

Under the auspices of the United States Educational Foundation for New Zealand (the Fulbright program) I spent our Spring and Summer quarters teaching at the University of New Zealand in their Autumn and Winter terms (March–September). I was officially a visiting professor of law at Victoria University College in Wellington, but I also taught at the university colleges in Auckland, Christchurch, and Dunedin, which are also constituents of the federal University of New Zealand.

The primary purpose of my visit was to help introduce the case system of teaching law to New Zealand. The three full-time professors of law have visited the United States under Carnegie grants, and two of the three full-time lecturers have also seen American legal education in operation. These teachers were anxious to develop this method of teaching. I taught landlord and tenant law from a collection of English and New Zealand cases which I had prepared from our own Law School library. Only time will tell how successful my visit was. I was told that some of the practitioner-teachers regarded a “lecture” as the reading of a passage from a text at a rate slow enough to permit manual transcription by the students. The younger part-time teachers do not do this, but they do more or less repeat orally that which they have in a prepared syllabus.

My first introduction to practical New Zealand law came on the day of my arrival. A lease of a house had been arranged for me, and, when I went to pick up the lease and sign it, I found the first thing I had to do according to the terms of the lease was to pay the fees of the lessor’s solicitor for preparing the typewritten lease—a sum equal to about 5 per cent of gross rental. Apparently even large landlords use this system, and it was impossible to purchase a printed form lease in a stationery store. My second introduction to practice came when I drew the check for the fees on my local bank. I discovered that my checks were all payable to bearer. When I asked the solicitor whether he wanted it that way, he told me that the common practice was to “cross” the check by drawing two parallel lines across its face. This made the check non-negotiable, and, if I really wanted to be doubly secure, I inserted “& Co.” within the lines, which then prohibited my bank from paying across the counter. As I read their negotiable instruments law, this practice is to protect the bank rather than the drawer. My third introduction to practice came after I gave the check. The solicitor insisted on giving me a receipt. When I suggested that my canceled checks were sufficient receipts, I was told that the



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banks kept the checks as their own receipt and that under the solicitor’s insurance scheme he was required by law to give me a receipt on an official numbered receipt prepared by the law society. Each solicitor pays to the law society a sum each year which is used to reimburse clients against solicitor’s fraud in handling a client’s money. Incidentally, New Zealand does not have the English separation between solicitor and barrister. The educational requirements are different, and a separate license is required, but a person can be both; and, unless the barrister is a queen’s counsel, he may be in partnership with a solicitor.

Even in the larger cities the bulk of practice in any one firm is conveyancing, estates, divorce, and personal injuries. There is very little “corporation law” and no commercial law practice. The accountants have the tax business except for estate tax work; and, in spite of much government regulation, there is little administrative law practice. One common solicitor’s function was new to me. It was a very common practice for a client to request a solicitor to invest money for him not as trustee but as investment adviser and custodian of the funds. The solicitor’s remuneration for this service did not include a procurator fee (considered improper in most cities) but consisted of fees (collected from the borrower) in preparing any necessary papers and of collection fees when the borrower made his payments at the solicitor’s office. This practice was so common that the first place a purchaser of land thought of to ask for a loan was a solicitor’s office.

Both in their trustee work and in this kind of investment business the solicitor’s thinking was dominated by land security and the statutory list of legal investments. When pushed in discussion, they conceded that they could and did in trusts commonly contract out of the list

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The Class of 1915 Scholar, Roger C. Crampton, St. Johnsbury, Vermont, A.B. Harvard University.

but that they used this contractual power, if at all, only to retain nonlegals. They considered it too risky for the individual fiduciary to invest in nonlegals, and they were not conscious of any surcharge risk in being too cautious. The corporate trustee acted the same way, however. The best investment was a real estate five-year term mortgage usually renewed as of course.

Corporate trustees are not part of banks as here but are part of fire and casualty insurance companies. They originated as a convenience of the stockholders of the insurance companies and even today do not make a determined effort to get new business from other sources.

