprisingly, he did not discuss whether a Governor General can legitimately request outside aid against internal disruption. Whether or not the Governor General of Grenada in fact did this, the emergence of such an area of discussion demonstrates the continuing relevance of Commonwealth law and thus of the value of this book.