

BOOK REVIEWS

FEDERAL CONFLICT OF LAWS, by *Michael Pryles and Peter Hanks*. Butterworths, 1973, pp. i-xxviii, 1-212.

This book attempts to satisfy the stated need for a work on the "peculiar choice of law and jurisdictional questions which arise within the Australian Federation." The emphasis on these matters is indicated by the titles of the six chapters which constitute the book: "Jurisdiction and Inter-State Service of Process", "Execution of Judgments", "Full Faith and Credit", "Federal Diversity Jurisdiction", "Choice of Law in Federal Diversity Jurisdiction", and "Federal Jurisdiction—The Commonwealth as Litigant". There can be little doubt that each of these matters deserves closer consideration than is possible in a general work on the conflict of laws. And there can be equally little doubt that the authors have produced a valuable and informative treatment of federal conflictual problems. Not only have they fruitfully discussed the Australian provisions and case law, they have also drawn heavily, in some chapters, at least, on experience arising from the existence of analogous problems in the United States. The result is a book which should prove most useful to anyone wishing to gain a proper comprehension of the particular difficulties which arise from the Federal Constitution and from legislation enacted thereunder by the Australian Parliament.

It is not to be expected that a reviewer will agree with every stance adopted in a book of this type, for the conflict of laws has truly been stated to be "a subject on which scarcely any two writers are found entirely to agree, and on which it is rare to find one consistent with himself throughout". Rather than listing differences of opinion or emphasis, it seems preferable to note and enlarge on one or two criticisms which seem deserving of comment. The first concerns the chapter of jurisdiction and interstate service; the second, that on full faith and credit. In the chapter on jurisdiction there is a discussion of some eight pages on the appropriate manner of dealing with objections to jurisdiction consequent upon service under the Service and Execution of Process Act. While this is not an unimportant matter, it may be doubted whether its significance justifies the extended treatment given to it, particularly when one reminds oneself that only half as much valuable space is devoted to the critical difficulty which arises in relation to jurisdiction in tort actions, that of determining the place of the commission of a tort (e.g., *Order 11, R.S.C. (S.A.)*), the place where an act for which damages are claimed was done (*Service and Execution of Process Act*, s.22(1)(d)), or the place where a cause of action arose (*Order 10, r. 1(a) R.S.C. (N.S.W.)*). The different formulae referred to are treated as if they were one, the author (Mr. Hanks, in this case) stating simply that he "cannot see how any substantial distinction can be drawn". But the fact that such different verbal formulae have been used and persisted in gives some cause for belief that different concepts are involved, and courts do recognise this fact, even though the Privy Council did not do so itself in *Distillers Co. v. Thompson* ([1971] A.C. 458), simply because the need did not arise. It is certainly not sufficient to dismiss the analytical problems created by the stated differences as being worthy only of those "who are adept at, and inclined to, esoteric semantic arguments."

Turning to the chapter on full faith and credit, the section dealing with the effect of the doctrine on choice of law might be thought rather too descriptive in some respects. The Australian cases are discussed at length,

reference also being made to Cowen's and Sykes' views on the matter. But the relevance of full faith and credit to the recent tendency of state legislatures unilaterally to set their own territorial limits (e.g., s.6, *Consumer Transactions Act*, 1972-1973 (S.A.)), and even of courts to determine the territorial scope of legislation other than by reference to traditional choice of law rules (e.g., *Kay's Leasing Corporation v. Fletcher* (1965) 116 C.L.R. 124), is barely covered. There will clearly be cases now in which both South Australian and New South Wales law "claim" application to a given set of circumstances, yet no guidance is offered by the author (Dr. Pryles in this case) for the solution of such difficulties, although the relevance of Phillips' views on full faith and credit ((1961) 3 *Melb. U.L.R.* 170, 348) are noted by him. It is at this level, of course, that an ambiguity appears in the requirement to give full faith and credit to sister state laws: is it faith and credit to the substantive laws or to their territorial claims, and, if the latter, in what manner are these to be determined? American cases offer less than adequate guidance to one grappling with these and similar problems in Australia, partly because American courts have adopted quite inconsistent stances at different periods, and partly because the more recent decisions have been concerned with conflicting interests and policies, not conflicting territorial claims in the conceptualised form of express or implied localising rules. And this is important, because a balancing of interests may be possible without recourse to full faith and credit, but not a balancing of rules, if only because the forum simply may not, federal constitutional correctives apart, decline to recognise the claims asserted by its own legislature. What was Currie's most controversial view, that forum law should be applied in all cases where the forum possessed a substantial interest in the outcome of a given case (*Selected Essays* (1963) at pp.181 ff.) is, where interests are conceptualised in the form of localising rules not only uncontroversial, but demanded by the doctrine concerned with the supremacy of parliament (Kelly, *Localising Rules in the Conflict of Laws* (1974) at p.27).

