would free the common law of the fetters imposed on it since 1843 and restore to the common law its capacity for development and flexibility of operation. The Committee also recommended that whether this new test is introduced or not, it should be provided that the Crown carry the burden, once the issue of insanity is raised, of satisfying the jury beyond reasonable doubt that the accused was sane at the time of committing the act.

A strange omission in the Committee's Report is any discussion of the reasons for the rejection both by the government of the day and by members of the judiciary in England of the test proposed by the majority of the Royal Commission members. A major criticism of this test and one which probably led to its rejection, is that it is too vague. It leaves to the judge in each case in which insanity is raised the exacting task of interpreting and directing the jury on the standards they should apply in determining whether the accused should be held responsible for his actions. As Glanville Williams has pointed out, there is also the danger that the test would encourage a reactionary jury to ignore medical evidence of insanity on the ground that although the accused is undoubtedly insane, he ought to be held responsible.

The M'Naghten Rules form the basis of the test of criminal responsibility when insanity is raised as a defence not only in Victoria but in all other States of the Commonwealth. For this reason the Report of the Committee merits close attention in all Australian jurisdictions. It is perhaps a measure of both governmental and legal apathy not only in Victoria but in other States that an investigation and recommendation for the reform of such an important area of the criminal law as that relating to insanity should have to be undertaken by a Committee set up by a political party in opposition. This comment must in no way be taken as detracting from the quality or the value of this Committee's work. The excellent Report which it has produced may perhaps lead to a nationwide review of the criminal law relating to insanity, a review which is long overdue.

DUNCAN CHAPPELL.*

*The Constitutions of the Australian States*, by R. D. Lumb, Senior Lecturer in Law in the University of Queensland, Brisbane, University of Queensland Press, (2 ed.) 1965, ($3.50 in Australia).

The first edition of this book was reviewed in this journal in 1964[1] and I would endorse the views expressed on that occasion by Professor Whitmore. It was a valuable introductory study of an important aspect of Australian constitutional law which is too often overshadowed by the much greater emphasis placed on the Federal aspect. However, the worthwhile goal of brevity had been achieved at the cost, in some problem areas, of treatment verging on the superficial.

Previously there had been no up-to-date book in this field at all. Students and their teachers had to consult a multiplicity of sources. The value of Dr. Lumb's achievement was that he brought the principal references into one volume which was also brief enough to be easily accessible to students. Having charted the course, however, he exposed himself to perhaps unwarranted criticism for not having done much more, for the very brevity of his book highlights the need for a fully comprehensive treatment of the subject.

However, one could still wish that Dr. Lumb had given fuller treatment to some of his topics. Now, in this second edition he has, in fact, expanded certain sections of the book to meet such objections.

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[1] (1964) 4 *Sydney L.R.* No. 3 484.

One immediate gain is the addition of five appendices comprising texts of the Colonial Laws Validity Act, 1865, The Australian States Constitution Act, 1907, The Statute of Westminster, 1931, Letters Patent Constituting the Office of Governor, and Royal Instructions to the Governor.

Part I of the text dealing with the historical background to the State constitutions has been improved in a number of minor respects, notably by reference to additional journal discussion on the constitutionality of the Governors' orders and of the establishment of civil jurisdiction prior to 1823.[2] Another addition is "a note on boundaries".[3] But Dr. Lumb has confined his attention to the development of legislative and executive institutions and their powers. His reference to the reception of English law into New South Wales[4] remains disappointingly brief, and there is no mention at all of the reception of law into the other colonies as they were established.[5] One would also like to see fuller discussion of the judicial institutions set up in the colonies.

The present structure of the State Constitutions is dealt with in Part II. Chapter Three entitled "The Legislature" discusses Lower Houses, Upper Houses and the relationship between them. A new section on "Privileges of the Houses"[6] has been added, and the topic is clearly relevant. But the only particular privilege dealt with (and then very briefly) is that of freedom of speech in Parliament. Again, one would like to see discussion on other privileges such as the power to commit for contempt.

Chapter Four deals with "The Relationship between the Legislature and the Executive" and this is an account of the legal and conventional basis of responsible government in the States. Dr. Lumb has left treatment of the actual operation of the doctrine to other sources such as Encel, and deals mainly (and somewhat inconclusively) with the question of the power of State Governors to act other than on the advice of their Ministers.

Incidentally, two typographical errors in this chapter can cause confusion and should be rectified in the next edition. One appears in the first line of p. 69 which, presumably, should read ". . . responsible government had been introduced by the Constitution. . . ." The other, on p. 74, refers to the requirement under the Australian State Constitution Act, 1907, s. 1 (1) (a) for the reservation for the royal assent of bills which "alter the constitution of the State or either House thereof". The actual text (now included as Appendix II) refers to a bill which "alters the constitution *of the Legislature* of the State or of either House thereof", a somewhat different thing.

The last chapter, Chapter Five discusses "The Law Making Power of the States" and deals concisely and well with the principal limitations, other than those arising under the Federal Constitution which, appropriately enough, are left to works on Federal constitutional law.

The treatment of "Extraterritorial Legislative Power" has been expanded[7] and thereby greatly improved. Discussion on the topic of "Repugnancy to British Legislation" has also been extended slightly[8] in view of recent decisions, but is still very brief. The topic of "Manner and Form Requirements" is well handled. And a new note on "Judicial Review" has been added[9] supporting the propriety of State courts ruling on the validity of State legislation which is passed in alleged violation of "entrenched" provisions such as possible Bills of Rights.

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[2] At 5 and 6.
[3] At 45-6.
[4] At 13.
[5] Except for South Australia at 31.
[6] At 64-5.
[7] At 86-9.
[8] At 94-5.
[9] At 109-10.

Most of the points I have made have been criticism of omissions. Fuller treatment could be given to several topics without drastically changing the character of the book. As it stands, it is a most useful text for students and others, up-to-date and concise. This second edition is an improvement on the first in a number of respects, and further, improved editions should follow.

But the need remains for a separate, fully comprehensive and definitive work on the constitutional law of the Australian States. Dr. Lumb's work has highlighted this need. Now it is up to someone else (or Dr. Lumb himself) to fill this need.

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