Australians "may have some trace of convict blood imported from the United Kingdom" (p. 149).

This work is a superb contribution of unquestionable authority to an important phase of Australian (and English) history. It is, too, an essay of first quality upon penological theories and the way in which they fared when put to the test of practical application. It is cool and balanced; the merits as well as the defects of the System are recognised; and the author's judgments are restrained and judicious, the product of a trained but generous and civilized mind. *Convicts and the Colonies* can be commended warmly and without reservation.

JOHN V. BARRY*

Cases and Materials on Constitutional and Administrative Law, by Geoffrey Wilson. Cambridge University Press, 1966, xxv and 609 pp. ($5.75 in Australia).

This book has one notable virtue and two principal drawbacks. The notable virtue is the refreshing breadth of approach adopted by the author. From the outset he rejects the strict Diceyan separation of law from convention. This distinction, he contends, has derived its longevity not only from conceptual considerations but also simply from the fact that lawyers are unaccustomed to dealing with the documentary sources of convention, for example parliamentary debates, committee reports, biographies, and the like. "These practical difficulties" he writes, "have artificially prolonged the life of a dogmatic distinction which is the product of an old fashioned jurisprudence and a narrow and outdated view of a lawyer's role in society."[1]

Stirring words! The author then states it as his intention to provide easier access to materials other than the law reports and formal legislation to which lawyers usually confine their attention. And this he does. Thus, such a critical topic as "Cabinet Government and Ministerial Responsibility" ean be dealt with in a chapter of its own, rather than appearing as a somewhat awkward footnote in a more conventionally "legal" text. Matters of law and matters of constitutional convention are dealt with side by side, and are illuminated by both "legal" and "non-legal" materials, as appropriate. The subject gains greatly in vivacity from this treatment.

It is also enlivened by the occasional background notes provided by the author himself. Thus, the judgments in *Thomas* v. *Sawkins*[2] are preceded by brief notes on the Fascist and Communist meetings held during 1934, and by an extract from the House of Commons debates on the subject of police powers in regard to public meetings. This, as much as the judicial reasoning, serves to clarify the decision.

All this is desirable and, in my opinion, valid. There are signs that the old barriers are beginning to crumble between law on the one hand and non-legal disciplines on the other. Just as criminal lawyers are learning to talk to criminologists, and company lawyers to accountants, so, too, constitutional lawyers can speak with political scientists, historians and administrators. Indeed, any account of constitutional or administrative law which ignores the social context is condemned to abstraction, dryness and legalism. The lawyer may surely be as legitimately concerned with society as with logic.

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* The Honourable Mr. Justice Barry is a judge of the Supreme Court of Victoria.

[1] At v.

[2] (1935) 2 K.B. 249.

So, this work's notable virtue is the pattern it provides for other writers on public law. And, in its own right it is a useful collection of materials, legal and non-legal, intelligently arranged.

Now, as to the first principal drawback. Any case book will tend to suffer from the fact that the material dictates its own emphases just as a television news service will make a local fire, for which film is available, seem more important than a distant war, reported without film. Of course, a case book is not designed to be used on its own but in conjunction with a text book or lectures. But even accepting this, the problem is magnified for Wilson, not only by his combination in the one book of Constitutional and Administrative Law, but also by his combination of legal and non-legal materials. It is not surprising then that, even with over 600 pages at his disposal, his selection of material is not always adequate.

In many matters his coverage is ample: for example, Chapter III on "Cabinet Government and Ministerial Responsibility"; and the sections on police powers which appear in Chapter IX, "Fundamental Liberties and the Maintenance of Order". But surprising omissions occur. While the same Chapter IX contains material on blasphemy, sedition and the control of plays, films and television, it contains nothing at all on obscenity. Such an omission, in the current British context, is quite astonishing.

Similarly Chapter II, "Constitutional Monarchy", in dealing with "The Appointment of Prime Minister", sets out material concerning the choice of Baldwin over Lord Curzon in 1923 and of Churchill over Lord Halifax in 1940. Both episodes really illustrate the same point—the convention that the Prime Minister should come from the Lower House. (Even this point is of less importance now, since the passage of the Peerage Act, 1963, allowing disclaimer of peerage. Mr. Wilson sets the Act out elsewhere[3] but does not refer to it in this context.) It would have been more useful to have omitted one of the Baldwin-Churchill episodes and to have referred instead to material on the Queen's choice of Prime Minister on the resignation of Sir Anthony Eden or of Harold Macmillan (Iain McLeod's famous *Spectator* article, perhaps?). It would also have been interesting to note the possible extension of the same convention to the office of Foreign Secretary, as evidenced by Harold Wilson's refusal to confer a peerage on Patrick Gordon Walker when the latter had failed to gain a seat in the Commons.

