Review of Administrative Action, by H. Whitmore and M. Aronson, (Law Book Co. Ltd, Australia, 1978), pp. i-xlv, 1-512, Index 513-9. ISBN 0 455 19593 7.

The past twenty-five years have seen remarkable developments in public administrative law. After an extended period of subservience to the Executive, the Judiciary has restored itself as the custodian of procedural requirements; it has a new, though as yet not fully articulated, self-consciousness of the principles upon which it has proceeded; it has narrowed the immunities which, previously, it had conceded to the higher echelons of the Executive; it has largely freed the substantive law from the tyranny of the writs and, to a degree, freed the writs from their technicalities; and, finally, the Judiciary has had its inherent jurisdiction to review extended by various statutes. Given all this, *Review of Administrative Action* is a welcome addition to the literature on the subject.

All these developments are covered in this volume, one which is 'designed primarily to assist practitioners'. The work is divided into three parts. The first part is introductory and deals with the Administrative Appeals Tribunal and the Administrative Review Council. The second part deals with the various 'grounds of review'. These are breach of the rules of natural justice, *ultra vires* and jurisdictional error. The implication of the rules of natural justice is treated separately from the content of those rules and the latter two 'grounds' are considered, rightly, as *sui generis*. The third part deals with the remedies, equitable and prerogative, and includes chapters on ouster, *habeas corpus*, evidence and procedure. The material on procedure constitutes a particularly useful introduction to the rules of court and the legislation, in all Australian jurisdictions, governing the various remedies.

The treatment of the issue of jurisdictional error is impressive. The issue is clearly identified and a large number of cases which have turned on the issue are either discussed or mentioned. The classification of the cases under the headings of disciplinary tribunals, industrial tribunals, rent tribunals, licensing tribunals, miscellaneous tribunals, time limits and defects in constitution of tribunals should prove of particular assistance to practitioners in their quest for more obvious analogues. Nevertheless, a few questions do arise which it is hoped it is not too pedantic to raise.

It is made quite clear in the text not only that a decision by an inferior authority on the issue of its jurisdiction is, generally, only 'conditional' and 'not conclusive' but also that the refusal by such an authority to exercise a jurisdiction that it possesses will attract *mandamus*. However, there appears to be nothing in the text which gives an indication of those circumstances in which an inferior authority should, of its own volition, submit the issue of its jurisdiction to a court. The matter is discussed by Devlin J. in *R. v. Fulham, Hammersmith and Kensington Rent Tribunal; Ex parte Zerek*.[1]

Furthermore, the issue of jurisdiction nowadays centres on two questions: which matters are to be considered preliminary or collateral and, especially since the decision in *Anisminic*,[2] which errors are to be considered jurisdictional. On the first question, the authors suggest that the answer will be supplied by statutory construction but they add that the answer will be 'largely intuitive'. On the second question, the authors agree that the law on jurisdiction and that on *ultra vires* are moving sensibly into focus and that this movement has been greatly helped by the decision in *Anisminic*.[3] Nevertheless, they consider it imprudent to ignore the distinction between jurisdiction and merits as it 'still does play an important role both in language and in effect'. So the problem is to distinguish those errors of law which go to jurisdiction from those which, as they are within jurisdiction, can only be reviewed if they appear on the face of the record. The list of errors given by Lord Reid in *Anisminic*,[4] which the authors

[1] [1951] 2 K.B. 1, 13.
[2] *Anisminic Ltd v. Foreign Compensation Commission* [1969] 2 A.C. 147.
[3] *Ibid.*
[4] *Ibid.* 171.

have extracted, was not meant to be exhaustive but neither was it meant to be inexhaustible. Lord Wilberforce in the same case intimated some more generic criteria upon which the distinction might be drawn but he did not take the question further.[5] In the circumstances, it seems a pity that *Review of Administrative Action* does not include a more full-blooded treatment of the decision in *Anisminic*.[6] The whole issue still awaits another 'valiant attempt'.

Subsequent editions of the book could, perhaps, be improved by the inclusion of a glossary of terms which might stipulate the definitions of the terms which are to be employed in the text. Administrative law is complicated not so much by the immaturity of its concepts as by the diversity of the terms which express them. Generally speaking, the authors have maintained a constant taxonomy of terms. However, there is the occasional lapse. For instance, the term 'collateral' is used in one sense as a synonym for 'preliminary' and, in another sense, as an antonym for 'direct'. Usually the meaning is clear but the free use of 'collateral' on page 153 is confusing, given the use of the word on the preceding pages. Such a glossary is particularly important if chapters are to be 'for the most part, self-contained'.

