individual interest was present in *MacDonald* v. *Cain*[10] and in *Collins* v. *Minister of Interior*;[11] it was absent in *Clayton* v. *Heffron*[12] and *MacCormick* v. *Lord Advocate*.[13] *Trethowen's Case*[14] would be considered a case of political interests and the High Court has expressed grave doubts as to the use of injunctions in such cases.

To some degree the book as a whole accords with the regard of the Scots for tradition and traditional ideas. English and American writers have decried the modern significance of the separation of powers doctrine; to them it is so remote from reality as to be irrelevant in the twentieth century. In Australia, adherence to the doctrine has produced some remarkable verbal gymnastics. Professor Mitchell believes that the doctrine "has both a functional and a theoretical basis and remains important".[15] However, he warns that it must not be regarded as a principle to be applied universally; it is essentially a matter of degree. Little value is seen in the constitutional entrenchment of guarantees of fundamental liberties.[16] Restrictive interpretation of statutes is argued to give a similar result. Discussion of the fundamental liberties is confined to one short chapter,[17] and is certainly inadequate. The malaise resulting from the failure "to develop a system of public law adequate to the demands of a modern state"[18] is fully discussed, but the suggestion that the malaise be relieved by appointment of an Ombudsman is coldly received. "It does not appear that such an official could do anything to make good the deficiencies of the law." Reliance can only be placed on the traditional institutions—the Parliament and the courts. In fairness it must be admitted that Professor Mitchell envisages a major break with tradition in the institution of a genuine administrative jurisdiction capable of evolving a new substantive law.

This first modern book on the Constitutional Law of Scotland is a very welcome addition to the works available in this general area. The numerous references to Scottish case law are likely to be of especial value to the practitioner and to the research scholar. The aim of the author is true.

H. WHITMORE.*

Administration of Assets, by R. A. Woodman, LL.M., Senior Lecturer in Law in the University of Sydney. Law Book Company of Australasia Pty. Ltd. 1964. xix and 220 pp. and Index (£3/5/0 in Australia).

The administration of assets is a subject which deserves a book to itself. Every practitioner who has been called upon to advise on an administration problem, and every person whose unhappy lot it has been to endeavour to teach the subject to law students, has long felt the acute need of a major and definitive work.

The subject is complicated enough. Most of the legislation, both in England and Australia, is comparatively recent, and as obscure and ill-

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[10] (1953) V.L.R. 411.
[11] (1957) (1) S.A. 552 (A.D.).
[12] (1960) 105 C.L.R. 214.
[13] (1953) S.C. 396.
[14] (1932) 44 C.L.R. 394.
[15] At 37.
[16] At 9ff.
[17] Ch. 18.
[18] At 270.
* LL.B. (Sydney), LL.M. (Yale).

considered as anything on the statute book; such judicial decisions as exist are in hopeless disarray; the growing importance of stamp duty and Federal estate duty aggravates all the practical difficulties. Yet the subject is strangely neglected. Neither the standard works on wills (Jarman, Theobald, etc.) nor those on equity (Hanbury, Snell, etc.) do more than summarize inadequately the decided English cases. Mr. Woodman has, therefore, been presented with a challenging opportunity to give us a really first class text book. In the present reviewer's opinion, he has clearly failed in this although he has produced a book with many admirable qualities and one on which he has obviously spent a great deal of work and time.

One admirable quality is that his is the only modern work which sets out succinctly and in detail the old order of the application of assets as it obtained in England before 1925 and in New South Wales before 1931. The importance of this is very considerable as one can hardly evaluate the legal effect of amending legislation without a thorough knowledge of the law which it was intended to remedy.

Another quality for which we are all beholden to Mr. Woodman is that he has developed, almost as far as one can, an analysis of the problems which arise from Federal and State legislation to protect assets like life insurance policies and superannuation funds from the claims of creditors, which presents cases of artificial insolvencies.

Again, Mr. Woodman has gone to considerable pains to illustrate the practical consequences flowing from the varying judicial attitudes taken to administration problems in modern cases.