Part of the Fulbright scholar's task is of course to help interpret and explain the United States to his host country. Except for Dean Griswold, who spent a few days there en route to Australia, I apparently was the first American lawyer to spend time enough in the country to visit lawyers. And I had a time trying to explain not only the formal organization of our judicial system but also its operation to lawyers whose only knowledge of American courts comes from Perry Mason and Hollywood movies. I was frequently asked whether all American lawyers did detective work like Perry Mason.

An occasional contact with an American court sometimes confirms their suspicions. One lawyer steeped in the dignified aloofness of their own judicial tradition and the carefulness of their courts was confirmed in the dim view he had of our system when he received an official letter from the clerk of a Florida court on stationery containing a picture of an orange tree and a booster slogan for the local county. I saw the letter, and he was much more upset by the orange tree than by the fact that notices to appear in a divorce case sent by surface mail had arrived two months after the date set for appearance or that from the language and spelling in the letter the clerk of the Florida court and his stenographer appeared to be illiterate.

Hollywood movies had convinced many lawyers that our lawyers adopted the following procedure in arguing cases to a judge. The lawyer first seated himself with his feet dangling on the judge's bench; then he put out his fist almost in the judge's face; then in a loud and angry voice he began talking to the judge by saying, "Now, Bell, you must decide for my client because. . . ."

While the United States Information Service has documentary films about many aspects of our life, they have none about our legal system. In response to an inquiry I made to the American Bar Association, I found that the Association and State Department were preparing such a film but too late to help me.

Not only is New Zealand short on knowledge of our legal system; it is also weak on our legal literature. The four main Supreme Court libraries have the United States Supreme Court reports up to 1938, when they

decided *Erie R.R. Co. v. Tompkins* made our Court relatively useless as a common-law court. Two of the four have *American Law Reports Annotated* and its predecessors, and the West Publishing Company has just given a set of *Corpus Jure's Secundum* to one of the university libraries. With the exception of an early edition of *Williston on Contracts*, all American textbooks in the Supreme Court libraries were nineteenth-century books such as Kent, Story, Elliott, Redfield, and Greenleaf. Oddly enough, in the early days of New Zealand (1840-60) Kent's *Commentaries* seem to be cited more by their Supreme Court than is Blackstone. As a result of generosity of some of our publishing houses, the university libraries are beginning to get a few American teaching books. The dollar shortage of course complicates their problem.

There is, I think, much more knowledge of our affairs among the populace generally than I think most Americans would exhibit concerning British Commonwealth affairs. There was such an amazing preoccupation with Senator McCarthy that I found myself always requested to speak to organizations on some aspect of the investigations. As a guest I felt a certain obligation to accede to their requests, although once or twice I tried unsuccessfully to speak on more palatable topics such as how successful our private housing programs were or the merits of a competitive economy. I complained once that the only topics on which I was asked to speak were McCarthyism, crime in the United States, or our meat and butter tariff.

Their concern with the meat and butter tariff is obvious, but I was considerably puzzled by their concern with McCarthyism. They seemed to draw the conclusion that such investigations meant that we were heading toward fascism. I tried to tell them that this was nonsense, and those who had been in the United States admitted to me that they knew it was. There was also an amazing amount of naïveté concerning the problems which have produced the investigations, and I attributed this in part at least to their geographical isolation from such matters.

I hope I have not suggested that the New Zealanders are odd or were anti-American. They have an amazingly high standard of living and were exceedingly pleasant to my family and me. We could not have asked for more.

Even though we were over nine thousand miles from the University of Chicago, we found one contact with The Law School. Our guide on the Tasman Glacier was the same guide that Stanley Kaplan '33 had had only a few weeks before. We spent the school holidays in sight-seeing, and without doubt the scenery in New Zealand is among the best in the world. The Southern Alps, with many glaciers terminating among the tree ferns in almost tropical rain forest, are truly as wondrous as their advance publicity. But it is good to be back at the University again.