> have been "best" as individuals, and they were employed in jobs which allowed them to exercise a degree of skill or responsibility, while their employing firms were good employers. . . . Their crimes and punishments appear almost to have been irrelevant.

What led to the offender's being caught in the first place may be what makes him also poor employee material. A longitudinal study tracing the progress of individual offenders (the second part of Dr Martin's survey) promises good things, particularly if the job skills of the offenders can be matched, for example, with those of a group of registered unemployed, thus exposing the fact of criminality as the only uncontrolled variable.

Though employers approach each case pragmatically, Dr Martin ranks their disapproving *attitudes* in the following order:

1. Those who had been mentally ill.
2. 'Sex offences aroused the greatest aversion . . . based more on prejudice than experience.'
3. Stealing from a fellow worker—'to protect the morale and unity of the firm's employees'.
4. Stealing from customers.
5. Stealing from the firm. ' "Pilfering" . . . merges at an ill-defined point into theft. . . . Small "perks" . . . [are] seen as the worker's equivalent to the boss's expense account. . . . It is not what you steal but who you steal it from that makes the difference.'
6. Crimes of personal violence.
7. Driving offences. (In our Melbourne study, one firm, with an apparently aggressive sales policy, said that in prospective travellers it looked for 'an impressive record of parking convictions' because its absence 'would indicate that he had not done a great deal of driving in business hours'.)

In a penetrating analysis of employers' responsibilities to offenders, to other employers and to law enforcement, Dr Martin says:

> An employer, more perhaps than any other civil person policemen excepted is in a position where he has to decide whether or not to put a man in the hands of the law. . . . A policy of prosecution *combined* with continued employment is possible.

For an offender facing difficulties with which he is unable to cope, 'to lose his job would merely add to them, whereas a court appearance might bring them into the open and secure the assistance of a probation officer'. But 'much of what is done involves an implicit criticism of the machinery of justice'.

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Essays on the Australian Constitution, edited by Hon. R. ELSE-MITCHELL, 2nd ed. (Law Book Company of Australasia Pty Ltd, Sydney, 1961), pp. i-xxxii, 1-380. Price £3 3s.

To republish after the space of ten years a volume of essays on the special topic of Australian constitutional law requires courage. One cannot be sure what the process of 'bringing up to date' will bring forth. Which analyses will now appear unfortunate? Which general theories will have to be abandoned? Which prophecies will now have to be recast?

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In short, one may fear that the additions, subtractions and alterations will make of the new garment a thing of shreds and patches. Alternatively it may have to be so thoroughly altered that it becomes a new book and not just a new edition.

That the second edition of these essays should be made up of the same cloth as its predecessor—with only some almost invisible mending—is a tribute to its editor (now Else-Mitchell J.) and to its early contributors. Editorially it follows the same broad plan as the original 1951 publication. So much has happened in the Trade and Commerce area that two chapters were obviously called for; Mr C. I. Menhennitt has dealt with the latest developments and the more recent transport cases, leaving the survey of the principles by Mr P. D. Phillips for separate treatment, including his valuable treatment of the early cases on Monopolies. Professor D. P. Derham has been able to adopt much of the material formerly set out by Menzies J., though he has added his own contributions, especially his very interesting analysis of the problems of the defence power in time of peace. Nor has the general structure been disturbed by adding Professor Zelman Cowen and Mr Howard Zelling to the list of distinguished contributors; their clear, informative chapters on 'Full Faith and Credit' and on 'The Territories' respectively were plainly necessary to round off the book.

Moreover, it is most interesting that the original authors (with the exception of one, all alive and active) have not found it necessary to abandon any of their previous major propositions. The last decade witnessed some weighty decisions—such as the *Boilermakers Case*,[1] *O'Sullivan v. Noarlunga Meat Co. Ltd*,[2] and the *Road Transport Cases*—as well as some critical situations in affairs abroad and in migration and development at home. Yet the growth of our constitutional law seems to have proceeded along lines generally predicted by the experts in 1951. Sir John Latham's most admirable introduction remains almost unchanged except for some remarks on the *Second Uniform Tax Case*.[3] Professor Sawer is able to rejoice, for example, that his prophecy as to the power of the Federal Parliament to commit for contempt was vindicated; his doubts as to the 'ingenious attempts' to explain the previous decisions on *Inter Se* questions seem also to have been justified by the *Dennis Hotel*[4] decision. Eggleston J. is now happily able to bring his judicial experience to bear on those matters of industrial law which he formerly discussed as an advocate: he has no cause to recant any of his general assessments, despite the major changes in the system of Industrial Tribunals. So too with the other writers.

