premises. What drugs are addictive? And addictive in what sense? What drugs have what effect upon the physical and psychological health of people? And most critical and germane of all in proceedings of the Institute of Crimology: should the criminal law be used as an instrument to control drug abuse? Professors Morris and Hawkins in "The Honest Politician's Guide to Crime Control" (1970) [p. 8] maintain that as to the use of drugs ". . . the invocation of the criminal process is wholly inappropriate".

The general spirit of drug seminars is to superficially describe drug abuse problems and existing programs of rehabilitation followed by a statistical evaluation of success; to describe legal actions, followed by more statistics, and finally to consider legal problems, *e.g.* search and seizure and sentencing, but without re-evaluation of the total process. Can criminal law ever meet the problem of drug abuse? Is there actually a problem of drug abuse or is excessive drug taking only symptomatic of underlying social and personal maladjustment? Can society afford to support some drug abuse rather than forcing potentially less desirable alternatives? Are there potentially less desirable alternatives? Can society justify and tolerate a happy self-destructing drug abuser or must all people be socially productive and conformable to make us comfortable?

Failure to re-evaluate basic premises or to question conventional actions assures responses by well-meaning front-line drug foes that must eventually take a high position on lists of the ludicrous. Only recently a new phrase was popularized in Northwestern United States—"Wyoming Green". A mountain of grass in Wyoming was reputed to have marijuana-like qualities. The hippies were wonderstruck and the police were panicked. The most recent public announcement is that "Wyoming Green" is not botanically or chemically the same as marijuana and therefore not illegal. Further it was noted that "Wyoming Green" is neither depressant nor hallucinogenic although the particular hill is reputedly being patrolled by the local police. The pot users' traditional mistrust of official pronouncements assures a continuous flow of visitors to the notorious mountain for personal on-site tests. A most bizarre and ludicrous play continues. And to what end?

If medical and pharmacological clarity is not obtained, if relevant scientific evidence is obscured by irrelevant statistics, and if criminal law persists as the principal actor in drug abuse control, the composite total of official action should create a sufficient negative impact to assure a steady growth in drug abuse for many years to come.

LARRY M. ELISON*

Principles of Australian Administrative Law (4 ed.), by D. G. Benjafield and H. Whitmore, Australia, Law Book Co. Ltd., 1971, xxxviii + 367 + (index) 9 pp. (Cloth bound, $10.75; limp cover, $8.75).

It is a pleasure to welcome the fourth edition of this leading textbook, which started life as a pioneering work by Professor W. Friedmann, and is now produced by the distinguished team of Professors Benjafield[1] and Whitmore.[2] In common law countries administrative law is a very rapidly developing subject, and it is a mark of the success of this edition that the authors have managed to bestride the relevant laws, not just of Australia, but of

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the whole common law world, with understanding and authority, an excellent knowledge of its modern twists and turns, and an ease of literary style. Practitioners in the field can take heart from the information in the Preface that the authors, far from resting upon their laurels, are to prepare two major practitioners' works on administrative law. It would be hard to think of better hands for this commission to be in.

Apart from the fact that this volume is so clear and up-to-date, its most striking feature lies in the law it describes and discusses. English lawyers are accustomed to treating decisions of the High Court of Australia with the respect due to one of the strongest courts in the Commonwealth, but it becomes only too clear from this edition that Australian State legislatures and courts at all levels have in recent years taken a hand in moulding administrative law into the form required for modern needs. Using United Kingdom and United States law as a starting point, the Australian authorities have added distinctive Australian characteristics, and on the whole kept a very level-headed balance between State (or Federal) interests and the legitimate rights of the citizen—which is what administrative law is really about. At times it seems the law has yet to settle into a generally accepted pattern, as *e.g.* on the result in law of a failure to lay delegated legislation before Parliament (p. 126), on which there are conflicting Australian cases, but in many aspects of administrative law Australian authority is firm and unequivocal. An example of this would perhaps be the recognition that unreasonableness is merely a manifestation of *ultra vires*. In fact English cases are probably just as clear (*e.g. Roberts* v. *Hopwood*,[3] *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*,[4] and *Padfield* v. *Minister of Agriculture, Fisheries and Food*[5]), but it is most unfortunate that some English textbook writers still do not recognise this: see *e.g.* J. F. Garner, *Administrative Law*, and L. Neville Brown and J. F. Garner, *French Administrative Law*.

