BOOK REVIEWS

Federal Conflict of Laws, by MICHAEL PRYLES AND PETER HANKS, (Butterworths, Sydney, 1974), pp. xxviii and 212. $16.00 (hard-bound) and $10.00 (soft-bound).

It should be that posterity will recognize the overriding virtue of this small book as being that it is unclassifiable in terms of black letter law subjects however they might be composed at law schools.

This is not a comprehensive text on Australian private international law nor is it a similarly comprehensive constitutional law text. In the sense that constitutional law is not about constitutions but about constitutional strictures upon social structures, this is a constitutional law book. Most publicity related to a new legal text states that it is designed for and will be useful to the practising profession as well as the academic student. Usually this is a false claim and strangely enough the publicity about *Federal Conflict of Laws* acknowledges only a "value to practitioners interested in this field". But if ever a text needed to be absorbed by the profession this is it.

To some extent the acceptance of the present task by this reviewer whose major academic preoccupation over the last eleven years has been in commercial law may seem to be a particular example of effrontery if not irresponsibility but upon reflection it should appear to the reader of this book that anything between 50% and 75% of it is commercial law. In their pursuit of a true legal and academic base the authors trace an historical path from pre-federation to the present time. This process refreshes the reader's mind on two salient points about legal Australia:

(1) Federation came about very largely, though not exclusively, because of the need for cheaper and more convenient inter-colonial commerce; and

(2) Federation with its commercially artificial barriers of state and federal jurisdictions *a priori* sets up a conflicts of law community.

For too long the material brought together by Dr Pryles and Mr Hanks has been regarded as optional material for the student and as academic by the practitioner. With Australia's mobile society and complex commerce it is no such thing. This book is a vital legal reference to all who study Australian law in any form.

Coverage within the book embraces six chapters on jurisdiction and inter-state service of process, execution of judgments, full faith and credit, federal diversity jurisdiction, choice of law in federal diversity jurisdiction and the Commonwealth as litigant, all written, as has been indicated before, in a fully responsible and informative manner with considerable emphasis upon historical perspective even where the older cases no longer apply. Illustrations from the United States of America are frequent and it may be questioned whether the connections which both authors have or at least have had with that country may have slightly coloured the content of the book in this regard. But in defence of the authors one must ask from whence else one would obtain any volume of material to support and perhaps explain Australia's own relatively thin precedents. On the other hand perhaps some readers might feel that that most socially unsatisfactory decision in *Commonwealth* v. *Cigmatic Pty. Ltd.* (1962) 108 C.L.R. 372 could have been given a somewhat more extensive treatment with, perhaps, concurrent reference to U.S. judicial assistance to the community at large by way of constitutional advisory opinions as against the very restricted attitude there evidenced by the High Court.

If one adds a reference to section 4.4.3 of this book—which deals with the diversity problems based upon the term "residents" it appears clear that a concept of a single

place of residence within one state of Australia which commended itself to some members at least of the High Court in *Australasian Temperance & General Mutual Life Assurance Society Ltd.* v. *Howe* (1922) 31 C.L.R. 209 must go out now that the motor car and caravan and aircraft are in. In this regard the illustrations from the United States of America indicate a much greater awareness there than here of social mobility across artificial jurisdictional boundaries with the resultant legal conflicts problems for the very ordinary man in the street. Some three years ago the present reviewer sought Commonwealth statistical information about interstate demographic movement as background for a journal article but no such information was collected—we just do not recognize this feature of Australian life.

During the writing of this review the Australian Parliament has passed the *Trade Practices Act* 1974 in which Part V seeks to provide certain measures of consumer protection. This Act raises an interesting diversity of law problem in the context of s. 109 of the *Constitution*. Is the drafting of s. 75 of the *Act*, as introduced, adequate to prevent s. 109 from operating so as to deny the applicability of State laws, and if so, is there produced an entirely free choice open to a plaintiff between a State and Commonwealth law? Here, there is a choice of law problem even without an interstate dispute but with a true diversity suit the problem does appear of significant stature. A reading of chapter 5 of *Pryles and Hanks* explains the U.S. base in *Erie Railroad Co.* v. *Tompkins* 304 U.S. 64 (1937) but when progressing to a consideration of the Australian legal environment perhaps the reader is left with a less comfortable conclusion. For example, hire purchase legislation throughout the States is far from uniform in definitive coverage of varying forms of contract and there are areas of overlap between that legislation and the Sale of Goods Acts. One could now foreshadow the application of a third set of legislative provisions from the present *Trade Practices Act*. Thus a diversity suit is faced with an ever increasingly complex choice of law problem; domestic statute v. statute (and possibly common law as well), State v. State and State v. Commonwealth. *Federal Conflict of Laws* does not clearly and finally provide a guide through such a maze but perhaps no single book could draw together all the necessary threads into one neat tapestry which could be appreciated at a single glance.