One final word on the style of the publication of the book. It is becoming increasingly common for authors to present their work, as Pryles and Hanks have done, in the numbered paragraph form. With this one should not cavil, even if one's preferences lie elsewhere, for it serves certain rational ends. Unfortunately, the reviewer was unable to detect a similar basis for the method of locating case references, in a seemingly haphazard fashion, sometimes in the footnotes, at other times in the body of the text. Fortunately, the quality of the book is more than sufficient to compensate for such stylistic distractions.

D. St. L. Kelly*

JESSUP'S LAND TITLES OFFICE FORMS AND PRACTICE (5th edition), by J. G. Maher. Law Book Company, 1973, 1-442 pp.

An academic review of what is essentially a book of forms may seem misconceived. However property law depends on procedure almost as much as substance and there is much to be learnt from the practices of the South Australian Lands Titles Office. Furthermore, this work, universally referred to as *Jessup*, has already been reviewed from the practitioner's point of view (F. R. Fisher, (1974) 48 A.L.J. 158) and deference is given to the comments in that review as to the accuracy of the book's portrayal of existing practice.

* Reader in Law, The University of Adelaide.

It is also unfair to describe *Jessup* simply as a book of forms. The book contains comments on each form and these comments enunciate legal principle on which Lands Titles Office practice is based. Three comments are of particular interest to this reviewer.

The comments relating to caveats cover an area where judicial pronouncements in recent times have created uncertainty. On pages 290 to 295 *Jessup* describes the type of interest which is sufficient to support a caveat. These passages suggest that any interest in land in law or in equity is sufficient to support a caveat. This suggestion is contrary to statements by the Privy Council in *Miller v. Minister for Mines* ([1963] A.C. 484) and by Barwick C.J. in *J. & H. Just (Holdings) Pty. Ltd. v. Bank of New South Wales* ((1971) 45 A.L.J.R. 625). It would now seem however that a distinction must be drawn between the caveat provision in the statutes in those cases and caveat provisions similar to s.191 of the South Australian Real Property Act (*Osmanski v. Rose*, noted 48 A.L.J. 360). Because of this distinction the assertions in *Jessup* may be supported for South Australia. However on the matter of caveats, *Jessup* asserts (p.291) that the application must state the interest claimed and that mere general words are insufficient. The case of *Re Fairlie* ((1959) 76 W.N. (N.S.W.) 475) is cited as authority for these statements. However it should be noted that *Re Fairlie* was distinguished by Joske J. in *Gasiunus v. Meinhold* ((1964) 6 F.L.R. 182). His Honour pointed to the words of the Schedule of the Australian Capital Territory's Ordinance which required that only the nature of the interest be set out. Despite some ambivalent language in the relevant section of the Act, Joske J. held that these words in the Schedule meant that the rule adopted in New South Wales was inapplicable. The Twelfth Schedule of the South Australian Real Property Act also requires a statement of only the nature of the interest claimed. Moreover s.191 is silent on the issue. Consequently the position in South Australia seems to accord with that in the Australian Capital Territory rather than that in New South Wales.

Part VIIA of the Real Property Act, introduced in 1945, enables persons in possession of land to obtain a registered title where the current registered proprietor makes no objection to that registration. Section 80a gives a right to apply for a certificate of title to persons who would have obtained title by possession to any land if that land had not been subject to the Act. In view of the established principle that Anglo-Australian Statutes of Limitation destroy titles but do not create titles, it is not easy to interpret this section. Consequently the second passage in *Jessup* of particular interest is that specifying what an applicant under s.80a must establish. *Jessup* informs us that an applicant must establish actual, continuous and exclusive possession for a period of thirty years, or, if the absence of disability on the part of the registered proprietors is proved, for a period of fifteen years. Essentially these requirements accord with what is necessary to destroy a general law landowner's title.

