BOOK REVIEWS

'Contempt of Parliament and the Media', by Sally Walker, *Adelaide Law Review Research Paper No. 4, 1984* (Methuen L B C Ltd 1984) pp. i-ix, 1-110, no index. Price $7.00 (limp) ISBN 0 908448 03 1, ISSN 0156-269X.

The initiative of the *Adelaide Law Review* in starting its research paper series is to be highly commended. The purpose of the series is said to be 'to provide a forum for works of high quality, too long to be review articles and too short to be published as monographs.' This has long been a notable gap in the publishing outlets available for good work in law. Cutting a longer piece up into law review size chunks for publication in successive numbers creates at least two problems. On the scholarly side it often causes an artificial division of subject matter and invariably causes reading discontinuity. On the editorial side, particularly if the editorial board consists of students, there are difficulties about editors committing space which necessarily pre-empts what would otherwise be at the disposal of future editors. Moreover there is no law of life or scholarship which dictates that a given subject is best treated at either law review, monograph or book length. The importance of none of these considerations has been lessened by the great increase in publishable Australian legal scholarship over the past decade or so.

If the research paper under review is anything to go by, the *Adelaide Law Review* research paper series will emerge as a highly prestigious vehicle of publication. Ms Walker is one of the most talented and able younger scholars on the Australian legal scene. There could be no better illustration of this than the present production. It is easily the best piece on contempt of Parliament now available. The subject has been traditionally regarded as elusive, no doubt because, in common with many areas of public law, particularly those affecting Parliament, it does not lend itself readily to the habitual modes of everyday legal thought or the routine avenues of research. It requires the lawyer's professional skills of logical analysis, clear presentation and thorough research, but these alone are not enough. It requires also an understanding of what Parliament is all about and a sense of the function and operation of public policy.

The author exhibits these qualities in excellent measure. She accurately perceives that the predominant practical relevance of the subject nowadays is to the public dissemination of information and informed opinion. She sees also that it is not the theoretically draconic powers of punishment claimed by Parliament which are the source of the trouble. It is the suffocating censorship which results from Parliament's excessive sensitivity to the mere possibility that some public statement amounts to contempt. Not the least virtue of this paper is that it brings out clearly the way in which contempt of Parliament correlates with the restrictions similarly imposed upon public debate nowadays by the law of defamation. One of the major weapons, perhaps ultimately the most important of all, available to a democratic society to defend itself against those who would exploit it for their own unlawful advantage is publicity.

No doubt reporters, newspaper owners and others frequently say and do things which are very annoying, and not merely to the hypersensitive. This is a small price to pay in return for the restraint imposed upon would-be spoliators of the public interest if they have to operate in constant awareness of the likelihood that their activities will become public knowledge with names named. In the particular context of Parliament it is to be borne in mind also that triviality on the part of one's parliamentary representatives does not help the general health of the community. On several counts politicians are regarded with little respect in Australia. One factor undoubtedly is the absurd over-sensitivity of politicians to public comment upon their actions and statements, a degree of self-centredness not infrequently illustrated by contempt citations.

The sheer absurdity of the current situation was illustrated in 1984 by an incident in which the Premier of New South Wales, Mr Neville Wran, made some critical remarks about a witness before a Senate committee. He thereby gave rise to serious discussion of the question whether he was in contempt of the federal Parliament. To the disinterested observer the point was not whether Mr Wran's

remarks were in themselves justified, wise or even desirable. The point was that the parliamentary sense of proportion has deteriorated very badly if it can be seriously suggested that a State Premier, speaking on a subject within his own sphere of interest, can be cited and perhaps arrested for contempt of the federal Parliament.

All of which is by way of stressing the importance of having such a publication as the paper under review available. It so happened that shortly before the reviewer's copy came into his possession he received an inquiry from a leading firm of Melbourne solicitors asking whether there was anything good on contempt of Parliament to which they could be referred. The answer at that date had to be that, so far as the reviewer knew, there was nothing which would give much immediately available help. That answer need no longer be made. Ms Walker's paper deserves to be widely publicised not only because of its highly practical content but also, and even more importantly, because of its scholarly and lawyer-like skills. Not a word is wasted and no useful source of further information is overlooked. The precision, modernity and balance of the presentation is impeccable.

