The book can be unreservedly recommended as an instruction medium to students and to those practitioners who are concerned with jurisdiction problems under the Act and as a stimulus to critical enquiry by those concerned in the teaching of conflict of laws and of family law.

E. I. SYKES*

Parliamentary Supervision of Delegated Legislation: The United Kingdom, Australia, New Zealand and Canada, by JOHN E. KERSELL (Stevens & Sons Ltd, 1960), pp. i-xvi, 1-178. Australian price £1 4s. 6d.

How should one manage an unruly horse? Tame it before it can go on the rampage, or shut the gate after it has bolted? If subordinate legislation is one of our modern unruly horses, we too often seem content with the latter policy—with recriminations and judicial pronouncements after the event—when we might well be able to devise useful ways to implement the former. Parliamentary supervision in one form or another is just such a way, and in recent years has been gaining increasing attention. The book under review is a comparative study of the law and practice of parliamentary supervision in four countries, as its title indicates. Some of it has already appeared in article form in the periodical *Public Law.*[1]

There can be no question of the value of the study which this book undertakes. The work of the United Kingdom committees is fairly well known, but to many readers the experience in Canada, Australia and New Zealand will be quite new. Professor Kersell demonstrates that parliamentary supervision can play a useful role in checking the propriety of subordinate legislation, even though the bulk of such legislation and the pressures on parliamentary time may prevent that supervision being as effective as it might be in an ideal world.

'The prerequisites of Parliamentary supervision of delegated legislative powers', the author concludes,

> seem . . . to be adequate provisions for publication and laying. Preliminaries of supervision are scrutiny of form and of substance. Opportunities for Parliament to bring some degree of influence to bear on the form and substance of instruments are afforded by normal and, preferably, special debates. Parliamentary influence over the effects of instruments in operation can be had through appropriate procedures by which grievances are brought to light, ventilated if necessary, and, in the last resort, presented formally to the Government for redress (page 168).

On the whole, 'Australia' comes out of Professor Kersell's review reasonably well. But what is his 'Australia'? Here one must draw attention to a serious defect in the book: it gives a quite unbalanced picture of what is in fact the Australian experience in this field.[2] When discussing 'Australian' law and practice, Professor Kersell concentrates exclusively on the Commonwealth. Despite the fact that the great bulk of subordinate legislation in the key fields of housing, town and country planning, public health, education, traffic and transport, labour and

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[1] [1959] *Public Law,* 46, 152.

[2] The criticism here made seems equally applicable to the author's discussion of the Canadian position.

industry, public utilities, the regulation of trades and professions, agriculture, marketing and retailing derives from State law, he says nothing whatsoever about State law and practice.[3] Moreover, he presents his examination of the Commonwealth position in such a way that readers could well remain quite unaware that it was concerned with a mere fraction of the subordinate legislation in fact affecting the Australian people. There seem to be only three passing references to the existence of State legislatures (pages 5, 137, 169), and there is no indication of the limited legislative powers of the Commonwealth Parliament and its subordinates. Commonwealth statutes are referred to as 'Australian' statutes, the Commonwealth Parliament as 'the Australian Parliament', the *Commonwealth Gazette* as the *'Australian Gazette'*. The provisions of the (Commonwealth) Acts Interpretation Act are described as 'the Australian requirements' and 'Australia's . . . procedures'. After mentioning section 5 (3) of the (Commonwealth) Rules Publication Act 1903-1939 and section 48 (i) of the (Commonwealth) Acts Interpretation Act 1901-1957, the author remarks: 'Thus in Australia there is compulsory publication of all delegated legislation unless the enabling Act specifically excludes this requirement' (page 9). Discussion of Australian experience elsewhere in the book, including the concluding summary (pages 160-163), follows the same pattern. It is highly, and quite unnecessarily, misleading.

I do not quarrel unduly with Professor Kersell's decision not to discuss the position in the Australian States, though I regret it; he may have had some good reason for wishing to keep the volume of the work within certain limits, and if he had dealt with the Australian States he would also have had to deal with the Canadian Provinces (which are likewise ignored). But I do quarrel with his failure to give any real indication to his readers that the 'Australian' law and practice he describes is merely the law and practice within the circumscribed province of Commonwealth legislative and executive activity.