Thirdly, *Jessup* provides clarification of that curious clause in s.81 of the Real Property Act which provides for the registration of a statement "that the person therein named is entitled to any easement in gross". History tells us that this section was first written before the characteristics of easements were settled. We learn that the section has been restrictively interpreted. "If an easement over land under the R.P.A. is granted as appurtenant to land under the general law, or as appurtenant to land in an agreement for sale and purchase with the Crown, then a certificate of title for this easement "in

gross" may issue. It will be made clear in the certificate of title that the easement is appurtenant to certain land" (p.209).

It is in relation to issues of this sort that fruitful reference to *Jessup* can be made. Consequently the work's value to practitioner and academic alike is undoubted. If the comments do not provide a thorough analysis of these issues no complaint is called for: the book does what it claims to do, that is to provide a guide to Lands Titles Office practice. However it is not so easy to excuse the absence of academic comment on the many issues arising from the Torrens System. It almost seems that academics have not passed the point of the original practitioner opposition to the system. Recent years have produced Sackville and Neave, *Property Law Cases and Materials*, but that is a student casebook, and Francis, *Torrens Title in Australasia*, but that is little more than a collection of references. In many important cases differences between the Torrens System statutes in the various States may produce different results: the issue of caveats has already been referred to; s.69(11) of the South Australian Real Property Act may retain deferred indefeasibility despite *Frazer v. Walker* [1967] 1 A.C. 569; *Anthony v. Commonwealth* (1973) 47 A.L.J.R. 348 indicates that the South Australian Act does not recognise easements acquired by long user (doctrines of prescription and lost modern grant). Issues such as these deserve reasoned comment.

Finally a reviewer of *Jessup* is led to reflect on its limited usefulness for information on the intricacies of land transfer. Again this comment is not a reflection on the work itself but on the extent to which the law relating to land transfers has grown outside the Torrens System. The Regulations under the Land and Business Agents Act 1973 drive home the point that investigation of title covers many matters outside the Real Property Act. Some of the opposition to the Land and Business Agents Act seems to this writer to be wrongly directed. The information which that Act requires to be obtained is all information which is significant for a purchaser. What we have done is to allow the Torrens System Certificate of Title to be deceptively devoid of information about title.

*Anthony P. Moore**

AUSTRALIAN TOWN PLANNING LAW—UNIFORMITY AND CHANGE, by *A. S. Fogg*. University of Queensland Press, 1974, pp. 1-706.

URBAN LEGAL PROBLEMS, by *L. A. Stein*. Law Book Company Ltd., 1974, pp. 1-547.

The problems of land-use control in sprawling urban Australia have been thrust into prominence as part of the environmental concern which has developed in recent years. The appearance of two works devoted to this issue is therefore timely. It is pleasing for the future of legal research in the area to note that both works were assisted by research grants.

Australian Town Planning Law is an attempt to set out, analyse and compare existing Australian legislation regulating land-use by means of town-planning controls. Some reference is made to planning laws in England and the United States, particularly to the legal force of planning schemes and

* Senior Lecturer in Law, The University of Adelaide.

the appellate process in England, and to amortisation in the United States. The value of the work will undoubtedly be that it provides a clear and accurate statement of town planning law throughout Australia. The work covers all major points relating to the control of land-use by town planning laws but not control through other laws such as those relating to coastal protection or air pollution. Probably the most valuable sections are those relating to the nature of zoning and to planning appeals where Mr. Fogg canvasses a wide range of possibilities.

The analysis of the relevant laws is generally thorough and accurate. The work does concentrate on the statutory provisions rather than their interpretation or implementation but the author justifiably points out that an examination of these matters would have taken the work beyond manageable proportions. One area where I believe greater clarity and precision could have been obtained is that of the protection of existing uses of land (pp.200-206). There have been a number of important cases on this topic and they appear to divide it into three parts: what is the nature of the use? over what area does the use extend? has the use continued without a break? The case-law provides guidelines (which are not always satisfactory) for answering these questions, but these guidelines are insufficiently explained by the writer. There is also some conflict between the principles discussed in parts five (permission for expansion of existing uses) and six (amortisation) of the chapter on existing uses, but this conflict does not appear to be recognised. Indeed the author completely avoids the issue of when the alteration or expansion of existing uses should be permitted.

