

BOOK REVIEWS

STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW

By D. P. O'Connell (Cambridge University Press, 1967). 2 volumes, cxi and 948 pp.
Index 46 pp. Price: Vol. I £7-7-0; Vol. II £6 (Sterling).

This will surely rank as the definitive treatise on State succession at the present time and it is unlikely that anyone will attempt to scale the same heights within the next decade or so. Placed beside the impressive work on Public International Law, published in 1965, the four volumes bear witness to the tremendous industry and scholarship of the author. He is in the very forefront of international lawyers at a comparatively early age and it is to be hoped that such rare talent will not be allowed to pass unrecognized. One would be happy to see him follow in the footsteps of his mentor, the late Sir Hersch Lauterpacht, who was translated from a professorial chair to the bench of the World Court which he was to grace with such distinction until so tragically cut down at the height of his powers. Australia should count itself fortunate in possessing two international jurists of the calibre of Professor O'Connell and Professor Julius Stone.

The Law of State Succession was first published in 1956 when a number of subject territories had recently achieved full sovereignty and others were soon to be emancipated. Its appearance was therefore most timely. The author had access to much historical material including notably the opinions of the Law Officers of the Crown during the period from the Congress of Vienna to the turn of this century, which were reproduced in an appendix to the book. It should be mentioned that those opinions, which are of considerable interest and take up 126 pages of the original work, have been omitted from the present volumes. The division of the subject which the author then adopted was as follows: Part I—Treaties in the Law of State Succession; Part II—The Doctrine of Acquired Rights in the Law of State Succession; Part III—The Effect of Change of Sovereignty on the Legal and Administrative Structure of Absorbed Territory; and Part IV—The Effect of Change of Sovereignty on Nationality of Inhabitants of Absorbed Territory.

Part I of the 1956 work (Treaties), which ran to something like sixty two pages, having now been expanded to 387 pages, occupies the whole of Volume II and is entitled International Relations.

The author is of opinion that the traditional doctrine of State succession with respect to treaties has been over simplified; that since the middle of the nineteenth century it has been supposed that treaties

locally connected pass with the territory so as to affect the successor State, while treaties personal to the previous sovereign do not. But the characterization of any particular treaty has proved difficult and the distinction has become more and more elusive as the nature of the problem has changed. However, State practice, on which the distinction was supposed to be based, has itself been inconsistent. It seems clear, at least, that the supposed rule that all treaties, except those connected with the land, lapse in virtue of change of sovereignty—however that change may be brought about—is not verified by reference to contemporary practice. Although the variation in State practice is obviously antithetical to the formulation of firm legal principles, courts will be called upon to decide whether or not, as a matter of international law, treaties are in force. The purpose of this volume is therefore not only to analyze the machinery which has been devised for dealing with the problem of State succession on specific occasions but also to attempt to elaborate a scheme of legal rules.

The author explains that the essence of the scheme is to make the solution of a problem of succession to treaties dependent upon the extent to which change of sovereignty has brought about a disruption in the existing legal order. The greater the degree of legal disruption involved in the change, the greater the number and kind of treaties which will be found to be incompatible with the changed circumstances; the opposing limits are marked, for example, by political revolution on the one hand and by annexation on the other. The author contends that a presumption that a successor State inherits most of the treaties of its predecessor has the advantage of achieving for that State an option to continue treaties which are beneficial or to terminate them on notice if they are not. This method is preferable than leaving the question of treaty continuity to the hazard of its characterization as one running with the land or one personal to the displaced sovereign.

Volume I, entitled *Internal Relations*, presents a more expansive treatment than previously of the nature and theory of State succession, the effect of change of sovereignty on the legal and administrative structure of the affected territory, the doctrine of acquired rights in the law of State succession, and the effect of change of sovereignty on nationality. There are new chapters on the evolution of the British Empire and Commonwealth, the French Community, the Congo and the Netherlands Indies.