A conclusion that an observer might draw is that over this period the general trend of our constitutional law has been what Llewellyn would have called reasonably 'reckonable'. It is true that the High Court has been almost evenly divided on some aspects of judicial power, inconsistency, the burdens forbidden by section 92 and the nature of an *Inter Se* issue—leaving the Privy Council to give decisive answers. It is also true, as Else-Mitchell J. points out in his introduction, when discussing the great post-war issues—the extent of executive authority, the financial powers of the Commonwealth, the possible limitations on schemes of nationalization—that 'in each instance . . . it cannot fairly be said that

[1] *A.-G. (Commonwealth) v. The Queen; ex parte The Boilermakers' Society* [1957] A.C. 288. [2] (1954) 92 C.L.R. 565.
[3] *State of Victoria v. The Commonwealth* (1957) 99 C.L.R. 575.
[4] *Dennis Hotels Pty Ltd v. State of Victoria* (1961) 35 A.L.J.R. 119.

the issue was finally resolved in a clear and decisive manner'. Yet on these issues there had been open debate in the courts and the opposing views had been vigorously presented long beforehand: it was only a question of which view would be ultimately adopted; there was no astonishment when one proposition was accepted rather than its alternative. In the rest of the field the building of principles and rules has gone on according to plans now generally known and accepted. The High Court itself has avoided extremes; it has set out wide doctrines without freezing them in formulae; it has sought, and usually achieved, a certain balance of interests. This combination of flexibility with stability has helped the contributors to this volume, so that Mr Baker, for example, needed only to vary his original text on compulsory acquisition by some comments on the limits of the incidental power and on the problems of 'pooling' and 'just terms'. Mr A. J. Hannan, it is true, has withdrawn his striking passage in which he compared the delegates of the States to the Federal Convention to an 'infatuated bridegroom' handing over his sources of wealth to the Commonwealth. He admits, however, that section 96 has not been misused, that 'the Commonwealth has been just and indeed generous in appropriating money out of its Consolidated Revenue on such a scale' (page 264), and in general he stands his ground.

These considerations vindicate the view of Dr Anstey Wynes in the Preface to the third edition of his massive study: 'with the passage of time so much of the body of our constitutional law has become settled that an increasing number of decisions appear as illustrations of principle or applications of principle to particular facts and circumstances'.

The new edition of *Else-Mitchell* will then continue to provide light and food for law teachers, students and practitioners. It remains convenient in size: the new version is only about sixty pages larger, despite the two additional topics. All the writers express themselves in plain language and use sub-headings effectively as an aid to the reader. They describe the effects of the decisions without becoming too involved in the details of the judgments and they are restrained in their speculations as to the future.

Until the day when some hardy author is prepared to come forward with a student's text book on the subject, this volume of separate studies amply justifies the editor's hope that it would appeal not only to lawyers, but also to public administrators, economists and political scientists. Might one suggest that for the lawyer it would have been helpful to include a copy of the Constitution itself as an appendix?

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Samples of Lawmaking, by SIR PATRICK DEVLIN (Oxford University Press, 1962), pp. 1-120. Australian price £1 9s. 9d.

It has been remarked, with perhaps a little cynicism, that one seeking the basal principles of the common law should look not to judgments in the law reports, which are mostly written *ad hoc* to settle the differences of the litigants, but rather to the great text books, the writers of which have devoted a life's work to their particular subjects. Lord Devlin certainly does not conform with the generalizations inherent in this comment. Both in his judicial opinions and in his published works he has never been unwilling to look beyond particular cases to the broader principles of law operating in particular fields.

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