

on the accused, but where the defence is absence of *mens rea* because of automatism not arising from disease of the mind, the burden rests upon the Crown to prove the challenged element beyond reasonable doubt!

The headnote in *Cottle's Case*²⁰ states that:

in cases in which intent is an essential ingredient, where the plea of automatism (i.e. that the accused's lack of consciousness negated intent) is put forward as a defence and a proper foundation has been laid for it, and the automatism is of a type consistent with sanity, there is no reason why, should the defence be successful, the accused should not receive an ordinary acquittal. But if automatism, or action without consciousness of so acting, is shown in evidence to be attributable to an abnormal condition of mind capable of being designated as a disease of the mind, the judge should submit to the jury the question whether, if there is to be an acquittal, the verdict should not be expressed . . . as an acquittal on account of insanity.

In legal theory, this may be the inescapable result, but it certainly produces a sharp contrast between the practical consequences of the application of the subjective test on the one hand and the *McNaughton* formula on the other. As Dr. J. Ll. J. Edwards has pointed out,²¹ a grave problem of community protection may arise if the same individual exhibits harmful violence during recurrent attacks of automatism, and in any event, public confidence in the criminal law may be gravely impaired if the defence is commonly successful in crimes that arouse feelings of fear and insecurity in the community.

The two concluding essays touch upon a topic of growing importance, the conflict between the legal protection of the individual and measures for the protection of the community from its habitual and psychopathic criminals. The move to substitute social accountability for criminal responsibility is growing in strength, and some of its proposals are deceptively and dangerously attractive both intellectually and from the standpoint of efficient social organization. In the light of these developments, Professor Hall's reminder is timely, that one cannot have his cake and eat it too. We cannot have the advantages of protection by law and also have all the advantages that *in particular instances* might flow from completely unfettered discretion in the treatment of criminals. From a medical viewpoint, it may be absurd to release an offender at a fixed time that in fact has no relation to rehabilitation. But if the law fixes no upper limit, there is no adequate protection for any convicted person against life imprisonment.

Professor Hall has provided a wealth of material for the reader anxious to reflect upon the close relationship between the social purposes which both law and sociology should serve and the way in which they may combine to do so. The language of American scholarship is not always easy to follow and these essays demand concentration if their quality is to be appreciated, but they well reward the effort.

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A Guide to Diplomatic Practice, by the late Sir Ernest Satow, G.C.M.G., LL.D., D.C.L. 4 ed. 1957, by Sir Nevile Bland, K.C.M.G., K.C.V.D. London, Longmans, Green. xviii and 510. (£4/15/9 in Australia).

Satow has been the *vade mecum* of the professional diplomat since its first publication in 1917. The fourth edition brings it without major damage

²⁰ *Supra*.

²¹ "Automatism and Criminal Responsibility" (1958) 21 *Mod. L.R.* 375

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(except what has arisen from the condition of professional diplomacy itself) onto the stormy ocean of the age of atomic and ideological weapons. This qualifiedly safe passage is a tribute to the great and widely recognised merits of the original work. It is no less a tribute to the steady and sophisticated steering of Sir Nevile Bland, who has brought to his tasks the mature experience and insights of many years as Head of the Treaty Department of the Foreign Office, and as Minister and Ambassador at The Hague.

Satow is, of course, one of those rare works which it is safer and easier to edit, than to attempt to repeat or replace. It had in its time the solid down-to-earthness of European diplomacy of the era which ended with the outbreak of the first World War. This, it is easier to see now than then, was an era already past its zenith when the work was first published. It is not surprising, therefore, that the learned editor has felt some doubt whether the craft he has so well navigated will prove entirely seaworthy on the ocean to which he has brought it. Or, for that matter whether, even if it does, it will be able to earn freights enough to keep it in commission in cruel competition with the newer types of craft which have dominated diplomatic commerce since World War II. As Sir Nevile correctly observes, there has been a growing tendency since the last edition in 1932 to replace the professional diplomat by "the creature of local ideology", and "the discreet exchange of notes" by "tendentious press conferences and abuse over the air". And whatever may be said as to the old secret diplomacy, few will disagree with him that "the airing of national dislikes and prejudices in uncontrolled language" is neither conducive to international conciliation, nor rightly to be called "diplomacy". He renounced therefore any attempt to make *Satow* into a guide for diplomats who are caught up as actors or victims in this new type of "non-diplomacy", to which "the response can only be framed in the light of the circumstances and the authority dealing with them".¹