The author has for some time been concerned with the problem of relationship between subdivisional and planning approvals but the analysis of this problem is disappointingly superficial. The author points out that in strict legal theory subdivisional approval will not bind the exercise of discretion in considering a planning application (pp.99-101). He argues that titles are but documents and do not affect land-use. This analysis firstly ignores the fact that a planning authority should not and generally does not act arbitrarily so that it is not a simple matter for an authority to change its reasoning. Furthermore, separate ownership of parcels of land, made possible by subdivisional approval, has a significant impact: the area of land owned by any individual may be reduced below that which is economically viable for rural activities; each owner has an investment on which he will seek some return, it is difficult to deny him the right to erect at least a dwelling-house, and dwellings may represent an environmental hazard in sensitive areas.

The author also shows a lack of sensitivity to the role of the public in the planning process. He discussed this issue in relation to the preparation of planning schemes (pp.143-147), third party appeals (pp.366-374), and redevelopment proposals (pp.406-420). In all instances the author considers that the need for full public participation is outweighed by the convenience of planning authorities. He justifiably points out that the planning process is already slow and cumbersome. However, many people believe that unless full public participation is possible, planning should not be undertaken at all. The frustrated Hackney Project to which the author refers (p.409) appears to this reviewer to have been an attempt to achieve engineering and architectural aims at the cost of other social considerations. The author does not consider whether the methods of public participation could be made more effective.

This criticism leads to a more general comment on the work. The author sets out and analyses existing laws and generally does that well, but he then goes on to suggest a preferred law for all States. I believe that at that point he goes beyond what his material justifies. I have pointed out that the interpretation and implementation of the laws is not examined. Consequently the author can rarely say which law is effective in achieving the purposes for which it was enacted. He operates at too theoretical a level for such conclusions: thus he discusses the exercise of administrative discretions (pp.253-257) without examining the issues on which authorities are given discretion or the ways they currently exercise such a discretion. It would be useful to look at an issue such as home-unit development and discover the extent of administrative discretions and the considerations significant in their exercise. Then some reforms might be suggested, but the author is a long way from that point. He also works on a general presumption in favour of uniformity of Australian law but at the end, at least to this reviewer, the case for uniformity is unconvincing.

If *Australian Town Planning Law* represents something of a planning administrator's guide, *Urban Legal Problems* presents a dazzling array of approaches to town planning problems. *Urban Legal Problems* contains a selection of extracts on the topics with which it deals and in addition Mr. Stein provides an illuminating and incisive commentary. The work covers much the same ground as *Australian Town Planning Law* but has a valuable first chapter on local government organisation and finance. The reader will find that *Urban Legal Problems* provides convenient summaries of and references to more detailed studies of planning problems. The work shows a keen appreciation of Australian conditions and utilises a good deal of primary material for which very little adequate reference guidance is otherwise available. The two areas this reviewer found most challenging were those relating to land taxes (including rates) and to grounds of planning control. Australia has experimented with various forms of land taxes and in particular with rating based on unimproved capital value and Mr. Stein has gathered a great deal of previously unrelated material. His treatment of planning control again reveals an attention to detail and for example analyses in depth control on the basis of prematurity and preservation of open spaces.

The work presents a range of possibilities for planning control; it is questioning rather than expository and a reader should not expect to derive an appreciation of the manner in which any current planning control system works. Although the author presents material from all States it is difficult to appreciate the interrelationship of various controls. This difficulty is accentuated by a disjointed arrangement of the materials and some peculiar chapter titles. Thus the topics of zoning, implementation of planning schemes and exercise of administrative discretion appear in widely separated parts of the book although they may jointly operate in any one situation. Furthermore, the work uses short extracts to bring out a major point and rarely works through from a fact situation to its resolution so that, again, overall perspective of a problem is lost.

Although the title *Urban Legal Problems* suggests a coverage beyond planning law the only real extension is the opening chapter. Even in the area of what could strictly be regarded as planning law the work deals only fittingly with new towns (pp.296-297). Its sole venture into broader environmental controls is a short extract relating to clean air regulations (pp.235-238). In both instances it is very difficult to see that the references contain sufficient

information to merit inclusion. Indeed the reference to clean air regulations may be misleading in that they are but one species of environmental regulation: there are for example controls of noise, of emissions into waterways, and of the erection of out-door advertisements. The proposed introduction of environmental impact assessment legislation throughout Australia (discussed elsewhere in this journal) gives a new dimension to environmental regulation. However, these comments reflect more the scope of environmental law than a criticism of the book.