Although there are minor irritations in *Federal Conflict of Laws* it must rate as one of the most needed and broadly useful legal books to be published in Australia for a long time.

D. W. CHANTLER

Some Fundamental Problems of the Law of Treaties, by GYORGY HARASZTI, (Akademiai Kiado, Budapest, 1973), pp. 438.

The value of this book lies in the fact that it contains an extensive examination of treaty law from an Eastern European source. Mr Haraszti examines two major aspects of the subject—the interpretation of treaties and the termination of treaties. Frequent reference is made to Western or non-socialist commentators and to judgments of the International Court of Justice, which is further evidence of a timely attempt to clarify points at issue between the major legal systems and their respective approaches to points of international law. For the socialist states the treaty has been the major instrument for regulating or adjusting their legal relations with the outside world. The current international detente and the increasing incidence of economic and other contact between peoples and governments across ideological frontiers render it all the more necessary to remove previous misconceptions about the theoretical bases of each other's position, and distortions about their respective viewpoints. This work is a useful, detailed and closely argued contribution to that purpose.

A. C. C. FARRAN

The Legal Regime of Hydrospace, by E. D. BROWN, (London, Stevens & Sons, 1971), pp. xx and 236.

This book is divided into three parts, dealing with "The Boundaries of Hydrospace", "The Utilisation of Hydrospace", and "Environmental Protection of Hydrospace" respectively. Its coverage is not as comprehensive as these headings would suggest, though the areas studied are treated very thoroughly indeed. The "Boundaries of Hydrospace" examines the developments of legal significance up to the end of 1970 affecting the delimitation of the Continental Shelf. In addition to the relevant customary law and the Convention on the Continental Shelf, the author critically appraises the I.C.J.'s decision in the *North Sea Continental Shelf Cases* [1969] I.C.J. Rep. 3 and looks ahead to emerging regimes stimulated by the multilateral preparations for the 1974 Law of the Sea Conference. The work thus provides an excellent background to the voluminous documentation spawned since December 1970, when the General Assembly of the United Nations issued its Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil thereof Beyond the Limits of National Jurisdiction, and its Resolution on the Law of the Sea Conference (both of which are reproduced in the appendices to the Book). Even if the law in these areas is far from clear the legal issues affecting the Continental Shelf and the utilization of its resources are, in this work, immensely clarified.

Part two, on the "Utilisation of Hydrospace", discusses the legal regime of deep-sea mining, i.e. beyond the continental shelf (but not necessarily beyond national jurisdiction, as Dr Brown advocates the adoption of distance and depth criteria, rather than geological criteria, for delimiting the latter). An international organization, or Ocean Agency, is proposed which attempts to reconcile and accommodate the divergent political and economic interests involved. The Agency would include a system for registering claims and vesting rights of exploration or exploitation in States, subject to conditions to protect international community interests. Also included would be a Fund, furnished by moneys received from levies on production, to benefit developing countries; and an Arbitral Board for the settlement of disputes. By definition, national appropriation within areas beyond national jurisdiction and encompassed by the conventional regime, would be prohibited. Decision-making processes would be weighted in favour of those nations with most at stake, which would be the "developers" as regards exploitation and the "developing" as regards allocations from the Fund. Although Dr Brown's proposals have in detail been overtaken by events the international community is still a long way from agreement on the many relevant issues which he raises.

The third part examines efforts to date to curb ocean pollution, including oil and nuclear pollution, and contains a wealth of information relevant to any study of these increasingly pressing matters.

