

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 1952<sup>2</sup> 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.<sup>3</sup>

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*.<sup>1</sup> 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*.<sup>2</sup> By this time the

<sup>2</sup> (1951-52) 85 C.L.R. vii-viii.

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

\* The Honourable Mr. Justice Else-Mitchell is a judge of the Supreme Court of New South Wales.

<sup>1</sup> 1901.

<sup>2</sup> 1 ed. 1902; 2 ed. 1910.

High Court, seldom tentative in its approach, had commenced to enunciate constitutional doctrine and had proved that it was a more than adequate general Court of Appeal for Australia. The Constitution, however, had begun to take shape so that a writer on the subject could expound with the benefit of local precedent.

Before another text book was to emerge, the Constitution was to be put to the strain of war, economic developments of the Commonwealth were to play a profound part, doctrine thought to be entrenched by judicial decision was to be reversed, amendments were to be made, which in many respects altered the character of the Federation. On top of this came the full force of the depression years and their results upon judicial thinking were at any rate consequential.

Then came the Peden Royal Commission<sup>3</sup> and much of the evidence before that body might usefully be exhumed.

Next was Dr. Anstey Wynes' *Legislative and Executive Powers in Australia*. The first edition published in 1936 made a book on the working of the Constitution available for the first time. This work has, of course, been kept up to date.<sup>4</sup>

Nicholas published his book, *The Australian Constitution*, in 1948, but this was concerned more with economics and political science.<sup>5</sup> In the meantime others such as Brennan and de Foenander had explored particular fields;<sup>6</sup> there had been articles in the *Australian Law Journal*, and Professor Sawyer published his case-book.<sup>7</sup>

By this stage there was a literature in which informed opinion had expressed itself concerning the Constitution but in reality what this literature amounted to was an exposition and sometimes a criticism of the decisions of the High Court of Australia. More than 100 volumes of the Commonwealth Law Reports had been published when Lane published his *Some Principles and Sources of Australian Constitutional Law*.

The speculations which faced Quick and Garran have gone. This is not to say that some others have not replaced them. Reliance upon United States authority is minimal. Doctrines have been established in some cases after reconsideration. The principles are there not only in broad outline, but with something more than an indication of how they will be applied to present circumstances. In the space of a very short time and with the contribution of but a few judges, a coherent system of constitutional law for the Commonwealth of Australia has emerged. It is this magnificent result which comes from the quality of the High Court throughout a short space of time which makes it possible for Professor Lane to use the words "Principles" and "Sources" in the title of his book. Quick and Garran were forced to "annotate"; Dr. Wynes in 1936 could expound powers and decisions. Now there is room for a further approach which Lane has taken. He is able to approach a legislative power by examining the decisions upon it. He does not take them one by one. Rather he gives them coherence according to a method which supposes that cases are decided by the use of a "formulary" and that the same result may be achieved by isolating "factors" which contribute to a decision but which can only be relied upon to make a springboard which the judge uses to

<sup>3</sup> "Royal Commission on the Constitution: Report" (Commonwealth of Australia, 2 *Parliamentary Papers*, 1929/31, 897-1296).

<sup>4</sup> *Legislative, Executive and Judicial Powers in Australia* (2 ed. 1956; 3 ed. 1962).

<sup>5</sup> 2 ed. 1952.

<sup>6</sup> T. C. Brennan, *Interpreting the Constitution* (1935); O. de R. Foenander, *Towards Industrial Peace in Australia* (1937), *Solving Labour Problems in Australia* (1941), *War-time Labour Developments in Australia* (1943), *Industrial Regulation in Australia*.

<sup>7</sup> *Cases on the Constitution of the Commonwealth of Australia* (1 ed. 1948; 2 ed. 1957; 3 ed. 1964).

leap to his decision (p. vii). This is very novel or perhaps I do not understand what is intended.

When one examines the treatment of a specific subject matter, it would at first seem that "formulary" means "principle" and that "factors" means "facts". But closer examination suggests that more than an exercise in semantics is involved.

The truth is that the language of this book owes much to the North American language and, as one brought up on the English language, I am aware of great gaps in my appreciation of Professor Lane's arguments. The methods of criticism, though equally foreign, I am sure would be enlightening if they could be understood more easily.

Let me say at once that an iconoclastic approach to judicial decisions is useful if soundly based. Indeed, I am sure that the great merit of this book is that the author remains unimpressed by anybody or anything other than the strength of his own intellect. But all that is no more than a starting point. What an overall reading of the book does to this reviewer is to leave him with the conclusion that despite the formulation of principles and the actual application of them, any of these cases might have been or their counterparts might yet be decided differently depending entirely upon the exercise of a discretion controlled by nothing more than the composite mood of the Court.

After reading any chapter, one is left not so much with any clear concept of what the law is but with a set of criticisms of each case in which the Court has decided a dispute. The dispute which has been decided tends to be lost sight of in the course of the criticism of the judicial method followed in pronouncing reasons for a judgment. The same technique is followed naturally enough in each of the chapters.

This leaves a person who consults this book with the knowledge that he must also look elsewhere. No doubt the author intends this result. For myself, I would think that one should look at this book last so that through its manner of criticism the student may then best come to his own conclusion upon the specific problem he must solve.

J. D. HOLMES.\*

*The Life and Death of John Price: A study of the exercise of naked power*, by the Hon. Mr. Justice J. V. Barry. Melbourne University Press, 1964. xiv and 204 pp. (\$5.00 in Australia.)

In Sir John Barry's *Alexander Maconochie of Norfolk Island* (1958) the following passage occurs:

The next Commandant, John Price, was a stern disciplinarian, although he was said to be a just man, according to his lights, and he restored order by the merciless application of terror. Bishop Willson denounced Price's methods after he had visited the island in 1852. . . .

Price remained on the island until 1853, and later became Inspector-General of Prisons for Victoria. On 26 March 1857 at Williamstown, Victoria, when inspecting some earth-works, he was rushed by some convicts and so severely battered that he died on the following day.

Elsewhere in a footnote we are told that Price was a police magistrate from Van Diemen's Land who married a niece of Sir John Franklin; and we are referred to Rusden's *History of Australia* and Ives' *History of Penal Methods* for contrasting estimates of him. But that is substantially all that we are told about John Giles Price.

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\* The Honourable Mr. Justice Holmes is a judge of the New South Wales Court of Appeal.