

Australian Constitutional Law Cases Materials and Text, by J. I. FAJGENBAUM and P. J. HANKS (Butterworths, Australia, 1972), pp. i-xxxii, 1-709. Recommended Australian price \$18.50 (hard), \$14.50 (limp). ISBN 0 409 43570 8 (hard), 0 409 43571 6 (limp).

The subject of Australian Constitutional Law, for some time, has stood in clear need of a satisfactory casebook to supplement the authoritative texts already in print. Sawyer's *Australian Constitutional Cases*,¹ published originally in 1946 and which has now run into its third edition is not only out of date but also suffers from the defects common to early casebooks which were intended rather as adjuncts to overtaxed library resources than as exegeses on the topic in question.

So a new casebook was needed. But teachers, students and others should be warned that *Australian Constitutional Law Cases Materials and Text* is a rather ambitious and, to that extent, misleading title for a treatment which excludes from its pages some of the salient topics traditionally and recently associated with the subject such as, Trade and Commerce, Conciliation and Arbitration and Civil Liberties.

However, the confined scope of the treatment would appear to be the deliberate intention of the authors; for what they have attempted is to provide a fully integrated first book in basic constitutional law covering topics, some of which commonly arise in the discussion of any constitutional democracy and others which are peculiar to a federal and responsible system of government such as our own, but without concentrating on any particular powers as such. And in this respect they have succeeded admirably.

For the greater part, the text proceeds to discuss matters raised jointly at both federal and state levels. The treatment commences with a thorough survey of the law and conventions appropriate to the Executive. It provides, for the first time in such a book, a compendious survey of the occasions of and reasons for the exercise of the gubernatorial discretions. In the exercise of these prerogatives, the Governors [or Governors-General] are not responsible to the legislature nor are their decisions justiciable. Whether, in fact, these should be the subject of judicial scrutiny is a question raised frequently and the authors have included ample material upon which students can form thoughtful conclusions. It appears that the authors tend to the conclusion that since someone has to make the decision the 'political irresponsibility' of a Governor is a qualification rather than a disqualification. The Double Dissolutions of 1914 and 1951 receive passing treatment and the authors suggest that, in fact, the Governor-General has no effective discretion under Section 57 of the Constitution. This may well be so, but obviously the Labor Party in 1951 thought differently for many members of its caucus were known to be furious when McKell, a Labor appointee, granted Menzies' request for the Dissolution. The matter is not without significance today.

The treatment of the conventions involved in 'ministerial responsibility' is less exhaustive. The case studies are interesting and, in some cases, of recent memory, such as the circumstances which led to the resignation of Mr Gorton from the McMahon ministry in August 1971. A section has been included on the peculiar difficulties raised by Labor Party practice of having caucus elect the ministry which places under some strain a doctrine of responsibility founded upon the practice that the Head of the Cabinet chooses his own ministry. A Labor Prime Minister has neither the freedom to choose nor to dismiss. The treatment of this area is rather thin although this is probably of necessity as the issue is one of power rather than convention which is patent in Australia today.

One has the impression that Australia is about to see the development of a wider body of constitutional 'lore'; and in this respect one might feel that the treatment in this book is dated rather than speculative. The portents have appeared

¹ Sawyer, *Cases on the Constitution of the Commonwealth of Australia* (3rd ed. 1964) Supplement to 3rd edition (Reprinted 1970).

since publication and so the authors can hardly be blamed for having failed to discuss them. Future studies will have to assess the significance of committees such as the Senate Select Committee on Securities and Exchange or the recently established² Committee to investigate the 'Croatian Affair'. What is commonplace in the United States might just happen here. The presence of both a Labor Government and a hostile Senate makes these areas more interesting and relevant than usual.

The federal-state treatment is pursued through the legislative and judicial arms. The extracted materials on the State Constitutions preserve the integrity of the approach but appear to be of limited exegetical value save the chapter on reconstruction of State legislatures which is thorough and will form a useful basis for valuable study. Consistent with the task the authors have set themselves, the overworked section on the Separation of Powers within the Federal Constitution is not treated as such but rather only in so far as it is of any significance, namely in the Separation of the Federal Judicial Power. *Alexander's* case³ is slotted into a chapter on the independence of the judiciary both in the state and federal spheres, which is as fascinating as it is compendious. The content of the Federal Judicial Power receives separate treatment. The relationship of legislative power between the Commonwealth and States in the compact is again thoroughly treated and, linking the cases, is a critical and imaginative commentary on the attempts by the High Court and Sir Owen Dixon, in particular, to resolve the balance of power which, if followed methodically will fully acquaint the student with the issues involved.

The book is extraordinarily well integrated and quite complete in itself. It exhausts the area covered by the materials selected which have a fluency of their own and which are further fused by a text which is at the same time substantive and imaginative. But in its very integrity the book demonstrates its weakness as an aid in the teaching of Australian Constitutional Law.

Constitutional Law is such a wide subject that in expounding it teachers have to be selective; the content of their courses will vary considerably according to preference. Accordingly, a casebook needs to be sufficiently flexible so as to provide the basis for a number of such different courses. So unless those who adopt it are prepared to accept the particular approach of the authors students will have to supplement it with other texts which cover those other areas generally associated with the Australian Constitution; which is a serious matter when one bears in mind the cost of this book.

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Administration and Probate, by ERIC E. HEWITT., B.A., LL.B., Q.C., assisted by B. D. BONGIORNO, LL.B., (Butterworths, Australia, 2nd edition, 1971), i-xi, 1-294. Recommended Australian price \$19.50. ISBN 409 368 024.

This is the second edition of a work first published in 1963, which provides practitioners with a convenient collection of Victorian statutes, regulations and court rules relevant to the administration of deceased estates and probate duty. Most sections of the various Acts are accompanied by useful annotations. One may question the wisdom of including Victorian probate duty legislation unaccompanied by Federal estate duty measures. The 1971 edition includes a number of precedents.

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² May 1973.

³ *Waterside Workers Federation of Australia v. J. W. Alexander Ltd* (1918) 25 C.L.R. 434.

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