Although Dr Brown notes that international customary law is capable, if necessary, of stretching to accommodate and regulate new and anticipated users of the oceans it should not, he says, be left to international customary law to provide a regime for the exploitation of the ocean-bed. Apart from being slow to develop, customary law would be much less precise and certain than treaty rules, and would not permit recognition to be given of any community interest in ocean-bed resources and would thus be opposed by the developing States and those who recognize the need to legislate for an equitable apportionment of sea-bed resources. Nevertheless, it remains to be seen whether the myriad of interests at stake in current moves to formulate a coherent, up-dated, all-embracing conventional regime can be sufficiently adjusted so that we will be left with a less complex and more certain system than before, or whether some partial, selective system will merely result and be superimposed upon the existing confusion of overlapping customary and conventional rules. The attitude of the socialist states, briefly discussed on p. 111, will have an important bearing in this regard.

The restricted nature of Dr Brown's subject matter has limited the opportunity to raise in any depth the closely inter-related issues of national jurisdiction beyond territorial waters affecting a broader range of economic interests. Recently, the

notion of a national "economic zone" extending some 200 miles out to sea from the coastline has gained increasing support. Dr Brown argues that only jurisdiction with respect to the continental shelf should be allowed out to that limit, on the ground that physical or geological criteria are too imprecise. On the other hand, depth or distance criteria that ignores physical characteristics could lead to even greater absurdities. Perhaps, like a number of other commentators, his attitude reflects an overreaction to the Latin American claims of 200 miles for territorial waters to protect their own specific economic interest, namely fisheries. Why distinguish or differentiate between one economic interest and another? If the traditional concept of territorial waters could be preserved and applied on a reasonable basis in distance terms, a more extensive notion of a national economic zone could possibly be the way by which the international community will pattern a comprehensive regime over maritime areas which is both reasonable and universally acceptable. Dr Brown's book is a valuable addition to the literature in this field, for students and practitioners (government and private) alike.

A. C. C. FARRAN

Shakespeare and the Lawyers, by O. HOOD PHILLIPS, (Methuen & Co. Ltd., London, 1972).

It is not commonly known that members of nearly every profession have at some time claimed Shakespeare for their own. Engineers, sailors, soldiers, obstetricians, gynaecologists, psychoanalysts, toxicologists and numerous others have set out well-argued claims that Shakespeare was one of them and we have had such treatises as "William Shakespeare, M.D." and even "Shakespeare and the Ear, Nose and Throat".

Quite understandably lawyers are no exception, and are indeed thought to be the pioneers in making such claims. Starting with Edmond Malone in the eighteenth century, the line of lawyers who have set out such claims includes even a Lord Chancellor of England, John Campbell.

For all lawyers who have fallen under the spell of Shakespeare—and what lawyer hasn't?—Professor Hood Phillips' work is a treasury of valuable information on matters pertaining to Shakespeare and the law.

The material collected in his book furnishes the reader with all the necessary data for forming an opinion on the question whether Shakespeare was a lawyer. Also explored is the question whether if Shakespeare was not indeed a full-blooded lawyer, he had some slimmer connections with the Inns of Court. We thus have such details as whether the "fair youth" of the Sonnets was a fellow student at the Inns of Court or the "dark lady" was a notorious courtesan who kept a brothel in the vicinity of Gray's Inn.

Perhaps more important for lawyers than these questions is the important fact of legal history which this work reveals, namely, the extraordinary extent to which sixteenth century legalism had found outlets among the citizenry in general. Professor Hood Phillips draws attention also to the fact that in those days there were few places of recreation and people found attendance in court and the watching of judicial procedure a diverting pastime. Consequently, law for the Elizabethans took the place of politics and sport as a main interest. This is a factor of great significance in an age such as ours which habitually deplores the lack of popular interest in the processes of the law.

When one takes this into account and also the fact that many of Shakespeare's contemporary dramatists were members of the Inns of Court, one has little reason to be surprised that a layman of Shakespeare's calibre should display such familiarity with legal terminology. If Dickens did not need to be a lawyer to write of *Jarndyce* v. *Jarndyce* and to describe the Court of Chancery, there is little reason to think

that Shakespeare needed a formal legal training to write of legal matters as he did.

A question that must necessarily interest all lawyers is that much debated one of Shakespeare's attitude towards the legal profession.

Shakespeare's lack of enthusiasm for the practices of the lawyers of his time is unmistakable. He depicts them as dreaming on fees and he pokes fun at 'old father antic the law'. As Professor Hood Phillips rightly points out, there are no complimentary references to lawyers (other than the real Chief Justice Gascoigne) in any of the plays except perhaps the advice in *The Taming of the Shrew*:

"And do as adversaries do in law
Strive mightily, but eat and drink as friends."

