

shall, on appointment, make a declaration to uphold the constitution and the laws and that any judge who declines to do so shall be deemed to have vacated his office. A provision of this kind, or alternatively a provision that the question of the validity of the constitution should not be entertained in any court, or both, would surely suffice to remove difficulties.

One wonders whether even this would deter a judiciary so minded to reject the new constitution as law. The dilemma confronting judges in such situations may not be one soluble in terms of legal logic. Legal revolutions cannot properly be reconciled with notions of constitutionality unless judges are themselves prepared to acknowledge that the obligatory character of a constitution is derived from its general acceptance by the society it is supposed to govern.

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Legal Aspects of Foreign Investment edited by Wolfgang G. Friedmann, Professor of Law and Director of International Legal Research, Columbia University, and Richard C. Pugh of the New York Bar. London, Stevens & Sons Ltd., 1959. xiii and 812 pp. (£9/16/- in Australia).

International Transactions and Relations: Cases and Materials, by Milton Katz, Henry L. Stimson Professor of Law and Director, International Legal Studies, Harvard University, and Kingman Brewster, Jr., Professor of Law, Harvard University. London, Stevens & Sons Ltd., 1960. xlv and 863 pp. (£7/12/6 in Australia).

The scene is a legal office in Sydney or any other Australian city. An important and impatient client enters and demands prompt advice on a plan to establish a subsidiary company in Indonesia or Burma or Argentina. One might be pardoned for contemplating the probable reaction with some amusement. No doubt some legal offices have faced similar problems already. No doubt a considerable amount of legal advice is available from Australian government departments, foreign consular officials and banks. There cannot be the slightest doubt that this form of enquiry will increase — particularly if the promotion campaign of the Commonwealth Department of Trade results in a significant increase in manufactured exports. Already a few legal firms in the United States derive most of their income from advice on international commercial transactions and it would be easy to slip into clichés about a “smaller world” and to imagine that this pattern will be repeated in Australia.

There are, however, limiting factors. The most important of these is the fact that the marketing of many Australian primary products is controlled by governmental marketing authorities. In the case of wool, our most significant export, a group of private firms have developed a sufficient expertise to cope with the more common problems in the trade. So, at least in relation to the staple Australian exports, central commercial organizations, government or private, can supply required legal advice more efficiently than the ordinary legal office.

One development seems assured. There will be an increasing demand for legal advice from all the available sources. Overseas this demand has led to the publication of an increasing number of texts. As well as the books under review the *Harvard World Tax Series*¹ and the works of Proehl,² the Southwestern Legal Foundation³ and Seyid Muhammad⁴ — to mention a representative selec-

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¹ The *Harvard World Tax Series* consists of a series of volumes published in the International Program in Taxation of the Harvard Law School. Each volume analyses the taxation law of a separate country.

² P. O. Proehl (ed.), *Legal Problems of International Trade* (1959).

³ The Southwestern Legal Foundation, *Proceedings of the 1959 Institute on Private Investments Abroad* (1959).

⁴ V. A. Seyid Muhammad, *The Legal Framework of World Trade* (1958).

tion — have appeared in the last few years. It can be predicted that at least one Australian university will be offering post-graduate courses in international commercial law before the end of the present decade.⁵

What do the texts under review offer? Katz and Brewster have collected a rich variety of materials for the purpose of conducting seminars in this very specialised field. Consequently the arrangement is dictated by pedagogical objectives. The reviewer first met these materials in the seminars of Professor Katzenbach at the University of Chicago. There it was demonstrated that the editors had achieved their objectives. It will be a long time before a better collection of materials for class-room discussion is published.

Lawyers trained to keep public international law issues separate from private international law issues may be disconcerted by the arrangement. The first half of the book contains materials illustrating the position of an alien involved in some activity or owning property in some foreign country. We are introduced to typical restrictions on the rights of an alien individual or company and invited to consider their operation in the courts of that foreign country. Then we are asked to consider those restrictions in the light of customary international law and treaty obligations. The second half of the book is concerned with the "interaction, conflict and accommodation" of several legal systems with special reference to criminal law, anti-trust and labour legislation, exchange control, taxation and nationalization.

The bulk of the materials collected consists of case extracts. Approximately half of these extracts are taken from cases decided in the United States. The balance are taken from a wide variety of other countries particularly Britain and France. The width of selection enables some interesting comparisons to be made. Thus the text includes a note of the decisions in the courts of Italy, Japan, and Aden concerning the effectiveness of the Oil Nationalization Law of Iran.⁶ One Australian case, *Murray v. Federal Commissioner of Taxation*,⁷ and the Privy Council decision in *Musgrove v. Chun Teeong Toy*⁸ are included. Only a small percentage of the cases were decided before international tribunals. The implication is that business enterprises have been left to fend for themselves under the private international law rules of the foreign countries they enter. Of course this is not true and an increasing number of treaties regulate international commercial transactions. Generally speaking, the public international law of international commerce is treaty law. This book contains a reasonable selection of extracts from typical treaties (e.g. the double taxation agreement between the U.S. and Japan) but the treaty extracts appear to be "tacked on" to the case extracts. This book could have been improved by a selection of materials indicating the broader economic and political issues which were involved in the drafting of the international agreements. Frequently the drafting of the agreement must have raised policy and technical issues which had not been raised in an ordinary civil court. In seeking to conform to traditional American case-law techniques the authors may have concentrated too much on the law of the immediate past and too little on the law of the present and the future.

In a lyrical review in the *Harvard Law Review* a practising barrister claims that the book "presents for the legal scholar the stuff of which international law is made".⁹ While this may be true the limitations of the book should be noted.

⁵ Such a course has been considered at University of Sydney but the shortage of staff has necessitated a postponement of final discussions. The existing courses in Public International Law, International Legal Organization and Private International Law include some of the issues raised by these materials but no course is devoted exclusively to commercial problems on an international level.

