for both the average and the first-class student, for while it contains a great wealth of material and references, it is nevertheless so well set out and so clearly expressed that no difficulty should be experienced in discerning the more fundamental principles of the subject.

This book is a text on English land law, but the treatment by the authors of the rules of the common law relating, for example, to legal estates and concurrent interests independently of the provisions of the English 1925 legislation, renders this book more readily adapted to the study of the land law of Victoria.

D. MENDES DA COSTA*

Federal Jurisdiction in Australia, by Zelman Cowen. (Oxford University Press, 1959), pp. i-xv, 1-211. Price £2.

In the five essays comprising this book, Professor Cowen has directed his attention to five super-technical areas of Australian public law—the original jurisdiction of the High Court, diversity jurisdiction, the federal courts, the territorial courts, and the exercise of federal jurisdiction by state courts. I can recall with some vividness my own ineffectual efforts during an Australian stay to comprehend the tortured ramifications of the law in these areas. Indeed, it seemed to me then that students more learned than I in Australian law shared some of my perplexity. This bewilderment and confusion over what Professor Cowen felicitously describes as 'the Gothic complexities of federal jurisdiction' has tended, I think, to produce the atmosphere of romance and mystery which inevitably envelops the unknown. The trouble with Professor Cowen's essays is that they pierce the mystery and destroy the charm. What is revealed by the author's persistent and obdurate clear-headedness is a structure of intricate complexity often signifying very little indeed. The apparatus of super-technicality in the area of federal jurisdiction can be defended, of course, as Justice Frankfurter has often stressed, in terms of its functioning in the allocation of power within a federal system. The answer to those impatient to get on with the merits of the case is, in short, that these rules of jurisdiction subserve ends of policy no less significant because of their subtlety and lack of immediate relevance to the dispute between the litigants. What Professor Cowen's book does, however, is to cast considerable doubt that many of the rules of Australian federal jurisdiction serve any meaningful purposes at all. And to the extent that this is the case the intricate crochet work of jurisdictional distinctions comes to little more than plain foolishness.

The author reaches conclusions of this character with respect to several important areas of federal jurisdiction. He fails to see the wisdom of vesting the High Court, actually or potentially, with original jurisdiction over all matters of federal jurisdiction, especially since the High Court exercises a general appellate jurisdiction over the state courts anyway and Parliament was authorized to invest state courts with federal jurisdiction. He concludes that the establishment of a head of federal jurisdiction based on diversity of state residence lacks even the superficial justification given for it in the United States since there was never any real fear of bias by state tribunals against non-residents and, in any event, the general appellate jurisdiction of the High Court was available as a

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measure of protection. He declines to follow Sir Owen Dixon's conclusion that it is 'improper to carry the federal division of power and functions into the field of adjudication', on the sensible ground that the merits of a federal court structure wherein matters of federal concern are made cognizable cannot be resolved on *a priori* grounds. It must depend, he concludes, on such considerations as methods of judicial selection of state judges, local pressures, character of constitutional problems, historical patterns, and the like, which may vary among different federations. In any event, he deplores the anomaly of the Australian structure which vests the same courts, the state courts, with both a federal and a state jurisdiction, a 'two-tier' jurisdiction, with differing incidents depending upon which is being exercised. Few could quarrel with such judgments.

Part of the source of these difficulties the author plausibly attributes to an uncritical copying from the American Constitution without recognition of the relevant differences in constitutional structure and institutions which rendered the transposition inapposite. These observations have been made by others before him. But having the evidence cumulatively marshalled creates a most dramatic example of the potential dangers of the misuse of comparative jurisprudence. One can sympathize with the comment of one of the Founders quoted by Professor Cowen to the effect that a more suitable Australian constitution might have been evolved if the American and Canadian constitutions had been burned before the Conventions met.

These remarks may tend to create a false impression of what the book is like. It is not really a polemic at all. To be sure, we are told explicitly where the author stands on the desirability for constitutional and statutory change. But principally the essays in this book are dispassionate and acute analyses of the state of the law in the areas of federal jurisdiction discussed—what is clearly the law, what is arguably the law and what the problems are to which the courts have not addressed themselves. Only those who have themselves attempted to grapple with the abounding confusion in these areas can fully appreciate the triumph involved in the orderliness and lucidity of the author's treatment. The problems discussed, of course, are not the daily fare of the Australian practitioner. But where these problems do arise I should suppose that Professor Cowen's book will prove a treasured *vade mecum*.

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