Both these works will assist persons working in or interested in planning law. Essentially *Australian Town Planning Law* provides a statement of existing planning law in all States. *Urban Legal Problems* presents questions and references on important issues of planning law. The two works should be complementary. *Australian Planning Law* is a good reference source for students and practitioners; *Urban Legal Problems* is an ideal casebook for students and a challenge to anyone involved in the environmental issues of urban planning.

Anthony P. Moore*

FREEDOM IN AUSTRALIA, by E. Campbell and H. Whitmore, Sydney University Press, 1973, i-xi, 1-488 pp. Cloth \$15.00, paper \$10.00.

The latest edition of Campbell and Whitmore is a welcome addition to the Australian literature upon civil liberties. It is welcome because it provides a comprehensive account of topics which are of much greater importance than the scant serious writing in Australia suggests. Furthermore, substantial refinement has led to an increase in the value of the book for those who do take these topics seriously.

The authors claim that their book has been written mainly for non-lawyers, but success in this regard has not prevented them from also making a valuable contribution to the law. No less can be said of a good commentary in an area neglected by other legal writers. But there is much more, largely because constant attention to relevant social and political background has avoided the distorted perspectives of a more conventional approach to legal writing.

One possible criticism is that the authors' discussion of the law is not always even in its attack. On several occasions there are signs of undue satisfaction with things as they are (e.g. contempt by scandalizing the court; misprision; criminal trespass upon land). Some may detect instances of what they consider to be one-sided commentary (e.g. parts of the chapter on bills of rights; the treatment of the exclusionary rule) and insufficient attention to prominent points of opposition (as in relation to denial of bail for the purpose of preventive detention).

As a source of reference to further material *Freedom in Australia* is very useful, but those who would like to see it function as a select bibliography may want more. For example, in chapter one reference might be made to materials upon the relevance or otherwise of public opinion polls in a democracy. The literature upon civilian review boards might attract more notice in the chapter upon the police. On Australia's security, and political responses thereto,

* Senior Lecturer in Law, The University of Adelaide.

attention could be drawn to the parliamentary debates upon the injudicious 1960 amendments to the Australian Crimes Act. A very good account of bail is to be found in the Cobden Trust's book, *Bail or Custody*. But preparing a select bibliography is a long task, and, if it is to be pursued, requires the incentives of authorship.

The need for a good book of this type, together with the forces of contemporary change (already parts of the book are out of date), invite the hope that the third edition of *Freedom in Australia* will take much less than another seven years to appear.

W. B. Fisse*

CRIMINAL LAW, by J. C. Smith and T. B. Hogan, Butterworths, 3rd ed., 1973, i-xciii, 1-678 pp.

Smith and Hogan have updated their comprehensive statement of English substantive criminal law. Like its predecessors, the third edition is a useful, sometimes very useful, book which, on its home ground, has no present competitor.

One possible source of disappointment is that criticisms of the present law and questions of reform are given little space. Thus, conspiracy is presented without proper disclosure of its weaknesses and the possibility of a suitable replacement. The same is true of complicity. Recklessness is taken up without sufficient advertence to the place and function of this concept in criminal responsibility. In provocation, the ordinary man test receives justified criticism, but the authors' handling of proposals for a subjective test is accomplished without due enquiry about qualifications which may need to be introduced. These are but examples of an approach which, by reason of inconstant concern with things as they might or should be, is not as interesting or educative as might be desired in a book this size.

Debate upon the mental element of crime is endless but, given the level of our present understanding, perhaps not unprofitable. The following are minor points of criticism of Smith and Hogan's valuable exposition.

1. Recklessness is introduced as a general concept of importance but is sometimes allowed to pop out disguised (as in the presentation of conspiracy).
2. The concepts of knowledge, belief, suspicion and wilful blindness are examined with less than equal rigour.
3. The treatment of negligence at pages 61-3 needs further elucidation (including possibly the application of Dubin's distinction between prescriptive and conformance negligence—contrast the unhelpful statement at page 63 that "negligence is the central feature of [offences such as driving without due care and attention]").
4. The account of "social danger" in relation to the interpretation of regulatory offences falls short of the standards of intellectual honesty set elsewhere in the book.
5. The examination of reform of the law upon fault in regulatory offences is less than successful because it fails to proceed upon the basis of a

* Senior Lecturer in Law, The University of Adelaide.

fundamental enquiry into the various different purposes served by regulatory legislation.

