The text of this book was completed in 1978 and not published until 1980. Quite important changes have come about since then either in the public arena by debates on rain forests, aboriginal sacred sites or in the law by the introduction of the Environment Planning and Assessment Act, 1979 (N.S.W.), the Land and Environment Court Act, 1979 (N.S.W.) or the High Court case of *Australian Conservation* v. *The Commonwealth*[3] on *locus standi*. These milestones, however, have not aged Dr Fisher's thesis. The book is recommended reading for any student of Australian environmental law.

DAVID JOHN HAIGH*

Principles of Australian Administrative Law (5th ed.), by H Whitmore, Law Book Company Limited, 1980, xxviii + 289 pp $25.00 (hard cover), $15.00 (paper).

The first edition of this book by the late Professor Wolfgan Friedmann appeared in 1950, and the second, by Professor Friedmann and the late Professor Benjafield, in 1962. Professors Benjafield an Whitmore wrote the third and fourth editions, the third, on which dieted as a student, appearing in 1966, and the fourth in 1971. Now in 1980 the fifth edition has been published, written solely by Professo Harry Whitmore.

This work is a general account of what is traditionally describe as administrative law. Its text has 279 pages which are divided int twelve chapters. Four introductory chapters deal with some back ground constitutional matters, Chapter 5 deals with the classificatio of functions in modern administrative law and the next five chapte cover aspects of administrative review — delegated legislation, judici review at common law, Public Service Boards, the Ombudsmen, th Administrative Appeals Tribunal, the Administrative Decisions (Jud cial Review) Act, and the Administrative Review Council. The fin two chapters deal with actions in tort and contract and the speci position of the Crown and public authorities. Therefore, the book comprehensive in that it deals with the major remedies provided b administrative law, as that term has been traditionally understood. Fo the most part, it is easy to read as Professor Whitmore has a lilting, idiosyncratic style. Thus as a clear and concise account of a large fie of remedial law, the book is a useful work. However, the work h

[3] *Ibid.*

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some deficiencies and limitations which detract from its usefulness. I shall deal with them in turn.

First, there is the matter of organization. There are two obvious ways of breaking up this subject. One way is to break it up remedy by remedy, then to divide each remedy into its parts. Using this method, administrative law would break up into judicial review at common law, judicial review by statute, Administrative Appeals Tribunal, ombudsmen, etc. Under the second method, the subject is broken up not according to remedies but according to steps in the decision making process. The first method shows the requirements for remedial use of the law, the second exposes the decision making process. However, Professor Whitmore has adopted neither of these methods. His approach is *sui generis* (which is Latin for "I did it my way"). The problem starts with Chapter 7.

Chapter 7 is entitled "Review of Administrative Action: Natural Justice". Natural justice is a ground for judicial review at common law. One would expect therefore that the succeeding chapters would deal with the other grounds for judicial review at common law, then with the remedies. Alas, this is not the case. Chapter 8 (entitled "Review of Administrative Action by the Parliament, the Administration and the Courts") detours as its title suggests, into other methods of review, before returning to the grounds for judicial review. Then in Chapter 9 entitled "Review of Administrative Action: the Remedies", the remedies for judicial review are discussed. This awkward division of the subject, and wayward use of headings, can only confuse students who are trying to master what is already a difficult subject.

Secondly, there is the question of allocation of space. I appreciate that this is never an easy task. Nevertheless, taking this into account, I think it is still possible to lament the lack of attention given to the new administrative law (by which term is meant the recent statutory reforms). Chapter 10 deals with these, but that chapter includes a mere 14 pages in which are discussed the Administrative Appeals Tribunal, the Ombudsmen, the Administrative Decisions (Judicial Review) Act 1977 (Cth.), the Administrative Review Council and the Victorian Administrative Law Act of 1978. Admittedly, the Ombudsman is treated elsewhere in another 5 pages, but that brings to a total of 19 the number of pages devoted to these reforms. It is even more a pity, as Professor Whitmore himself was a member of both the Administrative Review Committee and the Committee on Administrative Discretion, which did so much excellent work examining the problems of administrative law and in recommending most of these reforms. Included on the Administrative Review Committee were Mr Justice J. R. Kerr (as he then was) who was the Chairman, and R. J. Ellicott, Q.C., who was then Solicitor-General for the Commonwealth of Australia. It is understandable if Professor Whitmore wished to

dissociate himself from the actions of these two people in 1975, but it is a pity their good works in administrative reform are not more fully reported. Of particular sparseness are the treatments of the Victorian Administrative Law Act 1978 which receives a small paragraph, and the State Ombudsmen who receive a few sentences. I appreciate that there is always pressure for space, but one way in which more space could be made available is to eliminate much of the materials in the first four chapters (which cover a total of 71 pages). While the treatment of the introductory constitutional material is an excellent summary of the law, it is available in other published works, and is material which students have normally covered before they encounter administrative law. Therefore, by omitting much of this material, more space could be given to the statutory reforms without loss of efficiency.

Thirdly, the treatment in Chapters 11 and 12 of actions in tort contract and under statutes against the Crown, the government and public authorities, while in many respects good, is bedevilled by a rather unclear introduction. Chapter 11 entitled "The Legal Position of the Crown and Public Authorities" commences with the sub-heading "The Shield of the Crown". This part does not clearly state that there are three types of Crown immunity to discuss — first, the general immunity at common law of the Crown from common law actions; secondly, the presumption that the Crown is not bound by statutes, and thirdly, the immunity of the exercise of the Royal Prerogative from scrutiny by the courts in judicial review. A clearer statement of these immunities, and a statement of the links between these three and the rest of the chapter would have brought the chapter to the high quality of the rest of the work.

