Principles of Australian Administrative Law, by W. FRIEDMANN, LL.D. (London), DR JUR. (Berlin), LL.M. (Melbourne), and D. G. BENJAFIELD, LL.B. (Sydney), D.PHIL. (Oxford) 2nd ed. (The Law Book Company of Australasia Pty Ltd., Sydney, 1962), pp. i-xxiii, 1-263. Price £2 18s.

In fields of general law, the law applicable in Australia has a close identity with the law operating in England. Pronouncements of the House of Lords and the Court of Appeal on general rules and principles are treated by courts and lawyers in Australia as expressing, in most cases, the law applicable in Australia. Decisions of single judges in England are treated as having authority at least equal to single judge decisions in Australia and, sometimes, as having more authority.

For these reasons English text books on such subjects as contract, tort, quasi-contract and evidence are regarded as equally applicable to Australia as to England, apart from any statutory variations. There are many fields of common law and equity in which Australian courts have made marked contributions and we all regret the tendency of English courts and text writers to ignore the Australian experience; nevertheless, it would be impossible to produce an 'Australian' work on a subject of general law that was predominantly judge-made without it containing a great deal that was also 'English'. A writer of such a book would regard it as equally appropriate to English conditions and might avoid using the word 'Australian' in the title. Case books prepared for use in Australian law schools in common law and equity subjects, for example, do not usually specify in their titles the 'nationality' of the law expounded.

The situation is, of course, otherwise where the law is largely statutory or the work is intended to deal only with distinctly Australian variations or developments.

What, therefore, does one expect from a work on ' Australian ' administrative law ? This is a field in which Australian (and, it might be added, New Zealand) courts have made marked contributions even though much of the law applicable in Australia is to be found in English decisions. An exposition of Australian administrative law can, therefore, be either a comprehensive work setting out the general principles of that subject orientated, so far as possible, towards Australian practice, statutory provisions and judicial decisions, or else a work that is supplementary to general English text books on the subject and pointing only to distinctly Australian features.

The book under review seems, in parts, to suffer from an indeterminancy of aim. It is not confined to aspects of administrative law that are peculiar to Australia; at the same time it does not deal with those aspects as fully as might be expected from the title of the book. In fact, peculiarly and distinctive English characteristics of the subject are sometimes given prominence at the expense of relevant Australian material.

The first four chapters deal with matters of general constitutional law and practice including the doctrine of parliamentary sovereignty, an analysis and criticism of the rule of law as expounded by Dicey, the separation of powers and changes in the social function of the State. Following chapters are concerned with, among other things, delegated legislation, the Crown and public authorities and judicial review.

In a valuable last chapter entitled ' The Problem of Administrative Justice' an examination is made of the recommendations of the Committee on Ministers' Powers and the Franks Committee. A classification is made of the various administrative tribunals in Australia with full references to the relevant legislation. The recommendations of the Franks Committee are then examined in relation to the whole range of administrative tribunals in Australia, both in the Commonwealth and State spheres. Not only is this a useful chapter in itself—it constitutes about one fifth of the book—but it should prove of considerable benefit to scholars who wish to pursue further the problem of administrative justice in Australia.

Unfortunately, in other parts of the book State statutory material does not seem to have been given the same detailed treatment or, indeed, as much attention as is given to United Kingdom provisions. This is particularly so in the chapters relating to delegated legislation. For example, in the section dealing with parliamentary control, detailed reference is made to the recommendations of the Committee on Ministers' Powers, the provisions of the Statutory Instruments Act, 1946 (U.K.) and section 48 of the Acts Interpretation Act 1901-1964 (Cth). But so far as the States are concerned, the authors, while making general observations in one short paragraph, do not even footnote references to the appropriate State Acts, let alone the specific provisions of those Acts.[1]

[1] A useful collection of the relevant State provisions is contained in a book review by Professor R. L. Sharwood in (1961) 3 *Melbourne University Law Review* 268. The position in Victoria has since been altered by the Subordinate Legislation Act 1962 (Vic.).

The treatment of publication of delegated legislation is similar. The English and Commonwealth provisions are given (pages 59-80) and, on this occasion, Tasmania receives notice. There is, however, no reference, for example, to the Acts Interpretation Act 1915-1957 (S.A.) requiring publication of regulations or to the similar provisions contained in section 36 of the Interpretation Act 1918-1962 (W.A.).

Often the only State to be given attention is New South Wales. On page 58 we are informed of the Committee of Subordinate Legislation set up by the New South Wales Legislative Council to scrutinise delegated legislation. No mention is made of the equivalent body in Victoria under The Constitution Act Amendment Act 1958 (Vic.) or that in South Australia constituted under the Constitution Act Amendment Act 1937 (S.A.).

