

BOOK REVIEWS

Sir John Latham and Other Papers, by Zelman Cowen, Melbourne, Oxford University Press, 1965. 191 pp. (\$5.75).

Only a year or so before the publication of this volume, a learned contributor to *The University of Queensland Law Journal*, Clifford L. Pannam, observed that "A notable feature of legal writing in Australia has been the lack of biographical studies of judges who have been members of the High Court of Australia". This, he thought, was "surprising when the important creative function of the High Court in the interpretation of the Australian Constitution is taken into account".¹

The study of Sir John Latham which is the major paper in this volume goes some distance towards remedying this omission for it provides in readable form the basic biographical details of Latham's life and career both in politics and on the High Court Bench of which he was Chief Justice for over fifteen years. It is not, however, a full-scale biography and, in view of the fact that it represents the substance of the John Murtagh Macrossan Lectures delivered by the author in 1965, it would not be proper to regard it as such. Professor Cowen is nevertheless to be commended for collecting together in a coherent form the main achievements of one of the few men who, since the First World War, has been a leading figure in both the political and judicial fields of government in Australia.

So far as Latham's political life is concerned, this study sets out in sequence those events in and influences on political affairs which concerned him as a member of the House of Representatives, active in the anti-Labor interests, and later as Attorney-General and Leader of the Opposition during the term of the Scullin Government from 1929 to 1931. His decision to foresake political life in 1934 after three years as Deputy Prime Minister, Attorney-General, and the holder of other ministerial posts, should perhaps be regarded as one of the momentous decisions in the history of the Federal Parliament, if not in the history of the Commonwealth, for the seat of Kooyong which he resigned fell to R. G. Menzies, no less brilliant as a lawyer, who later became Prime Minister for a record term. Latham's decision to devote his future life to the law instead of politics, where in due course he would probably have become Prime Minister, naturally made him an eminent choice for the office of Chief Justice of the High Court when Sir Frank Gavan Duffy died in 1935. Such are the accidents of the wheel of political fortune.

Whilst Professor Cowen has compressed together a wealth of material relating to Latham's career as Chief Justice, it is open to some doubt whether he has reached a sound assessment in saying that Latham "was a very capable Judge and Chief Justice, though not to be reckoned one of the great". Perhaps opinions differ on the qualities which make a great Chief Justice: it is not always sheer legal genius or erudition, for the office of Chief Justice entails

¹ "Judicial Biography — A Preliminary Obstacle" (1961) 4 *Univ. of Q.L.J.* 57.

high responsibilities of an administrative order and a sense of political judgment in the handling and determination of issues of constitutional or great public significance. Not the least of the functions of the Chief Justice of a Court which generally sits *in banc* is to ensure that the arguments are adequately presented and to encourage their formulation in a manner which avoids any risk of misunderstanding. In this respect Latham was a great Chief Justice and I am repeating the opinion of a former leader of the Australian Bar in saying that next to Viscount Simon, Latham was in his time the finest president of an appellate court in the Anglo-Australian legal system. Having had experience of both these eminent presiding judges as well as many others, I fully endorse this observation which is all the greater tribute when one recalls that in his valedictory speech in 1952² he bemoaned the repetitious nature of much of the argument presented in the High Court and regretted any sense of impatience he may have manifested in insisting that arguments should be intelligible and be heard fairly and fully.

As has been said, this paper is not a definitive biography. It may be too soon for such a biography to be written and one can hope with Professor Cowen that Latham "will surely find other biographers who will write more fully and with the advantage of a longer view".

The other papers included in this volume had already been published elsewhere in one of the learned law reviews and it is therefore not appropriate to do more than refer briefly to their titles and substance. The first is "Some Observations on the Law of Criminal Contempt" which discusses, *inter alia*, the different paths taken by American and English law in relation to the publication of criminal proceedings; the second is "A Century of Constitutional Development in Victoria 1856-1956" which is a useful and original contribution to Australian legal history; the last paper is "Alsatis for Jack Sheppards. The Law in Federal Enclaves in Australia", which attempts an analysis of the sources of governmental power in areas which are public places of Commonwealth import. The subject of this last mentioned paper entails other vexed questions only briefly mentioned by Professor Cowen which seem almost incapable of resolution and on which, even since he wrote, substantial differences of judicial opinion exist.³

R. ELSE-MITCHELL.*

Some Principles and Sources of Australian Constitutional Law, by P. H. Lane, Sydney, Law Book Co. Ltd., 1964. xxii and 303 pp. (\$6.75).

The publication of another book concerning the law of the Commonwealth Constitution demonstrates the development through exposition which has taken place in the High Court of Australia in a little more than sixty years. It is as well to pause and to consider what has happened.

When the High Court commenced its work it had that massive tome, Quick and Garran's *Annotated Constitution of the Australian Commonwealth*.¹ The plan of this work is well known and its usefulness then and now is not to be overlooked. But the point is that it relied upon the Convention Debates and United States authority.

A decade later, Professor Harrison Moore published a further edition of *The Constitution of the Commonwealth of Australia*.² By this time the

² (1951-52) 85 C.L.R. vii-viii.

³ See *Spratt v. Hermes* (1965) 39 A.L.J.R. 368.

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¹ 1901.

² 1 ed. 1902; 2 ed. 1910.