There are again, as in the *1965 Survey*, five chapters within the broad area of public law. Professor S. A. de Smith's 'Constitutional Law' covers what he describes as 'the year of Rhodesia and the year of revolutions'. This examination evidences only too clearly the continuing collapse of the British style governmental system in so many Commonwealth countries and underlines the need for countries, like Australia, in planning the constitutional evolution of territories like Papua-New Guinea, to look for new and better institutional systems in working towards granting independence to newly emergent countries. The situation in Rhodesia again, not surprisingly, impinges on the discussion in Dr Yardley's excellent chapter on fundamental rights and liberties. Dr Yardley looks, too, at Britain's decision to accept, for three years initially, the right of individual petition to the European Commission of Human Rights and the compulsory jurisdiction of the European Court of Human Rights. For those in Australia who still consider that fundamental rights and liberties need only the protection of the common law, this decision must have been viewed as a remarkable *volte face*, but it emphasizes the need for considerable changes in Australian attitudes on many questions relating to individual liberty. Professor Wade and Mr D. G. T. Williams provide an excellent summation of developments in administrative law and the chapter on criminal law, evidence and procedure, prepared by Professor Cross and Messrs Buxton and Taffer is a first class survey and critical analysis which serves as an admirable refresher course for those who haven't the time to delve regularly and more deeply into this area of the law. Finally, in the public law area, J. E. S. Fawcett covers recent developments in international law with a strong leaning towards the traditional, classical topics dealt with in this field. It is a pity perhaps that further material was not included on Commonwealth relations with international organizations and the role played by Commonwealth countries in the important juridical developments which are taking place through such bodies as the United Nations.

Professor Heuston's contention that a feature of our time 'has been the increasing independence of the High Court of Australia' sets the tone for his expected urbane, careful analysis of recent developments in tort, in which the High Court of Australia, as Heuston clearly demonstrates, is making contributions in the field which are influencing the path of the law well beyond the confines of this country. Treitel's 'Contract', the chapter on 'Trusts' by J. D. Davies and P. B. Carter's 'Conflict of Laws' stand out, partly at least because of their general interest as contributions which can be read with considerable profit in Australia. Other areas are well served, too, by contributions, *inter alia*, on commercial law and partnership, labour law, industrial property and bankruptcy, civil procedure and family law.

As Denning M. R. said in his Foreword to the first volume in this series, it is 'a notable venture'. Because it is obviously difficult, and in some cases impossible to give a deep analysis of the widely differing developments, both legislative and otherwise, which are taking place around the Commonwealth in a number of fields of law the *Survey* cannot, of course, be regarded as a substitute for other more lengthy analyses on particular subjects. As an up-to-date source of information, on recent legal developments, written by scholars of calibre, with critical eyes cast on movements in the law in a particular year, the *Survey* stands out, however, as a publication which should gain firm acceptance not only in the countries of the Commonwealth but in many other countries as well.

ALEX. C. CASTLES*

Cases and Materials on the Legal Process, by F. K. H. MAHER, M.A., LL.B. (Melb.), Barrister and Solicitor of the Supreme Court of Victoria, Reader in Law, University of Melbourne; LOUIS WALLER, LL.B. Hons. (Melb.), B.C.L. (Oxon.), Barrister and Solicitor of the Supreme Court of Victoria, Sir Leo Cussen Professor of Law, Monash University, and DAVID P. DERHAM, M.B.E., B.A., LL.M. (Melb.), Barrister-at-Law, Sir Owen Dixon Professor of Law and Dean of the Faculty of Law Monash University. (Law Book Company Ltd, Melbourne, 1966), pp. i-xliii, 1-457. Price: $9.50.

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How to teach the legal process without teaching some substantive law? For without a study of actual cases, the course becomes a mere description of the legal machine and remains a strictly one-way process with the students forever on the receiving end. Yet how to teach substantive law without having taught the legal process? Some knowledge of the working of precedent and the interpretation of statutes is essential before the student can thread his way through the cases and statutes. Moreover, what about students of other disciplines who are taking one course only in law and who need a course on the legal system and process itself rather than on one particular branch of law? In our own university, at Kent, where law is studied within the Social Science Faculty, four-fifths of the Social Science students fall into this category.

One solution to this dilemma is provided by Maher, Waller and Derham in their *Cases and Materials on the Legal Process*. Their aim is to combine an explanation of the workings of the legal process with an introduction to its actual operation in decided cases. Underlying this approach are the premises that the lawyer's job is essentially that of solving problems, that students should observe lawyers solving problems through the medium of decided cases, and that they can usefully look at certain areas of law without doing a total survey of the whole surrounding territory.

