and the courts are no longer adequate to deal with the grievances of citizens against the government. The firm recommendation usually follows that an Ombudsman be appointed to deal with the problem.

Professor Sawer's book is in this pattern. It is obviously inspired by the visit to Australia in 1963 of the New Zealand Ombudsman, Sir Guy Powles.[1] Professor Sawer examines the categories of grievance which do, in fact, arise under our present administrative system, and explains the deficiencies of the judicial and political remedies. Brief but thorough descriptions are given of the powers and functions of the Scandinavian and New Zealand Ombudsmen. One chapter is devoted to exposition of the "gaps, doubts and conflicting decisions"[2] in our system of administrative law. The Professor concludes that reform *is* needed in Australia. He favours introduction of a completely new system of administrative law based on the French Conseil D'Etat type of organization and adoption of the Ombudsman.

It is remarkable how much support there has been for injection of the Ombudsman into the British style governmental structure—and how little opposition. The proof of the pudding can now only be in the eating. The flavour is good in New Zealand. There is no reason why it should not be good here.

H. WHITMORE.*

Constitutional Law, by J. D. B. Mitchell, Professor of Constitutional Law in the University of Edinburgh, Edinburgh. W. Green & Son Ltd., 1964. xxxv and 305 pp. (£4/11/6 in Australia.)

This book is the first of a planned series of about sixteen separate treatises designed to restate Scots Law "applying and adapting traditional principles to the needs of the twentieth century".[1] The series is to be published under the auspices of the Scottish Universities Law Institute. Although the series is to be written primarily for the practitioner and advanced scholar, this particular volume is aimed at both students and practitioners.

In Australia we might be very tempted to assume that little advantage is to be gained from reading a book on the Constitutional Law of Scotland. After all, we have enough to do to keep up with the reading of books on Australian Constitutional Law. This assumption should not be made. As Professor Mitchell points out, the problems of constitutional law are universal;[2] he has embarked on a more thorough examination of these problems than is to be found in most of the standard works on the subject. The chauvinistic Scot might wish, and indeed believe, that Scots law should stand apart from the law of the Sassenach. This can never be so. It may be that preservation of the Court of Session by the Acts of Union also preserved "a separate and distinct jurisdiction and system of law",[3] but the unifying influences of statutes passed by the Parliament of the United Kingdom and the growth and acceptance of the appellate civil jurisdiction of the House of Lords have created a large body of common doctrine. This is more obviously the position in the field of constitutional law and the reader will find that discussion of institutions, statutes and cases is very familiar. There is a

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[1] At 32.
[2] At 13.
* LL.B. (Sydney), LL.M. (Yale).
[1] At vii.
[2] At ix.
[3] At 222.

great similarity to Australian books in the same field. Local cases and principles are treated against a background of traditional United Kingdom constitutional law.

It is somewhat disappointing to find that there is little examination of the especially unusual doctrines of Scots law. The doctrine of desuetude is mentioned as applying to the pre-Union statutes[4] and a footnote explains that a 1585 statute "aganis leaguis and bandis" is likely to be treated as being in desuetude. But that is all there is, and the student must go to other works and cases cited in the footnote to find what it is all about. Acts of Sederunt by the Court of Session are briefly discussed as a breach of the separation of powers doctrine.[5] They are, or were, Acts which might regulate particular branches of the law pending the enactment of a statute. The Act Anent Wrongous Imprisonment and petitions to the Lords of Justiciary are more fully considered and compared with English procedures for habeas corpus in the preservation of the liberty of the subject.[6]

