BOOK REVIEWS

Law Reform — The New Pattern, being the Lindsay Memorial Lectures delivered at the University of Keele, November, 1967, by the Honourable Mr. Justice Scarman, London, Routledge & Kegan Paul Ltd., 1968. 64 pp. (12/6d. in England).

No person is better able to speak with authority on this subject than the author who is the Chairman of the Law Commission for England and Wales. The work is obviously that of a distinguished scholar. The first lecture describes the work currently being undertaken in Great Britain and the pattern of the work of reform adopted. The second discusses the problems associated with the work. It is of interest to see that the author proposes the adoption of Benjamin Cardozo's original thesis, namely the establishment of a Ministry of Justice to which the parliamentary functions could be assigned after the Commission had completed its work, or, alternatively, a third law officer in the House of Commons. There is no doubt that some such scheme will prove necessary if full advantage is to be taken of the work of the Commission. The third lecture deals with the future shape of the law. This presents a most interesting challenge. In general, codification is presented as the answer to most situations, and, although this has many critics, it is without doubt the most effective weapon of the reformer. I would not desire to join issue with the author on any of his ideas or proposals, except to say that I am still not convinced that statutory interpretation will be assisted by the production of a memorandum or commentary explaining the nature of the statute to which reference may be made by the judges. This is a charming and informative little book which no one interested in law reform should fail to read.

J. K. MANNING*

The Law of the Sea and Australian Off-Shore Areas, by R. D. Lumb, Brisbane, University of Queensland Press, 1966, 86 pp. $2.85.

This useful, though no longer up-to-date, little treatise is designed to present a concise discussion of the various international regimes governing national rights in off-shore maritime and submerged areas, especially in their application to Australia and of the allocation of the national powers accorded by these arrangements between the Commonwealth and the States under the Commonwealth Constitution. The regimes in question are seven in number, designated as (1) High Seas, (2) Territorial Waters, (3) Inland Waters, (4) The so-called Contiguous Zone, (5) Special Fishing Zone, (6) Continental Shelf, (7) Sedentary Fisheries. The international law governing these subjects is in part codified by the four Geneva Conventions on the Law of the Sea (viz., the Convention on the High Seas, the Convention on the Territorial Sea and Contiguous Zone, the Convention on the Continental Shelf and the Con-

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vention on Fishing and Conservation of Living Resources of the High Seas) and in part deducible from certain regional treaties and unilateral state action in conformity therewith or parallel thereto. The four Geneva conventions have entered into force[1] and have been signed and ratified by Australia. The new "special fishing zone" of twelve miles was first recognized by the parties to the so-called European Fisheries Convention of 1964[2] and implemented by conforming legislation of most of the thirteen signatories.[3] Their action prompted similar legislation by non-European countries, *inter alia* by Australia,[4] Canada,[5] India,[6] New Zealand[7] and the United States.[8] The regime of the continental shelf includes sedentary fisheries,[9] but recently voices have been raised urging separation of the two arrangements.[10]

Of course, the interpretation and application of the international conventions and of the rules of customary international law governing the seven regimes raise many difficult questions, including the interaction between the treaty rules and the customary rules. The recent opinion of the International Court of Justice in the North Sea Continental Shelf Cases between the Federal Republic of Germany and Denmark and the Federal Republic of Germany and the Netherlands[11] settles some of these issues. Particular complications, however, arise in federal systems such as those of Canada,[12] the United States,[13] the Federal Republic of Germany[14] and especially of Australia. It is therefore no surprise that the author devotes special attention to the constitutional status

[1] The Convention on the High Seas, 450 *U.N.T.S.* 82, entered into force on Sept. 30, 1962; the Convention on the Territorial Sea and the Contiguous Zone, 516 *U.N.T.S.* 205, entered into force on Sept. 10, 1964; the Convention on the Continental Shelf, 499 *U.N.T.S.* 311, entered into force on June 10, 1964; the Convention on Fishing and Conservation of Living Resources of the High Seas, 559 *U.N.T.S.* 285, entered into force on March 20, 1966.

[2] For the text see (1964) 58 *Am. J. Int. L.* 1070. The convention entered into force on April 28, 1966.

[3] Belgian law of Jan. 11, 1966, 1966 *Pasinomie* 22; Danish law of May 26, 1965, in force since July 1, 1967, 1965 *Lovtidende* 826, 1967 *Lovtidende* 359; French decree No. 67-451 of June 7, 1967 *Bull. Legislatif Dalloz* 391; Italian law of March 29, 1966, 1966 *Le Leggi* 421, Norwegian law of June 17, 1966, 1966 *Norsk Lovtidende* 396; Portuguese law of August 12, 1966, English translation (1966) 5 *International Legal Materials* 1094; Spanish law No. 20 of April 8, 1967, *Boletin Oficial del E.*, April 11, 1967; U.K. Fishery Limits Act, 1964, Stat. of England c. 72, 44 *Halsbury's Laws of England* (2d ed.) 283.

