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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.

V. C. Govindaraj.

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

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United Kingdom" examines the limitations on the sovereignty of Parliament and the role of the Judiciary. Chapter 3, "The Privy Council as Final Appellate Tribunal" analyses the role played by the Judicial Committee in exercising judicial review of the Constitutions of the self-governing members of the Commonwealth. Chapter 4 deals with the Canadian Constitution under the impact of Judicial Review and Chapter 5 on Legal Positivism in Australia. Chapter 6 deals with the race-relations and South African Constitution; Chapter 7 on Constitutionalism in the Republic of India and in Pakistan; Chapter 8 on Courts and Constitution in Catholic Ireland; and Chapter 9 on the United States Supreme Court and the dilemma of judicial policy-making. There are two new Chapters not found in the earlier edition—one on the major constitutional developments in South Africa since 1956 and the other, the final Chapter, on the role of a Supreme Court exercising judicial review in contemporary society.

The work, the author points out in the preface, is "more of a study in jurisprudence—of the judicial process, judicial habits and specialised thoughts, ways, and judicial philosophy." Therefore, there is no attempt made of "any exhaustive case-by-case canvassing of the constitutional law of each one of the countries selected for study."

Reared in the American pragmatic and sociological school, Professor McWhinney's analysis of the role of the English-speaking Courts is tinctured with a trace of impatience of their positivist approach and admiration for the pragmatist approach of the Supreme Court of the United States. He advocates a more dynamic policy-making role on the part of the Commonwealth Judiciary. The author finds in the Commonwealth Judiciary a uniformly positivist judicial attitude to constitutional adjudication [1] *i.e.*, "the strict statutory construction" approach to the constitutional instrument. This attitude, he attributes to the pervasive influence of a common legal education and training and a common system of professional organisation. He finds in this positivist approach the failure "to recognize that it is not a choice between judicial policy-making and absence of judicial policy-making; but between policy-making based on a full and open canvassing of alternate lines of action and policy-making in the dark". [2] He thinks that a more consciously creative and informed approach to adjudication on the part of the judges will be required in future. Even in cases where policy-considerations have weighed with the courts the author suggests that such considerations have entered through the

1. p. 27.
2. pp. 29-30.

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backdoor "to operate as inarticulate major premises only for the Courts' ultimate holdings".[3] He observes that if the Privy Council has tended to treat the constitutions of the Commonwealth countries no differently from ordinary pieces of statute law the appellate tribunals within the Commonwealth countries themselves have not reacted very differently to the task of constitutional adjudication. This attitude will persist if the local judges are to continue to retain strong affinities to the attitudes and practices of the English Judiciary. "The Canadian Supreme Court and other Commonwealth Appellate Tribunals have hewed rather more enthusiastically to the lines of interpretation marked out by the Privy Council than *stare decisis* and the deference due to a superior appellate tribunal alone would require."[4]

In Canada, after the abolition of appeals to the Privy Council, the problems of constitutional adjustment raised by the Privy Council through the process of restrictive interpretation are now the responsibility of the Canadian Supreme Court. Prof. McWhinney feels that it will be difficult for the judges recruited for a jurisdiction that was substantially private law at the time of their appointment to adjust themselves to the new responsibilities demanded in a period that is being increasingly dominated by public law. Advocating a broad basis for the selection of Supreme Court Justices, he hopes that "Canada will also follow the United States pattern in looking beyond the closed ranks of the leaders of the Bar for future Supreme Court material."[5] In Australia also Prof. McWhinney finds in the High Court's constitional jurisprudence sufficient indication of a pattern of "harsh judicial construction," "a purely mechanical conception of the judicial office." But he concedes that the "elaborate super-structure of propositions which successive judges of the High Court of Australia have built over the years upon Section 92 of the Constitution" cannot be labelled as "strict and complete legalism" on the part of the judges.[6] The author's point seems to be that while the judges have converted Section 92 into an "Australian due process clause" they have refused to admit that social and economic considerations have any place in constitutional adjudication. In South Africa, the author says, the Courts have been able to check and delay "the more overt features of Prime Minister Malan's *Apartheid* programme quite as effectively as through simple statutory interpretation as they have by direct judicial review in those

3. p. 29.
4. p. 69.
5. p. 75.
6. p. 8.