During the past few decades it has become fashionable for constitutional lawyers to question the uncritical acceptance of theories proclaiming the absolute sovereignty of the United Kingdom Parliament. Litigation and comment in South Africa and Australia has suggested that it is possible for one Parliament to entrench legislation which limits the sovereignty of a succeeding Parliament—at least as to the identification of participants in the legislative process and the form of legislation. Even more recently the Scottish case, *MacCormick* v. *Lord Advocate*[7] has prompted suggestions that the United Kingdom Parliament might be limited as to substance. English writers have tended to treat these matters lightly but Professor Mitchell has closely and critically examined them.[8] In discussing *MacCormick's Case* he asks: Was Parliament Born Unfree? It is clear, he establishes, that the constituent documents of the Acts of Union could have imposed limitations on the Union Parliament and that they were intended so to do. The question of actual entrenchment is less clear. The Professor firmly believes that constituent documents should be interpreted so as not to restrict unnecessarily the evolution of the society. Such an interpretation would preclude entrenchment of the detail of the Act for Securing the Protestant Religion and the Act of Union and leave limitations only in the central core of protection for the protestant presbyterian church and the Court of Session. These may be the substantive limitations on the United Kingdom Parliament.

It is pointed out that both substantive and form limitations may be only of theoretical interest if the British courts are not prepared to question the validity of statutes. The authorities on both sides of this question are fully considered. They are, of course, inconclusive and, as Professor Mitchell explains, the opinions in *MacCormick's Case* are for the most part *obiter dicta.* Further, they "speak with a double voice, while refuting judicial review in a particular case, they deliberately express reservations about possible future and different cases".[9] The question of judicial review is closely tied up with the problem of remedy; and after examination of some Australian and South African cases the author puts forward the highly tenable view that the courts are more likely to concede a remedy where the challenge to the statute is to protect specific and individual interests rather than political interests. An

[4] At 17.
[5] At 33.
[6] At 286ff.
[7] (1953) S.C. 396.
[8] Ch. 4.
[9] At 69.

individual interest was present in *MacDonald* v. *Cain*[10] and in *Collins* v. *Minister of Interior*;[11] it was absent in *Clayton* v. *Heffron*[12] and *MacCormick* v. *Lord Advocate*.[13] *Trethowen's Case*[14] would be considered a case of political interests and the High Court has expressed grave doubts as to the use of injunctions in such cases.

To some degree the book as a whole accords with the regard of the Scots for tradition and traditional ideas. English and American writers have decried the modern significance of the separation of powers doctrine; to them it is so remote from reality as to be irrelevant in the twentieth century. In Australia, adherence to the doctrine has produced some remarkable verbal gymnastics. Professor Mitchell believes that the doctrine "has both a functional and a theoretical basis and remains important".[15] However, he warns that it must not be regarded as a principle to be applied universally; it is essentially a matter of degree. Little value is seen in the constitutional entrenchment of guarantees of fundamental liberties.[16] Restrictive interpretation of statutes is argued to give a similar result. Discussion of the fundamental liberties is confined to one short chapter,[17] and is certainly inadequate. The malaise resulting from the failure "to develop a system of public law adequate to the demands of a modern state"[18] is fully discussed, but the suggestion that the malaise be relieved by appointment of an Ombudsman is coldly received. "It does not appear that such an official could do anything to make good the deficiencies of the law." Reliance can only be placed on the traditional institutions—the Parliament and the courts. In fairness it must be admitted that Professor Mitchell envisages a major break with tradition in the institution of a genuine administrative jurisdiction capable of evolving a new substantive law.

This first modern book on the Constitutional Law of Scotland is a very welcome addition to the works available in this general area. The numerous references to Scottish case law are likely to be of especial value to the practitioner and to the research scholar. The aim of the author is true.

H. WHITMORE.*

Administration of Assets, by R. A. Woodman, LL.M., Senior Lecturer in Law in the University of Sydney. Law Book Company of Australasia Pty. Ltd. 1964. xix and 220 pp. and Index (£3/5/0 in Australia).

The administration of assets is a subject which deserves a book to itself. Every practitioner who has been called upon to advise on an administration problem, and every person whose unhappy lot it has been to endeavour to teach the subject to law students, has long felt the acute need of a major and definitive work.

The subject is complicated enough. Most of the legislation, both in England and Australia, is comparatively recent, and as obscure and ill-

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[10] (1953) V.L.R. 411.
[11] (1957) (1) S.A. 552 (A.D.).
[12] (1960) 105 C.L.R. 214.
[13] (1953) S.C. 396.
[14] (1932) 44 C.L.R. 394.
[15] At 37.
[16] At 9ff.
[17] Ch. 18.
[18] At 270.
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