STATE STATUTES AND THE COMMONWEALTH

By G. SAWER*

Whether the revival of implied inter-governmental immunities in the *State Banking Case* (1947)[1] was necessary or wise is open to doubt, and whatever the extent of the doctrine so established, it has not as yet found another application. But the decision did not rest on any general proposition about the inability of governments to legislate so as to *affect* each other's operations, nor on an inability of the States in particular to legislate so as to affect the Commonwealth. On the contrary, the *dicta* of Rich, Starke, Dixon and Williams JJ., whose opinions provide the *ratio decidendi*, recognised that the *Engineers' Case*[2] at least established a presumption in these terms: 'a power to legislate with respect to a given subject enables the (Commonwealth) Parliament to make laws which, upon that subject, affect the operations of the States and their agencies'[3]; nothing in the case suggests that any different presumption need apply in the case of State statutes in relation to the Commonwealth, and certainly no such difference need flow from the fact that Commonwealth powers are enumerated. The principle of the *Engineers' Case* did not depend on any special quality of enumerated or categorised powers. In that case, only the power of the Commonwealth in relation to the States was in issue, but the Court plainly intended to overrule the previous doctrine of immunity of instrumentalities in both its applications — as protecting the States from the Commonwealth and also *vice versa* — and it is at least probable that the majority joint opinion intended to establish instead a similarly convertible presumption that the statutes of one federal unit are *prima facie applicable* to the operations of another.

But in *Uther's* case (1947)[4], decided four months after *State Banking*, Dixon J., as he then was, in a dissenting opinion, asserted a *prima facie* inability of States to affect the operations of the Commonwealth, depending not on federal implications but on implications from the historical process by which Australian federation came into being. His Honour said:[5] 'The Colony of New South Wales could not be said at

* B.A., LL.M. (Melbourne). Professor of Law, Research School of Social Sciences, Australian National University, Canberra.

1 *Melbourne Corporation* v. *Commonwealth*, (1947) 74 C.L.R. 31.

2 *Amalgamated Society of Engineers* v. *Adelaide S.S. Co. Ltd.* (1920) 28 C.L.R. 129.

3 *Per* Dixon J., (1947) 74 C.L.R. at 78.

4 *Uther* v. *Federal Commissioner*, (1947) 74 C.L.R. 508.

5 *Id.* at 530.

the establishment of the Commonwealth to have any power at all with respect to the Commonwealth. Like the goddess of wisdom the Commonwealth *uno ictu* sprang from the brain of its begetters armed and of full stature. At the same instant the Colonies became States; but whence did the States obtain the power to regulate the legal relations of this new polity with its subjects? It formed no part of the old colonial power. The Federal Constitution does not give it. Surely it is for the peace, order and good government of the Commonwealth, not for the peace, welfare and good government of New South Wales, to say what shall be the relative situation of private rights and of the public rights of the Crown representing the Commonwealth, where they come into conflict.' His Honour accordingly held that in a company liquidation in New South Wales, the priorities established between different classes of debts by the New South Wales Companies Acts could have no application to debts owed to the Crown in right of the Commonwealth. His Honour contrasted the position of the Commonwealth; he attributed the power of the Commonwealth to bind the States to its having 'paramount' authority, which the States do not have. In *Deputy F.C.* v. *Brown* (1958)[6], Dixon, now C.J., intimated that he was still of the opinion he expressed in *Uther* so far as the principle just mentioned is concerned, which presumably means that he would apply that principle today, either notwithstanding previous decisions to the contrary, or at least so far as any future case might not be within the authority of a previous case on the narrowest view of such authority.

In *Bogle's* case,[7] the question arose whether Commonwealth Hostels Ltd., a company incorporated under the law of Victoria but formed and wholly owned and directed by the Crown in right of the Commonwealth for the purpose of managing migrant hostels, was subject in its dealings with lodgers in such hostels to the Prices Regulation Acts of Victoria and New South Wales and the Prices Act of South Australia. The High Court by majority held that the company was not an agent or instrumentality of the Crown or of the Commonwealth in a sense attracting immunity from those Acts. Fullagar J., however, who was of the majority, said *obiter* that if the Commonwealth and not the company had been the landlord, then he would have regarded the State Acts as inapplicable even if they had purported to apply to the Crown in right of the Commonwealth, his reasoning being thus:[8] 'The Crown in right of the State has assented to the statute, but the Crown in right of the Commonwealth has not . . . the State Parliament has no power over the Commonwealth. The Commonwealth—or the Crown in right of the Commonwealth, or whatever you choose to call it—is, to all intents and purposes, a juristic person, but it is not a juristic person which is subjected either by any State Constitution or by the Commonwealth Constitution to the legislative power of any State Parliament.' Fullagar J. intimated in *Asiatic*

6 (1957) 100 C.L.R. 32 at 41.

