# BOOK REVIEWS

*Parliamentary Sovereignty and The Commonwealth,* by GEOFFREY MARSHALL, Research Fellow of Nuffield College, Oxford. (The Clarendon Press, Oxford, 1957), pp. 1-248, appendices 249-266. Price £1 15s. sterling.

The doctrine of the sovereignty of the United Kingdom Parliament, described by Dicey as 'the dominant characteristic of our political institutions', is learned early by students of law. There is little inclination to press the matter far beyond Dicey's well-known chapter; the case law is meagre, and students having savoured Jennings' correction of De Lolme's limits to the operation of the doctrine of the sovereignty of parliament, accept this *grundnorm* and pass on to other things. But the doctrine is not without its difficulties and obscurities, and cases in Commonwealth jurisdictions have suggested some of these. Mr Marshall defines his task as 'an attempt to look at some of the traditional implications of the sovereignty doctrine in the light of certain ideas about the function and description of legal rules in theoretical writing about law, and also of recent constitutional developments outside the United Kingdom'. The material is organized in three parts: the first, an analysis of the notion of sovereignty, the second an examination of problems of sovereignty arising in the United Kingdom, Canada, Australia, New Zealand, Ceylon, India and Pakistan, as well as problems arising from the Statute of Westminster, and the third, an extended case study in parliamentary sovereignty entitled 'South Africa: The Courts and the Constitution'.

The Australian chapter, as would be expected, includes a discussion of *Trethowan's Case,*[1] and the High Court judgments are carefully examined. While the majority in the Court was able to resolve the problem by reference to the Colonial Laws Validity Act, Dixon J. suggested some more fundamental problems which might arise if the *Trethowan* problem had arisen in the United Kingdom. He did not offer definite answers, and his observations have provoked speculation and discussion. What Dixon J. had to say, taken together with the decision of the Appellate Division of the South African Supreme Court in the first *Harris* case, strongly suggests, as Mr Marshall points out, that the simple invocation of a sovereign legislature's right to unfettered decision does not dispose of the difficulties which lie submerged in the doctrine of parliamentary sovereignty.

The study of the South African cases and material is of particular interest. There have already been some very good discussions of these problems, notably by Professor Dennis Cowen. What is of special value in Mr Marshall's discussion is his elaborate examination of the legislative background to the three South African cases, as well as his careful and detailed discussion of the cases themselves. The first of the three cases, *Harris v. Dönges,*[2] as the author rightly observes, must be regarded as a milestone in the evolution of Commonwealth constitutional theory for more reasons than one, and notably for the light it throws on the analysis of parliamentary sovereignty. All three cases are deeply interesting; and the author's comment on the third, the *Senate Case,* is that it indicates a judicial withdrawal from the position taken in the first *Harris* case.

[1] (1931) 44 C.L.R. 394.
[2] [1952] 1 T.L.R. 1245.

Mr Marshall suggests that 'it would be justifiable to argue that where constitutional instruments refer to action by a particular majority in an elected legislative body (as distinct, for example, from an hereditary or nominated body) they must envisage some restriction on administrative and legislative action directly aimed at the fabrication of the required majority in ways other than by the normal intervention of the electorate.' In the particular context, it is easy to sympathize with this view, but very much more difficult to frame a proposition in acceptable legal terms.

Mr Marshall's study is well written and carefully documented, and it is a very useful contribution to the literature of constitutional law. It need hardly be added that it is handsomely and attractively produced by the Clarendon Press.

ZELMAN COWEN

*Principles and Practice of Profits Insurance,* by W. B. HONOUR and R. A. DAVISON, F.P.A. (N.Z.), A.I.C.A. 2nd ed. (Butterworth & Co. (Australia) Ltd, 1952), pp. i-xvi, 1-487. Price £3 3s.

The first edition of this work was a limited one published in 1950 by Edward Lumley & Sons, London, for private circulation. Its reception prompted a second edition in greatly expanded form.

Profits Insurance (or, as it is more usually known in England, Consequential Loss Insurance—a term which the author characterizes as 'forbidding and misleading') is a relatively recent growth. Though attempts were made as early as 1797 to write such policies, it was not till 1899 that any satisfactory scheme was evolved. So recent is it in fact, that the author refers to Profits Insurance tariffs as 'the laws of the Medes and Persians to most insurance men'. And, one is tempted to add, virtually unknown to lawyers.

The normal contract of Fire Insurance covers only the loss of and damage to the physical property involved. But many other losses may follow as a consequence. Hence Profits Insurance. The term, however, is somewhat of a misnomer since it is meant to include cover for:

1. Loss of anticipated profit.
2. Loss due to increased ratio of standing charges to turnover.
3. Increased trading expenditure, *etc.*

It can be seen that the policy will be concerned not solely with profits as such, but with such matters as wages, standing charges, *etc.* Moreover, such a policy may be most essential when a business is experiencing a period of trading loss, and hence insurance against 'loss of profits' appears quite unrealistic.

This work is based mostly on New Zealand experience, but the general trends are equally applicable to Australian conditions, where a tremendous increase in the writing of such policies is almost entirely a post-war development. The insurance companies of Australia, New Zealand and the United Kingdom follow a similar layout consisting of three distinct parts, Policy, Schedule and Specifications, while the Lloyd's Underwriters have adopted a self-contained policy. The actual forms used in Australia and New Zealand resemble the British 'foreign' form.

This is not a lawyer's book in that there is little citation of authority or statute. Profits Insurance policies have been before the Courts only once or twice (no cases cited in this work are later than 1949). One chief reason is that the policy itself incorporates a formula in accordance with which the loss of profits should be determined—a task handled by the accountants.