defeat the authors' stated claim that they do not intend to refer the reader to or bother him with some of the seemingly conflicting rules of Equity.

Although the book is divided into four parts, consisting of 24 chapters, it deals primarily with three topics, the basic concepts of Equity, the assignment of property and the relief provided by the Courts of Equity. More than half of the book is devoted to the principal grounds on which relief may be granted and to some of the more important remedies provided by Equity. The authors have apparently recognized the impossibility of including in a casebook all the relevant cases that deal with those areas of the law and have sought to do no more than illustrate the main aspects of the relief and remedies afforded by Equity. In their endeavour to be brief, however, they have stated a few propositions which tend to appear somewhat misleading, as for instance, in the chapter dealing with Rescission and in the discussion concerning *Walsh v. Lonsdale*.[1]

There are three general reservations that one can discern about this book. The first is that it is highly doubtful if the principles of Equity can be properly studied by concentrating almost essentially on the casebook method. That is not to suggest that the authors advocate that the casebook method should be used to the exclusion of other tools used by the teachers of law. In any event, the extracts from the cases are often too short and on occasions do not give the full context in which the relevant principles are declared by the Judges.

Secondly, because the book is intended primarily for use by students, the authors have preferred to be dogmatic in some of their comments and to illustrate certain propositions by judgments which leave little or no room for qualifications. Although that approach may assist the student, in as much as it relieves him of the need to be concerned with subtle distinctions often in areas of apparent contradiction of principles, it is doubtful that in the long run the student is best served by this sort of protection. One of the greatest virtues of Equity is the flexibility of the relief afforded by it to litigants. This has sometimes led to the often unjustified claims that there is inconsistency between various judgments and principles. Unless the student appreciates these matters from the outset he may have difficulty later in applying the rules of Equity to the best advantage of his clients.

Thirdly, a matter which was no doubt beyond the effective control of the authors, namely, the print used to re-produce the extracts from the various cases. Unfortunately, the print is so small that the reading of these extracts is made very difficult.

Often casebooks are of use in the practice of the law and there is little doubt that if the main topics chosen by the authors had been dealt with more fully, the casebook would have been of real value to the practitioner. Indeed, as it now stands, and despite the fact that the authors intended the book to be used essentially by students, it is of use to lawyers who practise in fields where equitable principles and relief are invoked.

ALEX CHERNOV*

Brett and Hogg, Cases and Materials on Administrative Law, by Richard R. S. Tracey, assisted by Edward I. Sykes, (3rd ed., Butterworths Pty Ltd, Australia, 1975), pp. i-xxxvi, 1-517. Recommended Australian Price $20.00.

The practising lawyer uses a textbook as the starting-point to research. He expects to find the author's view as to what the law is stated succinctly and certainly with foot-note references supporting the conclusions drawn. He may then refer to the

[1] (1882) 21 Ch. D. 9.

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references and satisfy himself that they justify the opinion expressed. However law is an inexact science, and no matter how eminent the author or the respect which is paid to his views, no statement of law in a textbook can be regarded as divine revelation. Even Halsbury has been often challenged and at time dissented from by the courts.

It is therefore of vital importance that every lawyer learn at an early stage of his career that statements in a textbook should not be adopted unless and until he has done his own research (starting usually with the cases referred to by the author), so that when he refers in court to the textbook he is able to add that reference to the cases justifies the conclusions drawn by the author. One can sometimes find that, particularly where the work has run to more than one edition, case references have been copied into later editions which are either not relevant in context, or may actually contradict the proposition contended for which they are said to support.

Stress cannot be laid too heavily on the requirement that a lawyer think for himself, and use a textbook as a tool but not a substitute for his own concluded view.

The publication of the third edition of this work, originally written by the late Professor Brett specifically as a teaching aid, in the second edition revised by Mr Hogg, and currently revised by Mr Tracey assisted by Professor Sykes, is to be welcomed by all those undertaking the task of teaching and lecturing in law. This book does not do the reader's thinking for him. It poses questions. It presents problems. It refers, by no means exhaustively, to many leading cases on administrative law, and by analysing and criticising them, stimulates the interest of the reader to challenge conclusions reached by the highest legal tribunals. It points the way to research, but does not carry out that research, because the reader is treated as an equal, well enough versed in the art to have views of his own, which may or may not coincide with the opinion of the author. In most instances, the actual view of the author does not appear. This is as it should be in a work designed to teach. It teaches a method — an approach to problems to which there is no ready made solution.

The complexity of modern life has led to the enormous growth of administrative organs of government which give decisions, often of far-reaching import, which make an ever increasing impact on the lives of all of us. The delegated legislative power to make regulations is a feature of most of our statutes. The regulations are sometimes more significant than the Act authorizing them, and even though they are theoretically open to review by Parliament and rejection because they are required to be tabled, in practice it is doubtful whether they are subjected to any close scrutiny in Parliament. It is fifty years since Lord Chief Justice Hewart referred to this type of delegated government as '[t]he new despotism'.[1] Those old enough to remember the National Security Act during the war and the way regulations made under it governed so much of our existence ranging from fixing of prices for declared commodities or goods to landlord and tenant will need no reminder that in a state of emergency the role of Parliament as a legislative body may be subordinate to that of the executive. Nevertheless the courts will ensure that regulations are scrutinized carefully and will declare invalid such as do not come within the delegated power conferred. The learned authors in Chapter 3 point out the limitations on judicial review within the *ultra vires* concept.