Even so, before looking at the cases themselves, they must learn something about the hierarchy of courts, the working of precedent and—to put it at its lowest—such things as what a plaintiff is. All this they get from the fifty or so pages of introduction, which give a rundown on such matters as law reporting, the process of litigation and the practice of precedent. Ideally the teacher would thrust writs and pleadings into each student's hands and then sit him down in court to watch an actual trial. As a good second best, the introduction provides an account of each step in an action, beginning with the writ and ending with execution, together with a form or precedent of pleading. This behind him, the student is now confronted with a series of cases on *Rylands v. Fletcher*, followed by a similar series on the duty of care in tort, and what better material for showing the growth and development of common law while at the same time retaining the beginner's interest? Having seen some substantive law in the making, he is now shown cases illustrating legal techniques: cases on finding the *ratio decidendi*, on the authority of judicial propositions, and on the weight of judicial decisions. Inter-mingling with the cases are comments to guide and explain and questions combining stimulus with penetration. Of course the law has moved on since the book appeared: the House of Lords for example has now thrown off the fetters of absolutely binding precedent. And different law teachers will want to stress different things: might it be worth while drawing the student's attention to the importance of judicial interruptions in counsel's argument? All in all, however, this part of the book is an unqualified success.

Less happy is the section on statutory interpretation. For this the fault lies chiefly in the subject itself. The authors have clearly tried their best with what is surely the least satisfactory aspect of our law. As before, they begin with an introduction on the creation and form of statutes and then proceed to examine cases on interpretation. The question, however, is whether the authors have tried too hard. For one thing, two hundred or more pages on statutory interpretation makes for excessive length. For another, the main problems for the ordinary lawyer, so far as concerns statutes, is less the interpretation of individual words and phrases than the complexity that arises from the multiplicity of legislation and the unintelligibility of statutory language. Of course examples of canons and presumptions in operation are essential, but is it really worth while illustrating so many of them? On the other hand could something more be said on the problems inherent in statute drafting, on the different types of ambiguity that can arise and on the effect of judicial attitudes to interpretation on the process of drafting? Given the authors' own approach, however, there is no doubt that they have dealt well and comprehensively with a vexed and vexing aspect of the legal process.

Finally, some reflections on the authors' general aim and method may be in order. At the outset stress is laid on problem-solving as the lawyer's task and on the importance of showing him performing this task by examining decided cases. Is there a danger here of emphasizing the pathological at the expense of the normal? Of highlighting litigation and overlooking the amount of non-contentious legal work?

Drawing up contracts, settlements, wills, company articles and so on looms at least as large in a lawyer's life as fighting court cases. And arising from this, is there a danger of giving the students the one-sided impression that most cases are borderline and that the lawyer's main problem is to decide what side to come down on? May not the student lose sight of the fact that the lawyer spends most of his time—in so far it concerns law rather than fact—simply in looking up the law, in translating statutes, orders and cross-references? Perhaps an introductory book on the legal process is not the right place to show the student this, but it must come in somewhere. Lastly, should more be said about extra-legal factors entering into the law-making process, (whether of the courts or of the legislature) and something about the difficulty of providing general propositions about social and economic factors on which policy may be based within the context of the traditional common law trial?

All this is not to deny that *Maher, Waller and Derham* is a highly successful venture. Student reaction here has been as favourable as that of the teachers. As an introduction to the legal process through the cases it should establish and maintain its place. If future editions are somewhat shorter, and if an index could be incorporated, the student would benefit. Meanwhile it only remains to congratulate the authors on their achievement.

P. J. FITZGERALD*

Cases and Materials on Criminal Law and Procedure, edited by M. L. FRIEDLAND. (University of Toronto Press, Toronto, 1968), pp. i-xiii, 1-568. Canadian Price: $20.

This casebook was designed for the basic criminal law course taught in Canadian law schools and is a revised version of a temporary set of materials used, presumably with considerable success, in a number of Canadian universities in 1967. Being Canadian oriented and focusing, as it must, primarily on the provisions of the Canadian Criminal Code and provincial legislation, the book is necessarily limited in its usefulness for legal audiences in this country. Australian teachers of criminal law will, however, find it an interesting exercise to compare the approach of this work with that of Brett and Waller, *Cases and Materials in Criminal Law* (2nd ed. 1965) which is our equivalent basic casebook for criminal law courses. Comparison of publications can, of course, give no clue as to their relative effectiveness as teaching tools—too much depends on the use each individual lecturer makes of the materials before him—but, taking content alone, one can discern a marked variance between what is perceived by the respective Canadian and Australian teachers as minimal in a criminal law course.

In essence, the difference lies in the greater extent to which the Canadians regard it as important to include criminological material in their studies. This concern with the practical realities of the administration of the criminal law is well established in United States law schools and, as manifested in the book under review, is finding expression in Canadian criminal law courses. But, as yet, it is largely unreflected in the teaching of criminal law in Australian universities. There is, however, no reason to believe that the winds of change which have already affected the teaching of this subject in our sister dominion will pass us by undisturbed. No criminal law teacher present at the 1969 Perth A.U.L.S.A. conference could fail to be impressed by the almost unanimous agreement amongst speakers that, within ten years or less, every law school in Australia would be teaching criminology either as part of, or as an adjunct to its criminal law courses.

Nor can one disregard Professor Rupert Cross' reiteration, at that conference, of the theme of his inaugural lecture as Vinerian Professor of English Law at Oxford (*Paradoxes in Prison Sentences*, 1965) that the study of the criminal law must be broadened to meet the challenge of contemporary legal developments. The undeniable trend towards a much needed simplification of the criminal law will, in time, relieve the law teacher of the futile burden of trying to teach students the impossible complexities of the historical accidents of the law of larceny. Also, with the final abandonment of capital punishment as a sanction, the intricacies of the law of

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