The main changes made by the editor also pertain rather to the content of the information omitted or included, than to the deeper changes in the spirit and texture of international diplomacy. The chapters on the League of Nations which were a sign of modernism in the 'thirties have yielded place to chapters on the United Nations, the Specialised Agencies, and Associations of Western States, which (we may hope) will not date as quickly.² The treatment of the British Commonwealth has been entirely redone as befits a classical work to which inevitably (too often still, we fear, in vain) foreigners will look for solutions to the current constitutional and diplomatic mysteries of the Commonwealth.³ The chapters on international meetings and transactions (including treaties) have also been overhauled, though some observations must later be made as to the adequacy of these.⁴ Many other matters have been supplemented or brought up to date. This edition still remains, after all this, a book of practical precepts and information of Western (and above all British) professional diplomacy, with roots in the pre-twentieth century monarchical world, rather than our own. Its pages are dominated by awareness of the importance of ceremony, form and decorum in diplomatic intercourse. Its measured, unsensational terms remind us of the salutary restraints which form and ceremony can bring to exchanges between nations, and of the relation of these restraints to the survival of mutual respect and the chances of improved understanding. The reader may suspect, as the editor himself stops little short of admitting, that this diplomatic form and ceremony has become obsolete or at least anachronistic. Yet they remain of practical import to the man on the spot in his day to day life, if only because no substitutes for them have been established. It is, moreover, important in any case that the knowledge of them should be kept alive,

¹ P.v.

² Cc. xxix-xxxiii.

³ C. xxviii.

⁴ Cc. xxji-xxviii. And see the comments on Book III, *infra* 183.

even if for the time being they offer little answer to the airborne, broadcast, telecast, press-conferenced, open-lettered, foreign-ministered, Head-of-Stated, "non-diplomacy" of our unfortunate epoch. And, of course, the traditional forms, ceremonies and precepts of diplomacy are (in any case) valuable to be known even by the "non-diplomatists"; if only in order that the flouting of them shall be a meaningful and effective mode of political warfare.

It is too late to have to argue that "non-diplomacy" has proved no substitute for diplomacy. It is also too obvious for argument, that a revitalised and renovated diplomacy (if only the main protagonists could bring themselves and their peoples to it) might offer the best hope of softening the inhuman tensions and the uncivilised asperities of contemporary international affairs. At any rate if we insist that events have outstripped the traditional channels, we must also recognise the corresponding urgency of bringing all the skills available to the task of improving or supplementing them. Sir Nevile well states one part of this challenge.

At the present day, the duties and responsibilities of the minister who is entrusted with conduct of the foreign relations of his country range over a yet wider field than before. The birth of new states, the advancement of others, constitutional changes which may occur in their methods of government, the growth of organisations designed to foster a better understanding between the nations of the world, the ever increasing complexity of international relationships, and the many questions to which all these give rise, have largely extended the area within which diplomacy finds its proper scope and call for close and unremitting attention.⁵

Quite apart from this matter of range and scope of contemporary diplomatic business, the conciliatory poise and patient attention of the old-fashioned diplomat at his best must still have meaning amid the terrible morass of mutual suspicion and reciprocal threats which now block international communication on the graver issues. We may do well to be nostalgic for the ideal type of State agent as *Satow* saw him.

He is conciliatory and firm; he eludes difficulties, which cannot immediately be overcome, only in order to obviate them in more favourable conditions; he is courteous and unhurried; he easily detects insincerity He has an intuitive sense of fitness and is adaptable. He is at home in any society and is equally so in the chanceries of the old diplomacy or on the platforms of the new. (P. 131).

