THE PERMANENT LEGACY

The Honourable Justice W M C Gummow

COMMOWEALTH SOLICITOR-GENERAL

I begin by reminding you that in 1964 Sir Anthony was appointed Commonwealth Solicitor-General and that he continued in that office until 1969. This is a matter of some importance in charting his legacy in administrative law.

The Solicitor-General Act 1916 (Cth) (the 1916 Act) provided in s 2 for the appointment by the Governor-General of a person to be the Solicitor-General of the Commonwealth and to have such duties and functions as prescribed by or under any statute or as were delegated to him by the Attorney-General. The 1916 Act was repealed by the Law Officers Act 1964 (Cth) (the 1964 Act). This provided for the reconstitution of the office of Solicitor-General as the second Law Officer of the Commonwealth and made detailed provisions with respect to that office.

In July 1964 the then Solicitor-General, Sir Kenneth Bailey, retired and it was decided that the office of the Solicitor-General and Permanent Head of the Attorney-General's Department were to be separated. The office created by the 1916 Act had been held by a distinguished succession of public servants who were also Permanent Heads. In addition to Sir Kenneth Bailey, the position had been held by Sir Robert Garran and Sir George Knowles.

The Bill for the 1964 Act had bipartisan support. On the Second Reading Speech, the then Attorney-General said that the new Solicitor-General was to be kept free of responsibility for, and administration of, the Attorney-General's Department so as to permit concentration on the duties as permanent counsel for the Crown in right of the Commonwealth.[1]. In supporting the measure, the then Deputy Leader of the Opposition, Mr Whitlam, said that the new position would be the most significant and challenging legal post in Australia and continued:[2]

> The Solicitor-General to be appointed under this Act will have the opportunity of appearing in nearly all the constitutional cases and most of the administrative cases which will determine the rights of citizens and governments in this country. He will contribute more than any lawyer of his time to the making of the laws of the country...The Opposition supports the Bill and trusts that the Attorney-General will be able to make an appointment worthy of the post.

The 1964 Act commenced on the date of Assent, 5 November 1964, and Sir Anthony thereupon was appointed as the first person to hold the office of Solicitor-General. At

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1 House of Representatives, *Parliamentary Debates* (Hansard), 22 October 1964 at 2220.
2 House of Representatives, *Parliamentary Debates* (Hansard), 22 October 1964 at 2445.

the time he was Challis Lecturer in Equity at the University of Sydney Law School and, as I remember, engaged in the annual grind of marking examination papers.

FEDERAL ADMINISTRATIVE LAW

It is important to understand the state of federal administrative law at that date. Section 75(v) of the Constitution had been well in advance of its time. It assumed that the officers of the Commonwealth who might be enjoined or whose activities or inactivity might be the object of orders in the nature of prohibition or mandamus included Commonwealth Ministers of state. When we evaluate the development of English administrative law and its significance for Australia, it is worth reminding ourselves of the delays in that development. It was not until decisions in the last 10 years, such as *R v Secretary of State for Transport; Ex parte Factortame Ltd*[3] and *M v Home Office*,[4] that the House of Lords granted against British Ministers relief of a kind which in Australia had a basis in Ch III of the Constitution. Even then, it seems, there may remain a distinction in the United Kingdom between duties placed by statute upon a Minister, as *persona designata*, and upon "the Crown as such".[5] This is a matter to which I will return.

Section 38(e) of the Judiciary Act 1903 (Cth) rendered exclusive of the jurisdiction of the several courts of the States jurisdiction of the High Court in matters in which a writ of mandamus or prohibition was sought against an officer of the Commonwealth or a federal court. In the area of industrial relations, recourse to the High Court under s 75(v) was frequent and burdensome to the Court. However, in other respects, the development of federal administrative law was limited by the practical constraint placed upon it by the requirement that relief in many cases could be had only in the High Court.

As we know, all of this changed. What is insufficiently appreciated today is the identity of the sources of the impetus for that change.

