BOOK REVIEWS

Final Appeal: A Study of the House of Lords in its Judicial Capacity, by LOUIS BLOM-COOPER and GAVIN DREWRY. (Clarendon Press, 1972), pp. i-xvi, 1-584. Recommended Australian price $31.00.

This is an excellent account of the practical operation of the highest tribunal in the United Kingdom in modern times. The fruit of five years of devoted study, it is a model of accurate research which every lawyer will admire, every law teacher and student will find both delightful and useful. The learned authors have not only collected a mass of valuable information; they have also arranged it to the best advantage and described its import in crisp, lucid fashion. To fifty-four tables they have added 116 pages of appendices and a further 46 pages of indexed materials. Yet the 422 pages of the text make easy reading, so intelligent are the comments, so pertinent the conclusions drawn from cases and figures, so smooth the writing.

One original reason for such an elaborate study may have been the controversy, endemic for a century and a half, as to whether the House of Lords, both in its legislative and its judicial capacities, had ceased to be worth preserving. (Weston's study of the nineteenth century debates has set out the constitutional debates.)[1] And the authors do devote the first six chapters to such kindred topics as the history of the judicial House of Lords, the nature of the appellate process, judicial review and *stare decisis*, the judicial decision-making process in various jurisdictions and the statutory basis of the modern structure of the role of the Law Lords. But the authors must have quickly realized the need not for quick conclusions about the future of the Upper House but for a complete investigation of its achievements, especially in the years 1952-68 for which pretty complete data are available.

Briefly, the proposal debated recently has been that the appeal system in the United Kingdom should be simplified by setting up, on the apparently rare occasions that might arise, a special Appeals Board of the Court of Appeal itself, with five judges. The authors disposed of that suggestion in an article they contributed to the *Modern Law Review* in 1969.[2] In this book they have discovered numerous other absorbing topics and discussed them fully. Thus their Appendix 2(a) gives a complete list of every appeal to their Lordships' House 1952-68: its title, when reported, subject matter, outcome—and interesting remarks. This is a mine of information for future research workers. And the valuable Table 50 gives the summary of civil appeals to the Lords in the same period. What it reveals is most significant. Of 349 Civil Appeals from the Court of Appeal 126 were allowed. Of all appellants (466) some 183 succeeded. These are perhaps surprising figures: a one-in-three success-tale. But these figures need further interpretation. In 87 non-Scottish reversals there were dissents in the House of Lords itself, one dissent in 44 cases, 2 dissents in 43 cases (see Table 22). Of these 87 dissents only 18 were, however, fundamental conflicts on legal issues, 15 involved inferences from primary facts; 44 turned on differences of opinion on interpretations of documents, statutes or contracts (Table 23). How does one account for these divergences of opinion?

One could not even attempt an answer here. It is not surprising that English Judges disagree on documents, so do all lawyers in all jurisdictions; and 30 per cent of English appeals have been Revenue Cases (p. 317), notoriously difficult. (In the Privy Council between 1966-71, despite the tradition of unanimity, there were 14

1 C. C. Weston: Constitutional Theory and the House of Lords (Routledge, 1965).
2 (1971) 34 *Modern Law Review* 364.

dissenting judgments.) And any disagreements are not on the principles of law as such, but on which of two valid principles is the more relevant to the set of facts. Nor can one attribute differences to the education of their Lordships. Of the 63 Lords of Appeal in Ordinary since 1876, at least 18 had fathers with some legal background; most came from a wide range of middle-class families (few from either aristocratic or lower-income groups); of the 61 whose universities are known 30 were at Oxford and 16 at Cambridge. Some 30 are known to have taken a first-class degree (most in classics or other humanities (pp. 165-7)), though more recently many studied law at universities. Nor probably can one see the answers in the varying proportions, at given times, of Chancery Judges to common law Judges.

What does emerge, among other things, is the authors' conclusion that the House of Lords does perform a very useful function. '. . . in terms of expense and delay, there is little cause for complaint. Indeed the House of Lords is remarkably cheap and quick, considering the high quality of service that it provides.' (p. 236) Again, they stress that it would be 'easy to over-estimate the importance of this single and rather crude factor, party politics, as a part of the inarticulate major premise which shapes the final product of a judge's reasoning.' (p. 169) There seems very little evidence of this kind of prejudice among the highest English Judges, certainly in the last half-century, despite their general middle-class origins. More effective may be the prestige and energy of individual men, as we in Australia well know. Lord Reid has been a powerful figure in debate and judgement; he has been present at about 70 per cent of all appeals 1952-68 and has delivered 14 per cent of all the full judgements in non-Scottish appeals . . . 'a phenomenal record' (p. 175).

