

deals with the shield of the Crown it is, perhaps, a little premature to say that the doctrine of Crown benefit 'has the stamp of approval of the House of Lords'. Perhaps, too, the possibility of the development in Australia of distinctions between 'want' and 'excess' of jurisdiction and 'void' and 'voidable' decisions along the lines of Lord Denning's judgment in *R. v. Paddington Valuation Officer; Ex parte Peachey Property Corporation*⁶ should not yet be excluded. It must be conceded, however, that the recent decision of the Privy Council in *Durayappah v. Fernando*⁷ has dampened somewhat the optimism of the reviewer.

Clearly, the authors have tried to isolate determinate principles wherever possible. That they have not succeeded on a number of fundamental points is far less a reason for criticism of their efforts than an indication of the urgency of the need for legislative reform in administrative law. It is the great merit of their work that in a little over three hundred and fifty pages they have given a balanced and judiciously selective account of a most heterogeneous body of case law. In doing this and in indicating the points at which the courts have become bogged down they have done a substantial service to legal education in the widest sense.

MAURICE CULLITY*

International Law in Australia, edited by D. P. O'CONNELL, Professor of International Law in the University of Adelaide, assisted by J. VARSANYI, Research Officer in Law in the University of Adelaide, (The Law Book Company Limited, 1965), pp. 1-xliii, 1-603. \$11.00.

The wide-ranging and extremely useful papers published in this volume for the Australian Institute of International Affairs is a further indication of the vitality of the discussion of international law in Australia, and coming soon after the two volume work on *International Law* by Professor O'Connell and new editions of Mr Starke's *Introduction to International Law*, shows very clearly the new status that Australians see for themselves in international affairs.

The contributors to this series of papers include Professor O'Connell, Professor Sawyer, Mr Body of the Department of External Affairs, Sir Kenneth Bailey, and many other important writers on various aspects of international law.

One aspect of the role which Australia may well find for itself in international law is indicated clearly in Professor O'Connell's paper on Australia's International Personality. He says (page 33) :

The total impression that is conveyed is that Australia's contribution to international law is as proportionate as her experience therein. Australia is the prototype of the federal society with a

⁶ [1965] 2 All E.R. 836.

⁷ [1967] 2 All E.R. 152.

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parliamentary system based on British constitutional principles. As such it has some claim to be the fountainhead of authority to which the newer Commonwealth States who have adopted federal systems might look for guidance. The material reflection which is now possible on the Australian problem of the relationship between international law and federal constitutional law permits insights into the classical problem of sovereignty, the State and international responsibility that unitary societies rarely offer.

Professor Sawyer's paper 'Australian Constitutional Law in Relation to International Relations and International Law' is of particular interest in this regard. While Professor Sawyer deals primarily with the constitutional difficulties presented by Australia's federal character and deals thoroughly with the *Henry* and *Sharkey* cases to show the extent of external affairs power, in a particularly important part of his paper (starting at page 48) Professor Sawyer considers International Law and Australian Law dealing, *inter alia*, with executive certification. The broad questions of recognition, the state of war, the extent of national territories and the modern practice of undeclared wars and withheld recognition are parts of international law of very great importance for the courts. The executive certificates cannot be expected any longer to be clear cut on many of the very important questions in international law. This issue and the problems associated with the reception of international law into Australian municipal law are carefully but somewhat shortly dealt with by Professor Sawyer in his paper.

Mr Body's discussion of Australia's treaty making practice is a much needed look into the workings of the Australian government in international affairs. Similarly Mr Harry's paper on Australia's commitment under the United Nations Charter brings together an analysis of the important provisions of the Charter and a discussion of Australia's duties and obligations under those provisions as well as underlying analysis of Australian policy with respect to many of the important articles in the Charter. Of special interest is the analysis of the effect of Article 2 (7). Where human rights inside a country are concerned and Article 2 (7) is relied upon, Australian practice has been difficult to follow. This has been particularly so concerning South Africa. Mr Harry puts it (page 84) 'In this connexion, the Australian Government has in recent years supported, or not opposed, discussion and condemnation of the policy of apartheid, but has not joined in the boycotts and other forms of active intervention which the General Assembly has recommended'. Some further discussion as to Australia's policy on the interpretation of section 2 (7) would have been welcomed by the reviewer.

The papers on Australia's Trade and Labour Relationship with other Countries by Mr Alexandrowicz—'Australia and G.A.T.T.' and Mr Starke—'Australia and the International Labour Organisation'—are important not only as showing the way in which Australia has entered into important international agreements but also to give a basis of understanding these agreements themselves and the way in which G.A.T.T. and the I.L.O. operate. In the first of these papers the shift in Australian interest towards Asia is clearly shown in the change of policy, for example,

towards Japan in G.A.T.T. Again the very great importance that Australia attaches to the projected British entry into the E.E.C. can only be understood in trade terms with an understanding of the workings of the general agreement.

Many of the other papers in the book are somewhat specialist in their treatment of particular aspects of Australia in international law. So, for example, Mr Pyman's paper on 'Australia and International Air Law' provides a useful analysis of the work of the I.C.A.O. and a very important practical summary of the categories of 'administrative' clauses in bilateral agreements.

Two papers of considerable importance to students of international law included in this volume are those by Sir Kenneth Bailey on the 'Law of the Sea' and Professor O'Connell on 'Australian Coastal Jurisdiction'.