Still it would help to place this attitude in better perspective if it is noted that, when compared with other writers of his age, Shakespeare has exercised considerable restraint in depicting lawyers as perverters of the law.

As Alfred Harbage has pointed out ("Shakespeare and the Professions", in *Shakespeare's Art*, ed. Malcolm Crane (University of Chicago Press, 1973), p. 21) it is a remarkable fact that Shakespeare has not explicitly portrayed more than one practising lawyer among his more than seven hundred characters—and that, too, only a shadowy character in *I Henry VI*. This is all the more striking when one has regard to the numerous trial scenes—for example, the trial of Hermione in *The Winter's Tale*, the trial in *Measure for Measure*, the trial in *Brabantio* v. *Othello* and the trial of Buckingham for treason in *Henry VIII*—that appear in the plays. These are all without their lawyers. If Shakespeare had indeed desired to portray lawyers unfavourably, he had ample opportunity to do so.

Some fuller reference to these aspects may well have been a welcome addition to what is undoubtedly an outstanding study of an important question.

Professor Phillips' work is a thorough investigation of many problems concerning Shakespeare and the law. The author's examination of Shakespeare's use of legal terms, his approach to problems of law, justice and government, his descriptions of lawyers and officers of the law, and his references to legal personalities and cases—all these are as comprehensive and thorough as any that have yet appeared. Another matter of special interest is the refreshingly fresh approach to the trial scenes—particularly the trial in *The Merchant of Venice*.

Perhaps one of the more important lessons emerging from this work is its assessment of the proper scope of lawyers' contributions to Shakespearean studies. Their role lies in placing their special expertise at the disposal of students of literature and drama by devilling for them in a broader sense than by a mere analysis of technical terms. As Professor Phillips stresses, this latter exercise can turn out to be fruitless if Shakespeare was not himself a lawyer and did not intend to use these terms in their exact technical connotation.

This book is yet another illustration of the extent to which lawyers are capable of fertilizing research in other fields of study if they can only be persuaded to lay aside their legal tomes occasionally and use their knowledge and analytical powers in the pursuit of other disciplines.

Professor Phillips' work is rewarding reading not only to the lawyer but to the interested layman and it bears the impress of his customary scholarship and research.

C. G. WEERAMANTRY

Branches and Subsidiaries in the European Common Market, by P. M. STORM AND OTHER CONTRIBUTORS, (Kluwer-Harrap Handbooks, London, 1973), pp. xii and 199.

This is the first English translation of a book which has been published in several editions in a number of European languages. It is a specialized handbook containing as much information as may be fitted into the short space available in each chapter.

Being a handbook, there is no critical discussion of the law expounded; it is for the reader to draw his conclusions with respect to his particular problem. The contributors are practitioners—lawyers and tax consultants—and this well indicates the style and approach of the book.

Branches and Subsidiaries consists of eight chapters, each dealing with a particular jurisdiction: the EEC, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom. Neither Denmark nor Ireland are included. This is unfortunate, for these States have laws which are specially relevant to the purpose of the book. In Ireland, for instance, there are laws granting tax holidays for new investments. No doubt the pressure of time to publish the first English edition led the editors to restrict new contributions to the U.K. alone. This is understandable, but it lessens the value of the work for overseas business lawyers. For Australians, at least, the language and legal traditions of Ireland make it an attractive place of establishment.

In the introduction, which appears oddly enough at pp. 29-33, the object of the book is stated to be to answer the questions a lawyer would ask in advising on the manner of penetrating the EEC: branch office or subsidiary, what form of subsidiary, the incidence of tax, and laws on the internal organization of the company. Each chapter, therefore, very briefly sets out the laws on these questions. The information is inevitably in broad outline. Despite the great amount of material set out, answers are not given and should not be looked for. All the book can achieve is to limit the choices available in an instance and pin-point the issues to be resolved.

Because of the brevity of this book, all information is "hard". There is no background provided and it is necessarily assumed that the reader has some grasp of the commercial legal system of the jurisdiction involved. A useful companion piece, though still a very general text, is G. A. Zaphiriou, *European Business Law* where more detail is provided on some aspects of the matter and there is a discussion of an academic type. Again, information is needed on virtually every point of the discussion of EEC law. Here the brevity of discussion tells. Much of EEC law is still at the stage of proposals, but those proposals are an important element in the questions sought to be answered by this book. For instance, on the question of mergers, the EEC law of anti-trust is largely developed and operative, but there are proposals to govern mergers, both intra-State and transnational. While the proposals for intra-State mergers are mentioned (pp. 11-12), there is no real indication given of the direction of thought within the Commission; it is the direction of thought which is more important than the mechanical details. The proposals on transnational mergers were published subsequently to the book—see *Bulletin of the European Communities* (1973) supp. 13.

