student are necessary; so one must accept that too spacious a layout is not feasible. One further page could have been saved with no great loss to literature by omitting Mr. McCallum's anecdote and poem on pp. 14-15. Still, I suppose one can allow an author a literary indulgence of one page in 652.

In summary, this book is more than a collection of materials. It is a cohesive and well presented course in industrial law; but it is not the only possible course. If the content and emphasis of the course with which the reader is concerned closely corresponded with the content and emphasis in this book, the work should prove a useful and stimulating aid. But it does not seem to be intended as a general case book, and should not be expected to lend itself easily to adaptation to other ends by a lecturer.

G. J. McCARRY*

Cases and Materials on Real Property, by P. J. Butt, G. L. Certoma, C. M. Sappideen and R. T. J. Stein, The Law Book Company Ltd., 1980, xlvi + 667 pp. (including index). $46.00 (hard cover), $32.50 (limp).

The Australian history of casebooks, or more accurately books of cases and materials, is confined to the period since the end of World War II. It was only in the late 1940's that the American influence on Australian legal education began to manifest itself.

At the foundation meeting of the Australian Universities Law Schools Association (as it then was), held at the University of Sydney Law School on the 5th and 6th June, 1946, the meeting expressed itself as favourable to the preparation of casebooks with an emphasis on Australian cases and Geoffrey Sawer (later Professor) was invited to prepare a draft scheme for a casebook on Australian constitutional law.[1] In the discussion which took place year after year about teaching methods, the topic of casebooks was a constant item. There were clashes of opinion between those content with the still pervasive English (particularly Oxford) influence and those favouring the more probing American method. Some still thought it preferable to teach by lectures and compulsory tutorials and that the emphasis should be on an "academic" rather than a "professional" training.[2]

Then in 1951 Professor Zelman Cowen (now His Excellency Sir Zelman Cowen, Governor-General) raised urgently the question of casebooks, "as a means of avoiding wear and tear on law reports". A

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

[1] Tarlo, "Law Schools and Law Teachers in Australia: 1946-1974" (1975) 9 *U.Q.L.J.* 26, 27.

[2] *Id.* 28.

motion by him and Professor Julius Stone that steps be taken for the preparation of casebooks for use in all universities was put forward and, after considerable and heated discussion, was passed in an expanded form, but not without several dissents being recorded.[3] It is interesting to note, having regard to the book which is the subject of this review, that a great deal of opposition to casebooks came from the University of Sydney Law School. Further, in 1956, Professor Kenneth Shatwell, for many years Dean of that School, stated that the staff of the School were not prepared to use casebooks which were not compiled by themselves. This was accompanied by the cryptic remark that this was "a result of a study of the casebook method".[4]

In the light of this historical context, it is of special interest to consider the predecessor of the currently used Australian land law casebooks — the late Professor W. M. Harrison's *Cases on Land Law*.[5] In the preface to the first edition, Harrison stated that no uniform principle governed the selection and the treatment of cases; he hoped that a statement of the variety of purposes he had in mind would explain and perhaps to some extent justify the inconsistencies of treatment which, he thought, lay the work open to criticism.

The first of these was that it had been prepared at the request of the Australian Universities Law Schools Association, "which has encouraged the production of casebooks mainly in order to lessen competition amongst law students for use of the reports in law libraries, and the wear and tear on library copies of reports". Most of the cases selected were therefore leading cases which all students should read, rather than cases which raised problems and invited criticism. His view was that land law did not lend itself so readily to the casebook method of teaching law as some other subjects did. Nevertheless, the book contained, as he said, a substantial number of cases which could usefully be discussed and critically examined in class, and also questions and problems were included "partly to assist the teacher who varied 'straight' lecturing with exercises in class discussion, and also to assist students in their studies and discussion outside the classroom".

Harrison also pointed out that some of the leading cases were so formidable in bulk, or difficult of understanding, that to most students they remained little more than a name. Accordingly, he presented abridged versions of these cases, and he hoped that with the explanatory notes provided they might actually be read and understood. However, no attempt had been made to provide in the book a coverage of the law equivalent to what was to be found in a standard textbook, and it was assumed that students would be studying land law from a textbook as well as from cases.

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[3] *Id.* 29.
[4] *Id.* 32.
[5] 1958; 2nd edition, 1965.