Though the text is designed primarily for practitioners, its treatment of the implication of the rules of natural justice is more critical than analytical. The authors accuse Lord Radcliffe of uncritical obfuscation in *Nakkuda Ali v. Jayaratne*;[7] they disapprove of the continued use of the 'old classification language'; and they criticize the extent to which courts are wedded to the 'joys of classification of functions'. They begin to undertake the very difficult task of explaining how such classification is operating and how it can be expected to operate in the future. However, it is clear that the authors favour the widest possible application of the rules for they are confident that this will result in 'decision-making procedures which do afford substantial justice to the individual without impinging unduly upon the efficiency of the administration'. One wonders whether the authors' undisguised exasperation with the courts will help to elucidate the paths the courts appear to be choosing.

J. G. SANTAMARIA*

[5] *Ibid.* 209.
[6] *Ibid.*
[7] [1951] A.C. 66.
* Lecturer in Law, University of Melbourne; Barrister-at-Law.

BOOKS RECEIVED

An Introduction to the Australian Constitution, by P. H. Lane, (2nd ed., Law Book Co. Ltd, Australia, 1977), ISBN 0 455 19584 6.

Family Planning and the Law, by H. A. Finlay and J. E. Sihombing, (2nd ed., Butterworths Pty Ltd, Australia, 1978), ISBN 0 409 43577 5.

An Introduction to Criminal Law in Queensland and Western Australia, by J. M. Herlihy and R. G. Kenny, (Butterworths Pty Ltd, Australia, 1978), ISBN 0 409 34151 7.

Fiduciary Obligations, by P. D. Finn, (Law Book Co. Ltd, Australia, 1977), ISBN 0 455 19589 7.

Governmental and Intergovernmental Immunity in Australia and Canada, by Colin H. H. McNair, (Australian National University Press, Canberra, 1978), ISBN 0 7081 1577 2.

Lawyers and the Community, by Roman Tomasic, (George Allen & Unwin Ltd, Sydney, 1978), ISBN 0 86861 168 9.

Understanding Lawyers, ed. by Roman Tomasic, (George Allen & Unwin Ltd, Sydney, 1978), ISBN 0 86861 160 3.

The Law of the Sea and Australian Off-Shore Areas, by R. D. Lumb, (2nd ed., University of Queensland Press, Brisbane, 1978), ISBN 0 7022 1147 8.

Trade Practices and Consumer Protection, by G. Q. Taperell, R. B. Vermeesch and D. J. Harland, (Butterworths Pty Ltd, Australia, 1978), ISBN 0 409 38105 5.

Crime, Law and Business; The Sociological Sources of Australian Monopoly Law, by Andrew Hopkins, (Australian Institute of Criminology, Canberra, 1978), ISBN 0 642 91814 7.

Meetings: Procedure, Law and Practice, by Mervyn G. Horsley, (Butterworths Pty Ltd, Australia, 1978), ISBN 0 409 33200 3.

Law and Society: The Crisis in Legal Ideals, ed. by E. Kamenka, R. Brown and A. Erh-Soon Tay, (Edward Arnold (Australia) Pty Ltd, Melbourne, 1978), ISBN 0 7267 2035 6.

Human Rights, ed. E. Kamenka and A. Erh-Soon Tay, (Edward Arnold (Australia), Melbourne, 1978), ISBN 0 7267 2036 4.

Legal Services for the Community, by Michael Zander (Maurice Temple Smith Ltd, London, 1978), ISBN 0 85117 155 9.

Commercial Law, by G. J. Borrie, 2nd Australian Edition by D. W. Greig, (Butterworths Pty Ltd, Australia, 1978), ISBN 0 409 40423 3.

Administrative Law, by H. W. R. Wade, (4th ed., Clarendon Press, Oxford, 1977), ISBN 0 19 876070 1.

Business Law of Australia, by R. B. Vermeesch and K. E. Lindgren, (3rd ed., Butterworths Pty Ltd, Australia, 1978), ISBN 0 409 45655 1.