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Book Reviews

Encounters with the Australian Constitution, Michael Coper, CCH Australia Limited, North Ryde, N.S.W. hard cover edition, 1987, pp. x + 502, recommended \$98; soft cover edition, 1988, pp. ix + 480, recommended \$38.

This is an elegant book, both in its prose and presentation. Michael Coper tells us that he set out to produce a coffee table book replete with lavish illustrations linked by an economical text. The hard cover edition remains replete with illustrations but, under the publisher's encouragement to give the reader plenty of food for thought, the text has become far from economical. Bound in burgundy buckram and leather, with brass corner tips, marbled end papers, a silk page marker, and printed on heavy ivory paper in brown ink to give a warm sepia impression, the book is a delight to hold and read, though at a recommended price of \$98 it will undoubtedly grace more coffee tables of lawyers than of agricultural economists. A year after the original edition a soft cover edition sans illustrations and the sepia combination, but with a Postscript to the chapter on section 92, was published at a recommended price of \$38.

Coper encourages both lawyer and non-lawyer to encounter ten facts of the Constitution. Each of *Encounters'* chapters is reasonably self-contained so that we can enjoy a good night's read (though not a light one) over an extended period and tackle the subjects in just about any order we please. There is a logic in the ordering, however. It starts with the basis upon which the Australian Constitution rests and the movement which led to a federal constitution. It ends with an account of how the judicial review process has achieved constitutional change despite many unsuccessful attempts to change the words of the Constitution. In between we are introduced to the methodology and politics of the High Court, the tussles between centralism and the States, the office of the Governor-General (and the sacking of Gough Whitlam), the "gothic horrors and theological complexities" of s. 92, and whether the Constitution protects human rights.

Of most professional interest to agricultural economists is Chapter 7 which deals with the notorious s. 92. Readers of this *Review* have already been introduced to Michael Coper on this subject. In August 1978 he published "Constitutional Obstacles to Organised Marketing in Australia" which presented the rationale behind the various constitutional provisions--s. 92 being focal--and the diversity of opinions about their interpretation. In December of the same year he published "A Postscript" following a High Court judgment relating to interstate trade in wheat which appeared to reverse the position taken by the Court for several years yet left the judges at odds themselves. This in turn was followed in December 1985 by "In the Beginning there was Interstate Trade" after a High Court judgment on the right of interstate traders to deal privately in barley outside the confines of Queensland's barley marketing schemes. The Australian agricultural economics profession is indebted not only to Michael Coper for writing so fluently on these themes, but also to the editors of this *Review* for providing the opportunity to have them published.

In Chapter 7 of *Encounters* on "Guaranteed Free Intercourse" Coper introduces us to the various theories associated with the history of judicial interpretation of s. 92. We are taken through the inconsistencies and confusions of changing judgments and split benches which, to the time of publication of the hard cover edition, had caused even the most eminent of constitutional practitioners and commentators to despair. Although other such accounts are available, Coper makes a story about the personalities and their political persuasions and idiosyncracies as well as the events and social developments which are the context of judicial lawmaking. He also shows us

how abstract rules can break loose from their context in judicial lawmaking and acquire a life of their own.

We encounter Sir Isaac Isaacs turning the tables on his fellow constitutional founding fathers, whom he cautioned against their “little bit of laymen’s language” by pointing out that “trade, commerce and intercourse among the States...shall be absolutely free” would inevitably be interpreted more widely than was intended. Isaacs on the bench led a movement which resulted in an absurdly wide interpretation of s. 92, a corollary of which was that only the States and not the Commonwealth were bound by it (which incidentally favoured Isaacs’ centralist sentiments). We encounter Sir Owen Dixon contending with Dr. H.V. Evatt on whether s. 92 guarantees the rights of individual traders (Dixon’s view) or facilitates freedom of trade as a whole (Evatt’s view). We encounter the transformation of “freedom of trade” into “freedom of enterprise” in the Australian National Airways and bank nationalisation cases of 1945 and 1948. And we encounter Sir Garfield Barwick endeavouring to dismantle Dixon’s views of how narrowly a law must focus on interstate trade before it infringes s. 92 and on the narrowness of Dixon’s tests of where interstate trade begins and ends.