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areas of the Constitution (entrenched clauses) where alone they have been able to assert this power."[7] But he says "how far the fact of the economic inter dependence of the Europeans and non-Europeans in South Africa can be reconciled with avowed legislative objective directed towards political, social or economic separatism as between the different races is one of the great problems to be worked out in the Union in the immediate future."[8]

"The Indian Supreme Court" is "baldly positivist" in its approach due "mainly to the continued dominance in Indian Jurisprudence of English judicial traditions and patterns of thought."[9] "Notwithstanding the attainment of political and juridical independence, the old patterns of legal thought remain in India."[10] The *Gopalan* case[11] and the *Kesava Madhava Menon* case[12]—the only two cases discussed by the author to support his theory of "bald positivism"—are not sufficiently indicative of the Court's approach to constitutional interpretation; at any rate, they do not justify the assertion that the court has subjected the Constitution to the restrictive rules of statutory construction. We do not propose to enter here and now into any detailed examination of the author's reasoning and conclusions regarding the approach of the Supreme Court of India to constitutional interpretation. The author has since expressed in a letter to the Editor his regret that he could not do full justice to the "important" and "complex" Indian case-law in a single Chapter and has assured us that he is attempting a more definitive study of Indian Public Law from the view-point of North American experience.[13]

The extent to which a Court can adjust the Constitutional instrument to changed community conditions will depend in the main on the institutional framework within which the Court functions. Judicial law-making or policy-making will be the minimum if there are other

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7. p. 19.
8. p. 125.
9. p. 130.
10. p. 136.
11. A.I.. 1950 S.C. 27.
12. [1951] S.C.R. 228.
13. It may not be out of place to point out a few things which the author has to take care of when he sits down to rewrite the Indian portion. The statements that "none of the Constitutions of the Commonwealth contains express provision for direct judicial review (p. 14), that the Indian States are divided into Part A, Part B and Part C for administrative purpose (p. 127), that the Indian Republic is expressed in its constitutional instrument to be federal in form (p. 127) and a loose description of the Indian Republic as "Hindu Republic" (pp. 126, 127) are some of them.

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organs of the Government better fitted to judge what is good for the community ; and it is necessarily limited by the limitations that inhere in the judicial process. Prof. McWhinney discusses these limitations in the final chapter, "Supreme Court in Contemporary Society". He does not advocate undiluted judicial activism as the governing philosophy at all times for all members of a Supreme Court. "In any country's constitutional history," he observes, "there may be sometime periods when judicial liberalism will be the prime motive force in national, constitutional and general legal development and others (possibly the majority of instances) when caution should normally be the watch-word." It is this ideal conception of the balanced Court having its share in all competing philosophies that is the running theme of the book.

One may not wholly agree with Prof. McWhinney's interpretations of the presented data or observations on how the future is to be built. Nevertheless the book, drawn on the experience of several countries, provides a stimulating intellectual exercise in the study of the interaction and interplay of factors of judicial personalities, values and techniques in a Court's decision-making process. Dean Wright has rightly said in the foreword to the book :

> "To understand his own country and his own laws, the lawyer of today and of tomorrow can afford neither the luxury of self-complacency nor the sense of security engendered by a belief in law as a static and sure guarantee of the *status quo*. The world moves and with it the law. The lawyer's task is not that of a mere observer. He must direct and guide the path of the law consciously and with knowledge and wisdom."

Judicial Review in the English-Speaking World goes a long way to help a re-thinking on these lines.

Handbook on Bonus, by I. K. Ramrakhiani (1961), published by K. C. Ramrakhiani, Opp. Kalina Municipal School, Santa Cruz, Bombay-29, pp. 147, Rs. 10/-.

Bonus has become an increasingly important problem in industrial disputes. Out of the fifty-seven Supreme Court labour cases reported in the All-India Reporter for 1960, sixteen relate to bonus. Further, the significance of "bonus problem" is evident from the fact that the Central Government has recently appointed a "Bonus Commission". Ramrakhiani's "Hand book on Bonus" is timely.

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The "Handbook on Bonus" was first published as a full feature under the heading of "Bonus—A Review" in the Industrial Court Reporter, Volume 1960, No. 7. The present Book is a revised edition of that material. The Book has thirteen Chapters. The first two Chapters are in the nature of an introduction to the subject. Chapters 3 to 12 deal with the various aspects and application of the "surplus formula" which is also known as the "Full Bench Formula".

The author traces the development of "Bonus" in India since 1917, when ten per cent. wage-increase was first granted to the cotton textile workers as "War Bonus". At present the underlying principle behind bonus is that the workmen "are entitled to a share of the prosperity of the industry, as a matter of social justice, and for the present, bonus is intended to be a temporary expedient as far as possible so long as living wage standard which is the goal laid down in the Constitution is not reached".

In the case of *Millowners Association, Bombay* v. *Rashtriya Mill Mazdoor Sangh,* [1] the Labour Appellate Tribunal laid down the principle that if "both capital and labour contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges". The Supreme Court in *Muir Mills* v. *Suti Mills Mazdoor Union, Kanpur* [2] laid down two conditions which are to be fulfilled before a demand for bonus could be justified. They are that the wages should fall short of living standards and, that the industry should make huge profits, part of which are due to the contribution which the workmen make in increasing production. The workers are not entitled to bonus out of extraneous income.

