



## BOOK REVIEWS

*Current Legal Problems*, 1960 (Vol. 13), Edited by George W. Keeton and George Schwarzenberger (Stevens & Sons Limited) London, 1960, pp. 299, £2, 10s.

“Current Legal Problems 1960” consists of a group of lectures on certain outstanding legal problems of the day delivered by the staff members of the Faculty of Laws of The University College, London, during the Session 1959-60, marked by the customary scholarship, depth and learning that are the attributes of professors and junior members of the Faculty.

There are fourteen lectures on varied subjects, ranging from Austin's contribution to juristic thought to certain branches of the statute and the common law of England relating to substantive and procedural fields. They deal with the following subjects: aspects of criminal law of England such as the offence of receiving stolen goods; emergency legislation in the Commonwealth; controversial divisions of the Law of Obligations consisting of the Law of Torts and the Law of Contracts, like the problem of award of damages for victims of accidents, the recent growth in the law relating to master and servant, the extent to which the law of defamation in England has made inroads upon one of the basic fundamental freedoms, *viz.*, freedom of speech, the necessity to call for another International conference to consider the operation of the Convention of Brussels 1924, in the light of certain recent cases decided in Britain, U.S. and the Commonwealth, defects in the English Law of Property relating to Trusts and Charities which call for immediate reform; the importance of the role of pleadings in the English legal system, and the need for revising the procedure in the law relating to mental health; and current subjects of first rate importance in International Law, such as the law relating to space, the alleged implied agreements in regard to election of non-permanent Members of the Security Council of the United Nations and the evolution and growth of the Law of International Institutions which, by a lucid and vigorous treatment imparted to them, provide a climax as it were for the whole series.

Comments on many of the papers might sound superfluous inasmuch as they point out the imperfections that characterise several branches of the statute and the common law of England and the peremptory need for reforming them. It cannot be gainsaid that the suggested solutions might strike one as purely empirical and tentative. All the same, they merit consideration as they reflect serious study



and research on the part of the contributors, subject only to such limitations that are inherent in the system and such others that may be termed personal.

It is apposite that a brief critical assessment be made in appreciation of the treatment of subjects like Austin's exposition of analytical jurisprudence and imperative theory of law, the law of space which happens to suffer at present from the inescapable criticism of being notional or speculative and the Law of International Institutions whose treatment by jurists curiously has hitherto been inversely proportional to the importance that it holds.

Professor Montrose in his Presidential address on the theme "Return to Austin's College", aptly remarks that the credit of John Austin chiefly lies in his attempt at "civilising English Law". The learned author also lays emphasis on the outstanding juristic contribution of Austin, namely, that for the first time in legal history, Austin sought to bring about a divorce between law and justice and law and morals; in short, he saw clearly the dividing line between what is and what ought to be law, the former known by the name of general jurisprudence, permitting a critical inquiry into the meaning of legal terms judged only for logical consistency and the latter, known by the name of critical jurisprudence or science of legislation, as Austin would prefer to call it, providing scope for evolution of legal rules in terms of goodness and accordingly preparing the ground for evolving a truly just legal order. Notwithstanding the inadequacy of logic employed by Austin judged by standards set by modern logic to which the author does not fail to make a reference, he nonetheless would unreservedly compliment Austin for his great contribution towards the creation of a philosophy of law with the following characteristic note: "He (Austin) may not have expertise of the modern exponent of the logic of legal institutions, and he was permitted but few journeys. We cannot complain if he has not left us a complete map of the territory. He shows us what he considers to be the principal features; intrepid and skilful though he was, it is not surprising that he draws for us the main streams and indicates but roughly the mountains which feed them and the lands which they make productive."<sup>1</sup>

Cheng in his paper "From Air Law to Space Law", proposes a space law based on the analogy of air law as evolved during the period between the two World Wars which underwent crystallization by the Chicago Convention on International Civil Aviation, 1944. The learned author while adverting to the indispensability of inter-

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1. Current Legal Problems, p. 15.



nationalisation of outer space whose status as *res extra commercium* is akin to that of the high seas, reminds us of the most likely insistence by States upon a relatively high ceiling to their national sovereignty. The author deserves due praise for his express disavowal of any claims to finality to the proposed space law, his objective being limited to stimulating discussions along concrete lines. Towards the close of the paper, the author rightly repudiates the suggestion that the principles and standards of air law could be mechanically adapted to evolving a law relating to space.

In the last essay Dr. Schwarzenberger has pointed out that the Law of International Institutions whose birth is of recent origin is a specialised branch of International Law. Curiously enough, we have yet to come across a treatise which so absorbs this branch of the law into the general framework of the Law of Nations, as presented in the classics, as to render the adaptation reflect more truly the changing needs of the time. The aim of the author is, as the title itself *viz.*, "Reflections on the Law of International Institutions", would reveal more in the direction of providing constructive guidance as to the mode of treatment of the subject than in suggesting any preference of one method to the other. As a realist, the author sounds a word of caution to those ardent enthusiasts who under a spell of idealism profess the possibility of bringing about the integration of the world community by an abstract extension of the concept of "rule of law" in international relations; and any such attempt, the author feels, would run counter to the hard realities of the international world order.

In fine, the members of the Faculty of Laws of the University College, London, are to be heartily congratulated on their scholarly contributions to the present volume of the Current Legal Problems and in their maintaining the quality and the high standard that characterise the entire series.

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*Judicial Review in the English Speaking World*, By Edward McWhinney, Second Edition 1960, University of Toronto Press, pp. XVI and 224, index pp. 3, Price Rs. 42.50.

This is a revised second edition of Professor McWhinney's book *Judicial Review in the English Speaking World*. The first edition appeared in 1956. This revised edition contains eleven Chapters. The first Chapter, "Constitutional Law in the Commonwealth Countries" deals generally with the impact of Judicial Review on Constitutional Law. Chapter 2 "Parliamentary Sovereignty and the Rule of Law in the