Selection, of course, is a personal matter, and any teacher, student or practitioner of the subject might have his own specific criticisms to make of the materials which Wilson has chosen to include, or to exclude. For example, the otherwise excellent coverage of Crown privilege of documents in Chapter XI, "the Crown and Crown Proceedings", seems incomplete without the Privy Council's opinion in *Robinson* v. *South Australia*.[4]

But more generally, in a book which purports to deal with both Constitutional and Administrative Law, the Administrative Law component suffers from quite serious omissions. The greatest weakness occurs in the area of greatest complexity and greatest importance—the grounds and the remedies for judicial review of administrative action through the supervisory jurisdiction of the superior courts. The coverage here, provided in Chapter XII, "The Courts and the Administration", is sadly inadequate. The only material given for Section 1, "The Prerogative Orders", is an extract from Lord Atkin's judgment in *R.* v *Electricity Commissioners*.[5] The sole illustration for Section II, "The Principles of Natural Justice", is *Cooper* v. *Wandsworth Board of*

[3] At 142.
[4] (1931) A.C. 704.
[5] (1924) 1 K.B. 171.

Works.[6] Extracts from four cases only are given to illuminate the complexities of the doctrine of *ultra vires*. Nothing at all is provided on such important grounds of judicial review as jurisdictional error, or error of law. Nothing is included on mandamus, or on the public law applications of the injunction or the declaratory judgment.

So, the first principal drawback concerns the selection of materials. As far as it goes, it is good, but there are too many important matters which are not covered adequately, or are not covered at all. No teacher of Constitutional and Administrative Law in England could rely on this book alone as the sole source of materials for his students, not, at any rate, if he wanted to give any reasonable account of Administrative Law.

The second principal drawback is a purely local matter. The book is a useful selection of materials in regard to law and convention in England. But for Australian purposes its usefulness is quite limited. Apart from the improvements one might hope to see in a second edition of the work, it would need, for local purposes, to be supplemented by a separate book dealing in a similar fashion with the law and practice in Australia.

On this note I return to Wilson's "notable virtue". I think his approach to the subject succeeds, even though his selection of materials is not, at this stage, fully adequate. It would certainly be worth the while of any Australian writer planning a case book on Constitutional and Administrative Law to follow Wilson's method of combining legal and non-legal materials while, perhaps, (if only for reasons of space) leaving most of the basic English materials to Wilson himself.

GARTH NETTHEIM*

Parliamentary Privilege in Australia, by Enid Campbell, Sir Isaac Isaacs Professor of Law, Monash University, Melbourne, Melbourne University Press, 1966. 218 pp. ($6.00 in Australia).

This is a valuable book and will be an essential acquisition for the book shelves of Members and officers of Parliament, journalists and others whose work brings them into any relationship with Parliament.

The main source material on parliamentary privilege has always been Erskine May's treatise on *The Law, Privileges, Proceedings and Usage of Parliament*; in addition, useful articles on applications of privilege appear regularly in *The Table—The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*. Only the latter has included references to Australian precedents. Now, thanks to Professor Campbell's industry, we have a work which not only expounds the origin of privilege, with references to British cases, but a work which covers the field of the law and application of privilege in Australia, at federal, State and territorial levels.

The matters selected for comment in this review are freedom of speech, Parliament's power to fine, and the question of the delegation to the courts of the power of Parliament to deal with certain contraventions of its privileges.

Parliamentary privilege means the special rights attaching to Parliament, its Members, and others, necessary for the discharge of the functions of Parliament. Undoubtedly, the best known privilege is that of freedom of speech, which is absolutely essential to a free Parliament's discharge of its functions.

[6] (1863) 14 C.B. (N.S.) 180; 143 E.R. 414.

* LL.B. (Sydney), A.M. (Fletcher), Lecturer in Law, University of Sydney.