Review of David Solomon, *The Political Impact of the High Court*, Sydney: Allen & Unwin, 1992. $24.95.

Not uncommonly, the lead up to a propitious national anniversary is a time to assess what has been done and to review the alternatives, on this occasion with the benefit of centennial hindsight. The methods by which disputed provisions of the Commonwealth Constitution and legislation are defined will inevitably come under national scrutiny. The High Court, a creation of the Constitution and, amongst other things, delineator of disputed sovereign powers, will inescapably share centre stage. The composition and role of the Court will feature prominently in any re-appraisal of the federal constitutional framework. The political significance of its decisions will be explored and not simply the legal principles which underpin them. This in turn will raise questions about the independence of the Court and the process by which its members are appointed. *The Political Impact of the High Court* is an admirable and timely contribution to this debate, for as the author states (p 193):

> The Court's previous reluctance to acknowledge, except on rare occasions, that what it decides will or may have a political impact makes it imperative that others should highlight the political consequences of what the Court is being asked to do, be they the lawyers who appear before the Court, the clients they represent, or academic or journalist observers. The citizens who have no say in choosing the Court have a right to know what it is doing and what effect its decisions will have on them.

I have taken this excerpt to include a call for the translation of legal principle into political effect, a provocative exercise often eschewed in legal texts. This book is not, nor indeed was it intended to be, a technical legal text. It is rather the "biography" of a legal institution casuistically constructed but with an eye to historical, social and political context.

The book is divided into three parts. The first contains an overview of the historical, constitutional and political foundations of the High Court touching on issues covered in greater detail in the second part, which is headed "Problem Areas". These include the conservation and protection of the environment; the freedom of trade, commerce and intercourse among the States; human rights; taxation; industrial relations and the "federalisation" of company law. The third part is headed "Institutions" and is, broadly speaking, devoted to the constitutional relationship between the High Court on the one hand and parliament and executive government on the other. Of particular interest are those sections of chapter 12 dealing with the judicial review of executive acts and those instances where the Court has adjudicated legal disputes between the government and the opposition.

The style of this work may be illustrated by the following random examples. In chapter 7, the author has chosen the High Court's treatment of certain provisions of the Income Tax Assessment Act 1936 (Cth) to demonstrate how the Court may become involved in the political process through its interpretation of legislation. There was a popular perception in the 1970's and 1980's that the Court's approach to the interpretation of the Act facilitated the avoidance and evasion of tax liabilities, which in turn led to a wide ranging legislative reform of the tax system. This well

known chapter in the history of the Court exemplifies the effect of the forces created by a system based on the separation of powers. The author, true to his mission, describes these results as the effective destruction by the High Court of section 260 and "the tax fiasco which the High Court oversaw" (p 105), thus bringing the force of political reality to bear on results which lawyers might be more inclined to describe as the conclusions of sustainable legal principles. In similar vein, in chapter 5, in relation to the legislative curtailment of rights and freedoms, it is asserted that this can be done "so long as the legislation is clearly expressed in terms which the courts cannot overcome", an assertion which conjures up the political image of a judicial desire to frustrate the popular will.

Whilst the book has the virtue of being very readable there are some passages which place too great a demand on the background knowledge of the reader. The reference simply to "Bruce" (pp 113–114) is one such instance. The reader may have a shrewd idea as to what is meant but must seek confirmation in the Index that it is a reference to the "Bruce government". The explanation of "secondary boycotts" (p 119) is confusing. There are also a few of what appear to be typographical errors such as the use of "to convey ... on Australians" (p 71) and "the prevailing doctrine on the court" (p 139).

This book will, I suspect, enjoy an extensive readership and justifiably so, for it encapsulates in digestible form all the salient aspects of what for many would otherwise be arcane.

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Review of M Cope, *Constructive Trusts*, Sydney: Law Book Company, 1992. HC $175.

The period of 29 years that has elapsed since the appearance of Professor Donovan Waters' pioneering work on constructive trusts[1] has been one not only of the steady, and steadily increasing, application of equitable doctrine by Australian courts, and especially the High Court, but also one of development in the theory of equitable relief. Central to the latter has been the argument, initially academic but increasingly judicial, whether constructive trusts are an institution of equity or a remedy. The "institutional" approach sees a judicial declaration of trusteeship over assets as the recognition of a substantive trust that exists by operation of law, usually when a fiduciary has made an unauthorised profit. On this view, the emphasis is primarily upon established rules of equity.[2] The "remedial" approach, on the other hand, sees such a judicial declaration as a remedy against the "unjust enrichment" of the defendant and as a means by which "restitution"[3] must be made to the plaintiff.