The author suggests that the interaction of theory and practice is manifested more clearly in the matter of State succession than in any other aspect of international law. The concept of State succession fluctuates because theories of the State vary from age to age, and the doctrine enunciated in the past must constantly be verified by reference to the actualities of the present. The subject has become more intractable since World War II with the problem of decolon-

ization and the creation of a large number of new States. The author began to realize that the relationship between international law and municipal law in the solution of the legal problems resulting from change of sovereignty was more complex than he had earlier supposed and that international law plays a very restricted role in the matter except with respect to treaties, international claims and protection of foreign investment. It was for this reason that it seemed logical to divide the subject matter into two volumes, dealing with problems arising primarily under municipal law and under international law respectively.

The cut-off date of the information in the work is 31 December 1965, but the more important references for 1966 have been included. The bibliography and indexes of both volumes are of a high standard.

N. C. H. D.

CASES AND MATERIALS ON ADMINISTRATIVE LAW

By Peter Brett and Peter W. Hogg (Butterworth & Company (Australia) Ltd., 1967) 672 pp. Price: \$13.20.

This book is a new edition of Professor Brett's *Cases and Materials in Constitutional and Administrative Law*: the title has been changed for the simple reason that the constitutional material has been dropped out of this edition. This in itself is an improvement; the constitutional portion of the previous edition was quite inadequate and much too heavily slanted toward the position in Victoria.

The authors, Peter Brett and Peter Hogg, are to be congratulated for producing a major contribution towards learning in the field of administrative law. The cases and materials are well-selected and provide an excellent basis for teaching administrative law at an advanced level. What is more the book will, I am quite sure, find a place on the shelves of discerning practitioners for it is not merely a stringing together of extracts from cases and statutes: there are very extensive notes which not only fill out the body of case law which is not produced but also contain many acute and valuable comments on difficult aspects of the law. If an example is needed it is to be found in the notes (at 413 ff.) dealing with the courts' convoluted attempts to cope with the problem of licensing and natural justice. I particularly welcome this pattern in which cases are introduced and placed in context by explanation of practical issues and related case law. Any attempt to proceed by way of extracts from leading cases only would be doomed to failure; for in administrative law the principles and the qualifications on principles can only be built out of consideration of a large mass of case law. Students must be forced to realise this. It is perhaps one of the major areas where case-law teaching in the United States falls down because students gain an altogether distorted picture from their examination of a limited number of major cases.

So far as make-up is concerned the book is a handsome volume. Most teachers will appreciate the fact that the authors have resisted the temptation to produce a mammoth work (this could easily have been done without any repetition of illustrative cases). As it is the book is 150 pages larger than the first edition; and that is enough. I have one small *caveat*. I found that the pages of comment merged almost imperceptibly into the case extracts. Indeed on some occasions I found that I was reading comment when I thought I was still reading a judgment. Perhaps that resulted from careless reading but it is something which might be watched in the future.

The book takes a new point of departure in dealing with remedies before dealing with substantive law. Arrangement is always a problem in administrative law courses but on the whole I think I find this approach very satisfactory indeed. All aspects of the remedial law are dealt with in logical sequence; even an action in tort called 'misfeasance in a public office' (at 55 referring to *Farrington v. Thomson and Bridgland* [1959] V.R. 286) which was quite new to me even though it is an old action. Then follow cases and materials dealing with fact and law, review of discretionary powers, procedural requirements, privative clauses, and the Crown. In two areas it might be suggested that the materials are not entirely satisfactory. The separation of 'divesting' (at 271) from 'delegation' (at 230 ff.) is welcome, but in dealing with the latter subject the authors have become somewhat obsessed with the problem of delegation of legislative power. Delegation of administrative power is both more important in practice and more common, and yet, the important decisions in *Ex parte Forster*; *Re University of Sydney* [1964] N.S.W.R. 1000, and *Carltona Ltd. v. Commissioner of Works* [1943] 2 All E.R. 560, seem to get tucked away into a corner. The fact and law distinction gets fairly short shrift at one point (at 187) and then gets mixed up with problems of jurisdictional error at another (at 200 ff.). This distinction is likely to loom large in importance in the future as it already does in the United States.

