

BOOK REVIEWS

Page 129

The Constitutional Law of Ghana by F. A. R. BENNION

London, Butterworth, 1962. Pp. xxxvi + 527. 70s.

The Constitution and Government of Ghana by L. RUBIN & P. MURRAY

London, Sweet and Maxwell, 1961. Pp. xvi + 310. 50s.

Reviewed by Patrick McAuslan

Writers of books on constitutional law suffer from two difficulties; first, what to put in and what to leave out, and secondly, how much to describe in detail—ought they to confine themselves to the bare bones, or attempt to deal with the flesh as well? When the constitution under discussion is less than two years old, the difficulties are increased; and as a result both these books are somewhat uneven in composition. Mr Bennion, who was concerned with the drafting of much of the republican and immediately post-republican legislation of Ghana, says in his preface that 'It seemed best to write fully on the matters with which I had been closely associated, leaving it to others to fill the gaps in elsewhere'; but within these self-imposed limits he has written a good book. His opening account of the constitutional history of Ghana is as concise a summary as one could hope for. His description of the preparation of the republican constitution is important not only because it deals with the technical, legal aspects of breaking all constitutional links with Britain, but also because it shows that the Convention People's Party tried hard to obtain opposition agreement at the various stages of preparation, yet were met with intransigence at almost every turn. It may be that this gives a clue to the present attitude of the C.P.P. to the opposition. Bennion's workmanlike account of the provisions of the constitution is

Page 130

prefaced by some interesting remarks on the formal principles upon which it was drafted. He suggests that the words of the constitution have a fixed meaning and are not to be interpreted and twisted into new meanings by the courts. While agreeing that it would be unrealistic to see the Supreme Court of Ghana performing the functions of the Supreme Court of the United States, is it not equally unrealistic to imply that the Court would be stepping outside its powers if it later interpreted a provision in the constitution in a manner to which exception might be taken? If the courts are to be given the power to interpret the constitution—and the Supreme Court of Ghana has this power—then we must accept the possibility that the interpretation will not please everybody.

This book has a good account and justification of the recent legislation restricting personal freedom which has been passed in Ghana, though some may wish to query the premise upon which it seems to rest, namely that personal freedom is a privilege and not a right. It would perhaps have been better if quotations from government spokesmen had been balanced by quotations from opposition speakers in debate. There is a long section on the immense amount of technical law reform that is being carried out in Ghana and the manner in which it is being done, which will be of great value to lawyers in other parts of Africa. My only regret is that this book does not attempt to describe how the constitution works in practice, what

conventions are beginning to emerge, and what provisions are dead letters; but clearly when a book of this nature comes to be written, it will owe a great deal to this pioneer work.

It is not possible to be so sanguine about Dr Rubin and Miss Murray. The authors, who were lecturers at the University of Ghana and the Ghana School of Law respectively, completed their book less than a year after the inauguration of the Republic. I read it with the increasing conviction that this was only half the story; the provisions of the new constitution are presented as a series of puppets on the stage, but unless we go behind the scenes to describe and analyse the constitution from the point of view of the people working the puppets—an African point of view—we are going to get an incomplete picture. The authors take the approach of English or American constitutional lawyers, which leads them to make far-reaching suggestions as to the invalidity of certain provisions of the constitution—so far-reaching that one suspects they have not fully understood the constitution they are analysing nor the situation in which it is to work. This is a dis-appointing book, which bears signs of hasty production, and cannot be compared in usefulness or comprehensiveness to Bennion's more recent study.

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