The likely reader of *Final Appeal* would profitably consider the criticisms made of it by Sir Victor Windeyer in a recent review. While acknowledging that 'this is an informative and thought-provoking but formidable book',[3] he is not happy with the authors' use of what is called 'sociologese' or with some of their views on precedent. He is more pleased with their recognition that 'it is more relevant to look at the legal background and experience of Law Lords than to speculate on political bias which may or may not infect or shape Judicial attitudes'. Sir Victor willingly admits that 'a Judge's total experiences do, no doubt, "affect" rather than "infect" his intellectual and emotional responses',[4] though part of his experience is that of obedience to the law. He has also some pertinent observations on minor references to decisions of the High Court of Australia. His final judgment is that 'any determined and discriminating reader will gain from it much good food for thought',[5] despite some complexities of language and mathematical tables.

As other critics point out, the crux of the book is whether a third appellate tier is needed. Blom-Cooper and Drewry would like to see the House being somewhat more 'legislative' to rid law of manifest defects—and yet their Lordships have been very cautious in doing just that. The authors clearly, however, approve the continuance of the third tier, despite its conservatism; though one critic, J. A. O. Shand, considers the evidence so amassed points rather to 'abolition and not just reform'.[6] So the debate continues.

So whatever may happen to its legislative scope, there is evidently a strong case for retaining a separate body of judges with a separate role to decide exceptionally difficult and important issues of fact and law—judges with more time than the highly competent, but very busy, members of the Court of Appeal. This we gather with interest from Blom-Cooper and Drewry—thanks to their skill we can learn a great deal more about courts of final appeal as great social institutions. What we in Australia need now is a similar study of the High Court of Australia. Able pioneers like Professor G. Sawer have blazed some paths already; what is needed is a properly equipped expedition to open up the land, analyze the basic information, get out the figures, put up balanced arguments; thus we could explore further for ourselves the territory of our own Final Appeal system.

F. K. H. MAHER*

3 (1973) 89 *Law Quarterly Review* 282.
4 *Ibid* 286.
5 *Ibid* 288.
6 (1973) *Cambridge Law Journal* 152, 153.

* M.A. LL.B., (Melb.), Sir George Turner Lecturer in Law in the University of Melbourne.

Industrial Law in Victoria, by STEPHEN G. ALLEY, LL.B., (Butterworths, Australia, 1973), pp. i-xx, 1-340. Recommended Australian price $19.00, including first supplement. ISBN 0 409 34695 0.

This book is number six in Butterworths' Australian Industrial Law Series. The rapid expansion of the series clearly shows the recognized need for making data more readily available to practitioners of industrial relations in Australia.

The book is quite simply an annotation of the Labour and Industry Act 1958 It systematically sets out the Act, section by section, and discusses each provision in detail. The only criticism that can be made of this book is that the choice of this form of presentation is disappointing. The Labour and Industry Act is, as its long title reveals,[1] far from being a statute dedicated to providing machinery for the implementation of an overriding philosophy of labour relations. Rather, it is a hodge podge of ideas which regulates some aspects of employment relationships in Victoria, as well as the health, safety and convenience of both employees and the public at large. Reading the statute as a whole will certainly not disclose the full extent and nature of labour relations in Victoria; consequently, reading this book as a whole will not do so either. For instance, because of the chosen format, the legal relationship between federal awards and state Wages Boards' Determinations is only cursorily examined[2] and certainly it is hard to gauge the economic and social relationship between these two spheres of employment regulation in Victoria. In a similar vein, the structure of trade union organization is not discussed; there is no examination of Victorian trade unions as such, nor of their relationship with federal organizations or the Trades Hall Council or with the various political parties. On a more legalistic front, the format also proves somewhat inhibiting. For example, when discussing part IX of the Act, it is notable that apart from an odd reference (such as at p. 178) the author discusses the legislation with respect to safety provisions as being legislation which imposes sanctions for non-compliance; very little is said of the relationship of this legislation to causes of action in tort based on negligence, statutory breach of duty and occupiers' liability.

But all that the foregoing criticism points to is that the author did not write the kind of book that is, in my view, needed as much as the kind of book he did write. There is no question that, given the fact that Mr Alley set out to provide a guide to all aspects of the interpretation of the Labour and Industry Act, he has done a masterly job. His attention to detail is highly commendable and there is no question that every industrial relations' practitioner must put this book on his shelf. The introductions to each section of the book, the historical notes and the use of comparative jurisdictions' interpretations of analogous sections, makes the book a very useful tool for daily practice. In addition, the inclusion of the bulk of the Regulations made under the Labour and Industry Act provides an invaluable reference service. The production of the book is first-rate and this, plus the author's avowed intention of providing a Supplement Service—the first supplement is already being sold with the text—makes Alley's Industrial Law in Victoria a welcome addition to the field of labour law writings.

H. J. GLASBEEK*

1 'An Act to consolidate the Law relating to the Ministry of Labour and Industry, Industrial Matters and Supervision and Regulation of Factory Shops and other Premises.'
2 Pp. 18-20, also p. 42.
* B.A. LL.B. (Hons.) J. D. (Chic.) Barrister and Solicitor (Vic.), Senior Lecturer in Law, University of Melbourne.