The author has pointed out how the above principle regarding bonus has been applied not only to manufacturing concerns but also to non-manufacturing concerns such as mining and tea industry, electricity and banking companies, firm of chartered accountants, co-operative societies, public trust and charitable institutions and municipal concerns. But the fact that the formula had thus been extended from industry to industry and work to work has not simplified the task of finding out in each case the "surplus" on which alone the formula really can operate. The author has pointed out the authorities which show that the charges necessary to earn the profits, to retain the incentive for the investing public and to rehabilitate the machinery, build-

1. [1950] II L.L.J. 1247.
2. A.I.R. 1958 S.C. 170.

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ing etc., should be deducted from each year's trading profit to find out the "surplus" for the purposes of bonus.

There is detailed discussion in the book as to whether the courts would allow the employer to deduct from the trading profits such charges as entertainment expenses, commission paid to managing agents, directors or other employees and income-tax rebate thereon ; legal expenses, premium paid on profit insurance policy, brokerage to raise additional capital, contribution to political parties, donation to colleges, expenditure on amenities to managerial staff, reserve for bad debts etc. Separate Chapters are devoted for the calculation of permissible deductions from the trading profits to find out the available surplus involving the principles of calculation of depreciation, taxes, return on capital and provision for rehabilitation. Through these analyses the fact is brought out that there is no rigid formula regarding the distribution of available surplus among the industry, the shareholder and the workmen. There is no ceiling on the payment of bonus and the Tribunal has full discretion to decide the quantum of bonus. However, bonus is paid to all the workers including the clerical staff and is calculated on the basis of basic wages.

"Bonus", as the courts have said, is a difference betwen actual and living wage. The author has fully realized the need to clarify the term "living wage" and its relationship to bonus. He has tried to define the concept of living wage.[3] The term "living wage" being an important concept of industrial law the author could usefully have gone beyond the Court decisions in his elucidation of it. The book contains a good analysis of a number of cases on bonus decided by Industrial Tribunals and the Supreme Court of India. The cases are systematically arranged under various headings. This provides a neat glimpse of the "bonus" structure.

However, the author seems to have started on the assumption that the "surplus formula" is the correct and best solution for the bonus problem. He has made no attempt to be critical; rather he has taken for granted that what the courts have stated from time to time is the last word on the point.

To be helpful to a non-lawyer in the matter of citation of legal material it is suggested that greater care may be taken in the next edition of the book in following a systematic pattern of citation. In the citation of cases care should be taken to see that the names of parties and the spelling of names are as in the law-reports relied on.

3. pp. 23, 111.

4. P. 31, f.n. 1.

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For example, what the author calls *Standard Vacuum Oil Co.* v. *Petroleum Workmen's Union*[4] is given in the Labour Law Journal as *Burmah Shell Oil Co.* v. *Their Workmen.* Further, whenever cases are discussed under any popular name they should be immediately footnoted by their full names. *Muir Mills* case, for instance, should have been cited as *Muir Mills* v. *Suti Mill Mazdoor Union* in the footnote.[5] Unless these conventions are observed, readers would find it very difficult to pick out the discussed cases. Where quotations from a case are given the exact page of the report from which they are extracted have to be given. This would relieve the reader of the arduous task of finding the particular passage from the report of the case. Long quotations may, with benefit be avoided, but wherever extracts from the cases are given, it is necessary and proper to give a clear indication of their being extracts.

On the whole the book is a useful work for lawyers as well as to employer and employee organisations.

Arjun P. Aggarwal.

Taxation of Foreign Income—Cases and Materials, by Prof. Boris I. Bittker, Southmayde Professor of Law, Yale University and Prof. Lawrence F. Ebb, Professor of Law and Director, International Legal Studies, Stanford University, Preliminary Edition, Stanford University, California (1960), pp. 580.

Taxation of foreign income has become a subject of great importance in the context of rapidly increasing international economic collaboration. As such, this painstaking work of cases and materials on the subject by two well-known authorities is a welcome addition to the rather sparse literature on the subject. The volume exhibits in the manner of presentation of the cases and materials as well as the appended notes a remarkable insight into the intricacies of the subject woven in a host of bilateral agreements among nations and the interpretations by the courts of law in various countries. The basic emphasis on American law and conventions on the subject as is given expression in the work is appropriate as it is the United States, more than any other country that has become today the focal point in the field of international economic relations. Hence the importance and usefulness of the work will not be confined to the U.S. students of law; indeed the appeal and worth of the book easily transcend the limits of any national boundary. As the authors put it in the preface, "...an understanding of the operation of our tax system, especially as modified by our bilateral tax conventions, requires some insight into the reach of foreign tax laws." This, however is, an understatement of fact because

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5. See p. 19.

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