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inquest examines the circumstances of the person's death, this means the trauma must at times be almost unendurable. For those left behind there are only their memories of the deceased which are attacked from many quarters by others seeking to justify and even applaud the use of deadly force.

In Victoria a number of people were killed by police between 1987 and 1989. The inquests into the deaths of some of the men were brief, although one is still on appeal. However, by November 1992, a series of inquests into the deaths of seven young men at the hands of police had lasted for almost three-and-a-half years without any finding of fact by the State Coroner. The trauma for the relatives continues without the benefit of any adjournment.

Some of the young men died in extraordinary circumstances. But for others their deaths were marked by little more than police media releases that attacked their characters. It must have been devastating for relatives who could not get access to the media and other instruments of influence. That is why the work of the Flemington/Kensington Legal Service in facilitating the publication of *Police Shootings in Victoria* is commendable. It empowers the disempowered by giving them a chance to give the facts about their sons and brothers and boyfriends. It has also given them an opportunity to reflect on and record their experiences. It seems also to have given them an identity which has bound them closely together in their adversity.

Therapeutic the experience may have been for the contributors — relatives of three of the dead men — but the community is also richer for the document they have produced — personal, querulous and bitter as it is at times. And why should it not be?

Police Shootings in Victoria is introduced by Father Peter Norden who presided over the burial of two of the men. His comments aptly introduce the accounts. The authors describe the absence of compassion and, for some, the lack of any contact

from the police force. Was counselling made available to these people? Was a formal explanation given of what had occurred and why police felt it necessary to kill their brothers, sons and boyfriends? It was not. The communication that took place was through the media. And it was often inaccurate. Was it deliberately so and why did the media co-operate in the process? Many of the relatives believe that the police acted improperly.

The writers talk of their expectations of the inquest process and their observations of the police who attended court. They give vent to their frustration at the shooters being allowed to claim privilege against self-incrimination when called as witnesses. The community/police tension in Flemington after 1987 is also mentioned.

It is claimed that both the Homicide Squad and the Internal Investigations Department were eager to exonerate the police and that an adequate investigation into the circumstances of each young man's death was not undertaken. One after another, the authors lament the lack of an effective mechanism for investigating their grievances. Toward the end of the book there is a summary of the Flemington/Kensington Legal Service's submission to the Fatal Police Shootings Inquests. They, like the Council for Civil Liberties, were granted standing by the Coroner to appear before the inquests. This is a valuable record of the response by a community group to a gloomy chapter of Victoria's history of law enforcement.

Police Shootings in Victoria is an important publication. It does not pretend to be an academic analysis. Instead it is a powerful expression of feeling by the women close to three of the young men. What they have to say about how they and these men were treated by police and others can at last be heard. What they do say is a credit to their courage and their resilience. The reflections and the pain of Lyn Militano, Fay Spear and Elizabeth Houghton are powerful. Readers will

be sobered and disturbed by their experiences.

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THE POLITICAL IMPACT OF THE HIGH COURT

by David Solomon; Allen & Unwin,
Sydney, 1992; paperback \$24.95.

Two hundred years ago Alexander Hamilton wrote in *The Federalist* (No. 78):

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in capacity to annoy or injure them . . . The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither *force* nor *will*, but merely judgment.

As David Solomon establishes, this common conception is little more than a myth in respect of Australia's High Court. While the court's reasoning may cloak political issues and consequences with legal jargon, its decisions do have major implications for Australian society.

The notion that the judicial arm of government occupies a largely ineffectual political position has, on occasion, been propagated by the judges of the High Court. Sir Owen Dixon on taking up the position of Chief Justice of the High Court in 1952 argued that the court should adopt an overtly legalistic approach, for he perceived that this was the best way to avoid controversy in instances of great political conflict. It was implicit in Dixon's statement that, under a guise of legalism, the court should continue to exercise its powerful role. However, as Solomon

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demonstrates, recourse to purely legal reasoning cannot shroud the profound effect that the High Court has had on Australia's political system.