The new administrative law and its constitutional setting

By 1968, Mr N H Bowen QC had become Attorney-General.[6] Later, as Sir Nigel Bowen, he was to head the Federal Court of Australia. In 1968, the Solicitor-General suggested to the Attorney-General that he establish the Commonwealth Administrative Review Committee. This body was established on 29 October 1968 and Sir Anthony was one of the founding members. On Sir Anthony's appointment to the New South Wales Court of Appeal on 1 May 1969, he was followed as Solicitor-General by Mr R J Ellicott QC. The new Solicitor-General was also an enthusiastic supporter of the work of the Committee. It was through the work of that Committee, and later Committees, and

3 [1990] 2 AC 85.
4 [1994] 1 AC 377.
5 M Loughlin, "The State, the Crown and the Law" in M Sunkin and S Payne (eds), *The Nature of the Crown* (1999) 33 at 71-74; T Cornford, "Legal Remedies Against the Crown and its Officers Before and After M" in M Sunkin and S Payne (eds), *The Nature of the Crown* (1999) 233 at 257-262.
6 He held that office from 1966 to 1969.

Mr Ellicott QC, who subsequently became Attorney-General, that the system of federal administrative law we know today came into being.[7]

The Administrative Decisions (Judicial Review) Act 1977 (Cth) (the ADJR Act) focused upon "decisions of an administrative nature made under an enactment". This expression was so defined as to give the legislation more limited scope than that of s 75(v) of the Constitution. The judgment of Mason CJ in *Australian Broadcasting Tribunal v Bond*[8] was a forceful reminder that the ADJR Act had significant limitations. In other respects, for example the requirement in s 13 as to the provision of reasons, and the detailed remedial provisions of s 16, the statute advanced the general law position. The addition in ss 5 and 6 of a ground of review that the decision made, or proposed to be made, would otherwise "be contrary to law" was designed to accommodate further development of the law by the Federal Court.[9] The other grounds of review specified in ss 5 and 6 were those which had been established by the courts. Standing was conferred upon persons "aggrieved" by the decision in question.

In 1983, s 39B was added to the Judiciary Act.[10] This had the effect of conferring on the Federal Court, concurrently with the High Court, a very large measure of jurisdiction under s 75(v) of the Constitution. This addition of s 39B made applicable the power of remitter conferred on the High Court by s 44 of the Judiciary Act. With the elasticity provided in ss 5 and 6 of the ADJR Act with respect to grounds for review, and the liberal provision of standing, for a time it appeared that development would proceed through the case law in the Federal Court without any distinction turning upon whether the jurisdiction invoked was that under the ADJR Act or s 75(v) of the Constitution and s 39B of the Judiciary Act.

Examples of High Court decisions in which Sir Anthony Mason played a significant part, and which indicated this prospect, include *Bond*,[11] *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*[12] and *Kioa v West*.[13] This last-mentioned case involved the interpretation of the Migration Act 1958 (Cth) as it stood some years ago. However, the subsequent enactment in what is now Pt 8 of that statute of the restricted regime for review by the Federal Court of decisions of the Refugee Review Tribunal has bifurcated the development of administrative law and re-emphasised the importance of s 75(v) of the Constitution.[14] So also has the limited and special system for review of income tax assessments. The point is emphasised by a reading of the judgment of Mason CJ in *Deputy Commissioner of Taxation v Richard Walter Pty Ltd*,[15] with respect to the interrelation between s 39B of the Judiciary Act and s 177 of the Income Tax Assessment Act 1936 (Cth).

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7 A Mason, "Administrative Review: The Experience of the First Twelve Years" (1989) 18 *F L Rev* 122.

8 (1990) 170 CLR 321.

9 House of Representatives, *Parliamentary Debates* (Hansard), Second Reading Speech by the Attorney-General, Mr R J Ellicott QC, 28 April 1977 at 1395.

10 Statute Law (Miscellaneous Provisions) Act (No 2) 1983 (Cth), s 3 and Sch 1.

11 (1990) 170 CLR 321.

12 (1986) 162 CLR 24.

13 (1985) 159 CLR 550.

14 See *Abebe v Commonwealth* (1999) 162 ALR 1.

15 (1995) 183 CLR 168 at 178-188.

