

is anything but complete, and here as elsewhere, Professor Street suggests rules to fill the gaps. It is interesting to notice that in the very recent Victorian case of *Lloyd v. Lewis*,<sup>3</sup> Pape J. decided that a father is entitled to recover the costs of medical expenses he has paid out in respect of injuries suffered by his child from the tortfeasor responsible. The learned judge so decided on the basis that the father has an independent cause of action, which vests in him because of his obligation to maintain the child. This is Professor Street's conclusion also, on page 223, to which it appears Pape J.'s attention was not directed.

The last chapter of this book is concerned with 'Alternative Remedies', and compares and contrasts the rules for computing damages in contract and tort, tort and quasi-contract, and finally in an action for an account. This ultimate part deals with a remedy which is often unknown to practitioners, though it is of the greatest importance in, say, a passing-off action. Professor Street notes the dearth of English writing on this remedy (page 259, n. 77); his work is an immediate easing of the drought.

In conclusion let me say how pleasing it is to find a constant reference to judicial and academic opinion in common law jurisdictions outside England. There is a great deal of Australian material which Professor Street uses, and this alone makes this book more valuable to the Australian reader than other English texts on damages. Australian reviewers have often lamented the insularity of the English academic; how pleasant to see that that plaint can no longer generally be made. When one recalls that there is much more frequent judicial reference<sup>4</sup> to Commonwealth cases these days, it is perhaps proper to conclude that the common law world has come of age at last, and that the parent can learn from the children, as well as continue to teach them.

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*Australian Federal Politics and Law 1929-1949* by GEOFFREY SAWER, B.A., LL.M. (Melb.), (Melbourne University Press, Melbourne, 1963), pp. 1-244. Price £3 10s.

This volume is the second instalment of Professor Geoffrey Sawer's detailed survey of the political and legal development of Australian federalism. Together with its companion volume *Australian Federal Politics and Law 1901-1929*, which was published in 1956, it is an essential reference work, and research tool, for anyone who pretends an interest in the political and legal history of the first fifty years of the Commonwealth of Australia. Between them the two volumes constitute a selective index to the Commonwealth Parliamentary Debates, Commonwealth Parliamentary Papers, and the Commonwealth Law Reports for that period. But it is an index of a special and extremely useful type because it contains explanatory background material to enable the user to appreciate the significance of the indexed material.

The arrangement is chronological and the life of each Parliament con-

<sup>3</sup> [1963] V.R. 277.

<sup>4</sup> See, for instance, the references in *Director of Public Prosecutions v. Smith* [1961] 290, 334 (referring to the judgment of Martin J. in *The King v. Miller* [1951] V.L.R. 346); and *Attorney-General v. Clough* [1963] 2 W.L.R. 343; *Attorney-General v. Mulholland*, *Attorney-General v. Foster* [1963] 2 W.L.R. 658; (all referring to the judgment of the High Court in *McGuinness v. Attorney-General of Victoria* (1940) 63 C.L.R. 73).

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stitutes a chapter. Thus in the volume under review chapter one deals with the Twelfth Parliament which sat between 1929 and 1931 and the last chapter deals with the Eighteenth Parliament which sat between 1946 and 1949. Within each chapter, or Parliament, Professor Sawyer classifies his materials under the following six headings: Parties and Policies; The Government; Acts and Bills; Budgets; Motions; and Constitutional Issues. This is a very useful classification system for reference purposes as it not only makes the book easy to use but reduces overlapping to an absolute minimum. However as the general arrangement is rigorously chronological this system runs the risk of being far too staccato because of its lack of continuity. An example will illustrate what I mean. If the reader wants to trace the High Court's interpretation of section 92 of the Constitution between 1929 and 1949 then it will be necessary for him to read several pages of text in each of the seven chapters of the book to do so. Now this may be a small price to pay for the advantages in terms of clarity and socio-legal good sense that flows from linking legal decisions to the political and economic climate in which they were given. With less dramatic subjects, however, like the Parliamentary history of the Income Tax Assessment Act, this chronological approach can only work successfully on the assumption that there is a good index at the back of the book to refer the reader to the relevant pages. Professor Sawyer has provided such an index, or rather series of indexes, with the result it seems to me that he has overcome many of the disadvantages of the chronological approach. The first index is a consolidated table of cases which brings together all the cases cited in the two volumes. The second is a consolidated table of statutes which lists the various statutes passed by the Commonwealth Parliament which are referred to in both volumes. The third is a subject and name index. Curiously this last and most important index is not consolidated with the index of the first volume. This is most unfortunate and is a quite unnecessary impairment to the efficient use of the two volumes. Furthermore the subject and name index is not as detailed or well arranged as it might have been. It purports in just over 7 pages to unlock 223 pages that are just crammed with factual material. This is precisely the same space given to the table of statutes!

