

*The Australian Police Forces*, by G. M. O'BRIEN (Oxford University Press, Melbourne, 1960), pp. i-xvi, 1-268. Price £1 17s. 6d.

The policeman is always in the public eye; he is an inevitable part of the nature of things in our community. It is his part in the administration of the law which is the best known to the community in general; the appellation often given him indicates that to many people he is indeed 'the law' in all its forms. His actual place in the legal system, while not so omnipotent or omnipresent, is of the greatest importance. Of his eighteenth century predecessor Blackstone ponderously said:

... [His] general duty . . . is to keep the king's peace . . . and to that purpose [he is] armed with very large powers, of arresting, and imprisoning, of breaking open houses, and the like: . . .<sup>1</sup>

These remarks about the duties and powers of the policeman of 1756 are true of his Australian descendant in office today. The Privy Council has recently emphasized the true nature of an Australian policeman's status, in the course of determining whether the state government which pays his stipend might recover damages for injuries inflicted upon him which prevent him executing his duties. The Board said:

... [T]here is a fundamental difference between the domestic relation of servant and master and that of the holder of a public office and the State which he is said to serve. The constable<sup>2</sup> falls within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office: he is a ministerial officer exercising statutory rights independently of contract.<sup>3</sup>

This book, written by a Senior Constable in the Victoria Police who is a member of the Public Relations staff at Police Headquarters in Melbourne, sets out to present a picture of Australian policemen, to acquaint the public with the police, and on this basis alone it deserves at least a qualified welcome. We know all too little about our police forces.

Mr O'Brien provides a brief history of the establishment and development of police forces in each Australian state and territory (except the external territories)<sup>4</sup> and then goes on to describe the present organization of police forces in Australia. He devotes chapters to criminal investigation, communications, the 'special branches', like the water and mounted police, traffic control and juvenile delinquency. What is possibly the most important chapter of the book deals with the qualifications which the potential 'ministerial officer of justice' must have, the training which he has to undergo, and the basic duties performed by the ordinary policeman. Unfortunately, this chapter (chapter 5—'At the Call of Duty') is written in a rather loose style which is uncomfortable to read and which detracts from the force of this part of the book.

To this reviewer the most interesting part of the book is the last chapter, in which the author attempts to analyse the present relationship

<sup>1</sup> (1756) 1 *Comm.* 356. He went on to say, somewhat cynically or perhaps sorrowfully . . . of the extent of which powers, considering what manner of men are for the most part put into these offices, it is perhaps very well that they are generally kept in ignorance'. *Ibid.* For an excellent, brief history of police in England see Sir Carleton Allen, *The Queen's Peace* (1953) 92-127.

<sup>2</sup> The words 'constable' and 'policeman' are generally completely interchangeable. See Gerald Abrahams, *The Law affecting Police and Public* (1938) 18, esp. note (e).

<sup>3</sup> *Attorney-General for New South Wales v. Perpetual Trustee Co. Ltd* [1955] A.C. 457, 489, 490.

<sup>4</sup> Australia is divided into seven states on page 5.

between the policeman and the public which he serves. He readily admits that in Australia the police forces have been the objects of vilification on the part of the public. Mr O'Brien ascribes this attitude to the poor recruits who were enlisted in the police in the last century, to the lawless character of a large part of the population in Australia at that same time, and generally to the fact that 'the pioneers had bequeathed to their descendants a rugged individuality that chafed under any form of regimentation' (page 246).

It is perhaps surprising that this attitude of public antipathy should still prevail when recruits to the police are generally of far higher calibre, and when the so-called convict mentality and 'rugged individuality' have disappeared as characteristics of a population which is generally of respectable ancestry and lives a life of fairly close conformity in many respects; but there is ample proof that an 'anti-police' attitude still persists in the minds of substantial numbers of the public. The author himself relates an incident in 1951 where policewomen attempting to arrest a violent suspect were watched by a large crowd which rendered absolutely no assistance.<sup>5</sup> Dr Russel Ward reproduces the newspaper report of an incident where members of the public not only did not assist, but also encouraged the suspect;<sup>6</sup> many more such incidents still occur. Mr O'Brien believes that the public attitude towards police is changing, particularly since large numbers of people saw the behaviour of police on great occasions like the Queen's visit in 1954 and the Olympic Games and recognized that policemen were not all big-booted bullies. He suggests that a strong programme of public education, consisting of police exhibitions, lectures, radio broadcasts, and television programmes, about police and their activities (and books like this one under review!) will consolidate the position and produce that relationship of complete trust and mutual assistance between police and public which existed (and probably still exists) in England. But he does not suggest that it is only the public which must be educated about police. There are still cases of individual police behaviour which go to foster antipathy and which dissipate good feelings towards the police in ordinary people's minds, negating much of this public relations work so carefully undertaken and executed. Intensive education, in the widest meaning of that term, of police about their responsibilities to the public is equally essential; the author appreciates this and his survey of projects undertaken by police departments, which show that they realize it also, is heartening.

