

BOOK REVIEWS

THE CONSTITUTION AND GOVERNMENT OF GHANA. By Leslie Rubin, B.A., LL.D. and Pauli Murray, A.B., LL.M. (Law in Africa No. 1). [London: Sweet and Maxwell Ltd. 1961. pp. xvi & (incl. appendices, bibliography and index) 310, £2-10s.]

Considerable quantities of information are packed into this book. The result is a pretty comprehensive picture of the constitution of Ghana, her machinery of government and her legal system. Indeed, so many provisions of laws have been summarised that one is tempted to conclude that this is a reference book rather than a book to read through. And yet it seems meant to be read, and by students at that. Certain features of the book suggest that it might be intended as the book of a specific course in the Faculty of Law in the University of Ghana. Chief among these features is the frequency of explanation of elementary legal institutions not specifically Ghanaian. For example, in successive sections in the chapter on Ghana's foreign affairs, the sections dealing with Ghana's relations with the Commonwealth, with the United Nations and with other states by treaty (pages 152 to 155), there are elementary introductions to the Commonwealth, the United Nations and the nature of treaties. Another such feature is the footnoting of references to students' books. By way of illustration: on page 11, the proposition that the United Kingdom provides the most illustrious example of unwritten constitutions is buttressed by a reference to Wade and Phillips. Now the proposition is not made more true by this reference, nor is the proposition controversial; and this type of reference must therefore be either a case of *citisis* or else an aid to students who may require further elucidation of the institution alluded to.

Probably for economic reasons, an attempt has been made to roll up different kinds of book into one. Texts on the law of Ghana, as is the case with many colonial and newly independent common law countries, are sparse but needed. The present scarcity may be partly due to the previous absence of indigenous legal education but is also a consequence of the small circulation likely to be enjoyed by a specialised work on a branch of the law of a small country. There is a limit to what can be achieved in such countries by reading foreign (*e.g.* English) texts cautiously, and the habit of doing so inhibits the study of local problems. Consequently upon these conflicting factors there emerges a propensity to begin with books that cover as broad a sweep of the legal system as possible and which are unspecialised in aim (the three specialised targets being comprehensive reference, mainly for practitioners, introductory explanations, mainly for students, and critical argument, for scholars, including practitioners and students). Thus may the publishing venture be made financially viable. The reader seeking one type of service may be irritated at getting the others along with it, but the authors have provided all the services where none existed before. The bibliography lists few works on Ghana, only a couple of which are on the law of that country.

Extensive summary and introductory explanation form the bulk of this book, but occasional criticism and the posing of problems occur. It is on these occasions that the book comes to life, and one wishes they were more frequent. Yet, here again, the limitations have to be recognised. Most of the problems which will arise

under a constitution coming into force in the middle of 1960 are utterly undiscernible by 1961. Where the authors have seen difficulties they have said so in forthright terms and they are to be thanked for that.

There are places in the book where it is not possible to agree with the authors. Where there is controversy, this is natural. The inaccuracies are minimal and not worth mentioning. But one thing pulled me up short. On pages 177-178 the authors point out that, according to article 40 of the constitution, enactments in force immediately before the constitution came into force are comprised in the laws of Ghana. They then refer to the fact that the only constitutional provision for judicial review of legislation is article 42(2), which mentions only enactments made after the constitution took effect. This leads them to say: “. . . the principles enshrined in the constitution become nugatory if an enactment by a prior legislature, in conflict with them, is permitted to stand as part of the laws of Ghana. This surely could not have been the intention of the Constituent Assembly . . .” But it is not true that the principles become nugatory in these circumstances, and if it were true it could mean that it was misleading to characterise these principles as enshrined in the constitution. These principles may be weakened if they are made subject to pre-existing law, but that is really not a good enough reason for concluding that what appears to be laid down in the constitution could not have been intended. It has been so intended and done elsewhere. The attitude of the authors on this point possibly betrays the fact that they are not quite immune from the habit, difficult to avoid yet pernicious, of interpreting the constitution of one country in the light of experience of the constitution of another. Comparisons with the United States of America can light up the constitution of Ghana, but U.S. cases cannot govern its interpretation. But in general this is a book about Ghana, by people with knowledge of Ghana, and setting out to deal with Ghanaian governmental problems.