When such an enormous amount of time and energy is expended on such a valuable enterprise, and how boring and mechanistic it must have been, it borders on ingratitude to ask for more but yet that is what a reading of this book invites. Like Oliver our appetite has been whetted but not satiated. The work is entitled, *Federal Politics and Law*, and yet we only see the working and problems of one side of the federal compact—the Commonwealth side. What of the States? Two World Wars, a depression, the Uniform Tax System, the *Engineer's Case*, sections 96 and 109 of the Constitution all may have somewhat dented the importance of the States but they are still partners in the federal compact. Leaving them out tends not only to make Professor Sawyer's book that much the less valuable but it also tends to distort his treatment of Commonwealth politics and finance. Our appetites are similarly stimulated yet not satisfied by continual references to law reports, parliamentary papers and parliamentary debates. There develops a yearning for reference to newspaper editorial comment on the subjects being discussed, for references to pamphlets, magazines, and books. But with the single exception of policy speeches by party leaders at election time Professor Sawyer does not

venture beyond his chosen sources. One gets the same feeling as that which comes from looking at an X-ray photograph of a beautiful woman. You are shown the skeleton but something seems to be missing.

These two comments, they are not criticisms, only go to the question of how much more useful the book might have been. They do not go to the value of what Professor Sawyer has given us. On that point I have only one reservation. This reservation stems from a question which kept returning to me as I read this book: who is it written for? Is it written for the enquiring layman? For the reference shelf? For the amateur or professional scholar? Or for whom? What prompts these questions is the fact that Professor Sawyer often steps out of his guise as cataloguer to thrust a critical dagger through his subjects. It is almost as if the boring task of cataloguing becomes too much for him to bear. Thus Sales Tax is damned as 'a regressive impost' (page 10); judgments of the High Court are written off as 'pedantic' (page 38), or 'strained and improbable' (page 66), or 'probably wrong' (page 154), or riddled with 'hopeless confusion' (page 66); Justices of the Court 'incomprehensibly' dissent (page 69); governments are 'absurdly timorous' (page 62); Labor members indulge in 'brainless outcries' (page 90); politicians fling 'hysterical accusations' (page 147), or indulge in 'grotesque distortions' (page 172), or make allegations that are 'disgraceful and completely untrue' (page 208); and so one might go on. Now all of these critical judgments may or may not be right. Professor Sawyer however does not set out the basis on which these judgments are made nor gives us any reasons to support them. They are merely categorical assertions standing in the midst of this otherwise dull and dry catalogue of political and legal events. Now if the book is to be used by a layman this technique is open to serious objection. The judgments are not carefully dissociated from factual statements and there is thus the danger that Professor Sawyer's assertions will be taken as factual. If the book is to be used by scholars they are denied the opportunity of examining the reasoning that lies behind the assertions. This seems to me to be a fundamental criticism of the book. It is not content to be a catalogue and yet, in that it is anything more, it is most unsatisfactory. The very quality of Professor Sawyer's style—his characteristic clipped terseness—that enables him to digest twenty years of political and legal history into 223 pages constitutes a defect when he interjects his evaluations of the events he is digesting.

