

BOOK REVIEWS

STUDIES IN INTERNATIONAL LAW, by *F. A. Mann*. O.U.P., 1973, 717 pp. Index, bibl. \$A21.80.

It is a fitting custom that, when distinguished jurists have reached an age at which it could be thought that the major part of their contributions to legal learning has been made, a volume of essays should be published in their honour. This custom may be celebrated in several different ways. The established German tradition is to publish a *Festschrift*, which is a collection of essays contributed by a scholar's friends and colleagues. Or a special issue of a legal journal may be dedicated in the jurist's honour. Or, as in the present case, a group of friends may encourage the publication of a selection of the writings of the celebrated person himself.

Dr. F. A. Mann is one such distinguished jurist. He was born in Germany in 1907 and had already earned for himself a high reputation as a legal scholar when he came to England as a refugee in 1933. Since then he has been a specimen of that rare breed, the international lawyer in private practice, although he has maintained numerous connections with universities in honorary and visiting capacities. Apart from his general interest in public and international law, which is the interest particularly reflected in the present volume, Dr. Mann's work in the fields of private law and in monetary law is of course widely known and equally renowned. His standard work "The Legal Aspect of Money" recently appeared in its third edition.

With one exception, the 31 essays collected in "Studies in International Law" have been published previously. The volume begins with his Hague Academy lectures of 1964 on "The Doctrine of Jurisdiction in International Law" which is of a length (139 pages) and of a breadth which might justly have deserved separate publication as a book in its own right. The other essays include such topics as treaties, state succession, state responsibility, international corporations and the act of state doctrine. Six essays deal with aspects of state contracts, in which topic Dr. Mann has a special interest. The essays collected reflect the author's chosen theme which is to illustrate the inter-relationship and interdependence of national and international law.

This reviewer has misgivings as to the form of honour chosen for this occasion. A *Festschrift* has the undoubted advantage that the contents are topical and represent a wider sampling of scholarship. But a collection of essays by the one author spanning a period of more than 30 years is, as Dr. Mann himself regrets in the foreword, not always reflective of what might now be written if there were the opportunity to update or revise. The claim of the publishers that many of the articles collected "are now difficult to find" can hardly be sustained since the journals from which they have been abstracted are to be found in all but the most underprivileged law libraries.

In fairness, however, it should be recognized that the essays are of enduring value and Dr. Mann's many admirers will welcome the opportunity to acquire the selection *tout d'un coup*.

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AUSTRALIAN YEARBOOK OF INTERNATIONAL LAW 1968-69
H. B. Connell (ed.). Butterworths, 1971, 244 pp. \$12.00.

After a brief interruption, the re-appearance of the Australian Yearbook of International Law will be widely welcomed. The present volume, covering the years 1968 and 1969, is the fourth in a series which began in 1965. A fifth volume covering 1970 and 1971 is due to appear shortly, after which it is planned to revert to single annual volumes.

Yearbooks may take one of two forms, if they are to differ substantially from normal legal journals. They may be, like the British Yearbook of International Law, a prestigious collection of articles of unusual merit and of a length too great for inclusion in other periodicals. Or they may, like the Yearbook under review, contain articles of ordinary length accompanied by a review section which attempts a summary of the year's significant judicial decisions, treaties, policy statements and diplomatic practice. The existence of other national yearbooks of international law, and the reliance placed on them by scholars and researchers for regional information, should be sufficient to dispel any overtones of jingoism latent in such an enterprise. National perspectives are not incompatible with a universalist outlook, as Holder and Brennan's volume of cases and materials on the international legal system from the Australian perspective has recently demonstrated.

In fact only half of the articles in the first section of the Yearbook are specifically of Australian orientation. W. R. Edeson writes a comprehensive and interesting analysis of Australian bays, considering their definition both by common law and by current international law. H. B. Connell in "International Agreements and the Australian Treaty Power" takes another look at the scope of federal legislative competence with respect to the implementation of international agreements, and underlines the political factors that must be understood in any exposition of the powers contained in s.51(29) of the Constitution. M. C. Pryles compares "Proof of Sister State Laws in Australia and the United States." The remaining contributors, J. G. Starke ("The Concept of Opposability in International Law"), J. G. Merrills ("Two Approaches to Treaty Interpretation") and W. E. Holder ("Towards Peaceful Settlement of International Disputes") provide the "universalist" balance, if justification be sought in such terms.