This book is destined for many more editions, and in this knowledge it may not be impertinent to suggest a few matters of detail which might be attended to in the future. The statement that the United Kingdom courts are reluctant to question the exercise of power by ministers and senior officials (p. 29) certainly cannot be supported since *Padfield*.[6] On p. 52 the heading on magistrates' courts is wrongly numbered. On p. 54, and in fact in many other parts of the book, the Franks Committee Report is incorrectly cited as Cmd. 218: the citation should be Cmnd. 218, this abbreviation distinguishing all the current series of Command Papers from the older series, which included the Report of the Committee on Ministers' Powers. The full importance of *Padfield* is perhaps missed (p. 172), for since this decision of the House of Lords the power of the English courts to hold an unreasonable exercise of discretion to be a void act can no longer be a matter of doubt. This case, along with *R.* v. *Metropolitan Police Commissioner, ex p. Blackburn*,[7] demonstrates a rather wider use of *mandamus* in England than Professors Benjafield and Whitmore believe (p. 213). Declaration, unlike injunction, is *not* an equitable remedy (p. 231), but arises from statutory authority (though in New South Wales it may be that the Equity Act, 1901 makes it both statutory and equitable). And the whole point of *Punton* v. *Ministry of Pensions and National Insurance (No. 2)*,[8] is that declaration is useless to

[3] (1925) A.C. 578.
[4] (1948) 1 K.B. 223.
[5] (1968) A.C. 997.
[6] *Ibid.*
[7] (1968) 1 All E.R. 763.
[8] (1964) 1 W.L.R. 226.

correct errors of law within jurisdiction, because such errors only render a decision voidable, and declaration is a non-coercive remedy: this limitation on the scope of declaration is missed at p. 240. The Crown Proceedings Act, 1947 no longer applies to the Post Office since the Post Office Act, 1969 (p. 276): the point is more correctly noted at p. 332. Pages 332-338 and 361 seem to perpetuate a quite out-of-date view of English administrative tribunals and the Report of the Franks Committee. There is very little criticism these days along the lines suggested on p. 332, for the simple reason that the Council on Tribunals has done a lot of work which is generally recognised as beneficial. The authors' account would seem to be unduly influenced by the views of Professors Robson and Griffith, published many years ago, and now largely discredited. Professors Benjafield and Whitmore would find divided views in the United Kingdom today about the desirability of an Administrative Division of the High Court, but few would deny that the Council on Tribunals works and works well. Just as the Report of the Committee on Ministers' Powers over a period of time persuaded us to accept delegated legislation as necessary and even desirable, so the Report of the Franks Committee has in the space of a dozen years assuaged the fears and doubts about tribunals. With respect, the Franks Committee Report, written in an easy style, and being published on a wave of popular approval in political circles, cannot be called "narrow and legalistic" (p. 338) or "most disappointing" (p. 361). Indeed the independence of the United Kingdom tribunals, insisted upon by the Franks Committee, and now so widely approved, would lead most English lawyers to disapprove of the inclusion of administrative adjudication as part of the machinery of administration, as in the U.S.A., and as apparently applauded by Professors Benjafield and Whitmore (p. 343).

The authors perhaps underestimate the value of the Parliamentary Commissioner for Administration in the United Kingdom (his title is misprinted on p. 362). Again they may have been misled by the vigorous criticism of one man, Professor J. D. B. Mitchell, but despite the fact that Professor Mitchell has repeated his objections many times it is surely an overstatement to say that "most observers" regard the appointment of the P.C.A. as merely a palliative pending comprehensive reform of administrative law (p. 363). The major objection of Professor Mitchell is not that the institution of the P.C.A. will not work, but that it probably will, and thus that other more radical reform will not follow. But Professor Mitchell ignores one very important fact, that with all its imperfections English administrative law *does* work, and generally works justice, so that any more radical reform (such as Professor Mitchell's favourite introduction of a French-style *droit administratif*) simply is not a practical possibility. The British tradition of gradual change where really needed, rather than change just for the sake of change, is what is being followed, and the P.C.A., though far from a perfect institution as yet, is a generally welcomed stage in the furtherance of this tradition. Such popular or professional pressure as there is at present is mostly devoted to ensuring the strengthening of the institution, or its extension, and not to any more radical reform.

With respect, the authors' faith in the English Law Commission's 1969 Report on Administrative Law, and condemnation of the British Government's rejection of it, is touching but unconvincing (p. 363). In fact the Law Commission spent three years considering administrative law, at the end of which time it produced a Report of four pages (other than appendices) saying that it was convinced that a Royal Commission should be set up to consider the subject. After such a lapse of time and with such an empty Report to show for it, it was small wonder that the Government of the

day was not exactly eager to follow the suggestion. The Lord Chancellor's decision to refer back to the Law Commission the more limited topic of remedies in administrative law seemed to many a much more constructive course to take, and we now await with more hope the Report on possible simplification of these remedies which is understood to be currently in draft. This is one part of administrative law which clearly needs reform, and the reviewer fails to see why Professors Benjafield and Whitmore say that it is a question which cannot be examined effectively in isolation. In any case, is *not* the Supreme Court Act, 1970 in New South Wales laudably seeking to carry out the fruits of just such an examination (p. 188)?

