

BOOK REVIEWS

Legislative, Executive and Judicial Powers in Australia, by W. ANSTEY WYNES, LL.D. (Adel.). (The Law Book Company Limited, 1970), pp. i-xlviii, 1-555. P/B \$13.00, Cloth \$17.00.

When Dr. Wynes was writing the first edition of this book, the present reviewer was one of five articulated clerks in a large law firm whose offices were immediately adjacent to Dr. Wynes' Chambers. Dr. Wynes whilst assembling the material for his book was rarely in his Chambers which were left in the guardianship of his secretary — a very pretty girl. The joint and several efforts of the five articulated clerks in distracting the young lady from the typing of the book must have grievously denied and delayed to the learned author right and justice in obtaining the profits thereof. Accordingly the Book Review Editor in inviting me to write this review and thereby causing me to annotate the current edition page by page may well be thought to have demonstrated that the law even though it acts slowly does ultimately achieve its retributive effects!

Dr Wynes' book has deservedly held pride of place among text books on Australian Constitutional law for nearly thirty-five years and the present edition does nothing to detract from its pre-eminence.

Merely to review any textbook chapter by chapter and line by line indicating where a reviewer disagrees with the writer's conclusions is a barren exercise which usually achieves little but length and boredom — quite apart from producing a review which is always difficult to follow without a copy of the book being in front of the reader of the review.

The Constitution and its interpretation are going to come more and more under review as Australia becomes a great power in its own right and emerges from the penumbra first of Empire and then of American cultural penetration.

Accordingly a new edition of the book will, I am sure, be called for in a very few years and so I felt that I could most usefully review the book by making some suggestions for that edition. I lectured in Constitutional Law for over fifteen years and have examined in the subject for almost a quarter of a century and during all that time used Dr. Wynes' book constantly and the suggestions that follow are in part at least the fruit of that experience.

One thing which I am sure would be helpful stems from the fact that unlike the Americans we do not teach our young the history and economics of our country. Accordingly the historical and economic reasons for the High Court and other Courts acting in a particular

way at a particular period are completely unknown to the average Australian student or lawyer. In dealing with many of the powers, and I suppose the trade and commerce power is the obvious one, though the same point applies everywhere in the realm of Constitutional law, a reference to the political and economic background to a particular decision or stream of decisions, even if only in footnotes referring to the appropriate material, if it be thought that detailed reference in the text would make it too bulky, would be of great assistance and this need is going to grow greater as each generation moves farther away from the turn of the twentieth century and the era of the founding Fathers becomes more and more like ancient history to the reader.

My second suggestion is that the present Chapter V—"The Commonwealth and States Inter Se, New States, Territories"—ought to be expanded to deal in greater detail with the way in which the Commonwealth and States by interlocking agreements and legislation have achieved and are achieving a number of results which by-pass or short circuit (to use a different metaphor) the constitutional division of powers and often some of the express restrictions on power as well. In this field the use of Commonwealth grants and of other aspects of the Commonwealth's financial superiority to control the policies of the States and to impose overriding Commonwealth priorities might also well receive more extended treatment than the topic now receives at pages 338 ff. of the present edition. A thorough knowledge of these two matters is essential to the understanding of how the Constitution actually operates in its day to day working today.

The third matter which I think could be expanded with advantage is one on which Dr. Wynes because of his service with the Department of External Affairs is uniquely qualified to speak among constitutional writers. The various international engagements into which Australia is entering or has entered widen every day and even now comprise a large number of topics which have their impact on the internal law of the country. Within the next few years they will comprise a very substantial segment of constitutional law and of the framework of government in this country and the sooner Australian lawyers and students become familiar with them in detail both as modifying the general law and in relation to the seabed, to international commerce, to diplomatic immunities, and to the law of the air, the better qualified they will be to serve the Australian community in the last quarter of the Twentieth Century.

A fourth matter which I should like to advance for Dr. Wynes' consideration is that in dealing with those sections of the Constitution which are on its "growing edge", he might more often, following the admirable example of Quick and Garran, assume the mantle of the prophet to indicate how the current trends are likely to be dealt with in the immediate future. This would tend to balance the present tendency

in the book which is to show how the constitution has become what it is rather than where it is tending to go.

In saying these things I am not to be taken as being in any way critical of the achievement of the book or of its present edition. Moreover it would be both misplaced and foolish to criticise the author along these lines when he has clearly stated his endeavour to be "to present a coherent review of what has been decided over the past sixty-eight years". My only interest in making these suggestions is that there comes a time in the life of any textbook which is good enough, as this one is, to run through a number of editions, when the author or his editor has to stand back and look at the pattern as a whole and decide where complete rewriting and reappraisal is necessary if the book is not to be overwhelmed in a flood of footnotes and glosses on the main text. By the next edition, I would expect this position to be reached in relation to this book and my ideas are merely some which I hope Dr. Wynes will weigh up and consider when that day comes.

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Stamp, Death, Estate and Gift Duties (N.S.W. Commonwealth and A.C.T.) by D. GRAHAM HILL, B.A., LL.B. (Syd.), LL.M. (Harv.), (The Law Book Company Limited, 1970) pp. i-xxxviii, 1-751, together with looseleaf supplement. \$24.75.

Practising lawyers in Australia for many years relied heavily, for the answers to many queries relating to duties, on Smith's *Law Relating to Stamp, Death, Gift and Estate Duty*.¹ The last edition of Smith's book was published in 1953 although there was a supplement published in 1957. Obviously there was considerable need for an up to date publication on this subject—particularly as Smith's book was out of print.

Mr. Hill's publication takes as subjects the N.S.W. stamp duty legislation, the Commonwealth gift and estate duty legislation and the recently introduced A.C.T. stamp duty legislation.

Basically the book contains, section by section, the appropriate Acts annotated for the benefit of readers. However, apart from actually stating the law, the author recounts the practice adopted, and the interpretation of law followed, by the officers of the N.S.W. Stamp Duties Office—for the practical lawyer sometimes more important than the law as correctly interpreted. He also relates various

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¹ R. C. Smith, *The Law Relating to Stamp, Death, Gift and Estate Duty* (3rd ed. 1953).