Yet Mr. Woodman's work is, in my opinion, unsatisfactory. In the first place, he argues his points in a fundamentally non-legal way. In every case, he asks "what would be a satisfactory *practical* result?" rather than "what is the law on the point?". For example, it is surely beside the point that a rejection of *Fuller* v. *Fuller*[1] would give "a far more reasonable result" (77) than an acceptance of the principles laid down in that case. The true question is, what result (if any) does the law require one to adopt on the question? The defects in this approach are particularly noticeable when Mr. Woodman deals with the operation of the doctrine of marshalling in cases involving protected assets. He makes no attempt either to discuss the numerous important judicial decisions on that question or to examine the basis of the principle of marshalling: he contents himself with an enquiry into what theory will yield "satisfactory" results (20-24). The defect in such an approach is that the law may not permit "satisfactory" conclusions, as the recent High Court decision in *Miles* v. *Official Receiver in Bankruptcy*[2] rather demonstrates (a decision which Mr. Woodman conveniently ignores). For similar reasons, his whole discussion of the sources from which legacies are payable is vitiated by a refusal to consider the principles of law involved.

In the second place, many important questions simply pass unnoticed. The difficulties of classifying options as assets of a deceased estate are not touched on, despite the existence of cases like *Re Eve*.[3] Again, the question of how far an artificially insolvent estate should be administered as if it were solvent is ignored. For example, if an estate's assets consist of the proceeds of a life insurance policy of £80,000 plus £20,000 worth of other assets; the liabilities are £50,000, some of which are, and some are not, payable out of the policy moneys; and if the deceased by his will directed that his estate

[1] (1936) 36 S.R. (N.S.W.) 600.
[2] (1963) 37 A.L.J.R. 86.
[3] (1956) 2 All E.R. 321.

be divided equally between A, who survived him, and B, who predeceased him, is there not something to be said for the view that the estate is not insolvent for all purposes? In circumstances like those in the example posed, might it not be put that the estate is to be considered as insolvent *qua* creditors and as solvent *qua* beneficiaries *inter se*? This problem, a very important one, passes unnoticed by Mr. Woodman.

Again, Mr. Woodman's chapter on Locke King's Act fails to consider the sort of questions which have much troubled English courts in recent years in cases like *Re Biss*,[4] *Re Cole*,[5] *Re Cohen*[6] and *Re Neild*.[7]

Finally, Mr. Woodman has disregarded the two immensely valuable and illuminating articles on administration problems of Mr. G. Boughen Graham[8] and of Professor Ryder[9].

R. P. MEAGHER.*

Magna Carta: Text and Commentary, by A. E. Dick Howard, Associate Professor of Law, University of Virginia, Charlottesville, Virginia, University Press of Virginia, 1964. 55 pp.

June 15th, 1965, was the 750th anniversary of King John's confrontation with the barons at Runnymede, which was to lead a few days later (on June 19th) to the affixing of the King's Great Seal to what we now know as Magna Carta. To commemorate the occasion, the Magna Carta Commission of Virginia has projected a series of about fifteen essays, each to be published separately in inexpensive pamphlet form, with the generic title of "Magna Carta Essays", under the editorship of A. E. Dick Howard, Associate Professor and lecturer in constitutional law and currently in legal philosophy at the University of Virginia Law School.

The present pamphlet is the first fruit of this project. It is valuable mainly for its clear, attractive, and convenient presentation of the 63 chapters of the Great Charter itself. This is preceded (after a short Preface by Lord Denning, M.R.) by a Commentary written by Howard, the core of which is a useful attempt at thematic organization of the rather diffuse contents of the Charter. The three main groups of chapters which emerge are those regulating the incidents of feudal tenure ("a kind of road map of English feudalism in the reign of King John"); those relating to courts and the administration of justice; and, very interestingly, those which in fact (though not, of course, by the barons' design) served to facilitate the English transition from the self-contained, relationally-organised structure of feudal society, to that of an expanding commercial community. This last group of chapters includes the affirmation of the "ancient liberties and free customs" of the cities, boroughs, towns and ports (c. 13); the guarantee to merchants of "safe conduct . . . free of illegal tolls" (c. 41); the grant of freedom to leave and re-enter the kingdom to all except prisoners, outlaws and enemy aliens (c. 42); the removal of fishweirs (c. 33); and the establishment of standard weights and measures (c. 35). There remain a miscellany of other matters not susceptible of easy grouping; but the sorting-out of the above three principal

[4] (1956) Ch. 243.
[5] (1958) Ch. 877.
[6] (1960) Ch. 179.
[7] (1962) Ch. 643. (As to which see O. M. Stone in (1963) 26 *M.L.R.* 652.)
[8] (1952) 16 *Conveyance and Property Lawyer (N.S.)* at 257 and 322.
[9] (1956) *Cambridge Law Journal* at 80.
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