In a developing subject such as this, it would be surprising to find any reviewer in full agreement with all he reads in the book he is reviewing. On this occasion the reviewer finds himself in a different camp on Parliamentary sovereignty from the authors (pp. 54-65). While accepting all that is said on the Australian, South African and Ceylon cases, it is still submitted by the reviewer that any purported entrenchment of legislation in the United Kingdom would be ineffective as regards a later Parliament, either legally or at least politically. Of course this depends on one's view of what the British Constitution is and what it contains, and it will never be possible to conclude this argument decisively. There is, however, a sidelight on the doctrine of Parliamentary sovereignty shed by the decision in *Anisminic* v. *Foreign Compensation Commission*,[9] which the authors might care to consider. The House of Lords held that judicial review of the Commission's decisions was possible, despite the provision in the Foreign Compensation Act, 1950, s. 4(4), that: "The determination by the commission of any application made to them under this Act shall not be called in question in any court of law." Does this not show that the courts may be prepared to modify the whole idea of Parliamentary sovereignty in certain cases if they feel strongly enough? The doctrine does, after all, rest upon acquiescence by the courts, and perhaps the worm may be prepared to turn!

The authors have covered the recent authorities with great care, but it may be questioned whether the views of the Privy Council in *Durayappah* v. *Fernando*,[10] on void and voidable decisions, are quite so important since *Anisminic*. Although the effect of *Anisminic* on the law concerning jurisdictional fact is admirably stated (p. 181), this reviewer must dissent from Professors Benjafield and Whitmore in their preference (p. 155) for the artificial void-voidable distinction perpetrated by the Privy Council in *Durayappah* over the more straightforward view taken by the House of Lords in *Anisminic* that all breaches of natural justice render a decision void. It is submitted that the rules stated on pp. 153-155 to be those of English law cannot be supported since *Anisminic*, which the authors recognise as reinstating *Cooper* v. *Wilson*[11] (pp. 238-239). Opinion among a number of judges and writers in England is gradually forming that a decision taken in breach of either rule of natural justice *must* be *ultra vires* (see *e.g.* H. W. R. Wade, *Administrative Law*).

This volume ends with an account of the impressive strides made in Australia to bring about law reform. Surely the New South Wales legislature and the Attorney-General for the Commonwealth are to be particularly congratulated upon enlisting the personal efforts of the authors of this book to ensure the most desirable effects in the details of the work in hand.

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[9] (1969) 2 A.C. 147.
[10] (1967) 2 A.C. 337.
[11] (1937) 2 K.B. 309.

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Stamp, Death, Estate and Gift Duties (N.S.W., Commonwealth & A.C.T.), by D. Graham Hill, Sydney, Law Book Co. Ltd., 1970, xxxviii and 753 pp. with index and loose leaf supplement. ($24.75).

Anyone who sets out to write a book on revenue law is immediately faced with the problem of deciding whether he should prepare a treatise on the subject—perhaps with special reference to one particular statute or group of statutes—or, on the other hand, openly produce an annotated statute, with comments on the various provisions interspersed among the sections. The problem of decision is not lessened in New South Wales by the fact that the legal practitioner in the State needs to be familiar with several New South Wales revenue statutes (not always cross referenced[1]), with various Federal Statutes of Commonwealth-wide application, and now, in addition, with the statutory provisions relating to stamp duty applicable to the Australian Capital Territory.

The author of the volume under review has resolved this problem by producing a book which sets out and annotates the various New South Wales, Commonwealth and Australian Capital Territory statutes dealing with stamp, death, estate and gift duties, but in such a way that "some of the advantages of a treatise approach" are "added to the evident advantages" to practitioners of an annotated Act.[2]

The parent of this volume is Mr. R. C. Smith's *The Law Relating to Stamp, Death, Estate and Gift Duties*, the third edition of which was published in 1953, was supplemented in 1957, and has been out of print for many years. But the issue, while preserving the strength of the parent, is, naturally enough, different. This is inevitable since the bulk of case law and legislative amendment since 1957 has been substantial. In addition, the author has attempted (with success, one may add) to give the practice which the New South Wales Stamp Duties office adopts in administering the Acts which fall under its control.

