



INTERNATIONAL AND COMPARATIVE LAW OF THE COMMONWEALTH.
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THE VOLUME, thirty-third in a series published for the Duke University Commonwealth Studies Center, contains a collection of papers presented at a conference on the subject held in October 1966. The editor, Professor Robert Wilson's range and choice of the subjects is commendable and his summing up of the papers at the end very deft.

The first essay, "The Role of Law in Political Development," by Ralph Braibanti is an impassioned plea for according an appropriate place for law in the political development of countries. Professor Braibanti contrasts the place of lawyers in the early life of the American republic—which had led Tocqueville to comment that it was dominated by the "aristocracy of the robe"¹—with the deplorable conditions prevailing in developing nations today. As an example of the latter situation President Ayub Khan's 1960 broadside is cited wherein the President had charged the lawyers with fabricating evidence in support of their clients and had stated that the overcrowding in this profession :

apart from locking useful manpower unnecessarily, [had] created cut-throat competition in the profession, ushering in all sorts of abuses.²

Professor Braibanti deplors the lack of interest in academic circles in emphasizing the cruciality of legal phenomena in political development of the "new" nations. By way of reference to the inability of these nations to convert the revolution or rising expectations into legally organized channels Professor Braibanti makes a penetrating comment :

New States often simply do not have the institutional strength necessary to convert demands into action...they do not have a sufficiently even diffusion of juridical norms to infuse the whole political system with the strength of the basic polity. This is primarily why new systems collapse—not because of corruption, not because of infiltration, not because of institutional weakness—but because of uneven diffusion of norms, and because of the unnatural straining of stronger institutions (such as the judiciary) to take up the slack of the weaker institutions.³

Professor Braibanti urges a careful microanalysis of legal and administrative structure and of the substance of all public decisions, explodes the myth with the help of statistics that the developing states (especially India and Pakistan) have a high ratio of legally trained persons to population, and suggests that an enquiry into the operational

1. Wilson ed., *International and Comparative Law of the Commonwealth* 4 (1968).

2. *Id.* at 5.

3. *Id.* at 18.



relevance of law as a source of social change in the "new" states would yield fascinating results.

The next essay on "The Commonwealth and State Succession" is a masterly presentation of the problem by Professor R. Y. Jennings. The problem, as Professor Jennings remarks in his opening passage, is one that has been marked by controversy and doubt to an extent unusual even for international law. "It is not that there has been a lack of practice on which to build doctrine; rather the contrary,"⁴ says Professor Jennings. Obviously keeping in mind Professor D. P. O'Connell's *magnum opus* on the subject Professor Jennings offers "a few ideas and suggestions in the hope of provoking a profitable discussion."⁵ After an examination, marked by tight legal reasoning, of some of the knotty problems in the field Professor Jennings suggests that the present tendency found in practice for succession of rights and obligations from the old state to the new is not in principle at variance with the rule of the traditional law, and that new states inherit the ordinary stock in trade of general international law.

A very useful paper on "Colonial Participation in International Legal Process" is written by Professor David R. Deener. A balanced evaluation of Commonwealth attitudes to international law is followed by colonial participation in international organizations. The section on "Impact on the Law of Nations" is thought-proving. Professor Deener laments that although colonies did not constitute a separate subject of international law, their participation as separate units in international affairs has been unduly minimized and underestimated. The charge is indeed justified. How many important studies have been made about the role of colonial India, for instance, in international affairs?

Professor J. N. D. Anderson's analysis of "The Impact of Islamic Law on Commonwealth Legal Systems" exudes scholarship and lucidity. Since the coverage is selective (the Indian sub-continent, Zanzibar, and Northern Nigeria) it had to be necessarily impressionistic. The conclusion drawn, however, cannot easily be contested:

It would not be correct to say that the Islamic law has influenced English law as such, or vice versa; but it is certainly true that 'English' or statute law has radically restricted the extent to which, and the way in which, Islamic law is applied, and that Islamic law has both influenced, and formed the subject matter of, many statutory enactments.⁶

The impact of common law on the native systems of law and their interaction forms the subject of an exciting study by Professor L. C. Green. As Professor Green states,

particularly in the field of public policy, and especially with regard to morality and marriage... the interplay between common and native law become[s]

4. *Id.* at 27.

5. *Id.* at 28.

6. *Id.* at 63.



most marked, with judges waxing almost lyrical on repugnancy, barbarism, and civilization.⁷

As examples Professor Green cites native systems where concubinage, polygamy, female circumcision, *etc.* prevail. Professor Green takes the view that the position concerning Indian custom in the United States was more enlightened than that of the English judges, who sometimes adopted slavishly the common law ignoring local needs, which in turn had the predictable reaction of total rejection.

The volume also contains two useful articles by Alona Evans and Ivan Feltham on "International Rendition in United States Commonwealth Relations," and "Extraterritorial Application of Antitrust Legislation" as viewed from the standpoint of commonwealth states, respectively. The last paper on the "Commonwealth and International Sanctions," dealing with the British Commonwealth action against Italy during the League of Nations period, and the current efforts with respect to South Africa, Southern Rhodesia, and South-West Africa, make convincing reading. Rita and Howard Taubenfeld depict the vicissitudes of sanctions in these cases against the backdrop of the world politics of the time. The financial and political stakes of Britain involved in the policy (urged in the United Nations) of economic sanctions are too great. It would appear that the world expectations in this regard insofar as Britain is concerned are "the very midsummer of madness."⁸

*Rahmatullah Khan**

7. *Id.* at 91.

8. *Id.* at 189, Rita and Howard Taubenfeld quoting Neville Chamberlain on sanctions against Italy.

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