The success of the original study section is not quite matched by the review section. With the exception of the special section on the United Nations, one has the feeling that the sub headings of "Commonwealth Practice" (which surely should be re-named "Australian Practice"?) are unsuited to their purpose and might better be re-arranged under legislative, executive and judicial groupings. The important case of *Bonser v. La Macchia* is noted only briefly twice, once in an answer to a Parliamentary question and once in passing in a reference to the application of the Fisheries Act to Papua-New Guinea; one looks in vain for a comprehensive analytical case-note. A summary of important treaties affecting Australia during the period of review would also be most desirable. These quibbles aside, the Yearbook is, and hopefully will remain, an indispensable publication for Australian and overseas international lawyers.

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THE STUART AFFAIR, by *Sir Roderic Chamberlain*. Rigby (Adelaide), 1973, pp. 1-312, plus illustrations.

The Stuart case will be remembered for many years in South Australia. In the first 130 years of the State's legal history it will probably rank close to the removal of Boothby J. from the Supreme Court in 1867 as one of the major cause célèbres of this period. For almost 12 months in 1958-9 the Stuart case aroused passionate conflict both within and outside the State. This storm centred on the trial and conviction of an almost full-blood aboriginal, Rupert Max Stuart. He was sentenced to death for the brutal rape-slaying of a nine-year old girl near one of the most remote towns in the State. Unsuccessful appeals were taken on Stuart's behalf to the Full Court of the State Supreme Court and the High Court of Australia. His legal advisers then made local history by seeking leave to appeal to the Privy Council. This was the first occasion a criminal matter was taken on appeal from South Australia to London. Not surprisingly in view of the long standing reluctance of the Privy Council to re-consider criminal cases, except where major issues of legal principle are involved, leave to appeal was not granted.

Although Stuart's appeals were unsuccessful, comments in the judgment of the High Court raised doubts in some minds on whether Stuart should hang. In its judgment the High Court stated: "Certain features of this case have caused us some anxiety, but we are of opinion that it would not be in accordance with the principles governing the exercise of our jurisdiction to give special leave to appeal after a conviction upon indictment." Added to this, allegations of police brutality in obtaining a confession, which provided the foundation for Stuart's conviction, a language expert's doubts on the authenticity of the wording of the confession and new evidence of a claimed alibi for Stuart helped to lead to the appointment of a Royal Commission to inquire into the conviction.

Both before and during the Royal Commission there were heated debates in the State Parliament on the issue. The media in South Australia, elsewhere in Australia and overseas followed and sometimes commented on these events. A former Chief Justice of the High Court, Sir John Latham, others prominent in law and politics and bodies including the International Commission of Jurists intervened at various times with comments and suggestions which were not always favourable to the official conduct of the case. Although much of what was said and written at the time was, as a general rule, hardly exceptionable in terms of the tenor of such debates in the eastern States of Australia and overseas (in Britain and the United States, for example) these developments had few, if any, parallels in the contemporary experience of South Australia. Almost 100 years previously, what was said and done about the Stuart case would probably have been regarded as mild by the standards of the day. But in a State where the government had been firmly entrenched for many years and little ruffled the working of governmental administration, the Stuart case became an issue of major import. Even after Stuart's death sentence was commuted during the Royal Commission and the Commission advised that he had been rightly convicted the last act in the drama had not yet been played. Criminal charges were brought against the *Adelaide News* and its Editor. In these proceedings, counsel for one of the accused was reported as giving the jury "a clear indication . . . to see the prosecution as politically inspired". The jury found the defendants not guilty on eight charges. One other, on which the jury disagreed, was subsequently withdrawn

but only after a period of ten weeks during which the newspaper editor remained on bail.

During these events few, if any, were closer than Sir Roderic Chamberlain to the daily movement of events on the government side. He joined the State Crown Law Office in 1925 and had long experience as Crown Prosecutor, a position he held from 1928 until 1952 when he was appointed as Crown Solicitor. Sir Roderic led for the Crown at Stuart's trial. He appeared for the Crown in the appellate proceedings, including the hearing before the Privy Council. At the Royal Commission he represented the Attorney-General and played a prominent, sometimes leading role at these proceedings. Now, following his retirement from the bench of the State Supreme Court in 1971 (to which he was elevated in 1959) he has written a first hand account of what he clearly seems to have regarded as a major event in his period of more than 45 years of official involvement with the administration of the law in this State. Australia has had few, if any, of its former justices of its superior courts write with such enthusiasm, passion and readability about events with which they have been closely involved. In many ways, the dustjacket helps to set the tone of this book. It proclaims: "Rape. Murder. Lies. An Appeal to the Queen—7 Stays of Execution. All these were part of Australia's notorious Stuart Affair." Throughout, Sir Roderic writes with the flair of an experienced journalist combined with the wiles of a leading prosecution counsel to present what can only be regarded, in the last analysis, as his own *personal* view of the Stuart case and its ramifications.