As Sir Kenneth Bailey points out (page 231): 'Australia's position is basically that of an island. The world's islands have, as such, special interest in the substance of the international law of the sea, because all their international lines of communication, commercial, cultural and military, must lie in, or over, the sea'. Sir Kenneth recognizes the argument often raised at the Conference on the Law of the Sea in 1958 that the law had been developed during the period of Western dominance and colonial empires. Many of the newer States argued that the whole law of the sea ought to be reconsidered in the light of changed circumstances. Sir Kenneth however sees that the concept of the freedom of the seas was advantageous not only to the maritime powers in the West but to all States. Sir Kenneth however, seems to neglect one very important consideration concerning the exploitation of adjacent coastal waters. Many of the newer States are not yet in a position to adequately exploit their own resources either because of political instability or economic insecurity. Many such newly emergent States must be concerned with the increasing capacity of the great powers to exploit adjacent waters with the real possibility of working out potentially rich areas of marine food, or of using their technical resources to exploit and exhaust mineral deposits which may later be of critical importance to the adjacent State. Similarly many States, including the newly emergent States, see grave risks in the possibility of contamination of the high seas by the great powers. In these matters too, the States have an interest in reviewing the concept of freedom of the high seas so that it does not include a right in the States to contaminate by any of the methods which are now possible, for example, by the dumping of atomic waste or the discharge of considerable quantities of oil from the new and extremely large oil tankers that are in service.

Professor O'Connell's paper on 'Australian Coastal Jurisdiction' deals comprehensively with many of the problems that are raised by the colonial origins of the Australian States and their present federal union. Probably no other area of Australian international law presents what seem to be such intractable problems as to the distribution of powers between the States and the Commonwealth.

These problems relate to the territorial waters, the tide lands, the continental shelf and so on. In a period where exploitation of the continental shelf is of great economic significance both for the Commonwealth and the States, Professor O'Connell's paper shows the very unsatisfactory state of the law regulating the relative rights and duties of the two. Since the recent agreements between the Commonwealth and the State of Victoria over natural gases, Professor O'Connell's prediction that the solution to these questions may lie in agreements between the interested State and the Commonwealth may well prove to be the answer to the dilemma. Professor O'Connell's analysis of *Keyn's* case is of special use for students of international law and his discussion of English law on the nature and extent of territorial waters is especially useful.

Australia's international law problems as the 'last colonial power' are comprehensively dealt with by Dr Castles in three papers included in this volume—'International Law and Australia's Overseas Territories', 'The International Status of the Australian Antarctic Territory' and 'The United Nations and Australia's Overseas Territories'. The history of the acquisition of overseas territories is most comprehensively discussed and the source of constitutional power over the territories, as well as the special questions raised by the trust territories, are dealt with at length. As far as the trust territories are concerned Dr Castles recognizes that it may not be sufficient to find comprehensive legislative authority. The relationship of the trust territories and the mainland are under constant international supervision. The territory of Papua and New Guinea has been visited by United Nations visiting missions on many occasions since 1950 and there will no doubt be increasing political pressure from the United Nations itself to enforce the granting of independence.

Similar questions are raised by Dr Castles' paper on the Antarctic Territory. His historical analysis of the claims to the Territory in the Antarctic and the decline of the doctrine that discovery is sufficient as a foundation of territorial claims, lead to a very timely discussion of the problems of internationalization of the Antarctic. It seems clear that while the Antarctic is used for scientific and other specialist research projects the States may well agree to its internationalization but should it be the subject of exploitation of its resources then it is by no means clear that the States will agree to the internationalization principle.

The questions of the political significance of Australia as a colonial power are dealt with more fully by Dr Castles in his later paper 'United Nations and Australia's Overseas Territories'. This paper is of considerable importance as a background to the understanding of the political and legal work of the United Nations and its changing attitude towards colonial territories. Now that there is a considerable body of research being done by lawyers and anthropologists into the structure of New Guinea society this paper provides the necessary background for any discussions on whether the territory ought to be incorporated within the Australian federal system or ought to be brought into some other

form of arrangement with Australia. Following the decision in the *South West Africa Case* it can be presumed that the United Nations will be under considerable pressure from the Afro-Asian groups to require trustee States to bring trust territories up to a point of early independence.

Other specialist topics which are dealt with in this series of articles, e.g. ANZUS and SEATO ('Australia and Collective Security' by N. C. H. Dunbar) provide a short summary of Australia's international agreements for collective security particularly in the east as well as the internal political divisions between the major parties within Australia as to the purposes, desirability, and effectiveness of these treaties.

The remaining papers on 'Immigration, Aliens and Naturalization', 'Alien Property in Australia', 'Borrowings by the Australian Government', and 'Extradition and Asylum in Australia', are a fund of material that is generally very difficult to obtain.

In general the selection of papers for this volume has been very carefully considered. The range of matters dealt with touches on almost every aspect of Australia's international relationships. A careful balance has been preserved between matters which are primarily matters of international relations and matters which are strictly matters of international law and, as it should be in a volume of this kind, questions of international law have been dealt with at length and questions of international relations or of political issues have been kept at a minimum. Taken in conjunction with Professor O'Connell's *International Law* and Professor Stone's *Legal Controls of International Conflict* Australian students are now in the happy position of having almost every aspect of international law as they concern Australia dealt with by Australian writers.

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