as a collateral contract obscures its real importance. Surely the case does what has been frequently done in the U.S.A., that is to say it provides a contractual remedy in some cases of innocent misrepresentation based upon a warranty given in return for valuable consideration—a remedy that had for some time been confined by English lawyers to an agent's warranty of authority.

There are only two omissions that cause any grave concern. In Chapter III—Quasi Estoppel there is an adequate coverage of English and New Zealand cases but no Australian ones. It is true that there are no Australian cases directly in point but there are at least two cases of considerable significance to Australian lawyers. First, the decision of the Full Court of the Supreme Court of New South Wales in *New South Wales Rutile Mining Co. Pty Ltd v. Eagle Metal and Industrial Products Pty Ltd*[14] (following its earlier decision in *Perpetual Trustee Co. (Ltd) v. Pacific Coal Pty Ltd*[15]) demonstrates that the concept of quasi estoppel, if it exists, can have no application in a common law action in New South Wales. It would be parochial to assume that the decision is of interest only to lawyers practising in New South Wales. Secondly, in evolving the concept, Lord Denning placed great reliance on *Hughes v. Metropolitan Railway Co. Ltd*[16]. In the only case in which the High Court appears to have applied *Hughes's Case, Barns v. Queensland National Bank*[17], it did so on the assumption that consideration was an essential element.[18] In this context it is hoped that even case method purists will draw the attention of their classes to Sir Owen Dixon's address, 'Concerning Judicial Method'.[19]

The criticisms that have been made (one hopes that the authors will regard them as suggestions), if not *de minimis*, affect only a small part of a large book. This reviewer regards his copy not only as a valuable addition to his already not unsubstantial law library but also as an indispensable part of his equipment as a teacher of the law of contract in an Australian Law School.

P. F. P. HIGGINS*

Principles of Australian Administrative Law, by D. G. BENJAFIELD, LL.B., D.PHIL., and H. WHITMORE, LL.B., LL.M., 3rd Ed. (Law Book Company, 1966), pp. i-xxxi, 1-368. Price $7.50.

Few tasks require more scholarly skill and firmness than the writing of a textbook on Australian Administrative Law. The work under review represents a genuine development in content and arrangement from the two earlier editions, in which Professor W. Friedmann had played a significant pioneering role. The increase in social legislation, the influence of new approaches to many fundamental issues, and the greater volume of decisions by Australian courts have obliged the present authors (Professor Friedmann having withdrawn from the enterprise) to expand considerably the original volume.

These new demands have magnified the terrors of authorship. The grand flood of decisions and laws forces a writer to make a rigorous selection from his available material. The present authors have wisely opted

14 (1960) S.R. (N.S.W.) 495.
15 (1955) 55 S.R. (N.S.W.) 495.
16 (1877) 2 App. Cas. 439.
17 (1906) 3 C.L.R. 925.
18 *Ibid.*, 939.
19 *Jesting Pilate*, 152 ff.

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for a volume suitable for students rather than for a vast compendium containing all the available cases, which they have indeed pruned with sound discretion. The important decisions are all there; but mainly appear in footnotes, so that the even flow of the ideas is not interrupted.

They have also been confronted with weighing the relative importance of ancient and modern decisions and have achieved a similar happy balance between English and Australian ones—no easy task, especially as the force of such cases as *Ridge v. Baldwin*[1] is not yet apparent in Australia. They have obviously also given serious attention to the most satisfactory arrangement of this subject, a question upon which experts have come to very differing conclusions. How much space should be given to broad abstract constitutional principles and how much to details of administrative law? Should one begin with the role of the Crown or with the remedies? Opinions again differ; but the plan adopted here is one well suited to the general needs.