⁶ Book under review at 827-831.

⁷ (1921) 29 C.L.R. 134.

⁸ (1891) A.C. 272.

⁹ J. G. Laylin in his review of this book in (1961) 74 *Harv. L.R.* 1245.

It is intended as a teaching text and any information it gives about the solution of practical problems is incidental to that principal objective. Moreover the editors were fascinated, apparently, by the interaction of conflicting legal systems. This is pardonable. The subject is fascinating. However the twentieth century is witnessing an economic revolution and we would have appreciated materials on (1) alternative methods of attracting foreign capital investment; (2) alternative methods of controlling imports; and (3) alternative methods of encouraging exports. Questions concerning such topics may arise quite separately from situations where there is a conflict between legal systems.

Friedmann and Pugh have given us a very different book. It purports to survey the basic legal conditions of foreign investment in forty selected countries. Australia is discussed in twenty-five pages. This indicates the main limitation on a project of this type. Important changes have taken place already in the Australian law on the subjects discussed. It is true that what the book contains is not completely misleading so far as the present law is concerned but this is a consequence of the fact that a discussion as limited as this one must be superficial. If Australia is regarded as a typical, and rather more stable, example of the countries covered the question whether this work was worth publishing in its present form must be considered. For the practitioner or government official concerned in international trade a more comprehensive looseleaf service would have been more useful and it would have been easier to keep it currently accurate. For the academic scholar or the draftsman the book has two redeeming features. The first is a chapter entitled "Legal Security for International Investment" which analyses the difficulties faced by a potential investor resident in a capital exporting country when he wishes to protect his overseas interests. The second is a chapter which makes a comparative analysis of the various factors which determine private capital investment in a foreign country and the methods used by both capital-exporting and capital-importing countries to regulate that investment. In many countries the risks involved for foreign investment are so great that private investors have withdrawn leaving a gap which can be filled only by governmental action. It seems unrealistic to expect a sudden change in this position. However, in many countries, especially the United States, permanent government monopolization of industry is not politically acceptable and there is an increasing tendency to explore possible ways of encouraging private industry into foreign markets.

Some time ago a famous writer in international law doubted whether the new research into international commercial transactions could be regarded as anything more than a necessary extension of national commercial law principles. He felt its contribution to international law might be slight. Recent developments in Europe and the United States have given the answer to these doubts. International trade may be the most significant factor in the development of an international community of interests and this is the solid foundation on which international law may develop.

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The Australian Journal of Social Issues, Vol. I, No. 1, edited by T. Brennan for the Committee for Post-Graduate Study in Social Work, Sydney, 1961. 93 pp. (10/0 in Australia).

One of the contributors to the first issue of this journal gloomily comments that in Australia there "hardly exists as yet a climate of informed opinion". Apparently the publishers of this journal do not share the pessimistic views of their contributors for they have set out to bridge a variety of professional skills

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and academic disciplines to provide a forum for the discussion of general "social problems". This courageous, and perhaps foolhardy, decision involves the consequence that the editor has neither a committed group of contributors nor a predictable circulation.

The journal will be published twice a year and each issue will have a central theme. In this issue the chosen theme is the city of Sydney. R. H. T. Smith analyses Sydney's "area of influence". Ruth Atkins discusses the history of attempts to guide development within the metropolitan area. In a complementary article D. N. Jeans and M. I. Logan examine in detail the difficulties that have arisen in extending essential services to the rapidly growing outer suburbs and the social problems that have resulted from unplanned development. The materials marshalled by these writers support the argument of Miss Atkins that there must be greater co-operation among the various governmental bodies responsible for planning in this area.

The remaining articles show a change in emphasis. Norma Parker surveys the agencies responsible for child welfare in N.S.W. and gives special consideration to the relationship between the governmental agencies and the voluntary organisations. Gustav Cross, whose gloomy views were noted above, offers some facts and impressions about culture in Australia. As well as the articles, the journal includes useful abstracts of articles on general social issues which have appeared in other Australian periodicals. In this issue the abstracts extend over some sixteen pages. The only fault that can be found with the technical production of the journal is the fact that part of the contents is printed on the inside of the back cover — thus making it practically impossible for anyone to bind the journal into an attractive permanent volume.

The contributions vary in style and quality. The articles by Miss Parker and Jeans and Logan are heavy with scholarly detail but they are the most substantial contributions to this issue. In some of the other articles we may suspect that the facts have been bent beneath the weight of a crusading fervour but all the articles, whether provocative or modestly analytical, are worth reading.

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Parliamentary Supervision of Delegated Legislation by John E. Kersell, Assistant Professor of Politics, McMaster University, Hamilton, Canada. London, Stevens & Sons Ltd. 1960. xv and 178 pp. and Index (£1/14/6 in Australia.)

This book will be of greater interest to students of government and administration than to lawyers. Nevertheless, there is much in it of importance to any lawyer who is concerned with techniques available to supervise and contest delegated legislation, other than the limited rudimentary techniques utilised by the courts in applying the *ultra vires* doctrine.

It is the avowed assumption of the author that the most appropriate institution to supervise the use of delegated legislative powers is the Parliament itself.¹ Few would dispute this assumption provided that such supervision is practicable and the procedures developed result in effective rather than nominal supervision. Two decades have elapsed since an American committee reported that "legislative review of administrative regulations . . . has not been effective where tried."² With the passage of time has come realisation that parliamentary control through the "laying on the table" device can be effective when it is coupled with procedures designed to ensure that incipient administrative neglect or abuse is brought to the attention of members. The very existence of reviewing procedures

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¹ At 3.

² Report of the United States Attorney-General's Committee on Administrative Procedure (1941) 120.