REVIEWS

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.

GEORGE WILLIAMS

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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.

The *Manual* is written by the judges of the County Court of Victoria under the direction of Judge Mullally. Authorship of a work by all the judges of a court is a first in Australia, but what is even more significant is that the *Manual* is said to be written for the benefit of its authors: 'It provides ready access to the law for sentencers whilst in court, and gives guidance in interpreting the matters of fact significant to the instant case' (1.005). And, indeed, the format and content of the *Manual* are unashamedly geared toward the sentencing judge. Not surprisingly all magistrates of the petty sessions courts in Victoria have also been issued with a copy and no doubt it has also made its way into the possession of some, if not all, of the judges of the Supreme Court who conduct trials or who sit on appeals.

Probably the most surprising thing about the *Manual* is that it has been published by the Law Printer and that it does not quietly reside on the shelves behind County Court Judges' desks in a ring-bound folder. The fact of its publication in its current form has both a positive and a negative side to it.

A major problem with an extra-judicial pronouncement is always as to its status — that is the reason why high profile judges are often encouraged by Chief Judges and Justices to concentrate more on their judicial duties than on extracurricular activities. The difficulty, however, is significantly magnified when the pronouncement is an apparently unanimous, semi-commercial publication advanced by all the members of the court that deals with all major criminal trials apart from homicides. The fact of the matter with this publication is that many of its interpretations of sentencing theory, while most certainly not iconoclastic, are inevitably idiosyncratic. Sentencing theory and practice are extremely controversial matters because of the many different views reflected both on the Bench and among academics, practitioners and law reformers. They are also a leopard whose spots are constantly on the move as trends, politics and decisions have their impact. The danger with a work such as this is that it will set in clay many of the views advanced which, in truth, are open to debate when other precedents than those cited are scrutinised and political and social values subtly alter. The likelihood all too quickly is that submissions on sentencing by practitioners will tend to be geared in terms of what is in the *Manual* and, quite likely, a high proportion of sentencing decisions may also be influenced by just those cases referred to and those views expressed in the publication. In short, the publication has the potential to take on an oracular value out of proportion to its inherent worth. This is unlikely to be in the interests of justice.

It should also be observed that many stances in this *Manual* do not take account of and do not refer to significant sentencing pronouncements of superior courts in other Australian jurisdictions. It is a disappointingly parochial work.

However, there is no question that the *Manual* will provide practitioners with an invaluable insight into the minds of at least a cross-section of the County Court, although how significant a cross-section, as time passes, it will not always be possible to say. Another positive aspect of the *Manual* is that it makes accessible a significant wedge of accumulated Supreme Court case law that has long lain unreported. As the *Victorian Reports* so badly under-report criminal cases and as the *Australian Criminal Cases* have long had a glitch resulting in a paucity of Victorian material, the creation of such a repository of information will be welcomed heartily by practitioners.

But the question in the end devolves to whether on balance the *Manual* is a worthwhile publication. Were it to have been written by an academic, a practitioner or an ex-judge, the answer most assuredly would have been in the affirmative. However, its authorship has the real potential to stagnate innovative sentencing in Victoria's middle-ranking court and to entrench unfortunate precedents as though it itself were a curial pronouncement. On balance, the publication of the *Manual* should not be welcomed but because of its nature, and to a lesser degree because of its quality and utility, it must be purchased by all practitioners who appear in the Magistrates' and County Court.

JOHN BARRISTER

SOLICITORS AND DIVORCE

by Richard Ingleby; Oxford University Press, 1992; 195 pp., RRP $65.00, hb.

Solicitors have a central position in resolving disputes in the area of matrimonial breakdown. Their role is not actually defined by the *Family Law Act* or other laws or rules. But almost without saying, the expectations of the legislature have shifted, particularly in the family law jurisdiction to placing the onus on solicitors to steer their clients through the minefield of procedural requirements to make sure inequalities in bargaining power between parties are transferred to fair negotiations.

It is clear to all participants in the jurisdiction that the *Family Law Act* is most used 'out-of-court' by the solici-

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