In the annotations, each topic of comment is separately identified by reference to the statutory section and a running number. These running numbers reach 192 in comments upon s. 102 of the New South Wales Stamp Duties Act and occupy (in relation to that section) eighty-five pages compared with thirty-four in Smith. The work is being kept up to date by a loose-leaf supplement. In this supplement comments are identified in the same way as in the main volume. By 31st January, 1971 one hundred and forty-six pages of supplement had been issued to cover the period from 1st July, 1969, the date at which the main work stated the law. The utility of the main work and the supplement is unquestioned.

The quality of the work is of a high order. Necessarily, in a work which covers stamp and gift duties as well as death duties, the same detailed coverage of the latter field as appears, say, in Dymond[3] or Hanson[4] cannot be expected. But the topics dealt with have been covered fully enough to provide a guide which is more than sufficient for mere casual advice. To take one example, six pages are devoted to the *situs* of various types of property, both corporeal and incorporeal, ending with a succinct and accurate statement

[1] The author at 414-16 lists over 50 statutes which provide for exemptions from N.S.W. Stamp Duty; while many of these exceptions could be incorporated in the Stamp Duties Act only with difficulty, some of the exemption provisions (e.g., those in the Educational Institutions (Stamp Duties Exemption) Act, 1961) could readily be, and should have been, enacted as amendments to the main Act.

[2] Author's Preface at ix.

[3] R. Dymond, *Death Duties*, 14 ed. by R. K. Johns, London, Solicitors' Law Stationery Society, 1965, and 3rd cum. suppl., 1969.

[4] A. Hanson, *Death Duties*, 10 ed. by H. E. Smith, London, Sweet & Maxwell Ltd., 1956, 6th cum. suppl., 1963.

(with the authorities which justify it) of the "relationship of the realty-personalty distinction to the moveable—immoveable distinction".[5]

The book is a mine of such useful materials, and has a value far beyond its usefulness to the practitioner at a bread-and-butter level.

R. G. HENDERSON.*

Outlines of Modern Legal Logic, by Ilmar Tammelo. Franz Steiner Verlag, Wiesbaden, 1969. Pp. 167 + vii. ($U.S 9.00).

Tammelo's book may be said to confirm to a high degree two statements of Abraham Fraunce (in his "The Lawiers Logike", published 1588) which are placed in its preface: "I see no reason, why that Law and Logike should not bee The nearest and the dearest freends, and therefore best agree." And: "I sought for Logike in our Law, and found it as I thought." There is a huge number of books on logic in general. But there are very few which are both a good introduction to logic and at the same time a good application of logic to some of the scientific disciplines; it can be said of Tammelo's book that it has both properties.

In more detail, the book is divided into three parts. Chapter I deals with traditional logic, especially with the system of syllogistic logic, and with non-syllogistic forms of hypothetic and disjunctive inference of propositional logic, which was introduced by the Megaric and Stoic schools and extended by Boethius and by the Scholastics. Chapter II is devoted to Modern Logic, especially to Propositional Logic, to Predicate Logic and to the Logic of Classes. In Chapter III the author deals with Legal Logic and with Deontic Logic, and with the application of Modern Logic in legal discourse. It is this chapter which gives to the book the name "Outlines of Modern Legal Logic". The Appendices are devoted to more special problems—methods and notations in Modern Logic.

Already in the preface Tammelo corrects some of the commonly used prejudices and misunderstandings about logic and its relation to law. This is very important because such prejudices hinder progress in legal discourse, in jurisprudence and in special subdisciplines of logic such as Deontic Logic and Legal Logic. The reviewer agrees with the author that "the so-called irrationalities of law are really not lack of logic in law or legal thought but rather manifestations of intricacies of the structure of law and reflections of intractabilities or uncertainties of its substance". (p. V).

After that the author states the task of the book to be an introductory compendium of Legal Logic, which means, first, that it is devoted to the understanding of formal aspects of legal reasoning (in general), and, second, that it is intended as a ground work for a more extensive and detailed treatment of logic in the service of law. (p. VI). It can be said that both aspects of the task are satisfied to a considerable degree by the book.

In the Introduction Tammelo tries to give a simple characterization of the two terms, "law" and "logic", which serves as an orientation for beginners. (pp. IX and XI). The introduction also shows that Tammelo is not a formalist. His view is that every legal formalism which places law in a straitjacket is an abuse of logic. (p. X). At the end of the Introduction the author gives reasons for choosing the so-called Polish Notation and for restricting the book to the chapters mentioned without treating more exten-

[5] At 228.

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