Section 75(v) has always served to emphasise that in Australia judicial review has its roots in the Constitution itself. This has not been realised by those who persist in teaching administrative law not comparatively, but simply through English spectacles. The subject of administrative law cannot be understood or taught without full attention to its constitutional foundation. That foundation also involves an understanding of the niceties of federal jurisdiction. All of this is, of course, understood by the likes of Professor Zines, lately identified in the press as one of the "wise old men of the law".[16]

The problems with the teaching of law in falsely self-contained compartments do not end here. To ponder the significance of federal jurisdiction is to engage in activity which may appear arid and unprofitable to some constitutional lawyers. But they will be poorly furnished scholars if they do not perceive the connection with choice of law issues within the Australian federation. This leads to the deeper and fundamental questions respecting the nature of the common law of Australia and the differential impact upon it of various State statutory regimes as well as federal statute law. On the face of it, the recent decision respecting common law conspiracy in *Lipohar v The Queen*[17] was a criminal law matter. However, the decision can be understood only by lawyers who appreciate the fundamentals of Australian federalism.

Many significant questions of public law have been determined by actions in which the plaintiff claimed redress for tortious injury to private rights.[18] Again, as Sir Anthony has emphasised,[19] and as the reference to injunctions in s 75(v) of the Constitution affirms, equitable remedies have played a critical part in shaping administrative law. Moreover, the principles by which equity regulates the exercise of fiduciary powers resonate in much of modern administrative law.

The distinction between the three remedies specified in s 75(v) is not always well understood. In *R v MacKellar; Ex parte Ratu*,[20] Mason J pointed out that, although the application before the Court in form was one for prohibition and certiorari, it was in reality an application for an injunction to restrain the Minister from acting on the deportation orders in question. This restraint was sought on the footing that the principles of natural justice required the Minister to consider his earlier decisions and, as a preliminary to that reconsideration, to inform the applicant of the reasons on which the earlier decision was based.

Nor is it well understood that, as Brennan J explained in *Attorney-General (NSW) v Quin*,[21] the reasoning in the judgment of Marshall CJ in *Marbury v Madison*[22] is concerned with the declaration and enforcement by the judiciary of determinations of

16 *Sydney Morning Herald*, 5 November 1999 at 9.
17 (1999) 168 ALR 8.
18 *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at 558.
19 A Mason, "The Place of Equity and Equitable Remedies in the Contemporary Common Law World" (1994) 110 *LQR* 238 at 238. See also *Bateman's Bay Local Aboriginal Land Council v The Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247 at 257-260 and *Corporation of the City of Enfield v Development Assessment Commission* (2000) 169 ALR 400 at 406-407 and 416-417.
20 (1977) 137 CLR 461 at 474-475.
21 (1990) 170 CLR 1 at 35-36.
22 1 Cranch 137 (1803) [5 US 87].

the limits of power conferred by statute upon administrative law-makers. It is not confined to the constitutional limits of the powers conferred upon legislatures.

I turn now to consider three areas in which decisions in which Sir Anthony Mason participated have emphasised the constitutional dimensions to what otherwise might have been conceived, inadequately, as purely administrative law problems.

Prohibition and mandamus and federal courts

The first concerns the use of prohibition and mandamus, respectively, to restrain federal courts of limited jurisdiction and to require the exercise by them of their jurisdiction. In *Bond*,[23] Mason CJ pointed out that the "traditional review functions of the superior courts in our system of justice" were "exercisable by means of the prerogative writs and the grant of declaratory relief and injunction". One of the curiosities in the interpretation of s 75(v) in the early years of the High Court[24] was the treatment of Justices appointed under s 72 of the Constitution to courts created by the Parliament as officers of the Commonwealth for the purposes of s 75(v). The oddity was that the traditional prerogative remedies were utilised by the superior courts in England at a time before there was in existence a modern appellate structure. However, the Constitution itself in s 73 had provided such a structure. In particular, the High Court had jurisdiction to hear and determine appeals from any other federal court in respect of all judgments, decrees, orders and sentences (s 73(ii)).

It may have been that the early High Court cases proceeded from an apprehension of the vigorous exercise by the Parliament of its power under s 73 to prescribe exceptions and regulations to the appellate jurisdiction. In some areas, particularly industrial law,[25] that power was exercised.

With the establishment of the Family Court of Australia and then the Federal Court of Australia the risk arose of the over-enthusiastic recourse to the High Court by respondents to proceedings in those other Courts. No threat arose from recourse to an appeal; rather, the development of the two new federal courts would have been stultified if, by remedies granted by the High Court under s 75(v), they had been restrained from embarking upon a determination of litigation otherwise regularly instituted in those Courts. At least as regards the Federal Court, the brake was put upon any such developments by several influential judgments of Mason J.