Coper also uses this chapter to present a personal view. This might have gone unremarked had it not been that, only six months after the publication of the hard cover edition of *Encounters*, a full bench of the High Court handed down a unanimous judgment which has totally vindicated Coper’s view that s. 92 is aimed solely against State protectionism. In *Cole v. Whitfield* (the crayfish case) the Court has judged that s. 92 is solely concerned with preventing State or Commonwealth legislation or executive acts from discriminating against the traders or consumers of any (other) State in a manner which imposes a protectionist burden. There is, of course, a link between Coper’s view and the Court’s judgment. Coper tells us that at the end of 1986 the Court was poised to bite the bullet if counsel were bold enough to fire it. Counsel for all the States and the Commonwealth did indeed fire that bullet in mid-1987 by asking the Court in two cases to review the then existing interpretation of s. 92. Coper himself appeared as counsel during that intervention and, in the crayfish judgment, the Court did bite the bullet.

The principles governing the interpretation of s. 92 now appear to have been settled in a manner with which Coper heartily approves. Arguments about competing philosophies of laissez faire or collectivist controls should, he claims, be addressed in the legislatures and choices between them made in the ballot box. A much more limited role is seen for s. 92--to prevent preferment among the States in whatever choice is made. But although the principles may appear settled, the question remains--who will establish the facts about what is discriminatory and protectionist? (After more than thirty pages in the crayfish judgment expounding principles, the two pages allocated to facts read somewhat lamely.) Coper has added a Postscript in the soft cover edition in which he draws attention to the need for a specialist body to establish the facts, and that this could be undertaken by the constitutionally recognised Inter-State Commission (to which Coper himself had moved in 1987).

It is ironic that a principle which disestablishes the protection of laissez faire (at least between the States) has arisen at a time when non-interventionist philosophies are in the ascendant. However, the issues raised by the crayfish case will continue to be of concern, not only to lawyers, but also to economists. Public choice theorists are increasingly asking questions about the appropriate domains for constitutional law and for statutory law in the regulation of economic activity. Some would applaud any move which places equity and fairness (income distribution) within the constitutional framework and liberates resource allocation decisions for the legislature. Others would applaud

any move that clarifies the meaning of a constitutional rule but would oppose any move by the judiciary to depart from the status quo interpretation of what that rule sets out to do.¹

Coper's view and the crayfish judgment also raise an agenda of issues in which economists have a vital practical interest. A major part of micro-economic analysis is about discrimination and protection. It has been widely suggested that the crayfish judgment gives broad ranging powers to the Commonwealth over interstate trade provided it legislates uniformly, and that arrangements of the wheat marketing type are now constitutionally secure. But the imposition of uniform market shares or uniform returns among the States is both discriminatory and protectionist since it prevents comparative advantages from being asserted. If uniformity itself is discriminatory, economists can expect that the criterion for s. 92 of no discriminatory protection may not be as unequivocal, or have as unchallenged a life, as some commentators have suggested.

There are, of course, many other aspects of the Constitution which are of relevance to agricultural economists, principally those involving money matters. Chapter 5 on "The Fiery Fiscal Furnace" is about these issues, over which Coper maintains that economists rather than lawyers have captured much of the constitutional debate. But the chapter is of interest to economists not so much for the light that it sheds on federal fiscal economics as for the manner in which it contrasts the modes of thinking of the economist and the lawyer.

This is highlighted in the chapter's discussion of the exclusive Commonwealth power under s. 90 to impose excise duties. The word "excise" does not have a precise meaning. To economists distinctions between taxes on production, sales or consumption are of minor importance, as economic analysis is capable of apportioning where the incidence of any tax lies among the various market participants irrespective of the point at which the tax is levied. Economists would, of course, be likely to opt for similar constitutional treatment for all such taxes. In contrast to the economist's relative indifference about how such taxes are classified, such distinctions are the bread and butter of constitutional law. Coper takes us through the saga of judicial squabbles between those who favour giving effect to the prohibition on State excise duties on the basis of the form which the tax takes and those who would give effect to it according to their conception of the purpose for which the prohibition was intended. However, Coper shows how precedents have caused both camps to stumble, leading to an unsatisfactory status for the current interpretation of s. 90.