It is to be hoped that one day the author will find time and interest to pursue a distinction that she takes up as one way of diminishing the unwieldy theoretical scope of contempt of Parliament. It is between powers necessary for the preservation of Parliament itself and powers unnecessary for this purpose. This paper was not the place to pursue the idea in detail but it is certainly an interesting one which deserves to be more thoroughly explored. Lastly, apart from its inherent excellence, it is to be hoped that this paper will receive wide publicity and circulation because the very knowledge of its existence could exert influence against the greater absurdities of present law and practice. One awaits Ms Walker's further published work with keen interest.

COLIN HOWARD
Hearn Professor of Law,
University of Melbourne

Principles of Australian Administrative Law, by S.D. Hotop (Law Book Co., 1985) pp. i-xxxvi, 1-504, Index 505-516. Price $52.00 (cloth), $36.00 (limp). ISBN 0 455 20575 2.

When the first edition of this now standard work was published in 1950 it barely created a ripple. It escaped the attention of Australia's University law reviews. It even escaped the attention of the *Australian Law Journal*. Two years later it was the subject of a terse note in the *Modern Law Review* by Professor Harry Street.[1] Having welcomed the addition to the scant literature on administrative law, it proceeded to do no more than record a series of minor criticisms.

Professor Friedmann's pioneering work was only 112 pages long and cost 12s. 6d. As it has progressed through subsequent editions, the book has expanded to its present 504 pages to take account of the many developments and reforms in administrative law which have occurred over the past 35 years. Yet it retains its basic structure. In 1950 it is understandable that a substantial part of a text on administrative law would have been made up of an exposition of constitutional principles and an outline of the structures of government. Administrative law was only just beginning to emerge as a discrete area of public law. It is much more difficult today to justify the inclusion of three introductory chapters on 'The Australian Constitutions' (Chapter 2), 'The Framework of Government in Australia' (Chapter 3) and 'Some General Constitutional Principles' (Chapter 4). Together they account for some 80 pages which traverse ground which is more than adequately treated in books on constitutional law and which would be familiar to most students who are about to embark on a study of administrative law.

One important change which has been made is that natural justice is no longer accorded a separate chapter. It properly takes its place amongst the grounds on which judicial review may be sought (Chapter 7). The traditional remedies (Chapter 8) and the new statutory remedies (Chapter 9) which are available when one of the grounds is established are positioned, logically, in the succeeding chapters. This reorganisation would have been more consistent had the separate chapter on delegated legislation (Chapter 6) been abandoned and that part of it which deals with *ultra vires* merged with the *ultra vires* ground of judicial review. Parliamentary control of delegated legislation could have been transferred to the chapter on extra-judicial review of administrative action (Chapter 10).

The new edition retains chapters on the 'Legal Position of the Crown and Public Authorities' (Chapter 12) and 'Proceedings Against the Crown and Public Authorities' (Chapter 13). These topics are also legacies of a bygone era. They have little to do with the regulation of the operation of public bodies, having more in common with constitutional law and civil procedure.

Nonetheless, one can well understand the hesitation of a new author of a new edition of an established work to make wholesale changes to the structure of that work. Professor Hotop has concentrated his attention on additions rather than deletions. A new Chapter has been added to take account of the Commonwealth's Freedom of Information Act 1982 (Chapter 11). It provides a useful overview of the federal Act but no more. There is no discussion of the equivalent United States provisions or of the seminal decisions made in that country which will almost certainly have a bearing on the interpretation of the Australian Act. Some of the Australian material warrants greater attention. For example, the thorny question of how far the secrecy provisions of section 38 protect government documents is disposed of in only two paragraphs.

The Victorian Freedom of Information Act 1982 is mentioned but is not accorded any space. While it is true that it is, in many respects, similar to the Federal Act, there are significant points of difference which could have been highlighted.

By contrast, the Commonwealth's Administrative Decisions (Judicial Review) Act and the Victorian Administrative Law Act are examined in much greater detail. Chapter 9, in which this examination takes place, is unquestionably the best of the sections which deal with the modern statutory reforms in administrative law.

The section on the work of ombudsmen is confined to the Commonwealth Ombudsman, although passing reference is made to his State counterparts and to the Defence Force Ombudsman.

It will be plain that the reviewer considers that future editions of *Principles of Australian Administrative Law* should include expanded treatment of 'modern' administrative law issues. If need be this

[1] (1952) 15 *Modern Law Review* 113.