The main order of topics remains unchanged in this edition. Book I, after certain introductory topics of diplomacy in general, including sovereign immunities, the minister of foreign affairs, the technical rules of title, precedence, and maritime honours, diplomatic language and the forms of documents,⁶ introduces instruments of accreditation and recall, and the general notions of diplomatic propriety,⁷ followed in turn by practical explanations of certain Latin and French terms of art.⁸

Book II contains eleven chapters on the selection of agents (including an up-to-date account of the U.K. Foreign Service), *agr ation*, status *en route* to post, the classification of agents (still over-dominated by the obsolete *Vienna R glement*),⁹ the personal immunities of the agent¹⁰ and of his residence,¹¹ and exemptions from taxation (including a valuable summary of the varying law of some of the more important States).¹² This book is rounded off with chapters on the agent's position *vis- -vis* third States;¹³ on the relations, and rules of precedence and etiquette, as between the diplomatic

⁵ P. 20.

⁶ Pp. 105-114.

⁷ Pp. 174-212.

⁸ Pp. 213-227.

⁹ Pp. 228-240.

¹⁰ Pp. 242-253.

¹¹ Pp. 1-77.

¹² Pp. 162-171.

¹³ Pp. 78-104.

agents of different States at the same capital in war and peace, the *corpus diplomaticum* generally,¹⁴ and on the termination of a mission.¹⁵ On these matters *Satow* continues to excel in practical guidance on numerous matters¹⁶ which, however trivial they may seem against the canvas of the Cold War, still undoubtedly loom large in the daily preoccupations of a professional diplomat at his post.

Book III, entitled "International Meetings and Transactions",¹⁷ comprehends a practical manual on conference organisation and procedure, the forms and nomenclature of treaties and procedure of treaty-making. Here again a fair review must recall the limited objectives of the work. This is not a book on international law, much less on the theory of international law in general, or of treaties in particular. Nor is it the kind of analysis of the nature of inter-state negotiation and compromise which would interest a political scientist. In practice a head of mission will refer any real legal perplexity to his government for the attention of its legal advisers; he will not expect to find the answers in *Satow*. Nor has he time to be interested professionally in the kind of questions which interest the political scientist. What *Satow* aims at is to provide him with sufficient information, to protect him from being wholly at a loss on matters that are most likely to arise.

From the standpoint, therefore, of the general law of treaties, or even of treaty-making procedure, the present account given of numerous matters of intense juristic interest would be quite inadequate. And a good many of the recent precedents of treaty texts here included have little warrant for their inclusion save that they are modern versions of precedents on matters originally included in *Satow*. Even after the playing down of serious legal problems is accepted as justified by the practical import of *Satow*, it may be legitimately complained that a great deal of unnecessary space is devoted to the reprinting at length of clauses, or lists of instruments, whose point could have been adequately made in a fraction of the space.¹⁸ At a time when the law of treaties and treaty interpretation has been for years before the International Law Commission and the *Institut*, not to mention the earlier work of the Harvard Research, notes mainly limited to nomenclature are not enough, perhaps not even for the practical diplomat.

A further comment touches the range and depth of the discussion of conferences and negotiations. The editor has devoted the concluding Book IV to "The British Commonwealth of Nations and International Organisations". Its opening chapter is a valuable brief guide, especially for non-British diplomats, to the external relations of Commonwealth Nations *inter se* and *vis-à-vis* foreign States. Some of the great mysteries of this subject, for instance as to the procedure of declaration of war, are again left to rest very baldly, on the barest recital of recent precedents. Yet it might be thought that even the most practical reader would benefit from having his attention drawn to the legal theories necessary to explain these precedents; and certainly to the relation of such matters to the prerogative of the Crown, and

¹⁴ Pp. 254-273.

¹⁵ Pp. 274-302.

¹⁶ See e. g. on the British practice as to uniforms and evening dress, especially during official naval visits, 266-67; on the distribution and acceptance of gifts and decorations, 269-273; on places of honour at various sizes and shapes of table, in various *Milieux*, and in the standing, walking and sitting postures, 258 ff.

