

colonial problems. In order to justify the ouster of the previous administrators, the fiction was resorted to that any territory (be it mandate, colony or protectorate) which could be said to be a "non-self-governing territory" within the meaning of Article 73 of the Charter, had a sort of embryonic international personality justifying its emergence as a single future Member of the United Nations, irrespective of the fact that its boundaries were usually just drawn on a map by the colonial powers and regardless of tribal and other divisions in the territory. Recently this error has been compounded by the habit of conferring, in advance of any elections, upon one of many factions striving for supremacy in the future independent country the dubious title of being "the authentic representatives" of the people concerned, as the General Assembly did for instance in relation to the South West Africa People's Organization (Swapo) in a resolution adopted on 12th December 1973. Such a procedure makes nonsense of the very principle of self-determination which the United Nations purports to uphold and to advance.

D. H. N. JOHNSON*

Commentaries on the Australian Constitution, by Leslie Zines (ed.), Sydney, Butterworth Pty Ltd., 1977, xxiii + 275 pp. \$20.00.

The eight essays of which this book is comprised were written in honour of Professor Geoffrey Sawer. In view of Professor Sawer's long association with the Australian National University, it is not surprising that at least six of the eight essays were contributed by people who are or have recently been associated with that University, the two exceptions (so far as I am aware) being the essays by Professor Campbell of Monash University and Dr. Lumb of the University of Queensland. Further, in view of Professor Sawer's long association with Australian federal constitutional law, it is not surprising that seven of the eight essays are (as the title of the book represents them *all* to be) commentaries on the Australian constitution, the one exception being Professor Stoljar's essay "Austin and Kelsen on Public Law". According to the book's preface, the essays "deal, in the main, with areas of constitutional law that have not received a great deal of attention in existing works. . . ."¹ What are their subject matters?

The first and longest essay is that by Professor Zines, who, as well as contributing an essay, edited the book. His essay traces the expansion of Commonwealth executive and legislative power consequent on Australia's growing independence from the United Kingdom. One noteworthy

* Professor of International Law, University of Sydney.
¹ P. v.

aspect of the essay is Professor Zines' frequent comparisons between the Australian and Canadian experiences. For instance, I noted reference to at least a dozen Canadian constitutional cases, almost all of them, in view of the largely historical nature of the essay, being decisions of the Privy Council rather than of the Supreme Court of Canada.

The second essay was contributed by Professor Richardson, recently appointed the first Commonwealth "ombudsman".² It concentrates on the executive power of the Commonwealth. As an illustration of the many problems with which it deals, I mention merely one which particularly interests me — that of the ability of the Crown to enter into a contract as to the future exercise of its discretion. (Of course, this problem is one which does not arise uniquely in connection with the Crown in right of the Commonwealth).

Professor Campbell's essay, which I enjoyed most of all the essays, concerns itself with the extent to which either House of the Commonwealth Parliament can investigate the conduct of the Commonwealth executive. The bulk of her essay is devoted to the question of the extent to which Crown privilege can be claimed before the Houses or their committees, with particular reference to the Senate's attempt in 1975 to investigate the so-called "overseas loan affair" involving the Labor government.

The fourth of the essays is Mr. Pearce's on the legislative power of the Senate. This is a topic many aspects of which, in view of the controversy surrounding the double dissolution elections of 1974 and 1975, have become rather well-worn.

The next essay is Mr. Lindell's on the duty of the High Court to decide the question of the constitutionality of legislative or executive action when called upon to do so. It is the only essay of the seven constitutional law essays which is devoted to the judicial power of the Commonwealth.

The sixth essay, by Mr. Rose, examines some constitutional provisions which proscribe certain inequalities before the law, particularly ss. 51(ii), 51(iii), 99 and 117. The treatment of s. 117 focuses on the interesting High Court decision in *Henry v. Boehm*.³

The last of the seven essays which can truly be described as the title of the book describes them, as well as being the briefest, is also the least useful. It is entitled "Reform of the Constitution — The 1973 Session of the Australian Constitutional Convention" and was contributed by Dr. Lumb. The relative lack of utility of the essay was dictated to a large extent by its narrow subject matter, but there are the further considerations that the task of reporting on the Convention's proceedings in Sydney had already been performed by Professor Richard-

² See the *First Annual Report of the N.S.W. Ombudsman*, 1976, p. 7.

³ (1973) 128 C.L.R. 482.

⁴ "The Australian Constitutional Convention, Sydney 1973" (1973) 45 *Australian Quarterly* 90.

son some years previously⁴ and that Dr. Lumb's views on the significance of the proceedings are available elsewhere.⁵

This brings me to the last of the eight essays, that by Professor Stoljar. Aside from reiterating its incongruity (made even more apparent by the book's title), I propose to say nothing about it.

Having now amplified the book's table of contents slightly, what have I left to say? I suppose I can report the result of my check list of typographical errors: I counted nine.⁶ I can report that four books and five articles of Professor Sawer's are referred to by the essayists paying him tribute.⁷ I can rail against the book's cost and ask why it is not available in paperback. In the end, however, I must admit that I find attempting to review this book as a whole as impossible as attempting to review an unusually lengthy issue of a law review. All that I can say is this — I have read other writings on Australian constitutional law by six of the seven people who contributed essays on that topic to this book, the exception being Mr. Rose. In none of the six cases can I claim that their contribution to this book has been their writing which I have found most stimulating. Nevertheless, anyone with a genuine interest in Australian constitutional law will feel, as I did, a duty to read this book and, having read it, will, I expect, feel, as I did, that he has gained information on the subject which might be useful to him at some time in the future.

LESLIE KATZ*

Logique Juridique, Nouvelle Rhetorique. Chaïm Perelman.
Paris, Dalloz, 1976, 193 pp.

It has always been clear that the basic principles of legal reasoning in the French legal system are at drastic variance with those favoured in the Common Law, certainly so far as these are reflected in the judgments of the superior appellate courts of each system. If there were no treatises on "Logique Juridique" in French it was because the French lawyer did not believe there to be any difference between the standards of sound reasoning, i.e. logic, in law or in any other discipline, whereas

⁵ Commentary, *Labor and the Constitution*, 1972-1975, (1977) p. 98.

⁶ On pp. 8, 20, 24, 105 (two), 119, 123 and 216.

⁷ The books are: *Australian Federal Politics and Law 1901-1949* (1956 and 1963); *Australian Federalism in the Courts* (1967); *The Australian Constitution* (1975); *Australian Constitutional Cases* (3rd ed. 1964). The Articles are: "Councils, Ministers and Cabinets in Australia" [1956] *Public Law* 110; "Australian Constitutional Law in Relation to International Relations and International Law" in O'Connell (ed.), *International Law In Australia*, (1965), p. 35; "Political Questions" (1963-64) 15 *University of Toronto Law Journal* 49; "Commonwealth Taxation Laws — Uniformity and Preference" (1958) 32 *A.L.J.* 132; "Getting Around The Constitution" (1970) 29 *Public Administration* 25.

*B.A., LL.B. (Manitoba), Senior Lecturer in Law, University of Sydney.