The "Stuart Affair" captures well the feelings of passion and conflict of the time. Professor K. S. Inglis in his recently re-issued "Stuart Case" has produced the more definitive study with balanced perspectives, despite his own admitted partisanship at the time. Sir Roderic in fact adds little that is new by way of detail to Inglis's work. He neglects, also, to examine issues and comments which Inglis explores and documents. But in presenting his record of the case and of his own personal attitudes to it, Sir Roderic, more than Inglis, exposes the depth of feeling which helped to turn the Stuart case into a cause célèbre. At the same time, and no doubt because of this, there are expressions of opinion by Sir Roderic which are hard to justify, not only in terms of the Inglis account but in the light of the "Stuart Affair" itself.

Sir Roderic describes the Stuart "campaign", for example, "as an early instance of the phenomenon which has become so familiar in more recent times: the revolt against authority". But issues relating to justice being done and seeming to be done, were very much in the minds of many concerned with the Stuart case. These issues, in the time honoured tradition of British-Australian jurisprudence, were important in themselves, even if there may have been some who viewed the Stuart case as serving as a catalyst for wider aims and purposes. The conviction of Stuart largely on the basis of a confession made without the benefit of legal advice was a matter of concern, particularly when linked with allegations of police brutality at the interrogation. The evidence of aboriginal trackers as to footprints near the scene of the crime pointed in Stuart's direction. But the fact that the police made no plaster casts and no detailed measurements were taken of these footprints could certainly give rise to queries. The hairs taken from under the finger nails of the cruelly murdered little girl may not, as some expert evidence suggested, have provided a firm basis for identification. But there are those who have argued that greater significance can be attached to such evidence. In at least

one trial in another State such evidence has been regarded as important. The comments by leading newspapers on the Stuart case, in Australia and overseas, the views expressed by a leading Q.C., now a member of the Supreme Court of New South Wales, and others, including Sir John Latham, which were part of the "campaign", as Sir Roderic terms it, could hardly be regarded as early examples of a "revolt against authority".

Sir Roderic's antipathy to the reporting of the Stuart case, particularly by the *Adelaide News*, and the opinions he expresses on this, shows little understanding of the traditional role of the press in a democratic society. Newspapers are in the business of making money as Sir Roderic suggests. But this is not the only reason why newspaper proprietors and journalists become involved in taking up causes like those involved in the Stuart case. Without such newspaper reporting, overly enthusiastic and exaggerated as this may sometimes be, one of the basic checks on government in a free society would be set at naught. The reporting in the *News* of the Stuart case was in fact generally restrained compared particularly to the standards espoused at the time in Britain and elsewhere in dealing with such matters. In the era of Watergate, any diminution of such a role for the media, which is impliedly suggested by Sir Roderic, should, it would be hoped, fall on deaf ears.

There are instances, too, in which Sir Roderic's account could be regarded as failing to give full due to persons who, with nothing to gain and perhaps standing and credit to lose, came forward to perform what they believed in all conscience, to be a public service to probe for the truth in a matter in which a convicted murderer might still die on the gallows. Such persons as Father Thomas Dixon, the Roman Catholic priest who became one of Stuart's confidants and Professor T. G. Strehlow, an acknowledged expert in Stuart's native tongue, followed the tradition of such public service in coming forward to assist in the further investigation of the Stuart case.

With factors like these in mind there are aspects of the treatment in the "Stuart Affair" which should be treated with reservation. It is a pity in fact that Sir Roderic has allowed some of his personal opinions to intrude in such a way that there can be a tendency for expressions of opinion which do have considerable merit to be discounted. Because of defects like these, the "Stuart Affair" can hardly be regarded as a substitute for Professor Inglis's better all round exposition of the events of 1958-9. Nevertheless, it cannot be doubted either that Sir Roderic has helped immeasurably to recapture more than Inglis the feelings which permeated at least some sections of the State during the Stuart case. As such Sir Roderic has produced an important social document. Clearly, this should help future generations to understand why to some at least the Stuart case helped to mark the beginning of the end for a particular social epoch in this State; an epoch which, as Sir Roderic's account shows, also affected official attitudes to the working of the law.

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