Many of the issues of judicial interpretation raised throughout *Encounters* (including those of ss. 90 and 92) are revisited in the final chapter. Although the lyrics of the Constitution have remained virtually unchanged (the subject of the penultimate chapter), over the years the judges have been substantially "Rewriting the Music". This has not been done without some objective touchstones of constitutional interpretation, but the answers have been far from automatic and the judges have been faced with difficult choices. The High Court is neither an assembly of wise persons nor an assembly of legal automatons. Different judges with different styles often come to different conclusions, and Coper leaves us in no doubt that he would not want it otherwise.

Our encounters with this human side of judicial law making, not least through an impressive collection of photographs and cartoons (in the hard cover edition), are the most pleasing feature

1. For the former view see Robert D. Tollison and Thomas D. Willett (1976), "A Menu of Distributional Considerations", in *The Economic Approach to Public Policy*, edited by the same authors, Cornell University Press, Ithaca, Chapter 16. For the latter view see James M. Buchanan (1988), "Contractarian Political Economy and Constitutional Interpretation", *American Economic Review*, Papers and Proceedings, 78 (2), May, 135-139.

of Coper's book. Many economist readers may despair over the "murkey morass of debatable doctrines" which has emerged out of the judicial process, but none can ignore it and few will not feel, after reading *Encounters*, that the Australian social fabric has been enriched by the processes which lie behind the "weird and wonderful world of Australian constitutional law".

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Getting Started in Farming: a study of non-inherited business "start-ups", A.J. Errington, A.K. Giles and P.C. Oakley, Study No 15, Farm Management Unit, University of Reading, U.K., 1988.

The publication is a report of a postal survey of how new entrants to farming in "central southern England" got started--what information was required, what training and backgrounds are useful and the type and source of financial backing. Essentially, the authors obtained information about the difficulties people had in getting started in farming, with particular emphasis on the difficulties faced by young people--those in the 25-35 years age group.

The report is structured into five parts. The introduction explains the genesis to the project and the questionnaire sampling methodology used. The second section describes the background details of the "starters" sampled and whose questionnaire results were eventually used in the report. The next section deals with the profile of the types of farming and other agricultural related business which were set up. The fourth section deals with the nature and description of the problems encountered by the "starters" when setting up their particular business. The final section gives a subjective account of the problems the respondents encountered in getting started; progressing in their businesses and their view of the future.

The authors acknowledge that it is "impossible to claim any reliability for the results of this survey in the normally accepted statistical sense" and that "all that can be claimed is that what emerged represents the circumstances and attitudes of 50 young people who have got started in farming, without the help of an existing family farm, in the counties listed".

Against this background the main value of the report for the Australian reader is the similarity of experiences reported in the U.K. with those which "new starters" in Australia might reasonably experience.

The authors found that the respondents ran a wide range of different businesses within the farming sector ranging in size from very small areas to up to 200 hectares, but with an average of 36 hectares. Nearly all respondents shared a reliance for their present source of income from the business they had started.

There were clear indications from the results that a higher proportion of sons of farmers had borrowed start-up capital than those whose family was not otherwise in farming. The proportion was also higher among those who had previously had managerial experience in some other business. This finding is consistent with the Australian experience that collateral and previous experience have in the past influenced a lending institution's decision whether or not to lend money to a prospective farmer. As to the future, the authors report that respondents considered their main perceived threats to be personal ill health, collapses in markets, continued bad weather and high interest rates--all major concerns to Australian farmers.

A considerable number of other observations are made by the authors about the experiences reported to them through the questionnaires. All these additional anecdotes, such as the age profile of the starters, makes interesting reading. The report is easy to read and relatively short at 30 pages (not including appendices).

The report would be particularly useful to any social scientist interested in the processes by which people set themselves up in farming business, with implications for public policies towards rural land (size and pricing), finance and importantly, education and training.

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The Art and Science of Innovation Management: an international perspective, H. Hubner (ed.), Elsevier, Amsterdam, 1986. Pp. xiv + 452.