In 1978, in *R v Dunphy; Ex parte Maynes*,[26] Mason J emphasised, with respect to the former Industrial Court, that although that Court had been in error in making the orders it made, "it does not follow that the prosecutors are entitled to relief by way of prohibition or certiorari, for the existence of error in the judgment or order of an inferior court or tribunal is not a sufficient title to relief by way of prohibition or certiorari".

In *R v Federal Court of Australia; Ex parte WA National Football League*,[27] the question was whether the prosecutors were "trading corporations" within the meaning of

23 (1990) 170 CLR 321 at 341.
24 *The Tramways Case [No 1]* (1914) 18 CLR 54.
25 A recent example is the legislation considered in *Re McJannet; Ex parte Minister for Employment, Training and Industrial Relations for the State of Queensland* (1995) 184 CLR 620 at 639 and 651-652.
26 (1978) 139 CLR 482 at 495.
27 (1979) 143 CLR 190.

s 51(xx) of the Constitution, the terms of which were picked up by s 6 of the Trade Practices Act 1974 (Cth). Mason J concluded that:

> the Federal Court has jurisdiction to decide whether the prosecutors or any of them are trading corporations and, further, that as its decision is subject to an appeal to this Court under s 33 [of] the *Federal Court of Australia Act*, it has not been armed with a conclusive power to determine constitutional facts the exercise of which is unreviewable by this Court. There is, accordingly, no absence or excess of jurisdiction in the Federal Court which would justify the grant of prohibition.
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> Even if the existence of the appeal to this Court under s 33 had not afforded in itself an absolute answer to the case of prohibition, I should have thought that the existence of the appeal constitutes a persuasive ground for refusing the writ as a matter of discretion. Many times it has been said that prohibition, though a writ of right, is not a writ of course. In general there is a great deal to be said for the view that this Court should have the benefit of the Federal Court's findings of fact and law before it embarks upon a consideration of questions of substance even though they involve constitutional questions. If it were thought that there were advantages in having the constitutional questions determined in the first instance by this Court, then application should have been made to bring these questions here by means of an order under s 40 of the *Judiciary Act*, rather than by means of prohibition.[28]

In *R v Federal Court of Australia; Ex parte Pilkington ACI (Operations) Pty Ltd*,[29] there had arisen in the Federal Court questions of construction, but not of validity, of s 80 of the Trade Practices Act. Section 80 conferred standing to seek relief upon "any other person". Mason J observed:

> No doubt the desire to secure a final decision in this Court as the ultimate court of appeal on an important question of law and the fact that an appeal to this Court from the Full Court of the Federal Court may necessitate the grant of special leave explain why it is that the prosecutor seeks prohibition from this Court at an early stage in the proceedings before the Federal Court. But understandable though the prosecutor's motives may be, they provide no ground for departing from the firmly established rule that prohibition will not issue unless it appears that there is an absence, or an excess, of jurisdiction.
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> Indeed, there are the strongest reasons why this Court should insist upon a strict application of the rule in cases arising under the [Trade Practices Act] in the Federal Court... This Court is the ultimate court of appeal, but Parliament has conditioned the appellate jurisdiction of this Court on the grant of special leave except in those cases where there is an appeal as of right. As the ultimate court of appeal this Court is entitled to the benefit of considering the Federal Court's views of the construction and application of the provisions of the Act. Moreover, this Court is entitled to the benefit of the Federal Court's findings of fact. Many cases arising under the Act are noted for their complexity both in relation to the facts and the law, and it is desirable that the Federal Court should be permitted to exercise its jurisdiction without interference by this Court by way of grant of prohibition except in those instances where the matter in question plainly gives rise to an absence or excess of jurisdiction.[30]

His Honour went on to indicate[31] that there were some instances in which prohibition has been awarded at an early stage of proceedings so as to prevent an inferior tribunal from granting relief before it decided the preliminary or collateral

28 Ibid at 230-231.
29 (1978) 142 CLR 113.
30 Ibid at 126-127. See also the reiteration of these views by Mason J in *The Queen v Gray; Ex parte Marsh* (1985) 157 CLR 351 at 375-376.
31 Ibid at 127.

issue on which the power to grant relief depended. Mason J referred to two categories of case, neither of which applied to the dispute then before the High Court. The first was where there was some reason for thinking that the tribunal would decide the issue erroneously or otherwise exceed its authority. The second involved "somewhat anomalous instances" where prohibition was granted to prevent an inferior tribunal from entertaining a proceeding of a kind which it manifestly lacked jurisdiction to entertain, in circumstances where there was nothing to indicate that the tribunal would have proceeded to the grant of relief.