[4] Fisheries Act 1967 (No. 116 of 1967), in force since Jan. 20, 1968. See J. G. Starke, "Adoption by Australia of a Twelve-Mile Limit for Fisheries Purposes" (1967) 41 *A.L.J.* 31.

[5] Canadian Territorial Sea and Fishing Zones Act, Stats. of Canada, 1964/1965, 13 Eliz. II c. 22.

[6] Proclamation of Sept. 30, 1967. For the text see (1967) 7 *Indian J. of International Law* 584. This decree extended India's territorial sea. In addition a presidential proclamation of Nov. 29, 1956 claims a conservation zone within a distance of one hundred nautical miles from the outer limits of the territorial waters. See U.N. *Supplement to Laws and Regulations on the Regime of the High Seas* (Vols. I and II) and *Laws Concerning Nationality of Ships* (1959) 25.

[7] N.Z. Territorial Sea & Fishing Zone Act of 1965, N.Z. Stat. 1965, No. 11.

[8] P.L. 89-658, 80 U.S. Stat. 908.

[9] Convention on the Continental Shelf, Art. 2(4).

[10] L. F. E. Goldie, "Sedentary Fisheries and Article 2(4) of the Continental Shelf Convention" (1969) 63 *Am. J. Int. L.* 86.

[11] Judgment of Febr. 20, 1969, *I.C.J. Reports* 1969, p. 3. See also F. Münch, "Die Anrufung des Internationalen Gerichtshofs durch die Bundesrepublik Deutschland und ihre Nachbarn in Fragen der Abgrenzung des Festlandsockels in der Nordsee" (1967) 27 *Zeitschr. fur ausl. öff. Recht & Völkerrecht* 725 (1967).

[12] See the opinion of Nov. 7, 1967 by the Supreme Court of Canada reported as *Reference Re Ownership of Offshore Mineral Rights*, 65 D.L.R. (2d) 353 (1968), noted by Neil Caplan (1968) 14 *McGill L.J.* 475.

[13] Submerged Lands Act of May 22, 1953, 67 Stat. 32, 43 U.S.C. § 1301, construed and applied in *U.S.* v. *California*, 381 U.S. 139 (1965), supplemental decree 382 U.S. 448 (1966), and Outer Continental Shelf Lands Act of Aug. 7, 1953, 67 Stat. 462, 43 U.S.C. § 1331.

[14] See E. Menzel, "Der deutsche Festlandsockel in der Nordsee und seine rechtliche Ordnung" (1965) 90 *Archiv des öff. Rechts* 1 at 55; J. Frowein, "Verfassungsrechtliche Probleme um den deutschen Festlandsockel" (1965) 25 *Zeitschr. für ausl. & öff. Recht und Völkerrecht* 1.

of the continental shelf in general and of the petroleum resources in the off-shore areas in particular. Of course, it is this part of the booklet which has most clearly succumbed to the onslaught of time. Fortunately, however, the author himself has updated his discussion in his recent article on the continental shelf[15] and found an able supplementation of his presentation in the Hon. C. W. Harder's recent exegesis of Australia's Off-shore Petroleum Legislation.[16] Obviously, the cooperative scheme now operating under the Commonwealth Petroleum (Submerged Lands) Act, 1968 (No. 1 of 1968) and the Commonwealth Petroleum (Submerged Lands) Act, 1967 (No. 118 of 1967), as supplemented by five concomitant Commonwealth Acts regulating various fees and implemented by the Petroleum (Submerged Lands) Acts of 1967 of the six States, merits some further analysis.

The author's book is lucid and succinct and calls attention to many unresolved issues such as the status of Australia's bays (p. 13-18), floating islands (p. 22) or the proper base lines (p. 23). To be sure, a limited and one-country oriented work like Lumb's booklet cannot claim more than the status of a primer. In the United States the legal regime of the exploitation of oceanic resources has recently moved into the focus of a widespread interest, as is evidenced by the tidal wave of new studies on that subject.[17] It has become painfully evident that the recent staggering advances in deep sea technology, especially deep sea mining and deep sea oil and gas production, has rendered the regime of the continental shelf, as sanctioned by the Geneva convention, inadequate if not obsolete within the short span of a decade.[18] Search for a new system, accommodating national and international exploitation authority, is conducted by various organizations and the scholars affiliated with them.[19] The United Nations itself has recently established a Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, with the special assignment (*inter alia*) "to study the elaboration of the legal principles and norms which would promote international cooperation and use of the sea bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole".[20] Thus while the range of modern problems transcends by far

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[15] R. D. Lumb, "The Continental Shelf" (1968) 6 *Melb. U.L.R.* 357.

[16] "Australia's Offshore Petroleum Legislation: A Survey of its Constitutional Background and its Federal Features" (1968) 6 *Melb. U.L.R.* 357.