This book records the proceedings of the Fourth International Conference on Product Innovation Management, held at Innsbruck in August 1985. The proceedings' forty papers have been organised into 13 sections whose titles indicate the breadth of the topics covered in the conference and those considered important by its sponsor, the International Society for Product Innovation Management. The 13 sections of the proceedings are Organization of Innovation Projects; Public and Institutional Climate for Innovation; Management Philosophy, Corporate Strategy and Innovation; Use-Oriented Product Innovation; Approaches and Methods for the Planning and Control of Innovation Activities; Relationship between Product and Process Innovation; Education in Innovation Management; Product Innovation in Small and Medium Sized Companies; Management of Research & Development and Technology; Innovation and Information; Socio-Economic Aspects of Innovation and the Process of Diffusion; State of the Art of Management Oriented Innovation Research; and Discussion, Results and Fields of Future Research.

The papers presented vary widely in intellectual tradition and quality. There are interesting papers on "The Role of Customer Cooperation in the Development, Marketing and Implementation of Innovations"; "Unions and Innovation: a politico-economic model" (which integrates the distributive role of unions with their role in reducing transactions costs within the firm); "Innovation in the Austrian Textile Industry"; "Patterns and Innovation Processes in Small and Medium-sized [Austrian] Firms"; and "Innovation through Joint Venture--a case study" (between Wild-Leitz and Magnavox for a consumer--rather than defence--oriented Global Positioning System for locating anything, anywhere).

Three papers deserve special mention. A paper on "Assessing the Market Chances of Product Innovation in the Field of Road Resurfacing" is a neat demonstration of the use of a simulation model for an *ex ante* evaluation of whether or not to purchase a licence for a new technology. The model included information on competitors' strategies for bidding for tenders for road resurfacing contracts, and two types of tendering processes. The analysis was stochastic. A paper on "Cognitive Map and System Analysis of Maritime Industry" demonstrates the use of "system dynamics" to analyse the structure of, and the effects of changes in, the maritime industry. The maritime industry is considered very broadly to include shipbuilding and repair, ship and harbour operations, and technological change. In the third paper, "Organisational-Cultural Aspects of the Promotion of a Favourable Climate for Innovation", the author emphasises the role of the individual in the innovation process, and particularly the conflict between security ("order") and development

("creativity"). This conflict can result in a catch-22 situation where a manager who makes innovative proposals risks being evaluated negatively if the proposal is rejected at the proposal stage or founders on implementation, but where a manager who makes no innovative proposals risks being outshone by rivals in the organisation. (This scenario seems more likely to characterise large bureaucracies--government and large companies--although the author argues for the opposite result.) The author makes some interesting proposals for optimising the conflict between security and development.

Contributions to the proceedings are dominated by Japanese authors (25 per cent of all papers), Austrian (20 per cent), West German (18 per cent) and US authors (14 per cent). Other contributing authors were from Poland, Canada, Norway, Yugoslavia, Italy, Switzerland and Liechtenstein. Of particular interest are the papers by Japanese authors, particularly since they contributed four of the five papers in the "Use-Oriented Product Innovation" section. (Since most of the papers were written by authors whose first language is not English, and particularly since the book was produced camera-ready from authors' typescripts, some papers require careful and sympathetic reading in parts.)

Overall, an interesting set of papers, but not one for the individual bookshelf.

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Sustainable Agriculture: a viable alternative, E. Wynen and S. Fritz, National Association for Sustainable Agriculture, Australia (Ltd), Sydney, 1987. Pp. 136. \$11.50 (paperbound).

Sustainable agriculture is a farming system which emphasises a highly ecological approach. It is described as:

...a system which avoids or largely excludes the use of synthetically compounded fertilisers, pesticides, growth regulators, livestock feed additives and other harmful or potentially harmful substances. It includes the use of technologies such as crop rotations, mechanical cultivation and biological pest control; and such material as legumes, crop residues, animal manures, green manures, other organic wastes and mineral bearing rocks. (p. 2)

Sustainable Agriculture comprises four substantive chapters: "The Conventional Agricultural System", "Sustainable Agriculture as an Alternative", "Policy Implications", and "Sustainable Agriculture at the International Level". There is also a chapter about the sponsoring organisation, the National Association for Sustainable Agriculture, Australia (Ltd).