It is somewhat regrettable that Professor Kersell has not examined the position in the Australian States, for he would have found there much of interest, and no comprehensive account of it appears to exist.[4] A book review is not the place to provide such an account, but reference to the leading legislative provisions of general application in the various States may be useful.

New South Wales has no such provisions. The practice is to insert clauses in the enabling statutes themselves providing for publication, laying-before-Parliament and parliamentary disallowance.[5]

This, too, is the practice in Queensland,[6] but in addition the Statutory Instruments Reprint Act 1952 provides for the regular publication of collections of statutory instruments. In South Australia, section 38 of the Acts Interpretation Act 1915-1936 provides for publication, laying-before-Parliament and parliamentary disallowance, and the Constitution Act

[3] In Victoria alone, 174 of the 235 statutes consolidated in 1958 contained regulation making provisions. Between October 1956 and April 1961, the Victorian Subordinate Legislation Committee examined 1274 regulations (which is not in fact the total output of subordinate legislation in that State). *Special Report of the Subordinate Legislation Committee, April 1961.*

[4] Brief references appear in Davis ed., *The Government of Australian States* (1960) 20-21; Professor Sawer describes the Parliamentary Committee in South Australia and Victoria in [1957] *Public Law* 6.

[5] Davis, *loc. cit.; N.S.W. Parliamentary Debates,* 27 September 1960, 727-728.

[6] Davis, *loc. cit.*

Amendment Act 1937 sets up a parliamentary scrutiny committee.[7] Tasmania has provision in section 47 of its Acts Interpretation Act 1931, similar to that in the South Australian Acts Interpretation Act, with an additional clause inhibiting for twelve months the adoption of regulations to the same effect as any that have been disallowed. The Rules Publication Act 1953 provides for the printing, numbering and publication of 'statutory rules'. Section 36 of the Western Australian Interpretation Act 1918-1957 is again similar to that in South Australia, but allows Parliament itself to amend vary or provide a substitution for any regulation laid before it. A Reprinting of Regulations Act was passed in 1954. Victoria has no general provision for publication, laying-before-Parliament and disallowance, and although many enabling statutes write in the first two requirements, comparatively few give Parliament power to disallow.[8] The (Victorian) Subordinate Legislation Committee Act 1956 (now the Constitution Act (Amendment) Act 1958, sections 351-357) set up a parliamentary scrutiny committee similar to that in South Australia, with terms of reference rather wider than those under which the (Commonwealth) Senate Committee operates.[9]

Even such a brief survey as this, which is confined to the legislation on the matter, reveals the diversity of experience within Australia itself, and suggests just how much more valuable Professor Kersell's comparative study might have been.

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The Law of Contract, by G. C. CHESHIRE, D.C.L., F.B.A., and C. H. S. FIFOOT, M.A., F.B.A., 5th ed. (Butterworth & Co. Ltd, London, 1960), pp. i-lxix, 1-561. Australian price £3 8s. 6d.

The Fifth Edition of *The Law of Contract* maintains the clarity, vigour and freshness of approach of earlier editions. In this edition the authors have again accomplished the difficult feat of presenting 'today's law today' in a subject which is continuing to develop at a fast rate.

The authors have recognized that one of the most common practical problems today is the identification of the terms of contract and devote forty-four pages to the subject. This section includes a full consideration of the principles which have emerged into a position of importance in recent years as a result of the concern of the courts to avoid the filching of the citizen's traditional rights by the device of the standard form contract. As a result of the decision of the Privy Council in *Sze Hai Tong Bank Ltd v. Rambler Cycle Co.*[1] and similar cases dealing with the effect of a breach of 'fundamental obligation' upon an exemption clause in a contract the authors state with some satisfaction 'It may therefore be

[7] Sawer, *loc. cit.*

[8] Of the 174 Acts in the 1958 Consolidation which contain regulation-making provisions, all but 31 require that the regulations be presented to Parliament, but only 11 contain provisions for disallowance, and 18 contain no requirement for any form of publication or laying-before-Parliament: *Special Report of the Subordinate Legislation Committee,* April 1961. (There is a further provision for parliamentary disallowance in the Legal Profession Practice Act (1958), s. 14 (7), which is not included in the Committee's list.)

[9] Sawer, [1957] *Public Law* 6. The 'terms of reference' which the Senate Committee observes—set out in Kersell's text 32-33—have never formally been imposed upon it, as the author notes.

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[1] [1959] A.C. 576.