

Government by Decree. MARGUERITE A. SIEGHART, pp. 343; Index; Stevens & Sons; 30/- stg.

This is a curious and interesting addition to the growing literature on the powers of the executive in the western European social service state. The author has set out to give firstly a historical comparison between the legislative power of the executive in Britain and France, and secondly proposals for the establishing of an administrative tribunal in Britain analogous to the *Conseil d'Etat*. It is evidence that the author is more at home with the French and German languages than she is with English, since her writing, though reasonably clear in general, frequently uses foreign phrases or literal English translations of foreign phrases without adequate explanation; the effect at times is incongruous and even unintelligible. Notice especially the use of "objective" and "subjective" (pp. 217 and 310). It may also be that she is insufficiently familiar with the English legal tradition, since she does not sufficiently explain how the subject of delegation of legislative powers to the bureaucracy is connected with the topic of legal remedies against the administration. There is a connexion, but it is buried in much material relating to what we would call *quasi-judicial* decisions; the connexion is the increased possibility of *invalidation* of executive *regulation* for *abuse* of power (somewhat akin to control of by-laws on the older conception of unreasonableness) which a powerful and flexible administrative tribunal may achieve under a doctrine embracing both *quasi-judicial* and legislative activities of the bureaucracy. This approach to the problem leads Miss Sieghart to give a very full and interesting survey of French constitutional law from the days of the *ancien régime* down to the fourth republic, including an excellent summary of the grounds on which the *Conseil d'Etat* will either annul administrative acts (including decrees) or award damages against the State. In view of the author's obviously close acquaintance with the French sources, one hesitates to criticise any part of this material. However, having recently discussed the topic with Professor Lawson of Oxford and M. Puget of the *Conseil d'Etat*, I suggest that the jurisprudence of the latter body is no longer in the direction of extending the concept of *detournement de pouvoir*, and that some anxiety to respect the autonomy of administrative discretions is instead becoming apparent, especially in the jurisdiction "*en cassation*." It is this survey of French institutions, and the practical recommendations to which it leads, which the Australian student will find most valuable in the book. The sections on the ordaining power in English law are less original and have some doubtful judgments and even more doubtful assumptions; for example, she lumps together conservative reformism with labour socialism (pp. 94-95), an error nowhere present in her French legal history, and seems to think that prior to modern collectivism there was only *laissez-faire* (pp. 110-114). Nevertheless the work as a whole is scholarly and an honest attempt is made to declare the basic value judgments, beginning with her quotation from Tacitus—"an excess of laws destroys the state." Her values are relatively conservative, but the book is not a piece of shallow journalism like the contributions in this field of Hewart and Hayek, has not the numerous errors in detail of Allen's *Law and*

Orders, and shews a better insight into the formal problems of the subject than Robson's *Justice and Administrative Law*. If her correlations may at times seem unfamiliar to English lawyers, they may be all the more provocative of independent thought on that account.

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Lectures on Legal History, by W. J. V. WINDEYER, C.B.E., M.A., LL.B.,
Barrister-at-Law; pp. i-xxiv, 1-364. Second Edition. 1949.
The Law Book Co. of Australasia Pty. Ltd. £1/15/-.

Eleven years have elapsed since this book was first published. In that time it has proved to be a work of inestimable value to students entering upon the law course.

The author has retained most of the subject matter of the first edition but has adopted some modified views of some of the topics treated. He has also enlarged some of the topics treated in the first edition.

It is a most readable book and is particularly valuable in so far as may be read and appreciated by a person not having a proper preparation in law or history.

The chapter dealing with the introduction of English law into Australia is interesting and novel, whilst the note on the citation of Statutes will be appreciated by all students of law.

JOHN LURYE.