

technological changes the inherent logic of the traditional distinctions between high seas, territorial seas, inland waters and contiguous zones. This reviewer finds himself in complete agreement with both these chapters.

The work of Professor McDougal and his associates, perhaps because the net has been spread to catch so many controversial subject matters, is of major importance, and for this reason, the collection of these articles, although with one or two exceptions readily available elsewhere, is probably worthwhile. With this said, however, it must be recognized that the influence of Yale, widespread as it is in America, is largely confined to that country, and in the United Kingdom it has not made a significant impact. No doubt this is because the work is stamped with an American character: it is both law and political science, and its relativism tends to be offensive to the English lawyer with his system of precedent and his sharp distinction between law and politics. Whether it is the English lawyer who is at fault is a matter which need not be discussed. It is sufficient to conclude with the query whether these two books will be treated outside the United States with the seriousness they clearly deserve.

D. P. O'CONNELL*

Commentary on the Constitution of India. Fourth edition. Volumes I and II. By Durga Das Basu. [Calcutta: S. C. Sarkar & Sons Ltd. 1961 and 1962. Vol. I, lxxviii and 746 pp., Vol. II, lxxxii and 842 pp. £E4 each].

Few of us can have cherished the ambition to write a review of the *Encyclopaedia Britannica* or *Halsbury's Laws of England*. Some of us have reviewed the two massive volumes of the third edition of Mr. Basu's *Commentary* with awe but without a sense of manifest inadequacy. But now matters are really getting out of hand. The fourth edition is to run to five volumes; the tally of pages in the first two volumes reaches the auspicious number of 1588. Clearly Mr. Basu does not expend his energies in playing bowls or on other distracting pursuits; for during the course of the last few years he has produced three editions of a shorter work for practitioners, two editions of a general textbook on the Constitution, two volumes of a casebook and various law review articles, as well as carrying out his work as a member of the Indian Law Commission. Those of us who have never listed indolence among our more serious failings are humiliated.

To describe Mr. Basu's treatise as an annotated commentary on the Indian Constitution would be misleading. The Indian Constitution is the longest in the world, and it has already begotten a teeming family of leading cases, so that one would expect a leading commentary to be of substantial dimensions. One would not expect, however, to find 325 pages of comment on two of its shorter articles (13 and 14). If Mr. Basu fails to justify his sub-title of "a comparative treatise on the universal principles of Justice and Constitutional Government", he can at least say that several books lie secreted within the interstices of his annotations. For example, the notes on article 14 (the equal protection of the laws) incorporate sizeable chunks of English, American and Indian administrative law. (Incidentally, the author makes the telling point that the right to carry on an occupation, which has been dismissed as a revocable privilege in some well-known English cases, is constitutionally protected in India as a fundamental right of the individual.) Again, in the second volume he includes a good deal of very helpful material on parliamentary privilege, a subject which Indian writers have tended to neglect; one observes

* Ph.D. (Cantab.), Professor of Law, University of Adelaide.

that he is fully conversant with the *Strauss Case* of 1957-58, which raised important issues concerning communications between backbench members of the House of Commons and Ministers, and that he is not content to serve up a potted version of *Erskine May*. There are other meritorious contributions on difficult and large themes—for instance, the general principles of constitutional interpretation, the foundations of judicial review and the constitutional conventions governing the exercise of the discretionary powers vested in the Head of State.

On some matters the author has allowed eclecticism to get the better of him. It is not easy to justify 64 pages of commentary on article 20, which contains the rules against retroactive penal legislation and double jeopardy and the privilege against self-incrimination. Nor is it apparent that any useful purpose is served by quoting articles of the constitutions of Danzig and Costa Rica. Moreover, the method of presenting non-Indian material sometimes evinces a lack of discrimination. The account of judicial review of administrative action in England is unnecessarily inflated by digests of the facts of large numbers of relatively unimportant and peculiarly English cases; it would have been more economical of space, though more difficult, to present the English law in the form of a selective narrative. And where an author appears to be offering an exhaustive statement of another country's rules of law his few errors and omissions stand out more sharply; one obvious illustration is the failure to appreciate that the decision of the House of Lords in *Smith v. East Elloe R.D.C.* is unaffected by section 11 of the Tribunals and Inquiries Act, 1958 (U.K.). What he has to say about Australian constitutional law is relatively modest in scope, but he makes good use of Australian authorities in discussing the constitutionality of the delegation of legislative power. There is no reference in the first two volumes to the constitutions of Nigeria or Cyprus, which include many features worthy of mention in a comparative study.

But this is primarily a treatise on the law of the Indian Constitution to be used by Indian practitioners and judges. As such it has earned very high commendation, and its reputation is likely to be enhanced by the author's adoption of a more critical approach to decided cases in the present edition. In looking into difficult points of interpretation of the Indian Constitution I have not always begun with *Basu*, but I have usually ended with him. His treatise should be in all self-respecting Australian law libraries, and indeed in all libraries which seriously attempt to cover federalism, bills of rights or modern government in Asia.

S. A. de SMITH*

The British Cabinet, by John P. Mackintosh. London, Stevens & Sons Ltd., 1962. xi and 546 pp. (£3/10/0 in Australia.)

Professor Mackintosh's book might be called a collateral descendant of the late A. B. Keith's *The British Cabinet System*. When a second edition of that work was published in 1953 under the editorship of N. H. Gibbs, several reviewers questioned the necessity for this step in view of the fact that Sir Ivor Jennings' standard work on *Cabinet Government* had gone into its second edition in 1951. No such caveat is likely to be entered in the case of Professor Mackintosh's book, which was originally intended as a third edition of Keith. Instead of revising Keith, he has written a new book, which differs significantly

* M.A. (Cantab.), Ph.D. (Lond.), Professor of Public Law, London School of Economics and Political Science.