It will be seen that there were a number of not altogether reconcilable purposes behind this first effort at an Australian land law casebook. Harrison himself agreed that the "prominence given to certain topics may seem eccentric, for example fixtures, rent, and covenants in leases". In fact, the topic of leases (not including covenants) amounted to more than two hundred pages out of a total of under seven hundred pages. His justification was that these were topics of every day practical importance, in which there had been a very large number of decisions.

Harrison's *Cases on Land Law* served its primary purpose well, that is, the rationing of scarce library resources. However, needless to say, it did not satisfy everyone. There were more profound justifications than the poverty of university libraries. The influence of American legal educational techniques, which had centred on the case method of instruction since the late nineteenth century, made itself strongly felt throughout Australia as the better graduates from the expanding law schools in the 1950's and 1960's made their way to Harvard, Yale, Columbia, Michigan, Berkeley and the other temples of legal scholarship in the United States of America. They returned, imbued with the rigorous standards of the Socratic method and inspired with reforming zeal when confronted again by the comparatively stodgy and conservative Australian law school scene.

Thus when the next property law casebook, Sackville and Neave's *Property Law Cases and Materials,* appeared in 1971, it bore little resemblance to Harrison. It was concerned more with the analysis of the nature of proprietary interests and the purposes served by the law of property so as to facilitate "a critical understanding of the rules and principles that comprise the modern law".[6] Further, the law of property was assumed to be as responsive as any other branch of the law to social change. Here we had arrived at something akin to the modern American casebook, even to the extent of rejecting the distinction between real and personal property as the basis for the organization of the subject. (The latter point is more a matter of aspiration than reality and, like the American casebooks, the main emphasis is on real property topics.)

In the U.S.A., casebooks are legion — it is almost a mark of pride for a teacher to develop his own materials and eventually publish them as a cases and materials book. The market is of course smaller in Australia and teachers here have perforce had to restrain their enthusiasms in this respect. With the appearance of the book under review, teachers in property law are now given a choice.

The authors, all of them staff members of the University of Sydney Law School, who admit that they have approached their task

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[6] Preface to 1st edition, 1971. It is now in its 3rd edition, 1981.

as a labour of love, state their aim in selecting their materials as being to cover the major substantive parts of the law of real property which formed the basis of land law courses taught in law schools in this country. The content of cases and materials books has been, and always will be, controversial. This is a reflection of the many different approaches to teaching the subject. The late Professor Harrison was a great legal scholar and his knowledge of legal history naturally coloured his approach to the subject, land law being jocularly (or ruefully) referred to by the students of his day as "Legal History III" (Legal History I and II being the regular courses in that subject). There are others who prefer almost to ignore history, dealing mainly with "the law as it is", though this is quite difficult in such a subject as land law. Again, one may build the entire subject around the Torrens System, instead of treating the system as merely one of a number of important topics.

In this case, the authors have concentrated on eight main topics, for each of which there is a separate chapter in the book. There are first of all three comparatively short chapters on Physical Limits of Land (43 pages), Concurrent Ownership (47 pages) and Old System Title and Registration of Deeds Act (22 pages). There then follows a longer but quite compact chapter on the Torrens System (80 pages), followed by more substantial chapters devoted to Easements (104 pages), Covenants Constituting an Interest in Land (116 pages), Mortgages (105 pages) and Leaseholds (the largest of all at 139 pages).

Some may argue with the authors' choice of topics insofar as there is no material on the doctrine of estates, legal and equitable interests or future interests. However, their disclaimer in the preface provides justification for the omissions. In any event, no cases and materials book, however comprehensive, should be used alone. It is true that for too long students relied on textbooks and lecture notes, which are at best only secondary sources of the law. But too great a concentration on primary sources, which a cases and materials book does to a large extent provide, will not in a subject such as land law give them in the space of one year's academic work a sufficient overview of the subject which only a good textbook can provide. However, in the book under review, the frequent and extensive notes provide an excellent commentary on the cases and the relevant statutes. The notes do in fact constitute an essential link between materials and textbooks and furnish a guide for the student through the labyrinth of land law. The occasional problems in the notes give the necessary prod to set the reader thinking rather than merely passively receiving.