Indeed the approach of this book is to arouse awareness of the growing concern in the community of the great powers being wielded by administrative tribunals whose decisions may not be subject to judicial review. The prerogative writs cannot be used by a disgruntled citizen when a discretionary power delegated by the legislature has been validly exercised by a duly appointed officer or tribunal. The real merits of the matter cannot be examined by the courts in such a case once the prerequisites to the exercise of power have been established, because even though more than one view is possible, the legislature in effect has said it is only the view of the delegate which is to count. Often this intention is clearly shown by making the decision final and conclusive and without appeal.

[1] The Rt. Hon. Lord Hewart of Bury, *The New Despotism* (1929).

The learned authors focus attention on remedies available, and particularly on the absence of suitable remedies in cases where issues of policy arise. Traditionally the civil servant who in fact makes a decision is anonymous. The decision may be communicated to the citizen over the signature of a minister or the head of a department. Loyalty to and responsibility for the decisions of subordinates are the norm, and it is not much use appealing to Caesar against Caesar. Therefore, if any redress is to be had by an aggrieved citizen, if he cannot be heard by the courts, he must be able to go outside the civil service system for an impartial review of his case. But when a government has determined a policy on a particular matter, and the decision is in accordance with that policy, one may well be met with the argument that a government cannot hand over to some tribunal the right to determine policy without abdicating as a government.

The role of the ombudsman in such a case is very limited. The authors do no more than refer to selective reading on the function of this official. Two reports have been tabled in Victoria by the ombudsman appointed under the Ombudsman Act 1973. Perhaps understandably most of the complaints brought to him came from persons in prison or confined against their will in mental hospitals. A recent decision in the Supreme Court of Dunn J. as yet unreported, imposes a limitation on the action which the ombudsman may take in relation to a prisoner. He may not inquire into the policy of the gaol. That must mean that so long as the treatment of a prisoner is in accordance with gaol policy, the ombudsman is powerless. For example, if it is gaol policy to discipline prisoners in a certain way, such as solitary confinement, breaking rocks etcetera, the harshness of the treatment being within the policy laid down cannot be investigated. It may be that it is possible in an individual case to investigate whether it was justified to impose a particular punishment, but that seems doubtful if the decision on that matter has been validly delegated and exercised within undoubted discretionary power.[2]

The learned authors give prominence and detailed attention to the case of *Durayappah v. Fernando*.[3] This case raises more problems than it solves, and may well be relevant if, as is likely, the practice adopted by the Whitlam government of appointing committees to inquire into proposed administrative action continues. Under various names having little consistency, boards of inquiry, committees of inquiry, or even royal commissions have been appointed to inquire into such diverse matters as Fraser Island development, Ranger Uranium Development, the impact on the Australian environment of woodchip industry, petroleum, human relationships, poverty and many others. These inquiries report and make recommendations, but do not directly make binding decisions. The action taken as a result of the inquiries may be that of a Minister, a department, the executive or the legislature, but it is for the committee or commission to undertake the relevant fact finding on which the ultimate decision is based. Usually the committee is left to work out its own procedures, and is often, if not usually, appointed because of the expert qualifications of its members. The *Durayappah* case indicates what may occur if the principle *audi alteram partem* is not observed by the committee. These committees have wide powers to summon witnesses and to compel production of documents. Often witnesses may be reluctant to produce documents which may reveal trade secrets, and one may reasonably expect there will be constitutional challenges to the right to compel evidence of this sort such as was undertaken in the *Colonial Sugar Refinery* case.[4] The dissenting judgments of Isaacs and Higgins JJ. in that case held that in determining the incidental powers of the Commonwealth, regard must be had not only to the present executive and legislative powers, but to the fact that the Senate and the House of Representatives have the initiative power in constitutional amendments. By amendment any matter of legislative power may be embodied in the Constitution. Therefore the Commonwealth has a present power of inquiry wholly unlimited by subject matter.

[2] *Director-General of Social Welfare v. Ombudsman*, reported in the *Age*, 4 February 1976.

[3] [1967] 2 A.C. 337, [1967] 2 All E.R. 152, P.C.

[4] *Colonial Sugar Refining Co. Ltd v. A.-G. for the Commonwealth* (1913) 17 C.L.R. 644 P.C., (1912) 15 C.L.R. 182 H.C.

This view did not prevail, but the widespread use of inquiries at the present time might well bring this matter up for judicial review again when citizens object to probes into their method of doing business, and the executive maintains a legitimate right to do so.

In this field of administrative action, the courts have been reluctant to interfere. The prerogative writs have real limitations, and reports and recommendations making findings of fact upon which executive or legislative action takes place cannot effectively be challenged on their merits under present procedures.

This work is to be commended as a teaching aid. Administrative action intrudes into the life of everyone, and often the implementation of executive or legislative policy leaves one defenceless against such action. The problem is well identified by the authors. Thought is stimulated to find remedies against abuse of administrative power. The inadequacy of the courts to delve into this sphere is demonstrated by many illustrative case references, and the student reader is encouraged to think for himself and face up to the problem with an appropriate remedy, actually existing or to be proposed for future legislative action.

Lest the reviewer be accused of male chauvinism, the use of the masculine is simply for convenience, and it is not merely assumed but expected that students of both sexes will be the readers of this book.

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