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.

JULIUS STONE.*

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 preceeding 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. Mydral, *Realities and Illusions in Regard to Intergovernmental Organisations.* 1955).

* D.C.L. (Oxford), S.J.D. (Harvard), Challis Professor of Jurisprudence and International Law, University of Sydney.

tax practitioners with the technical information which will enable them to discuss tax questions with their advisers abroad, and making information available to governments engaged in tax reforms or in international tax negotiations. A uniform arrangement and keys to the arrangement have been adopted. The remarks which follow are however only an assessment of this volume as an exposition of Australian tax law.

A reader may be permitted some scepticism in approaching a volume which purports to survey the whole of the Australian tax law, and, indeed, to tell something of the political, economic, fiscal and legal background of that law, within a slim compass of less than 300 pages. But the net impression is that the discipline imposed by space on the exposition of a vast amount of events, legal provisions and other data has resulted in perception and interpretation often lost or obscured in those standard texts which take as an analytical framework, a reprint of the sections of the relevant statute.

Part I, comprising approximately one-third, surveys the Australian tax system with a summary account of the income tax. Part II, comprising the remainder of the volume, is wholly devoted to the income tax. Chapter 1 in Part I provides necessary background information for the foreign reader. The Australian lawyer will, at the least, find education in the description of the economic and fiscal background. A great deal of statistical material, no doubt available elsewhere but in places where lawyers seldom look, is presented and interpreted. The summary account of the income tax in Chapter 2 of Part I is a distillation of principles. The minuteness of the statutory provisions and what is often the fogginess of judicial and administrative decisions interpreting those provisions inhibit the search for underlying principles, and the law as it operates is always tending to become an accumulation of rules determining issues by the luck of discovery of verbal relevance. Any distillation of principles keeps alive the possibility of service of the law to policies which admit of general formulation and criticism. Chapters 3 and 4 in Part I are concerned with taxes on capital and transactions. Land tax, local taxes on property, estate taxes, gift taxes, sales tax, stamp taxes, customs duties and payroll tax are described. As the acknowledgements at the beginning of the volume bear witness, a great deal of research was directed to the collection and interpretation of information which had then to be reported in summary fashion. The material on estate taxes and stamp taxes was drawn from all the States and, in the case of estate taxes, from the Commonwealth.

In Part II, on income tax, the uniform arrangement, as one might expect, differs from the arrangement of the sections in our Assessment Act. The classification of income in Chapters 7, 8 and 9 into "Business Income", "Income from Personal Services" and "Income from Capital", following a general account in Chapter 5 of "Principles of Income Taxation", attempts to show the detailed working of principles in different kinds of human situations. It is true that in the result there is some repetition. The deductibility of the expenses of an employee is governed generally by s. 51, as is the deductibility of the expenses of a person who is running a business. And both the employee and the business owner may be concerned with deductions for depreciation dealt with in ss. 54-62. The tax treatment of the giving and receiving of a premium on the grant of a lease in ss. 83-89 is relevant in determining both business income and income from capital. But there is reward in seeing the working of the statute in the unity of a human situation. The arrangement of the statute leaves the reader but flickering impressions shown through the shutters of conventional legal categories.

Taxation in Australia is elementary only in the sense that it is a systematic assessment of our tax laws. Australian lawyers have a very compelling professional reason for applying themselves to the study of tax law: without competence in tax law they cannot compete with the accountants as advisers to the commercial community. But there is another reason which goes to the

importance of preserving and furthering the lawyer's craft. Our tax law lacks sophistication for the reason that the scholarly study of it is yet in its infancy. The Income Tax Assessment Act does not attempt a general definition of income. It is the lawyer's craft to assist the courts to find principles determinate enough to achieve that measure of predictability which liberty demands, yet flexible enough to leave way for the furthering of consistent policies against the never-ending challenge of human ingenuity.

Newton's Case[1] and *Keighery's Case*[2] are noted above.[3] What was done by the courts in *Newton's Case* could have been done without the assistance of s. 260, and it would have been done better so. There was no need for the courts to call on a statutory provision in order to make possible escape from a rule of their own creating — the rule that no part of the proceeds of sale of an income-earning asset is income in the hands of the vendor. If the courts had preferred to rework the rule they could have reached the result they in fact reached while accepting the arguments of counsel for the taxpayer directed to sterilising s. 260. Section 260 is a constant invitation to administrators to abandon law in favour of administrative discretion. In *Keighery's Case* the High Court said in effect that s. 260 cannot be used by the Commissioner and the courts to escape rules of purely statutory origin. The High Court confined s. 260 to cases where it is a matter of escaping rules of the courts' creation and, it might fairly be inferred, only to such cases where the rule in the particular context works against some pervading principle. In the result the High Court confined s. 260 to a task which already the lawyer's craft is powerful enough to handle. Unfortunately the Privy Council in *Newton's Case* did not see the significance of *Keighery's Case* and sought to force *Keighery's Case* into a formula by which their Lordships sought to give meaning to s. 260. In fact *Keighery's Case* will not fit that formula: without doubt one of the purposes of the taxpayers, objectively assessed, must have been the avoidance of tax. The only comfort is that in the result the Privy Council's formula is considerably softened, and *Keighery's Case* may always be called on by a court that wishes to avoid the application of the formula. It is to be hoped that in the end we will get back to the law as it was left by the judgments of the High Court in *Newton's Case* and *Keighery's Case*. Meanwhile the need is all the more urgent for legal scholarship in the framing, for selection by the courts, of principles which will serve intelligible policies. The courts have done a substantial job in building up a body of principles which is the most significant part of our company law. These principles were made by the lawyer's craft and not by the draftsman's art. The prime importance for Australian lawyers of *Taxation in Australia* is in its contribution to the application of the lawyer's craft to our tax laws.

ROSS PARSONS*

The Law of Primitive Man, by E. Adamson Hoebel. Cambridge, Harvard University Press, 1954, London, Geoffrey Cumberlege, viii and 357 pp. (£2/17/9 in Australia).

Within the limits of a short book, remarkable for its clear exposition, the distinguished author makes an important contribution to the trend in mid-twentieth century legal theory which he himself would describe as "functional realism".

As in other fields in modern social science, the validity of the author's conclusions expressly and clearly depends upon a claim for the intrinsic

[1] (1956) 96 C.L.R. 577 (H.C.); (1958) 2 All E.R. 759 (P.C.).
[2] (1958) A.L.R. 97.
[3] B. A. Beaumont, Note (1959) 3 *Sydney L.R.* 153-163.
* B.A., LL.B. Associate Professor of Commercial Law, University of Sydney.