This book is an important addition to the material on European law available in English. It will be a useful first stop for Australian lawyers who advise companies with either offices or subsidiaries in Europe or which have interests in expanding there. For those with existing establishments, the book will enable the company's advisers to evaluate the advantages which may lie in establishing further offices or subsidiaries or in shifting their registered office. For those seeking establishment in Europe it will be no less useful. Obviously, it is the economic advantage of establishing business at a particular place which is most important, but the legal elements are significant. However, this is a specialized book and deals with only one aspect of the relevant law. A similar work on, for instance, regional aids would be valuable.

G. D. S. TAYLOR

On Analyzing Crime, by EDWIN H. SUTHERLAND, (edited and introduced by Karl Schuessler, University of Chicago Press, Chicago, 1973), pp. xxxvi and 279.

The contents of this book were originally published in 1956 as *The Sutherland Papers* under the editorship of Albert Cohen, Alfred Lindersmith and Karl

Schuessler. This version contains no new material other than a re-written introduction, a short autobiographical statement by Sutherland and a revised title. None of these modifications are of substance or significance and, in this age of consumer protection, it seems more than a little unfair to sell repackaged goods almost twenty years old without giving fair warning to the purchaser.

This is not, however, to detract from the merit of the man whose major writings are reprinted in this work. Edwin H. Sutherland is regarded by many American sociologists and criminologists as one of the most influential twentieth century writers in criminology. He was a sociologist who for thirty years concentrated on the subject of crime and its causes. Though he died in 1950 his text, *Principles of Criminology* (first published in 1924), has reached its eighth edition (1970, edited by Donald Cressey) and remains one of the favoured basic texts in criminology. Sutherland is best known for his much criticized, much defended, theory of differential association as an explanation of criminality. Sutherland's theory commences with the proposition that the processes which result in systematic criminal behaviour are fundamentally the same as those which result in systematic lawful behaviour and that systematic criminal behaviour is determined in a process of association with those who commit crimes, just as lawful behaviour is determined in a process of association with those who are law abiding. Sutherland elaborates his theory in a number of subsidiary propositions which add up to the concept that, if an individual is exposed to more criminal than non-criminal influences in his immediate environment his chances of breaking the law are greatly increased and vice versa. In so far as the essence of Sutherland's differential association theory seems to be that crime is the cause of crime, many critics find it tautological, if not redundant. Cressey has defended Sutherland by insisting that currently popular "multiple factor" theories of crime causation offer nothing but "a philosophy of scientific despair" and he thinks that he can show that none of the other theories, such as those concerned with the psychological and economic characteristics of offenders, "fit *all* the ratios and variations as well as does the theory of differential association". (D. Cressey, *Delinquency Crime and Differential Association*, Nijhoff, The Hague, 1964.) However, recent empirical work has confirmed that the theory does not apply to all offenders and while Schuessler, in introducing this book, might be correct in asserting that since no plausible alternative theory of comparable scope has been advanced, differential associations has no close rival at the moment, it may also be that the naive age of searching for global theories of crime causation has at last passed.

Sutherland also lays a claim to fame for coining the phrase "white collar crime". The term is still in currency, but its definition is no clearer these days than when Sutherland first published his book *White Collar Crime* in 1949. Whether the concept of occupational crimes by persons of respectability and high social status, should be predicated upon social class differences of offenders, upon the special nature of the behaviour involved, or only upon violation of specific categories or classes of statute has never really been settled and the term still seems to have as many meanings as the number of writers who use it.

On Analyzing Crime contains Sutherland's benchmark papers both on differential association and white collar crime. There are also additional sections dealing with Sutherland's papers on crime and social organization, juvenile delinquency, various aspects of the control of crime and questions of research methodology. Admirers of Sutherland, or teachers who use *Principles of Criminology* will be interested to read this book from cover to cover (unless they already posses a copy of *The Sutherland Papers*); others involved in criminology will find it a book in which it is pleasant to dabble—if time allows.

RICHARD G. FOX