His Honour also pointed out that an erroneous decision upon a point which, however essential to the validity of the order of an inferior court, it is competent to try, is not a case for a grant of prohibition. It was different where the legislature had made some fact or event a condition upon the existence of which the jurisdiction of a tribunal or court should depend. However, Mason J referred to the discussion by Dixon J in *Parisienne Basket Shoes Pty Ltd v Whyte*.[32] This indicated that it was far more likely that the jurisdiction of a tribunal would be conditioned in such a fashion rather than the jurisdiction of a court and, more particularly, that of a superior court such as the Federal Court.

Later, in *Bond*, Mason CJ said:

> To expose all findings of fact, or the generality of them, to judicial review would expose the steps in administrative decision-making to comprehensive review by the courts and thus bring about a radical change in the relationship between the executive and judicial branches of government. Amongst other things, such a change would bring in its train difficult questions concerning the extent to which the courts should take account of policy considerations when reviewing the making of findings of fact and the drawing of inferences of fact.[33]

However, it is accepted as fundamental that findings of constitutional fact cannot be foreclosed from the High Court. Further, the tribunal in question may have made findings of jurisdictional fact which are not constitutional facts.

What then is the standing of those findings of jurisdictional fact in proceedings for judicial review? It must be for the court to determine whether the tribunal acted within jurisdiction.

Findings of jurisdictional fact and "deference"

This brings me to the second of the three matters I mentioned. That concerns the significance to be attached in proceedings for judicial review to findings of jurisdictional facts by the body or tribunal in question. In this regard, reference is sometimes made in Australia to United States learning respecting the *Chevron* doctrine[34] as to judicial "deference".

In the United States itself, the *Chevron* doctrine provides a battleground for competing doctrines respecting the proper roles of the three branches of government in supervising the regulatory state. Speaking earlier this year at a Symposium on the subject "Formalism Revisted", held at the University of Chicago, Professor Sunstein said:

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32 (1938) 59 CLR 369 at 391-392.
33 (1990) 170 CLR 321 at 341.
34 After *Chevron USA Inc v Natural Resources Defense Council Inc* 467 US 837 (1984).

> *Chevron* appears to rest on the suggestion, central to legal realism, that the decision how to read ambiguities in law involves no brooding omnipresence in the sky but is an emphatically human judgment about policy or principle. *Chevron* concludes that, where underlying statutes are ambiguous, Congress should be taken to have decided that agencies are in a better position to make that judgment than courts. Agencies are in that better position because, *Chevron* emphasizes, the President is generally in charge of their policy judgments, and hence agencies have a kind of democratic pedigree, certainly a better one than the courts.[35]

The better view is that *Chevron* is concerned with competing interpretations of a statutory provision, not the jurisdictional fact-finding at the administrative and judicial levels. In its terms, *Chevron* applies where the statute administered by a federal agency or regulatory authority is susceptible of several constructions, each of which may be seen as a reasonable representation of Congressional intent.[36]

On the face of it, one should have thought it was for the court exercising authority with respect to judicial review to determine the presence of jurisdictional error by the body or tribunal in question and that the findings of that body or tribunal as to jurisdictional facts could not bind the court. The High Court now has turned its face against the adoption of any "judicial deference" doctrine derived from *Chevron*.[37] Whilst accepting that rejection, there is, in the decisions under s 75(v) of the Constitution, some leeway permitted.

With respect to jurisdictional challenges to decisions of the Australian Conciliation and Arbitration Commission, Mason J observed:

> If the evidence remains the same, if the Full Bench on appeal has confirmed the decision at first instance and if the issue of fact is one in the resolution of which the Commission's knowledge of industry specially equips it to provide an answer, greater weight will be accorded than in cases in which one or more of these factors is absent.[38]

This approach to the matter was subsequently adopted in joint judgments of the Court in *R v Williams; Ex parte Australian Building Construction Employees' and Builders Labourers' Federation*[39] and *R v Ludeke; Ex parte Queensland Electricity Commission*.[40] In *Ludeke*, the Court gave "considerable weight" to the finding by the Commission that there was an industrial dispute because:

> (1) the evidence is essentially the same; (2) the Full Bench affirmed the Commissioner's decision; and (3) the Commission was specially equipped by reason of its knowledge and experience of industrial relations in the industry to make value judgments on some of the issues which arose.[41]

Review of decisions made by Governors in Council

The third matter is one foreshadowed in the discussion earlier in this paper of the significance of the recent English decisions concerning judicial review of decisions

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35 C Sunstein, "Must Formalism Be Defended Empirically?", (1999) 66 *U Chicago L R* 636 at 660.