Despite this criticism the book is an invaluable reference tool. The criticism only means that it must be used with some care. But if Professor Sawyer's interjections tend to be out of place in this particular book one can imagine a book in which they would be its very heart. That book, for which let us hope *Australian Federal Politics and Law 1901-49* is a skeleton, would give us Professor Sawyer's closely reasoned analysis and evaluation of the first fifty years of our federation. Parliament and the High Court would not be surgically severed as they usually are but would be seen as partners in the working out of the federal relationship in Australia. Let us hope too that the States would be admitted to the partnership. Professor Sawyer is one of the most perceptive observers of Australian federalism and such a book from him will be anxiously awaited.

Perhaps the most delicious footnote in the book under review concerns the present Chief Justice of the High Court. With *The King v. Brisbane*<sup>1</sup>

<sup>1</sup> (1935) 54 C.L.R. 262. In this case Latham C.J., Rich, Evatt and Starke JJ. held,

in his mind Sir Owen Dixon was heard to say to a brother Justice on leaving an orchestral concert run by the Australian Broadcasting Commission at the Sydney Town Hall: 'Very fine, but I still can't see what this has to do with posts, telegraphs, telephones and other like services'<sup>2</sup>

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*An Inquiry into Criminal Guilt*, by PETER BRETT, LL.B. (Lond.), LL.M. (W. Aust.), s.J.D. (Harv.), (The Law Book Company of Australasia Pty Ltd, Sydney, 1963), pp. i-xvii, 1-228. Price £2 18s.

For want of a publisher, valuable dissertations too often lie unknown or virtually inaccessible in university libraries, and it is a happy circumstance that Professor Brett's thesis for the degree of S.J.D., Harvard, now appears in book form through the Law Book Company's commendable policy of encouraging works of scholarship. It deserves a warm welcome, for it is a lucid and fascinating examination of problems that lawyers tend to by-pass. In the 1960 Rosenthal Lectures, Lord Radcliffe remarked that the principles of law are, after all, no more than generalizations relating to human conduct, and he reminded us that the lawyer often stands too close to his subject to see in what direction he and his fellows are making.<sup>1</sup> The training and professional pursuits of a lawyer tend to produce an uncritical acceptance of legal assumptions regarded through long usage as fundamental, and the legally binding character of judicial pronouncements distracts attention from their customary conservatism. It is inevitable, of course, that legal thinking should be controlled in large measure by an attachment to the *status quo*. The human inclination is to take things for granted, and in any event it is easier to perceive the deficiencies of a system than to devise innovations that we can feel sure will produce better results; hence, *nolumus leges Angliae mutari*. But public respect for the law is a necessary condition of civilization itself, depending upon the law's ability to satisfy the ordinary man's feeling for justice and his insistent demand that this feeling should be visibly vindicated in the courts. This is particularly so with the criminal law, whose basic postulates are examined in this essay.

Dicey remarked somewhere that statute law reflects the public opinion of yesterday, and judge-made law the opinion of the day before. He was speaking of the nineteenth century, but Professor Brett would consider the comment still has substance. He describes his purpose as, firstly, to isolate and examine the underlying assumptions of the criminal law, and to show how they came to be accepted; next, to demonstrate that these assumptions have been proved unsound in many respects; and finally, to devise a basis upon which we may grapple with the problems of criminal responsibility in a fashion acceptable to the understanding of the ordinary citizen as well as of those professionally concerned with them. It is a praiseworthy undertaking, vigorously and learnedly performed. He finds the purely formal approach to the definition of crime inadequate, and

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over the dissent of Dixon J. (as he then was), that s. 51 (v) gave the Commonwealth power to regulate radio broadcasting. S. 51 (v) provides that the Commonwealth Parliament has power to make laws with respect to 'Postal, telegraphic, telephonic, and other like services'.<sup>2</sup> N. 91, p. 64.

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<sup>1</sup> *The Law and Its Compass* (1961) 78.