The heavy emphasis on New South Wales is indicated by the following remarks (page 51):

> In the Commonwealth of Australia and most States (including New South Wales), the great majority of delegations are to the Governor-General or Governor-in-Council, but the instruments are usually called " regulations ".

If there are any States to which the abovementioned statement did not apply it would have been better to indicate which they were instead of being satisfied that the position was stated correctly for New South Wales alone.

On the question of drafting practice the authors state (page 60) that the Select Committee on Delegated Legislation in the United Kingdom had expressed the view that the absence of specialised control over drafting results in legislation that is complex and prolix. They refer to the practice in New South Wales of having drafts submitted to the parliamentary draftsman as having ' considerable merit '. Of the practice of the other States (except Tasmania) and of the Commonwealth there is no mention, even though the section of the chapter is headed ' Control as to Drafting and Procedures as to Consultation '. It might be mentioned that in the Commonwealth sphere, for example, the practice is not merely to submit drafts of regulations to the parliamentary draftsman: usually all the drafting is done by him or his officers.

So far as procedures for consultation with interested groups are concerned, the reader is informed that the procedure is frequently adopted by departments in England on a voluntary basis and that some statutes (presumably in England) make compulsory prior consultation of specified bodies. Of Australia we are told nothing.

References to English practice and English statutory provisions are readily available in other works. Yet it is the English position that seems to be the most fully dealt with in certain sections of this book. Despite the title, Australian legislation and practice is often given scant attention.

Sins of omission, however, are not the only faults to be found. More important, perhaps, is the inadequacy of treatment of a number of questions, particularly those in the early chapters on general constitutional

theory. Many of those questions are such that it is better to omit any discussion of them rather than to deal with them in a superficial manner. This is particularly true of the problem of the supremacy of the United Kingdom Parliament. On pages 3-4 it is stated:

> The traditional standpoint is that, legally, the British Parliament is still the sovereign legislator for all the Dominions and it is said that the limitations which it has imposed upon itself by the Statute of Westminster can be revoked by a simple statute: there is no legislative authority in the British Commonwealth of Nations superior to the British Parliament, with power to make laws binding equally upon the United Kingdom and the Dominions.

A footnote is added that 'While this represents the traditional legal theory underlying the British Commonwealth of Nations, it is, at the present day, open to argument.'

The above statement would be a correct exposition of the traditional theory only if 'British Commonwealth of Nations' were regarded as completely synonomous with 'United Kingdom and the Queen's Dominions'. Traditionally, the United Kingdom Parliament is the supreme legislature throughout Her Majesty's Dominions. Membership of the British Commonwealth cannot itself be the legal criterion of the sovereignty of the United Kingdom Parliament. If a country of the Commonwealth is a republic it is no longer part of the Queen's dominions and it could be argued that it is, therefore, outside the jurisdiction of the United Kingdom Parliament, even on the traditional theory.[2] The confusion implicit in regarding membership of the Commonwealth as the test is also brought out in a statement on page 12 that the withdrawal of South Africa from the British Commonwealth has given 'substantial support' to the possible view that 'the United Kingdom Parliament has . . . abdicated in relation to the territory of the Union of South Africa'. If, according to the traditional theory, the United Kingdom Parliament still retained legislative power in South Africa after that country became a republic it is difficult to see how withdrawal from the Commonwealth could affect the legal position.

It is not suggested, of course, that the traditional theory is correct and it might be thought that the exposition given above is arguable. What is suggested is that if the problem was to be dealt with at all it would have been less confusing to the student and other readers to have discussed it more fully and, also, not to have relegated the arguments opposed to the traditional view to two short footnotes. By contrast, it should be added that the problem of 'manner and form' is carefully and adequately set out.

On occasion, the analysis given of cases is questionable. *Yates v. Vegetable Seeds Committee*,[3] for example, is quoted (page 67) as authority for the proposition that a court will not enquire into motives of a local government body responsible to the electorate in order to determine the validity of delegated legislation. It is difficult to see how this conclusion

[2] Wheare, *The Constitutional Structure of the Commonwealth* (1960) 35.

[3] (1946) 72 C.L.R. 37.

is arrived at, as Dixon J. in that case referred at some length, and with apparent approval, to several Canadian cases and the Privy Council decision in *United Buildings Corporation Ltd v. City of Vancouver*[4] in which the motives of local government bodies were investigated.

Although, in the reviewer's opinion, this work leaves much to be desired, the authors have undertaken a task which needed to be done and which no one else has attempted. There is no other text book that contains most of the leading Australian cases and material on the subject and it is difficult to imagine a teacher, student or practitioner, in this field, who would not benefit from reading it.

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[4] [1915] A.C. 345.

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