In many areas Australian courts are taking a rather different path of development from English courts. The authors have noted several such divergencies: for example, the greater use of the injunction here to challenge delegated legislation (page 143) the effect of a breach of the *audi alteram partem* rule (page 163), the doubts about the notion of excess of jurisdiction (page 192), the more frequent use of mandamus—due partly to the influence of section 75(v) of the Commonwealth Constitution (page 211), the less obvious use of the declaration in investigating the validity of proceedings of statutory tribunals (page 235), and the attitude of judicial hostility in Australia to privative clauses (page 243). Now that the House of Lords has relaxed its refusal to overrule its own decisions and that the High Court of Australia has expressed its intention of not following House of Lords' decisions so closely as in the past, differences of approach will probably become more marked, especially as the role and structure of statutory corporations grows more powerful and more singular here.

The final difficulty in such a work arises from the complexity and uncertainty of the case law. One feels real sympathy for the authors' confessions of despair. On classifications of functions: (page 110) 'The writers freely confess that they have no confidence in conceptual classification.' And, concluding a review of the *ultra vires* cases (186): 'The vague "principles" stated by the courts impose no real fetters on the court's own discretion and give to the practitioner virtually no possibility of predicting the action which a court will take in particular circumstances...' Finally, (198) 'even the most learned practitioner is frequently in a quandary as to the choice of remedy—and a wrong choice may prejudice his client's case'. The writers, however, do not simply throw in their hand; they always attempt to give some form and clarity to even the most cloudy regions.

The student who comes to a study of the legal aspects of modern administration has often been groping in the dark for lack of a picture of the actual structures of government in Australia. He will find all the light he needs for his early explorations in the very useful, if brief, accounts of the British background, the Australian Constitutions and the framework of Government in Australia set out in the opening three chapters. These are supplemented by a very practical final chapter listing and describing some of the more important statutory corporations and

[1] [1964] A.C. 40.

tribunals in this country. (There is a case for placing that chapter after chapter three so that the student can know what sort of legislated creatures he has to cope with before he sees what the courts have done to them.)

The only criticism one would make is that a fuller discussion of some of the more important cases would be helpful to make them stand out for the student. Doubtless, however, the writers intended this work to be used for teaching purposes in confunction with a casebook. As it is, even *Ridge v. Baldwin* does not emerge here as quite the major decision it may well prove to be.

Generally then, they have coped manfully and courageously with a highly complex task. With equal courage they have not hesitated on some thorny topics to express their own stringent and careful conclusions; these opinions are valuable guides for the student who has tried hard to grapple with a problem in depth and deserves help at the end of his struggles. One might indeed wish that they had been even more forthright in criticism in many other areas, where the present state of the law is confused—or defective—in protecting the citizen.

F. K. H. MAHER*

Cases and Materials on Constitutional and Administrative Law, by GEOFFREY WILSON, M.A., LL.B. (Cambridge University Press, 1966), pp. i-xxv, 1-609. Australian price $5.80.

Mr Wilson's compilation does not fit easily into any of the three casebook categories most familiar in Australian Universities. It does not seem intended or, indeed, particularly suitable for use in class; it is not a work of reference containing extensive editorial discussion of the principles exemplified by the materials compiled; and it can by no means be dismissed as merely a students' time and energy saver—a moderately respectable relative of the Nutshell series. In the reviewer's opinion its quite considerable value and its justification arise mainly from the inclusion of much material which would otherwise be largely inaccessible to students.

Rejecting any sharp distinction between legal and conventional rules, Mr Wilson has gathered from a number of sources, including the Royal Archives, Her Majesty's Stationery Office, The Times, Hansard and various books by or about leading political figures, a considerable amount of interesting and often fascinating matter bearing on the powers and duties of the Crown, its Ministers, other members of the legislature and the judiciary. Such an approach not only demonstrates that there are still surprisingly large and important areas in which the rules are uncertain but, in so doing, it also reveals with some clarity the respects in which the United Kingdom constitution is not altogether suitable for export.

If, in fact, the distinction between legal and conventional rules has led to undue emphasis on the former at the expense of the latter, one must agree that the balance should be regressed. It does not follow, however, that the distinction should be forgotten or obscured. Indeed, the importance of the conventional part of the United Kingdom Constitution is such that it would seem most desirable that the attention of students should be directed to the important differences between legal and conventional rules as well as to their similarity. In this last respect the book is open to criticism. Nevertheless if one concentrates on the conventional

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