The chapter on conventional agriculture is essentially about the *problems* of conventional agriculture. On-farm problems are identified as involving pests, pesticides and pesticide resistance; soil degradation; and fertiliser and herbicide spillovers. Off-farm problems identified are the effects of fertilisers, biocides and feed additives on human health, and environmental degradation.

The chapter on sustainable agriculture is partly about some basic biology of farming, but is mainly about how "sustainable" agriculture utilises natural biological processes to yield farm products. Sustainable agricultural practices are described in theoretical terms to include soil, pest, weed and disease management; animal husbandry; and bio-dynamic farming. The principal elements

of the last appear to be additives 500, 501 and 502-507, and astrology:

Efforts are made to carry out operations such as sowing... and weeding at a time when the position of the planets will have the most beneficial influence. (p. 42)

Discussion of the practices of sustainable agriculture comprises a review of existing studies of the characteristics of sustainable farming, including the quantity and quality of produce, and financial aspects (including a good discussion of the incentives to undertake research on, and disseminate information about, sustainable farming systems).

In the chapter on policy implications are discussed the differential effects of government intervention (input and output subsidies, tariffs) on sustainable and conventional farming. It is argued that:

If the aim of society is a *socially* efficient form of agriculture...the encouragement of conversion from conventional to sustainable agriculture should be considered. (p. 67, emphasis added)

The international sustainable agriculture movement described in Chapter 6 is exclusively that of the developed countries.

What is an appropriate response to *Sustainable Agriculture*? This reviewer has the strong impression that a false dichotomy has been set up between "conventional" and "sustainable" farming as mutually exclusive systems. While sustainable farmers eschew *some* practices of conventional agriculture, the two systems have many common practices. This commonality can be seen from the above-quoted definition of sustainable agriculture, which includes many practices of *conventional* agriculture. Commonality can also be seen from the discussion of sustainable agriculture in practice (e.g. pp. 47-48). There may be idealised, polar examples of the two farming systems, but most practical farmers of *both* persuasions sit somewhere on a continuum between the poles. This perception suggests that, rather than having sterile arguments about whether "conventional" or "sustainable" agriculture should be encouraged, the principal policy issue is which *particular* farming practices should be encouraged. And, clearly, the choice of farming practice should not be based solely on its *private* costs and benefits, but take into account its *total* costs, however remote some external costs and benefits may be. A lesson should also be learned from the acid soils problem of southern NSW that knowledge of the ecology of farming is often very imperfect. Where the consequences of adopting farming practices may be irreversible, great care should be taken when encouraging farmers to change their cultural practices.

Like the rest of society, farmers vary along a spectrum from the ecologically aware to the "if it moves, shoot it; if it doesn't, chop it down" school. At the 1988 ANZAAS Conference, David Suzuki recalled a North American Indian proverb that we don't *inherit* resources from our parents, we *borrow* them from our children. If this book, and the sustainable agriculture movement, encourage us to have a greater humility in our exploitation of nature and to repay our debt of borrowed agricultural resources in full, it will have served a valuable function.

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From Scarcity to Surfeit: a history of food and nutrition in New South Wales, R. Walker and D. Roberts, New South Wales University Press, Sydney, 1988. Pp. x + 202. \$19.95 (limp).

In *Scarcity to Surfeit*, Walker and Roberts analyse changes in the diet of New South Wales' inhabitants from the 1788 invasion to the present day. This history is presented in themes, sometimes overlapping, and always interwoven with the development of the colony from penal settlement to contemporary society. This book is interesting to the economist because it documents why and how governments increasingly intervened in food supply as dietary, public health and medical knowledge improved *inter alia*. In an age when deregulation is *de rigueur*, it is valuable to understand why and how particular regulations developed. Understanding these developments leads to a better understanding as to whether deregulation would encourage the re-emergence of those practices which the regulations were designed to control.

Chapter 1, "The Invaders", documents the role of food from the founding of the colony in 1788 to its consolidation by about 1820. This period was one of slow emergence from dependency on uncertain external food supplies to domestic sufficiency, and thus from privation to an adequacy of basic foods. An irony of this period is that, while the invaders suffered privation from an inadequate and unbalanced diet, the dispossessed Aborigines--who could have demonstrated how the new land could provide adequate supplies of a nutritionally balanced diet--were being exterminated in a war for resources and as a consequence of exotic diseases introduced by the invaders.

