Essays on Constitutional Law, by R. F. V. Heuston. London, Stevens and Sons Ltd., 1961. 186pp. (£2/19/0 in Australia.)

Perhaps Mr. Heuston's stay in Australia as a Visiting Professor at Melbourne University Law School was partly responsible for the enthusiasm which he shows in these essays for the constitutional ideas of Sir Owen Dixon, in particular for the notion that there are "logical" pre-suppositions of parliamentary sovereignty. His seventh essay ("Judicial Control of Powers") was not worth the printing, because the problem is too great for useful handling in so short a span. The other six ("Sovereignty", "The Rule of Law", "The Prerogative", "Parliamentary Privilege", "Personal Liberty", "Civil Disorder") contain much useful material and occasional original insights. Mr. Heuston is at his best when analysing in detail a range of cases; for example, he gives an excellent account of the problem of successive applications for the writ of Habeas Corpus (pp.109 ff.). However, as usual with works on the English "Constitution", it is sometimes not easy to see why detailed problems in the criminal law (e.g., pp.123ff.), or the rulings of Speakers which might be overruled at any time (p.66) should form part of such a work at all. This is not merely a question of the "definition" of constitutional law; it is a question of the sense in which particular legal rules are relevant to the study of government, and the extent to which such rules are (in some sense which needs defining) "fundamental".

So we get the usual English mish-mash of political and moral principles, legal rules having some enduring or "fundamental" importance, and ephemeral rules having some detailed relevance to the relations between government and citizen. Mr. Heuston is for the most part a sentimental, naive admirer of the "common law" and of the Diceyan tradition, and like most such he readily identifies any sociological constant or probability with the "common law". He accepts some of the criticisms of Dicey but defends the substance of what Dicey had to say and dismisses most of the criticisms as not touching the "heart of the matter" (p.44) or as "pedantic and verbal" (p.38). But this requires a restatement of Dicey's theses; thus we are told that the rule of law is not "in some way a legal principle" but only "a constitutional principle based upon the practice of liberal democracies of the Western world" *(ib.)*. This brings us back to the definitional problem — should "constitutional principles" which are not "law" figure in a book of essays in constitutional law?

Mr. Heuston adds to the Diceyan principles the conception of "sovereignty" made familiar through the observations of Dixon J. (as he then was) in *Trethowan's Case*, by the decisions of the Court of Appeals in South Africa in the *Coloured Vote Cases* and by Mr. Geoffrey Marshall in *Sovereignty and the Commonwealth*. This is the notion that any collective "sovereign", such as the Parliament at Westminster, is by definition a body proceeding in accordance with rules determining its structure and activities, so that these rules must be "logically prior" to the institution and must have a more fundamental quality than the Acts of the institution itself. This leads to a conclusion that the United Kingdom could acquire a rigid constitution capable of judicial review. But Mr. Heuston does not carry his analysis far enough. What gives authority to the rules determining the structure and activities of Parliament? Why was it possible for the revolution of 1688 to make a complete break with the preceding structure? Do the rules which govern the structure and activities of the courts possess any independent fundamental quality, and if not what is to prevent the Parliament from so affecting the position of the courts that judicial consideration of the "logically prior" rules is rendered impossible? How far do we go with the "prior" definition of Parliament if, as Heuston concedes (p.21), the procedural rules of the Houses — which convert two mobs into two meetings — are beyond judicial inspection? Considerations of this sort drive one back to regarding the Parliament at Westminster as both a potential constituent assembly or revolutionary mob, whose authority depends on no prior rules, and as the regularly operating legislature which the constituent assembly from time to time re-creates. Such a view also renders a good deal more plausible the notion, which Mr. Heuston dismisses without discussion, that the Parliament Acts, 1911-49, operate as a form of delegated legislation (p.24).

There are greater difficulties in applying "logic" to the English situation than there are when applying it to the other realms of the Commonwealth, simply because in the case of the other realms, history makes it easy for us to "feel" that the relevant legislatures have in only a restricted or contingent sense the attributes of a constituent body. In those realms, Westminster is accepted for long as the necessary ultimate sovereign, and it tends to be replaced, not by the "common law", but by some notion of popular sovereignty. Possibly the Parliament at Westminster could construct a rigid constitution subject to judicial review, but *only by a process initiated by itself*, and possibly only if the physical destruction of everything we associate with that Parliament was part of the process, so as to leave no institution to which traditionalists could look as constituting the "real" sovereign. The "logical" sovereign which Mr. Heuston takes for granted is apt, on careful examination to dissolve into nothing, or to become an infinite regression.

But it is the function of a book of essays, as distinct from an institutional work, to tease our minds and provoke argument, and this Mr. Heuston admirably succeeds in doing. He has a pleasant style and a rich repertoire of stories concerning the history and working of English government. The difficulties this reviewer felt with his book would be fewer if its title were changed to "Essays in English Government".

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Canada and the Privy Council, by Coen G. Pierson. London, Stevens and Sons Ltd., 1960. 119pp. (£1/9/8 in Australia.)

Mr. Pierson is Professor of History at De Pauw University, Indiana. His book deals with the history of appeals to the Judicial Committee of the Privy Council from Canada and of the circumstances which led to the abolition of those appeals. There is some interest in his account of the politics of the process, though even this lacks the detail and analysis which would be required to make it a substantial contribution in the field of political science. His account of purely legal issues involved is quite unsatisfactory.

It is obvious that Professor Pierson lacks the background to understand and evaluate legal issues satisfactorily. The range of cases he covers is too slight and his account of them lacks depth. The Australian reader is at once put off by his ingenuous account of s.74 of the Constitution (p.22) and of the effect of the Statute of Westminster on the amendment of the Commonwealth Constitution (p.55). He suffers from the illusion that the Colonial Laws Validity Act of 1865 had some special relevance to the growth of Privy Council jurisdiction (pp.10,54). He completely misses the significance which the peculiar form of s.132 of the British North America Act had in the question of the competence of the Dominion to execute international agreements (pp.56-58). His preface promises (p.xi) that he will give us some picture of the relevant personalities on the Privy Council, such as Haldane, but in fact he gives us little more than their names and the baldest account of some of their main decisions.

There is room for an adequate work on Canadian appeals to the Privy Council, but it is unlikely that anyone except a Canadian constitutional lawyer of long experience and having an extensive knowledge of the constitutional structure and history of the British Commonwealth could do justice to the subject.

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