¹⁷ Pp. 303-391.

¹⁸ For examples of space used on such versions which could, in the reviewer's opinion, be better diverted to other purposes, see e.g. 335-337 (examples of use of terms "agreement" and "arrangement"), 342 (list of Exchange of Notes), 345-347 (examples of Final Acts), 353 (*réversales*).

On the other hand, there is some (though rather slight) treatment, of the nature of an international engagement (325-26); and a very adequate treatment of practice and current controversies on reservations to multilateral conventions (372-375). Characteristically, however, the examples given of reservations to acceptances of the optional clause (375-381) give little hint of the many legal perplexities now affecting this matter.

to the basic questions of the single or plural nature of the Crown as an institution.

The chapters on the United Nations and the Specialised Agencies proceed on a similar "bare-bones" level, presenting the outlines of membership, constitution, and procedure in terms which keep close to the relevant text, yet take the reader somewhat further than he could get with the aid of the *Statesman's Year Book*. This should yield sufficient information to enable the neophyte to distinguish one organisation from another. But it could scarcely provide even a *point d'élan* for a diplomatic agent whose duties brought him into operational contact with these organisations. Yet, quite apart from diplomats serving on the permanent delegations of their Government to the United Nations, there must today be very few diplomats who are not from time to time seconded to swell the national delegations at some conference or other of the United Nations or the Specialised Agencies. The comment is proper, therefore, that *Satow* is still far from streamlined to an age in which the bulk of negotiating and conference activity is now in the special form of participation in periodical meetings of standing organs, such as the General Assembly or other organs of the United Nations, or of the Agencies. In this situation it seems not good enough merely to limit the substantial treatment of contemporary congresses and conferences to the *ad hoc* conferences for the conclusion of post-World War II peace treaties, and to the Geneva Summit Conference of 1954.¹⁹ A great deal of thoughtful work, the import of which is intensely practical, has been done on modern type institutionalised negotiation and "conferencing".²⁰ A modern diplomat who lacks a modicum of insight and information concerning these is ill-equipped for his job.

It would be ungracious however to end this review on any note other than one of warm appreciation of what *Satow* has gained in passing through the able hands of Sir Nevile Bland. He has proved above all that *Satow's* craft can stay afloat on mid-twentieth century waters. A ship that is afloat can carry cargoes. And as long as it is afloat it may still be adaptable to the carriage of new kinds of cargoes as the needs of commerce impress themselves.

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Taxation in Australia, by Walter W. Brudno, B.A., LL.B., and a research group in the Faculty of Law of the University of Sydney, under the direction of K. O. Shatwell, M.A., B.C.L., Challis Professor of Law in the University of Sydney. Boston, Little Brown and Company, 1958. xxix and 273 pp. with Table of Cases, Table of Statutes and Index. (£5/7/6 in Australia).

This is one of a series of volumes in the World Tax Series, consisting of reports on tax systems of countries undertaken by the Harvard Law School in response to a resolution of the Economic and Social Council of the United Nations. The stated object is to give a comprehensive perspective of the various tax systems, thus providing basic tools of comparative tax research, equipping

¹⁹ See pp. 314-323. There are incidental references to UN. practice on the preceding pages (e.g. 308-309, 313-314) as well as (more fully) to that of the League of Nations. They do not however meet the point in the text.

²⁰ See e.g. on various aspects, P.C. Jessup, "Parliamentary Diplomacy" (1956) 89 *Hague Recueil* 185-314; P.E. Corbett, *Morals, Law and Power in International Relations* (1956); Baron F.M. Van Asbeck, "L'Application du Principe Représentatif dans les Organisations Internationales", in W. Schäzel and H. J. Schlochauer (ed.), *Rechtsfrage der internationalen Organisation (Festschrift Wehberg, 1956)* 39-65; G. Myrdal, *Realities and Illusions in Regard to Intergovernmental Organisations*, (1955).

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