In "Immigrants and Cornstalks" (Chapter 2), the authors commence with the dietary privations involved in actually reaching the colony, even as late as the mid-19th C, and the consequent mortality, particularly of convicts and children. The authors then discuss the "four familiar foods" of the colony in the first half of the 19th C: meat, cereals, sugar and tea. Of particular interest was sugar, a product whose nutritional and detrimental dental consequences are repeatedly noted by the authors:

In the colonies life began and ended with pap. The consequences of sugar were not sweet.

Walker and Roberts show that the colonists were probably healthier than their British counterparts, which is more a comment on poor living conditions in Britain than evidence that the colonists were adequately nourished. Indeed, as the authors show, with rising urbanisation in the second half of the 19th C, epidemics were accompanied by high mortality, suggesting that diets were far from adequate.

The diets of institutional inmates--hospitals, asylums and prisons-- are briefly discussed in Chapter 3. The nutritional deficiency of Vitamin A is related to conjunctivitis, and discussed not only with regard to institutions but also to vegetable-deficient diets, particularly of inland areas.

Chapter 4, "Townsmen and Sanitarians", has a discussion of public health problems arising from inadequate water supplies in Sydney; the rapid degeneration of available water supplies through poor sanitation and hygiene practices; and poor hygiene practices in food production, distribution and consumption (in each of which the discerning economist will detect classic market failure problems). As knowledge of the causes of disease and contamination developed during the 19th C, governments increasingly intervened in the provision of food, water and sanitation services. This intervention is further documented in Chapter 5, "Meddling in the Market".

The health of "Mothers and Children"--and especially the dietary and associated health risks of infancy--is examined in Chapter 6. The dangers of cows' milk for infants, because of its composition and contaminants, were partially remedied by patent formulas in the second half of the 19th C. (The authors do not discuss, however, the eventual rise to dominance of formulas in infant diets over the following century, and the breastfeeding counter-revolution of the 1970s and 1980s.)

Chapter 7, "Consumers under Control", is a complex chapter dealing, with *inter alia*, government intervention through wartime price control, control of baking hours, control of meat slaughter and distribution in Sydney, control of milk marketing, the beginnings of margarine control (the end of this saga is in Chapter 10), and government intervention in the sugar industry.

Although the effects of periodic depressions in the 19th C on food consumption are not separately discussed, the effects of the 1930s Depression are examined in Chapter 8, "Poverty and Puftaloons: 'Lasting out' in the Depression". A range of issues are covered in this chapter: the adequacy of average diets, the adequacy of "relief" diets, and Aboriginal diets:

...Aborigines...received an inferior scale of rations from the Aborigines Protection Board... Even in the improved scales of May 1931... deficiencies occurred in respect of vitamin A, riboflavin, vitamin C and calcium. Some police thought these rations were too generous. In July 1931, the police sergeant at Baradine would issue only "dry" (meatless) rations to an Aboriginal family as, he said, rabbits were plentiful...

On many of the Reserves conditions were miserable, accommodation poor, sanitation primitive, [and] impetigo, trachoma and tuberculosis prevalent.

As Mr. Justice Einfeld of the Human Rights Commission has recently discovered, not a lot has changed in 55 years at Toomelah (and undoubtedly elsewhere).

The relatively minor consequences--compared to other belligerents--of the Second World War for Australian diets is the subject of Chapter 9, "War and Welfare". More significant have been "Ups and Downs: changing patterns in food consumption" in the post-war world, discussed in Chapter 10. These changes include major changes in food preparation in the home, in the food distribution chain, in demand patterns resulting from non-anglo/saxon migration, and from changes in dietary and medical knowledge. These changes are further explored in Chapter 11, "From Shop to Plate". Finally, in Chapter 12, "Food and Health", the authors survey changing knowledge about food and nutrition, and its effects on eating habits, from the mid-19th C to the present.

For those with an appetite to know how and why Australian eating habits developed as they have, *From Scarcity to Surfeit* is highly recommended. A strong stomach is, however, required at times.

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