Solomon's central thesis is uncontroversial. As the title of the book suggests, he argues that decisions of the High Court have had significant political ramifications. In the legal community such a statement would be considered almost trite. Every student of law in Australia, especially constitutional law, should realise that as the final arbiter of the common law and sole interpreter of the Constitution, the High Court has a profound, though often indirect, effect on Australia's political system.

From a lawyer's perspective, the limited nature of Solomon's thesis is the significant weakness of this book. However, from a layperson's perspective the book is much more satisfying. As Solomon points out (p.19), media interest in the functioning of the High Court is minimal, with only one journalist permanently assigned to report on its decisions. Australians are also chronically ignorant of our Constitution; according to the Constitutional Commission only 54% of Australians are aware of the Constitution's existence (p.152). This book thus caters for the majority of Australians unaware of the political nature of the High Court's role, and fills a gap in popular works about the interaction of politics and the law.

Solomon has structured much of his argument around various areas where High Court decisions have made considerable political impact. Particular emphasis is placed on how decisions have tended to centralise constitutional power in the Commonwealth. There is discussion of the Commonwealth's newfound legislative capacity in areas such as environmental protection (Chapter 2), the balance of power between the Commonwealth and the States (Chapter 10) and the thwarting of the Commonwealth's attempts to comprehensively regulate corporations (Chapter 4). Solomon details how the High Court has played an important role in bringing Australia increasingly

closer to independent nationhood (Chapter 9). Reference is also made to institutional interaction between the High Court and the legislature and executive (Chapter 12).

This book includes a short bibliography (which highlights the lack of popular works in this area), short notes on selected judges of the High Court (which are so short as to be of little use), a table of cases (which is virtually useless because it has no page references to the text) and a comprehensive subject index.

The restricted scope of Solomon's thesis means this book is mainly descriptive. It was disappointing that he did not seek to grapple with the implications of, or at least give greater attention to, more challenging issues such as the link between judicial preference and method and the political impact he so clearly demonstrates. Greater focus on the extent to which the reasoning adopted by the High Court is political or value-laden would have been of particular interest.

One could also quibble with the use Solomon makes of certain cases. For example, he identifies the legal result of *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1 (p.74) but he fails to adequately consider the dramatic political events the decision engendered or to explain its importance in ensuring that political expression was free from arbitrary executive interference. The decision (and the referendum it provoked) is mentioned on four separate, but unlinked, occasions (pp.73-74, 149, 176, 189-190) causing much of the argument he may have generated from the case to be lost.

It is also arguable that the High Court's role in improving the judicial process deserves more attention. The importance to the criminal process of *McKinney & Judge v The Queen* (1991) 171 CLR 468 on the vulnerability of an accused to a fabricated admission while being involuntarily held in police custody (i.e. verballing) ought to have been dealt with.

This book was destined to quickly fall behind the relentless pace of

change set by the High Court. *Mabo v Queensland* (1992) 66 ALJR 408, which recognised a form of native title held by the indigenous peoples of Australia, and the court's preliminary order invalidating the Commonwealth's scheme to restrict political advertising in *Australian Capital Television v The Commonwealth* would have represented ideal additions to this work. However, this book contains more than enough material to satisfy the reader of the High Court's significant political influence.

In successfully traversing a surprising variety of subjects, this book is a significant achievement. Solomon presents lucid and accessible evidence of the importance of the High Court and its role in Australia's political system. Overall, in seeking to identify and explain the areas in which the court has influenced the political process in Australia, this book achieves its aim admirably.

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VICTORIAN SENTENCING MANUAL

by Judges of the Victorian County Court; The Law Printer, Melbourne, 1991; \$145 plus updates twice yearly.

The reviewer of the *Victorian Sentencing Manual* delayed for some months over his task. The Book Review Editor of the *Alt.LJ* will no doubt exclaim: 'Nothing new!' But there were two reasons for the dilatoriness — (1) that he was waiting forlornly for the Index promised at p.795 to arrive (a little spurious as an excuse you may be pardoned for thinking); and (2) more importantly, that something about the authorship and proposed audience of the work niggled at him.