Both the current English Royal Commission on the Police and the Hamilton Commission in 1928 have emphasized that without public co-operation the work of the police in the enforcement of the law is difficult if not impossible. Distrust or contempt of the law enforcement agency inevitably produces contempt of the law, which in turn intensifies the attitude to the law enforcers; ultimately the system collapses or becomes one of mere repression. One hopes that such a situation will never occur in Australia; that hope depends in large part for its fulfilment on the appreciation of police and public for each other.

PETER L. WALLER\*

<sup>5</sup> The man was William O'Meally, later convicted of murdering a policeman, (page 175).

<sup>6</sup> *The Australian Legend* (1958) 6, 49.

\* LL.B. (Melb.), B.C.L. (Oxon.); Senior Lecturer in Law in the University of Melbourne.

*Matrimonial Causes Jurisdiction*, by ZELMAN COWEN, B.C.L., M.A. (Oxon.), B.A. (Hons.), LL.M. (Melb.), and DEREK MENDES DA COSTA, LL.B. (Lond.), (Law Book Co. of Australasia Pty Ltd, Sydney, 1961), pp. i-xx, 1-163. Price £1 12s. 6d.

It was Professor Cowen who, together with His Honour Mr Justice Fullagar, first initiated Australians into the subtleties of 'Full Faith and Credit' and he has since explored in various publications<sup>1</sup> both conflictual and constitutional problems in Australia. Mr Mendes da Costa, who is Senior Lecturer in Law in the University of Melbourne, has made Conflicts of Laws his special study and has contributed to the periodical literature on the subject both in England and in this country.

It is therefore fitting that the first book to explore the Matrimonial Causes Act which, though passed in 1959, has only recently come into actual operation, should have come from these two authors.

The book does not purport to be a study of divorce law or of family law. It deals with the conflictual problems associated with jurisdiction, choice of law and recognition of foreign decrees which are involved in this new piece of legislation. However, in Australia private international law problems readily shade into those of constitutional law and the book naturally has to indicate the nature of the jurisdiction conferred by the new Act in the light of the Australian constitutional provisions regarding the grant of judicial power.

The book, after a general treatment of the courts involved, follows the technique of treating the various matrimonial remedies, *viz.* dissolution of marriage, nullity of marriage, judicial separation, *etc.*, from the viewpoint both of jurisdiction and choice of law, and then passing to consider in one chapter the general question of the recognition of foreign decrees no matter of what nature. Included in this treatment is the action for a declaratory judgment and also, incidentally, jactitation of marriage. However, the action for damages against a co-respondent is considered at a later point and is immediately followed by the two last chapters of the book dealing with, respectively, proceedings for ancillary relief and the transitional provisions of the Act.

Sir Garfield Barwick's Act betrays a keen consciousness of the existence of private international law problems and an earnest desire to solve them, thereby providing, at least so far as the aspect of nullity of marriage is concerned, a striking contrast with the prior Acts of 1945 and 1955. However, from the careful and penetrating analysis to which it is subjected in this book, there clearly emerges the fact that many questions in relation to nullity of marriage still remain substantially unanswered. Perhaps no statute can ever satisfactorily solve the intractable possibilities of the null marriage situation once foreign elements are involved.

Undoubtedly the most stimulating part of the book is that dealing with the question of recognition. The authors show an acute perception of the various possibilities of the *Travers v. Holley*<sup>2</sup> doctrine and it would certainly seem that in spite of the provisions in the Act, which represent a piecemeal adoption of some of its effects, the question whether the doctrine in its wide form applies, may well come up yet for decision. Whilst this remains the most interesting part of the work, one should

<sup>1</sup> Cowen, *Bilateral Studies in Private International Law. No. 8 American-Australian Private International Law.* (1957); Cowen, *Federal Jurisdiction in Australia.* (1959).

<sup>2</sup> [1953] P. 246; [1953] 3 W.L.R. 507; [1953] 2 All E.R. 794.