social realities. (Some excellent attempts have been made recently to link legal history and general history, notably that of Harding, *Social History of English Law* (1968)).

Too little work has been done on these latter centuries, as compared with the middle ages, to make it easy to discern the social and legal operations in the period after 1750, which is now what really matters for the modern lawyer. (The new Melbourne University course in Advanced Legal History, which tackles these more contemporary areas, represents a real attempt to describe relationships between social and legal developments, and similar courses in English and American universities promise well for the future).

Nevertheless, we can all enjoy and profit from this brilliant yet restrained appraisal by Professor Milsom of the value to legal historians of Maitland's assessments. He does show that the documents on which Maitland had to rely are not sufficient guides today. As the Justices of the Royal Courts took over more and more matters previously dealt with by the local or special courts, they were working with concepts, classifications and customs which were perfectly familiar to all those then concerned—but whose meaning to us is often either doubtful or downright confusing. Nor do we know enough about the social background of the economic forces that produced the rules and techniques as they were needed. Professor Milsom has to confess that:

> the assize of novel disseisin is the greatest enigma in the history of the common law (xxxviii) . . . For all that has been done, seisin is still the mystery of which Maitland wrote (xlix) . . . Words like covenant and trespass meant different things after the reign of Edward I than before. The insistence on the seal in covenant may have been due to social factors about which we are still in the dark (li).

Even less is known, of course, about the bulk of private litigation fought out on the 'personal actions' then in the county courts; for hardly any records have survived (lxiii). The judges in the Royal Courts had to reshape customs, devise new categories and formulate principles which would give system to the growing set of decisions on particular facts; even so, the lines early drawn over between contract and tort were not those that were acceptable to their successors (lxiii).

Professor Milsom has other fascinating things to say about the work of the court clerks, whose success in systematizing writs and actions made workable the centralization of English Justice; though later the same writ system led to decay and odd fictions and to an exaggerated formalism. He rightly draws attention to those inspired guesses of Maitland's genius that have not proved successful—but that is the fate of every creative historian. His conclusion is balanced and judicious: that the shortcomings in details do not spoil the truth of what Maitland saw. 'Maitland himself would probably wish his work to be superseded. There is little sign that this will happen soon. When it does, the subject will still be his' (lxxiii).

It is good that *Pollock and Maitland* is again readily available for all students. The non-expert is doubly grateful for the rich scholarship and lucidity of Professor Milsom's appreciation of the situation as the professional legal historians see it today. (And he will be further pleased that these two volumes are available at such a reasonable price).

F. K. H. MAHER*

Modern Federalism, by GEOFFREY SAWER. (The New Thinkers' Library, C. A. Watts & Co. Ltd, London, 1969), pp. i-vii, 1-204. United Kingdom Price: 15s sterling.

In his dustjacket note the General Editor of the series, Raymond Williams, remarks that The New Thinkers' Library attempts to bring 'seriousness' and 'general availability to the thinking and problems of a new generatian'. On both scores Professor Sawer's discussion of federations and federal concepts is a welcome addition to the series.

There is no attempt to construct a quintessential definition of federalism. Rather, Professor Sawer has examined a variety of solutions to the problem of allocating power between a central government and regional governments and the places occupied by these solutions in a 'federal spectrum'. The discussion is essentially compara-

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tive and the early chapters of the book are devoted to an account of existing federal constitutions and their historical development. In the end Professor Sawer's federal spectrum is a relatively narrow one. He finds only five countries which satisfy his criteria of federalism in unmodified form: the U.S.A., Canada, Australia, West Germany and Austria. As might be expected, a generous amount of space has been given over to discussion of Australian federalism and this is, perhaps, fitting in view of the author's conclusion that Australia occupies the 'dead-centre in the federal spectrum' (p. 55). Certainly no Australian reviewer should complain. But the dead-centre seems scarcely an exciting position to occupy in the light of Professor Sawer's concluding remark that federalism 'is a prudential system best suited to the relatively stable, satisfied societies of squares such as abound in Canada, Australia, West Germany and Austria, and probably still constitute the majority in the U.S.A.' (p. 186).

Description of the West German variety of federalism provides the basis for a tantalizing speculation in Australian constitutional law. German writers, beginning with Kelsen, have expounded the theory that there are three levels in any federation: the Regions, the Centre and the 'total state', or *Gesamtstaat*. In the preamble to the Commonwealth Constitution it is declared that the 'people' of the various States 'have agreed to unite in one indissoluble Federal Commonwealth', Here is a *Gesamtstaat* if one were wanted in Australian constitutional theory. When section 81 of the Constitution refers to the power to appropriate money 'for the purposes of the Commonwealth' could not this be read as a reference back to the *Gesamtstaat* of the preamble? Professor Sawer finds a muted echo of this argument in the contention advanced by Starke J. in *Attorney-General (Victoria) v. Commonwealth*[1] that the spending power 'must include activities inseparable from a national government' (p. 121). In marked contrast to this excursion into the metaphysics of federalism is the section on the problems surrounding the concept of sovereignty in federal systems (ch. vii). Here the attempt has been to demythologize the area. The conclusion that 'Analysis can only be carried a certain distance' (p. 116) and that theoretical speculation is best limited for practical purposes is hardly new. But it is reached after concise and elegant analysis.

Within its limitations of size and purpose the book is highly recommended. Much of the comparative material is not easily obtainable elsewhere. The more speculative sections are stimulating and clearly expressed.

IAN D. ELLIOTT*

A Guide to Australian Law, for Journalists, Authors, Printers and Publishers, by GEOFFREY SAWER, 2nd Ed. (Melbourne University Press, Melbourne, 1968), pp. 1-118. Price: $2.85.

This is the second edition of Professor Sawer's concentrated cautions for those who dabble in printer's ink. The interval of just on 20 years between editions is partly due, as the author explains, to successive postponements of the drafting and enactment of amended copyright legislation. Delay has enabled the book to deal with the Commonwealth Copyright Act 1968. Under his other main subject headings, including the major one of defamation, Professor Sawer is concerned less with charting new dangers than with warning us of the complexity and lack of uniformity in the statutes and regulations of the various States.

The field of publishing, which nowadays may include radio and television broadcasting and the making of films and records, is vitally concerned with the fact that the law of defamation in Australia is substantially controlled by the States. This results in some wide variations. Professor Sawer wisely spares his lay audience any exploration of these differences in depth. Having warned of their existence and counselled those who meet them to seek expert advice, he concentrates on the basic rules for publishing and staying within the labyrinthine ramparts of the law.

The journalist is apt to assume safety from a charge of defamation if what he writes is the truth of a situation, or fair comment on it. But his safety may depend on where he is.

In Victoria, South Australia and the Northern Territory, it is a complete defence

[1] (1935) 52 C.L.R. 533.

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