It would be preferable perhaps if rather more reference were made to the leading textbooks. Traditionally, Australian law schools have recommended the two leading English works, Cheshire's *Modern Law*

of Real Property and Megarry & Wade's *The Law of Real Property,* as appropriate textbooks for use by Australian students. Inevitably there must be some modification in their use so as to adapt them to Australian law. There is now an increasing range of Australian textbooks, New South Wales being better off in this respect than the other states. In particular, this casebook seems to be geared to a recent publication by one of the authors, Butt's *Introduction to Land Law* (1980), but it is not expressly indicated as the concomitant text. The latter book provides a concise statement of the general principles of land law, though the references are primarily to New South Wales law. The casebook is not so confined, and the primary New South Wales sources are followed by the corresponding ones in the other jurisdictions.

There is frequent reference in the casebook to articles and, in addition, there are substantial lists of further reading at the end of Chapter 4 (the Torrens System) and Chapter 8 (Leaseholds). It may be too much to hope that students, who tend to be somewhat overwhelmed by the weight of materials they have to study in most law subjects, will make much use of these lists, but they are of considerable value to those pursuing further research in those areas.

It is not a profitable exercise to enter into a detailed discussion of the contents of each chapter of a casebook. It is sufficient to say that in this book the leading authorities are included, together with a good many other cases of relevant interest and of course the more important statutory provisions. There is perhaps too heavy a concentration on covenants (Chapter 6), though this reviewer's attitude is coloured to some extent by the lack of sympathy shown by the registering authorities in Queensland towards restrictive covenants. While it is impossible in such a complex subject to simplify everything of complexity, the authors have done a reasonably good job of simplification, though inevitably a considerable amount of rather tortuous material appears in the chapter just referred to. But in general the book is straightforward, with well-researched, lucid notes. It avoids discussion of a jurisprudential nature as to the concepts and principles of the subject; there is likewise little tendency towards consideration of social issues in relation to the law of property, and one assumes that this is the consequence of a conscious decision by the authors. It is pleasing to relate that inaccuracies are few and that both the index and the tables of cases and statutes appear to have been thoroughly prepared for publication.

No casebook will suit everyone, but this one is strongly recommended as a valuable addition to the available materials for law teachers and law students in this country. There is little doubt that it will gain wide acceptance amongst those who prefer a "no frills, no

nonsense" approach to what is arguably one of the most difficult core subjects in the curriculum.

H. TARLO*

Fajgenbaum and Hanks': *Australian Constitutional Law* (2nd ed.), by P. Hanks, Butterworths, 1980, xxxv + 724 pp. $48.00 (hard cover), $39.00 (limp cover).

This is a student casebook which has apparently been designed with an eye to first-year constitutional law courses that combine general and federal constitutional law. The book departs in important respects from the first edition. It omits all the material in the three chapters in the first edition which dealt with the judicial function: the chapters on the independence of the judiciary (including tenure, contempt of court and judicial immunity from suit), on the separation of federal judicial power and on the judicial power of the Commonwealth. The material on judicial review of the royal prerogatives has also been dropped. Because of these and other critical omissions, this book (unlike the first edition) cannot, despite its considerable strengths, unhesitatingly be recommended for use in courses on either general or federal constitutional law.

The author in his preface has anticipated such judgments:

> Undoubtedly, some people will criticize my choice of topics and material. I remind them that constitutional law has no clearly etched boundaries; that this book is not intended as a comprehensive coverage of that boundless subject. Rather, this book is intended as a careful examination of a series of fundamental issues *affecting the distribution of political power* in Australia (p. v; my emphasis).

The italicized language is significant. The same point is made quite starkly in the preface to the first edition, where the authors defined constitutional law as merely the "study of governmental authority".

The function of this "distribution of power" is not seen by the author as the creation of a known and predicable legal framework in which people are free to pursue their own ends, but the establishment of an edifice of social control, a relationship of command and obedience. Accordingly, as we have noted, there is no discussion of the function of the judiciary, and not even a mention of the rule of law, which, together with the sovereignty of parliament, is usually regarded as one of the two main pillars of the constitution. There is no analysis of the judicial control of the prerogative. There is not even a passing reference to such important constitutional developments as the revolutionary

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* Professor of Law, University of Queensland.