At some points individuals might quarrel about choice of cases. For example, I would have preferred reproduction of the *Ozone* case (*R. v. Commonwealth Court of Conciliation and Arbitration; Ex Parte Ozone Theatres (Australia)* (1949) 78 C.L.R. 389) to *R. v. Vestry of St Pancras* (1890) 24 Q.B.D. 371 to explain the uses of *mandamus*, the particular point in the latter case could have been explained in a short note. Similarly I would have thought the *Pataky* case (*Utah Construction & Engineering Pty. Ltd. v. Pataky* [1966] A.C. 629) to be worthy of at least a mention since it is a decision of the Privy Council. But these are often matters of mere personal preference.

One point worthy of note is that the authors were able to include, at very short notice I imagine, such important cases as *Durayappah v.*

Fernando [1967] 2 All E.R. 152 and the Court of Appeal decision in *Conway v. Rimmer* [1967] 2 All E.R. 1260. But such is the pace of events in administrative law that we already have a House of Lords' decision in *Conway v. Rimmer* (as yet unreported) which will, one hopes, have considerable impact on the local scene so far as production of documents is concerned, a decision in *R. v. Criminal Injuries Compensation Board; Ex parte Lain* [1967] 3 W.L.R. 348 which greatly extends the operation of *certiorari*, and the *Anisminic* case (*Anisminic Ltd. v. The Foreign Compensation Commission* [1967] 2 All E.R. 986) which throws considerable light on the problems of jurisdictional error, error of law and the availability of the declaratory judgment.

Reading a book such as this always creates one especial doubt in my mind. Are we tending to over-emphasise the importance of judicial review in administrative law? It does seem that some practitioners in this field, as in some others, are too ready to leap into court when other avenues might be a good deal more rewarding and much less costly. It is a point that we should all bear in mind. That comment is not intended to detract in any way from the merits of this book. It is a fine book, worthy of study by students of public administration and political science as well as by students and practitioners of the law.

H. Whitmore.

THE LAW OF THE SEA AND AUSTRALIAN OFF-SHORE AREAS

By R. D. Lumb (University of Queensland Press, 1966). pp. 86. Price: \$2.85.

This monograph, dealing with one of the most important constitutional and international questions which have arisen in Australia since federation, can be studied by the general reader with profit and pleasure. It is easy on the eye and is written in a straightforward and sober style. The author's modesty of approach is appealing.

The two main sections are devoted to the position in international law and under the Australian constitutional structure respectively. Among the matters which receive special attention are the drawing of lines determining the inner and outer limits of the territorial sea, the relevance of American legal decisions, and the exercise of power by the Commonwealth and States over off-shore areas under the federal and state constitutions. A final section contains the terms of the joint governmental agreement on the exploitation of off-shore petroleum resources in those areas. There are useful references to more detailed writings on the subject.

N.C.H.D.

BOOKS RECEIVED

Verlag Zeit im Bild, Dresden and Publishing House of the Novosti Press Agency, Moscow: *Yesterday and Today, 1917-1967*. (A Report on the Progress of German-Soviet Friendship.).

A. Avins: *Open Occupancy Vs. Forced Housing Under The Fourteenth Amendment*, Bookmailer, New York.

P. Toose, R.S. Watson & Professor D. G. Benjafield: *Australian Divorce Law and Practice*, The Law Book Co.

P. E. N. Nygh: *Conflict of Laws in Australia*, Butterworth's.

Annual Survey of Commonwealth Law, 1966. Ed. H. W. R. Wade, Butterworth's.

W. L. Morison, R. L. Sharwood & C. L. Pannam: *Cases on Torts*, The Law Book Co.

British Digest of International Law 2b—Phase I, Stevens & Son.

R. R. Fox: *The Concept of Obscenity*, The Law Book Co.

E. Campbell & D. MacDougall: *Legal Research: Materials & Methods*, The Law Book Co.

G. Sawyer: *Australian Federalism in Courts*, M.U.P.

RECENT PUBLICATIONS

Copies of the following publications, which will be of interest to all lawyers, may be obtained from the Book Room of the University of Tasmania:

History and Status of The Legal Profession, by The Honourable Mr. Justice Crisp of The Supreme Court of Tasmania. Price: 30 cents.

The Correctional Agencies of Tasmania, by Mary Daunt-Fear, LL.M. (Senior Lecturer in Law at the University of Adelaide). Price: \$3.20.