Fourthly, there are two technical defects which further detract from the usefulness of the book. There is no statement of the date to which the law is presented, and there is no table of statutes. The need for a statement of the date of law is obvious. It is my firm belief that not only should such a statement be made, but in contrast to the usual practice of inserting it in the preface, it should be separately stated under a heading on its own and its location should be put in the table of contents. It is not only an important, but a vital piece of information for users of the book and its presentation should reflect that importance. As to the table of statutes, it should be recognized by authors that text books are not just read by those who will read them from cover to cover, but by those who will delve into them for specific pieces of information. For these users, a table of statutes is a necessary tool. The argument for the insertion of such a table is even more compelling when one considers the woeful state of the printing and publishing of statutes, reprints, case annotations and indexes.

My fifth and final point is more a comment than a criticism. It relates to the method of presentation of the subject. It is a long-standing

tradition of such Australian legal scholarship as there has been, that legal scholarship should largely consist of classification and description of legal principles. The performing of such scholarship is akin to stacking groceries on the shelves of a supermarket then taking an inventory. The works it produces extract ratios from cases, or such coherent ratios as can be constructed, organize statutory material in orderly form and summarize the results for the benefit of students and practitioners. I do not wish to deride the benefit of such scholarship. My comment is that it is a pity that our scholarship is so much of this flat description and so little deeper analysis. To illustrate this in the context of administrative law, the subject is largely concerned with the bureaucracy. It should, therefore, commence with some discussion of the nature of bureaucracy and such relevant matters as its function, powers, influence, ideology and rationale. Professor Whitmore does deal with bureaucracy and from the point of view of flat description it is a good treatment. He does insert some comments as to its operation, and some criticism. However, what is lacking is an attempt to assess a reason for having a bureaucracy. Is it to modify what would otherwise be the unpalatable operations of a system of *laissez-faire* capitalism such as operated in the 19th century in England? Is it to iron out market imperfections in that system, and by progressive taxation and government spending to increase demand in accordance with Keynesian principles of economic management? Or is the Marxist attitude (or more accurately, the common theme in the various Marxist attitudes) correct, in that the bureaucracy is not part of the Welfare State but part of class warfare, and a means by which the State interferes on the side of capital to lower the costs of reproduction of labour, to legitimize the power of concentrated capital by the apparition of regulation (e.g. the Australian Broadcasting Tribunal), and to buy off the unemployed with benefits and to control them by the threat of withdrawal of benefits? To discuss administrative law without examining these questions does appear, to use the old analogy, to be dealing with medicine without discussing diseases.

In a similar vein is my comment that Professor Whitmore's treatment of the bureaucracy is largely concerned with government bureaucracy. There is some reference to semi-governmental bodies, but the merest mention of so-called private bureaucracies. Yet if one is to assess the large bureaucracies which influence our lives, then surely the private bureaucracies, most of whom are large business corporations, deserve consideration. They influence our lives in many ways — for example, as employers of a large number of citizens, as providers of goods and services, as owners of property and as controllers of technology. To give an obvious example, the city of Sydney has been made irredeemably ugly by the erection of sky-scrapers, most of which have been financed by insurance companies and now stand as monu-

ments to idle superannuation funds.

In keeping with this narrow view of the subject, is a confined treatment of the ways in which the existence of large and powerful bureaucracies might be reconciled with such notions of democracy as purport to give the citizen some say and influence over his life. The remedies treated are the obvious and legal ones, such as judicial review at common law, the various statutory reforms and actions in tort and contract. However, there are a range of other remedies — public discussion before an area of activity comes under bureaucratic control, representation for the citizen in the management of a bureaucracy, participation by the citizen in some of its policy making, access to information so that informed discussion and criticism is possible, financial audit, managerial and efficiency audits, an appraisal of the economic, social and environmental impact of a bureaucracy, enquiries and commissions, and sunset legislation. All of these should be considered as ways by which the bureaucracy might be controlled and reconciled in part anyway, with notions of democracy. However, in taking a narrow view of the subject which outlaws treatment of these matters, Professor Whitmore has merely followed the prevalent ways of Australian academics. I, therefore, do not criticise Professor Whitmore for his treatment of the subject. Rather I criticise the tradition to which he has been loyal.

CHRISTOPHER ENRIGHT*

The System of Criminal Law: Cases and Materials: New South Wales Victoria, South Australia, by A. P. Bates, T. L. Buddin and D. J Meure, Australia, Butterworths Pty. Ltd., 1979, lvi + 984 pp. (including index). $32.50 paperback, $42.00 hard cover.

Until this book appeared late in 1979, the only casebook on criminal law in the common law states was *Criminal Law: Cases and Text* by Professors P. Brett and L. Waller, which first appeared in 1962. Both the late Professor Brett and Professor Waller were, with respect, Victorian academics, and the emphasis of their book on aspects of the common law relating solely, or particularly, to Victoria, is very evident.

It is pleasing therefore to find in Bates, Buddin and Meure's new casebook, a New South Wales complement to Brett and Waller's "Victorian" text. The authors have, as they say themselves "used

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