6. The definition of mens rea in terms of mistaken belief at page 81 fails to reflect one unhappy lesson of *Maher v. Musson* and *Proudman v. Dayman*—to state that mens rea is lacking where D has an honest belief in a state of facts, which, if it existed, would make his act innocent, is misleadingly elliptical (as a matter of principle, ignorance and absence of positive belief must also be sufficient, assuming D is not reckless or wilfully blind).
7. The attempt to rationalize *Johnson v. Youden* with such cases as *Creamer* and *Betts v. Ridley* is unconvincing, failing as it does to take account of a contrary (and, in the opinion of the reviewer, more obvious) interpretation of the common law (note the reasons given by Dixon J. in *Thomas* when rejecting *Wheat and Stocks*).
8. The central discussion of causation is elusive on the connection with the mental aspects of liability, but at page 298, in another context, the opinion is advanced, perhaps ill-advisedly, that reasonable foresight is relevant to causation in respect of the offence of assault occasioning bodily harm (cf. *Hallett*).

Authors' selections of references to case-law, texts, and periodical literature can never be perfect, if only because of the obsessions of reviewers. The following suggestions, perhaps, reflect obsessions.

1. On morality and the criminal law, reference should be made to Lucas, *The Principles of Politics*, where, in a few concise pages, the Hart-Devlin debate is reduced to size.
2. Brett's article upon ignorance or mistake of law warrants at least a note.
3. *Thomas* deserves mention in respect of compound events of fact and law (note the instructive differences between the approaches of Latham C.J. and Dixon J.).
4. *Kain and Shelton Pty. Ltd. v. MacDonald*, *Mayer v. Marchant*, and *Law v. Deed* could be cited to advantage in the section upon regulatory offences.
5. Buxton's comments upon the reform of complicity should be recommended further reading.
6. Leigh's book upon corporate criminal liability in English criminal law seems a surprising omission.
7. *Stones* and other New South Wales cases upon intoxication could be cited to reinforce the authors' views as to what the common law in England should be.
8. On conspiracy, *U.S. v. Dege* (a Supreme Court decision contrary to the statement, at page 180, of the position in the U.S.A.) and Hadden's work upon conspiracy to defraud are difficult to pass without notice.
9. Increased reliance upon the writings of others (e.g. Glanville Williams, Graham Hughes) could clarify the account of impossibility in attempt.
10. The commentaries in the Tentative Drafts of the Model Penal Code and the Working Papers of the recent U.S. National Commission on Reform of Federal Criminal Laws contain much useful material of note.
11. On perjury the N.Z.U.L.R. articles by F. B. Adams provide a very thorough account.

12. The judgments of the South Australian Supreme Court in *Samuels v. Bosch* would illumine the discussion of brothels.

From an Australian stand-point, Smith and Hogan is primarily a ready means of access to English substantive criminal law. A useful complement to Colin Howard's *Australian Criminal Law*.

*W. B. Fisse**

THE LAW OF CONTEMPT, by G. J. Borrie and N. V. Lowe, Butterworths, 1973, i-xxxix, 1-401 pp.

Borrie and Lowe's book is notable as a contemporary detailed examination of the law of contempt. There is no question that it is a leading work, to be placed close at hand to Fox, Frankfurter and Greene, Goldfarb, and the recent U.K. Report of the Committee on Contempt of Court. However, it is not as critical or constructive as a specialized work should be. Questionable aspects of the existing law tend to be accepted by the authors rather too readily. Questions of reform are taken up with less care and attention than is needed to counteract contempt's over-protective judicial fostering.

Examples of undue subservience to the status quo are scattered throughout the book, but nowhere are more evident than in the treatment of scandalizing the court. What matters here, it would seem, is manners and form, not substance. Furthermore, manners and form need improvement when the courts are feeling glum: "[The Court of Appeal's decision in *R. v. Metropolitan Police Commissioner, ex parte Blackburn* (No. 2)] demonstrates that in recent times, when the courts are confident of their stability and strength, scope for comment on the actions of the courts and the conduct of the judges is quite considerable."

On questions of reform, Borrie and Lowe have not discussed continental approaches, nor the fundamental proposals of Goldfarb. There is also more to be said about the issues raised by *Heaton's Transport* and *Sunday Times*; it is unfortunate that these important decisions occurred so close to publication.

*W. B. Fisse**

* Senior Lecturer in Law, The University of Adelaide.