[17] See esp. W. T. Burke, *Ocean Sciences, Technology and the Future International Law of the Sea* (1966); L. Henkin, *Law for the Sea's Mineral Resources* (Institute for the Study in Human Affairs, Columbia Univ., Monograph No. 1, 1968); L. M. Alexander (ed.), *The Law of the Sea: Offshore Boundaries and Zones* (Law of the Sea Institute, First Annual Conference, 1967); *id.* (ed.), *The Law of the Sea: The Future of the Sea's Resources* (Law of the Sea Institute, Second Annual Conference, 1968); Papers by S. S. Bernfeld, N. Ely and J. W. Morris presented at American Bar Association program on "Developing the Resources of the Sea", A. B. A. Annual Meeting, Honolulu, 1967, and now published in (1967) 2 *International Lawyer* 67, 215, 191; Symposium, "The Fourth Dimension of Seapower: Ocean Technology and International Law" (1967) 22 *J.A.G. Journal* 22; Symposium, "Resources of the Sea" (1968) 8 *Natural Resources J.* 373; Symposium, "North Pacific Fisheries" (1967) 43 *Washington L.R.* 1-307; M. R. Wilkey, "The Deep Ocean: Its Potential Mineral Resources and Problems" (1968) 3 *International Lawyer* 31; R. Young, "The Legal Regime of the Deep Sea Floor" (1968) 62 *Am. J. International Law* 641; Interim Report of Committee on Deep Sea Mineral Resources, 1967/1968 *Proceedings & Reports of American Branch of International Law Association* i-xx.

[18] See C. Boasson, Book Review (1968) 6 *Sydney L.R.* 140 at 142.

[19] See esp. Commission to Study the Organization of Peace, Seventeenth Report, *New Dimensions for the United Nations: The Problem of the Next Decade* (1966) 41-46; E. Mann-Borgese, *The Ocean Regime* (Fund for the Republic, 1968); World Peace Through Law Center, *Treaty Governing the Exploration and Use of the Ocean Bed* (Pamphlet Series No. 10, 1968).

[20] Resolution No. 2467 (XXIII), Jan. 14, 1969 (A/Res/2467 (XXIII)), following the Report of the Ad Hoc Committee to Study the Peaceful Uses of the Sea Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (A/7230) (1968).

the compass of this little book, it has the merit to serve as a firm base-line from which new research can safely depart.

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An Introduction to Law, by D. P. Derham, F. K. H. Maher and P. L. Waller, Sydney, The Law Book Co. Ltd., 1966, 226 pp. ($6.30 or $4.00).
Cases and Materials on the Legal Process, by F. K. H. Maher, P. L. Waller and D. P. Derham, Sydney, The Law Book Co. Ltd., 1966. xliii and 457 pp. ($9.50 or $7.50).
Legal Research: Materials and Methods, by E. M. Campbell and D. J. MacDougall, Sydney, The Law Book Co. Ltd., 1967. xi and 240 pp. ($6.30).

Cases on the Legal Process and *Introduction to Law* are the books promised to readers of this journal back in 1956;[1] the authors inform us (in their Prefaces) that planning began four years earlier, in 1952. A gestation of fourteen years (for these books appeared in late 1966) has produced two valuable tools for legal educators—specifically designed for (and, in my view, suited to) two separate functions.

Introduction to Law is intended as a "first-book" of Australian law, as preliminary reading for those about to undertake legal studies. (Or perhaps to "assist laymen to know something of what the law is about",[2] though the book's tone—it takes the legal profession, and legal education, very seriously—fits it more for the educational, or "induction into the mysteries", function.) It delves into (and presents to its readers) problems of both the abstract and the concrete—the theory of precedent (ch. 8), legal reasoning (ch. 11), and legal classification (ch. 4) stand alongside chapters on the legal profession (ch. 3) and the law library (ch. 12), and descriptions of the fundamentals of public law (ch. 5) and private law (ch. 6).

I claim to be a public lawyer, though the corollary of that statement is easier to justify: I make no claim to be (or I claim not to be) any other sort of lawyer. So I gladly hesitate to judge the accuracy and completeness of chapter 6 which discusses the scope and content of "Private Law". When reading that chapter I found it easy to regard myself as close to the intended reader: and applying the standards of a moderately intelligent and ingenuously interested reader I found that chapter both easy to read and comprehend, and stimulating of speculation.

Quite unfairly (yet naturally) I applied more rigorous standards to chapter 5—"Public Law". I cannot accept sweeping assertions such as: "In the United Kingdom most of the basic rules of constitutional law, called comprehensively 'the Constitution', were established in the period from 1689 to 1714."[3] What of Coke's *Case of Proclamations* (1611), what of *Entick* v. *Carrington* (1765)—decisions which establish or emphasize the courts' restricting attitude towards executive power? What of the foundation of Parliamentary supremacy during the Reformation period and its consolidation in the course of 1641? And the growth of that amorphous concept, "responsible government" (resting, as it does so heavily, on stable political factions)

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[1] D. P. Derham, "A First Course in Law" (1956) 2 *Sydney L.R.* 103 at 107-9.
[2] *Introduction to Law* vii.
[3] *Id.* 64.