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.

The formula limits the policy to Loss of Gross Profit due to Reduction of Turnover and Increase in Cost of Working. The Turnover is used as the index for measuring the effect of the accident upon the profits of the business. This general formula is then qualified by a Standard Adjustments Clause to provide for the Trend of the Business, or Variations in, and Special Circumstances affecting, the Business. This clause usually appears as a qualification to the definition of the terms (Rate of Gross Profit, *etc.*, in the Schedule).

What is not clear is whether the amount ascertained under this formula is recoverable or whether one is limited to actual loss, this type of insurance being in general governed by the principle of indemnity.

This work should be extremely useful to all who are either engaged in insurance work or compelled to consider the necessity of such cover. It has a wealth of forms (including American) and examples in the Appendices. The general organization is clear and logical but it suffers from a certain repetitiveness and poor planning in detail. For example, the discussion of the problem referred to above is dealt with partly in the section dealing with the principle of indemnity and is then buried in the chapter dealing with 'New Business and Departmental Requirements'. This is not to detract from the comprehensive nature of the work, which is its leading feature.

F. P. DONOVAN

The Development of Australian Trade Union Law, by J. H. PORTUS, Commissioner under the Conciliation and Arbitration Act of the Commonwealth, Member of the English and South Australian Bars. (Melbourne University Press, 1958), pp. i-xxix, 1-260. Price £1 17s. 3d.

This book is based on a thesis with which the author qualified to share in the award of the Harbison-Higinbotham research scholarship of the University of Melbourne in 1956. It is a happy coincidence that a thesis on trade union law should merit that award; the scholarship endowment is a memorial to the late George Higinbotham, sometime Chief Justice of the Supreme Court of the Colony of Victoria, who made a notable contribution to Victorian trade union history. The author is a commissioner under the federal Conciliation and Arbitration Act and a member of the English and South Australian Bars.

The adoption of compulsory arbitration in Australia has required a body of trade union law different from that obtaining in England or America where the emphasis is on collective bargaining. Because arbitration is founded on the desire for the utmost freedom of the community from industrial disturbance and because, once established, arbitration must be superior to the disputants, it has been necessary to proscribe many forms of industrial conflict which would be tolerated in England or America. Because of this, there has been little chance for Australian courts to develop common law principles about industrial conflict between unions and outsiders. On the other hand, relations between union members *inter se* and, in particular, protection of union members against arbitrary deprivation of the liberty to pursue a chosen calling are matters to which Australian courts can still apply the techniques of the common law.

Australian trade union law is compounded of many ingredients. There has been much legislation and because legislators do not clean up as they go along this branch of the law is extremely complex. To explain the