36 467 US 837 at 842-844 (1984).

37 *Corporation of the City of Enfield v Development Assessment Commission* (2000) 169 ALR 400 at 412-414 and 417-418.

38 *R v Alley; Ex parte NSW Plumbers & Gasfitters Employees' Union* (1981) 153 CLR 376 at 390.

39 (1982) 153 CLR 402 at 411.

40 (1985) 159 CLR 178 at 183-184.

41 Ibid at 184.

made by Ministers in exercise of statutory powers. In the States of Australia, there has been since colonial times a legislative practice of conferring powers to grant and cancel licences and the like, not upon individual Ministers, but upon the Governor in Council. The effect of decisions in the High Court, in particular of Mason J's judgments in *R v Toohey; Ex parte Northern Land Council*[42] and *FAI Insurances Ltd v Winneke*,[43] is to deny the consequence that, in selecting the Governor in Council as the body to make such decisions, the legislature necessarily selects a body to which it is inappropriate to apply rules respecting judicial review. In *FAI*, the argument of the Solicitor-General for Victoria had urged what one might regard as the traditional position. The submission was:

> A decision of the Governor in Council is a political decision, and protection from the consequences of that decision is to be found in the doctrine of ministerial responsibility; in the collective responsibility of ministers to Parliament, and thence to the electors. It is not to be found in the supervision of the courts. The intrusion of the courts would cut across the doctrine of ministerial responsibility...For those reasons, the selection of the Governor in Council as the repository of a power discloses a legislative intention that the rules of natural justice do not apply.[44]

However, in *Northern Land Council*, the High Court had held that the exercise of a statutory discretion by the Administrator in Council, a body taken to stand in the same position as the Governor in Council in a State, was reviewable on the grounds of *ultra vires* and improper purpose. In that case, Mason J treated[45] as no longer acceptable an approach under which exercises of the prerogative by Crown representatives (as opposed to Ministers) are unreviewable; no distinction is to be drawn between the prerogative and statutory discretions and the rule excluding judicial review in both cases is based on the need to preserve the secrecy of the deliberations of the Crown. Shortly after the decision in *Northern Land Council*, *FAI* was decided. The High Court granted a declaration that a decision of the Governor in Council not to approve the appellant as an insurer under a Victorian statute was void for failure to observe requirements of procedural fairness.

Mason J's judgment in *FAI* proceeded on the footing that *Northern Land Council* showed that "there is no more reason for permitting the Governor in Council to exceed his statutory authority than for allowing a Minister to do so".[46] His Honour added:

> Once the true relationship between the Governor and the Executive Council is understood, it becomes apparent that the doctrines of ministerial and collective responsibility provide no objection to the application of the rules of natural justice to the exercise of a discretion by the Governor in Council. As the Governor ultimately acts in accordance with advice tendered to him, the final decision is not a decision for which he has to account. The effective decision is that of the Executive Council or the Minister. It is the Government and the Minister who are responsible for that decision to the Parliament and to the electorate.[47]

It is a matter of regret for the development of public law in the United Kingdom that these decisions were not drawn to the attention of the House of Lords in the

42 (1981) 151 CLR 170.
43 (1982) 151 CLR 342.
44 Ibid at 346.
45 (1981) 151 CLR 170 at 224.
46 (1982) 151 CLR 342 at 365.
47 Ibid at 365-366.

argument in *M.* Nor are they referred to in any of the essays by a range of established and younger public lawyers which, this year, have been collected and published by Oxford University Press under the title *The Nature of the Crown.*[48]

In this paper I have sought to focus attention upon the significant part played by Sir Anthony in the erection of the legislative structure of federal judicial review, and subsequently in the consolidation of the Federal Court in that structure. All of this has been against the background of the continuing and entrenched place in the constitutional scheme of s 75(v) of the Constitution.

48 M Suskin and S Payne (eds) above n 5.