

tive and the early chapters of the book are devoted to an account of existing federal constitutions and their historical development. In the end Professor Sawer's federal spectrum is a relatively narrow one. He finds only five countries which satisfy his criteria of federalism in unmodified form: the U.S.A., Canada, Australia, West Germany and Austria. As might be expected, a generous amount of space has been given over to discussion of Australian federalism and this is, perhaps, fitting in view of the author's conclusion that Australia occupies the 'dead-centre in the federal spectrum' (p. 55). Certainly no Australian reviewer should complain. But the dead-centre seems scarcely an exciting position to occupy in the light of Professor Sawer's concluding remark that federalism 'is a prudential system best suited to the relatively stable, satisfied societies of squares such as abound in Canada, Australia, West Germany and Austria, and probably still constitute the majority in the U.S.A.' (p. 186).

Description of the West German variety of federalism provides the basis for a tantalizing speculation in Australian constitutional law. German writers, beginning with Kelsen, have expounded the theory that there are three levels in any federation: the Regions, the Centre and the 'total state', or *Gesamtstaat*. In the preamble to the Commonwealth Constitution it is declared that the 'people' of the various States 'have agreed to unite in one indissoluble Federal Commonwealth'. Here is a *Gesamtstaat* if one were wanted in Australian constitutional theory. When section 81 of the Constitution refers to the power to appropriate money 'for the purposes of the Commonwealth' could not this be read as a reference back to the *Gesamtstaat* of the preamble? Professor Sawer finds a muted echo of this argument in the contention advanced by Starke J. in *Attorney-General (Victoria) v. Commonwealth*¹ that the spending power 'must include activities inseparable from a national government' (p. 121). In marked contrast to this excursion into the metaphysics of federalism is the section on the problems surrounding the concept of sovereignty in federal systems (ch. vii). Here the attempt has been to demythologize the area. The conclusion that 'Analysis can only be carried a certain distance' (p. 116) and that theoretical speculation is best limited for practical purposes is hardly new. But it is reached after concise and elegant analysis.

Within its limitations of size and purpose the book is highly recommended. Much of the comparative material is not easily obtainable elsewhere. The more speculative sections are stimulating and clearly expressed.

IAN D. ELLIOTT*

A Guide to Australian Law, for Journalists, Authors, Printers and Publishers, by GEOFFREY SAWER, 2nd Ed. (Melbourne University Press, Melbourne, 1968), pp. 1-118. Price: \$2.85.

This is the second edition of Professor Sawer's concentrated cautions for those who dabble in printer's ink. The interval of just on 20 years between editions is partly due, as the author explains, to successive postponements of the drafting and enactment of amended copyright legislation. Delay has enabled the book to deal with the Commonwealth Copyright Act 1968. Under his other main subject headings, including the major one of defamation, Professor Sawer is concerned less with charting new dangers than with warning us of the complexity and lack of uniformity in the statutes and regulations of the various States.

The field of publishing, which nowadays may include radio and television broadcasting and the making of films and records, is vitally concerned with the fact that the law of defamation in Australia is substantially controlled by the States. This results in some wide variations. Professor Sawer wisely spares his lay audience any exploration of these differences in depth. Having warned of their existence and counselled those who meet them to seek expert advice, he concentrates on the basic rules for publishing and staying within the labyrinthine ramparts of the law.

The journalist is apt to assume safety from a charge of defamation if what he writes is the truth of a situation, or fair comment on it. But his safety may depend on where he is.

In Victoria, South Australia and the Northern Territory, it is a complete defence

¹ (1935) 52 C.L.R. 533.

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to a civil action for defamation that the statement was true. But in New South Wales, the Australian Capital Territory, Queensland, Tasmania—and possibly Western Australia—truth is no defence unless publication was for the public benefit.

Fair comment, too, is a safeguard with geographical variations. It is a defence still governed by common law rules in Victoria, South Australia, the A.C.T. and the Northern Territory. Elsewhere, State code provisions prevail. Under common law, the comment must concern a matter of public interest, must be fair, based on true facts, and be published without malice.

Professor Sawyer reminds us that actions are nearly always tried by juries, so that the average taste and moral values of one's contemporaries enter into the verdict. This can make it dangerous to assume that a phrase which was not held defamatory in the past is still safe to use.

One of the author's particular warnings is that, in Victoria, a 'fair and accurate' report of a public meeting is not necessarily privileged. Here, some clarification by statutory provision is long overdue.

Overall, the Sawyer tale is a cautionary one. The writer itching to be a fearless critic is warned to say, for example, that a particular painting is bad, not that the painter is incompetent; that the company director's fees are too high, having regard to the dividend rate, not that the director is defrauding the shareholders. But the temptation to libel a class of persons may be indulged, providing that the qualification 'some of' is attached to the libelled group.

There are sections on the complex and anomalous rules for publishing advertisements and results of lotteries, on obscenity, and on requirements for the registration of printers. A large glossary of legal terms amply covers the needs of most court reporters, with a surplus of Latin for those who want to play one-up-man-ship.

By and large, it is a valuable and very readable little book which will persuade most people with responsibilities in the publishing world of the need to keep in touch with a good lawyer.

FREDERICK HOWARD*

Matrimonial Causes and Marriage Law and Practice of Australia and New Zealand, being the fifth edition of *Joske's Law of Marriage and Divorce*, by THE HON. P. E. JOSKE, C.M.G., M.A., LL.M., Judge of the Commonwealth Industrial Court and Judge of the Supreme Courts of the Australian Capital Territory, Northern Territory of Australia and Norfolk Island. (Butterworth and Company Ltd, Sydney, 1969), pp. 1-951. Price: \$22.50.

The winds of change are sweeping through the fields of Anglo-Australian family law. Within the last few years all Australian States have enacted legislation, for the most part uniform, dealing with adoption and with the maintenance of children and married persons. There seems to be a gradual acceptance of community property notions in determining the respective property rights of husband and wife.¹ It even may be that the law relating to illegitimate children, so rooted in the hypocritical morality of an earlier age, is on the verge of substantial reform.²

Despite these winds of change, there is widespread satisfaction with the present state of Australian divorce law. The preface to Toose, Watson and Benjafield's recent work, for example, refers to the Matrimonial Causes Act 1959-1966 (Cth) as reaching 'a peak of legislative excellence unequalled in the countries which have inherited the English tradition as to marriage and divorce'.³ Notwithstanding this unabashed admiration, it is inevitable that the winds of change will finally reach even the Matrimonial Causes Act. This is not to deny that the Act represented a very great advance in the previous position, when the various states controlled the law of divorce, nor that portions of the Act are very sensible. The suggestion simply is that a system based upon contradictory premises (compare the goals of the counselling

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¹ See, e.g., Married Women's Property Act 1964, s. 1, Marriage (Property) Act (U.K.) 1962. But cf. *Petiti v. Petiti* [1969] 2 W.L.R. 966 (H.L.).

² See *Report on the Law of Succession Relating to Illegitimate Persons* (1966) Cmnd 3051; Status of Children Bill presently before the New Zealand Parliament.

³ Toose, Watson and Benjafield, *Australian Divorce Law and Practice* (1968) vii.