Governmental and Intergovernmental Immunity in Australia and Canada, by Colin H. H. McNairn, (Australian National University Press, Canberra, 1978), pp. i-xiv, 1-164. Price $16.95.

Governmental and Intergovernmental Immunity in Australia and Canada deals with two areas of constitutional law which in Australia are well known for their technicality and complexity. It comes as no surprise to those familiar with the consequences of the latter-day prerogative and the peculiarities of federalism that the same phenomenon exists in Canada. Mr McNairn has described, ordered and analysed the relevant principles applicable in both countries concisely and clearly. It was a formidable task, given the need to deal with variations in the rules relating to governmental immunity in seventeen jurisdictions in addition to the more predictable differences between the doctrines of intergovernmental immunity in Australia and Canada. The result is a book which is a handy work of reference for those seeking information about the scope of either doctrine in either country. In the absence of a settled rule it also suggests principles which could serve as a guide to future decisions. It should be noted that the book is current only to early 1977. It therefore does not include such recent Australian developments as *Bevelon Investments Pty Ltd v. City of Melbourne*[1] or the federal parliamentary deliberations on the abolition of priority of Crown debts.[2]

The material is arranged in two general introductory chapters, dealing first with the doctrine of governmental immunity and secondly with governmental and intergovernmental immunity in a federal system, followed by four chapters which cover specific areas in which the doctrines have commonly been applied: tort proceedings by and against the Crown; the criminal and contractual liability of the Crown; the Crown as creditor; and the Crown as taxpayer. This format adds to the utility of the book for quick reference on particular problems, although it detracts from the overall intelligibility of the doctrines described. The rules relating to intergovernmental immunity in Australia, for example, are very much the result of a gradual evolution in the attitudes of the High Court since federation rather than a systematic attempt to devise rules appropriate for the Crown in a variety of situations. On Mr McNairn's analysis the *Uniform Tax* cases are relevant only for their fairly limited contribution to the law with respect to the Crown as creditor. In the *First Uniform Tax* case, *South Australia v. Commonwealth*,[3] a majority of the High Court upheld the validity of a provision which effectively conferred on the Commonwealth priority over the States in the payment of income tax as an exercise of the power incidental to the power to impose taxation.[4] In the *Second Uniform Tax* case, *Victoria v. Commonwealth*,[5] a majority of the Court denied the validity of this provision. Seen in this light the *Uniform Tax* cases have very little to do with intergovernmental immunities at all. As a matter of fact, however, they represent a most remarkable inroad by one level of government on the functions of another within a federation and as such have an important place in the doctrine of intergovernmental immunity in Australia.

This example highlights a weakness in the book. The immunities doctrines are seldom put in perspective against the wider background of government in action. To suggest that they should have been may be to ask too much of a book which already covers a very wide field of law in a surprisingly small compass. Any departure from the legal analytical approach to immunities in Australia might also have created difficulties for the author, who as a Canadian is necessarily less familiar with the practical operation of government in this country. A period of time spent in Australia in 1973-74, which obviously has provided him with a thorough grounding in Australian immunities law and current literature, might not have been sufficient to

[1] (1977) 135 C.L.R. 530.
[2] Senate Standing Committee on Constitutional and Legal Affairs, *Report on Priority of Crown Debts* (1978) (Commonwealth Parliamentary Paper No. 169).
[3] (1942) 65 C.L.R. 373.
[4] Commonwealth Constitution s. 51(ii) and (xxxix).
[5] (1957) 99 C.L.R. 575.

enable him to absorb federal history and practice as well. Nevertheless, it is a pity. Litigation over intergovernmental immunities was one of the most colourful events in the first decade of federalism in Australia, as D. I. Wright[6] has shown. There is no hint of this in the book. An example of more immediate relevance concerns s. 114 of the Constitution. The constraints placed on intergovernmental taxation of property by that section are felt most keenly by local government, as the level of government which relies most heavily on that form of taxation, in relation to taxation of Commonwealth property. The author shows no awareness of this practical problem. On the other hand he does drawn attention to a lack of reciprocity in s. 114, in so far as the Commonwealth Parliament may waive its immunity from State taxation of its property, whereas there is no comparable power of waiver by the parliaments of the States. The solution offered in the interests of equality is that the States could make grants to the Commonwealth 'in lieu of taxes on their property, to make up for lost revenue'.[7] In present circumstances such a suggestion would startle the most inventive official in the federal treasury. It leaves with the reader an impression of unreality which the author's mild comment that such a transfer would be 'somewhat anomalous' does little to dispel.

Despite these criticisms the book is a welcome addition to constitutional literature. It is valuable in particular as a pioneering contribution to the growing field of comparative federal constitutional law.

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Administration of the Estates of Deceased Persons in Victoria, by Laurence McCredie, (Butterworths, 1979), pp. i-xxiv, 1-194. ISBN 0 409 33860 5. Price $18.00 (Hard Cover), $14.00 (Paperback).

The author of this book is a barrister and solicitor of the Supreme Court of Victoria and is at present attached to the Monash University Law School. The aim of his book as stated by the publishers is to consider the authorities, powers, duties and liabilities of executors and administrators in relation to the estates of deceased persons in Victoria. Although written primarily for law students, the book, it is said, should be of value to practitioners both in law and allied professions such as trust officers employed by trustee companies. A knowledge of the laws of property and trusts is assumed by the author, although it is doubtful whether such expertise could be assumed on the part of many of the trust officers with whom it has been the reviewer's experience to deal in relation to the administration of clients' estates. This work has a place in the library of all practising lawyers and in the libraries of Victorian Law Schools because of the concise and methodical treatment of the matters which it sets out to cover. Footnotes, whilst more than adequate, appear at the end of each chapter, leaving the treatment of the topics in clear and coherent form. The reviewer remembers his own student days when it seemed that the space devoted to footnotes often exceeded the amount of actual text, with the result that the reader frequently lost sight of the forest for the trees.

The book is described by the author to be not only an attempt to explain the relevant Victorian law but also a comment on its deficiencies. There is perhaps rather less comment than one would expect, but in all cases such comment is practical. Certain areas in which the practitioner frequently finds himself involved, particularly the testator's family maintenance provisions of Part IV of the Administration and Probate Act, are omitted from the work deliberately as they are adequately

[6] Wright D. I., 'The Political Significance of "Implied Immunities" 1901-10' (1969) 55 *Journal of the Royal Australian Historical Society* 380.

[7] McNairn, *op. cit.* 138.

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