7 *Commonwealth* v. *Bogle* (1952) 89 C.L.R. 229.

8 *Id.* at 259.

S.N. Co. Ltd. v. *Commonwealth* (1957)[9] and in *Commonwealth* v. *Anderson* (1960)[10] that he adhered to this opinion; in those cases too the *dicta* were *obiter*.

This theory does not give the Commonwealth complete immunity from State law. Dixon C.J. and Fullagar J. agree that the Commonwealth may in some circumstances be regarded as submitting itself to the control of a State statute by entering into a transaction for which federal law taken alone does not provide the necessary set of rights and duties, so that State law has to be imported to make the transaction legally meaningful.[11] It seems possible that Fullagar J. would now rationalise the majority decision in *Uther* on this basis. Thus if, in *Bogle's* case, Fullagar J. had accepted the dissentient view (which seems to this writer preferable to the majority view) and regarded Commonwealth Hostels as an agent of the Commonwealth Department of Labour and National Service, it would not have followed that a contract between lodgers and the Commonwealth would have had to be sought in federal law or *in nubibus*; the contract would have been governed by the 'general' contract law of the State where the hostel was situated, and it is plain that Fullagar J. would have regarded the Victorian Goods Act 1928 as part of the law so applicable, and probable that Dixon J. would have likewise.[12] This is independent of the effect of ss. 64 and 79 of the Judiciary Act, which expressly make certain State laws applicable in litigation to which the Commonwealth is a party. As Menzies J. pointed out in *Commonwealth* v. *Anderson*,[13] those provisions are applicable of their own force only when litigation is joined, and while in many cases a prophecy as to the outcome of such litigation will be the basis of advice to parties as to their legal rights before litigation is joined, it may be important in principle to know that State law governs or partly governs a transaction, to which the Commonwealth is a party, independently of the Judiciary Act.

Nevertheless, this Dixon-Fullagar theory concerning the relation of State statutes to the Commonwealth would if adopted give the Commonwealth a wider immunity from State laws than the immunity established (inferentially) by the *State Banking Case*. Although the doctrine cannot be said to have been adopted by the rest of the Court in the period during which it has been pressed, neither can it be said to have been rejected in clear and unequivocal terms. Williams J. thought there was a difference of opinion in the Court concerning the doctrine, and he mentions *Uther* as illustrating the difference.[14] In this writer's view, *Uther* does in fact illustrate a difference, but, as mentioned, Fullagar J.

---

9 96 (1955) C.L.R. 397 at 424.

10 34 A.L.J.R. 323 at 326. In the Supreme Court of New South Wales, at first instance in this case, Else-Mitchell J. expressed his concurrence with Fullagar J.'s views on this point.

11 *Per* Dixon J. in *Uther*, 74 C.L.R. at 528; *per* Fullagar J. in *Bogle*, (1952) 89 C.L.R. at 260.

12 Note his reference to s. 348 of the N.S.W. Companies Act, 74 C.L.R. at 528.

13 34 A.L.J.R. at 328.

14 *Bogle*, (1952) 89 C.L.R. at 254.

seems prepared to distinguish that decision. In view of the success which Sir Owen Dixon has had in establishing as doctrine what were once *obiter dicta* or dissents in judgments given by him, we may assume that if a suitable case arises, the doctrine will be very strongly pressed, and although the Chief Justice does not hold a position comparable with that of Marshall C.J. in his hey-day, there is nevertheless an antecedent probability that a view held by him will command a majority; its chance of doing so is, to say the least of it, not reduced by its having the support of Fullagar J. as well. It is suggested with respect that the Dixon-Fullagar theory on this matter is inconsistent with authority and principle, is unnecessary for the successful management of the federal system and should not be adopted.

First let us put aside an analogous but textually distinct problem—namely, the possible application of State law in 'federal enclaves' such as the Australian Capital Territory and areas of ground within States transferred to or acquired by the Commonwealth. I agree with most of the conclusions of Professor Cowen[15] on this question. The relevant doctrines throw little light on the problem considered in this paper.

Next it is desirable to deal with the suggestion of Fullagar J. that the consent of the Crown to one statute or another has any relevance. This is a distant echo of views expressed by Marshall C.J. in *M'Culloch* v. *Maryland*[16], that whereas the people of a State are represented in the making of federal statutes, the people of the U.S.A. are not represented in the making of State statutes. It is a fact which might have justified the immunity of the U.S.A. from State statutes, but could provide no justification for the correlative doctrine established in *Collector* v. *Day*.[17] In the Australian case, it is equally true that the Crown in right of the States does not assent to legislation of the Commonwealth; therefore the States should be completely immune from Commonwealth legislation. A more formal answer is that since the Crown is one and indivisible,[18] it assents to all statutes. If the latter proposition is refuted by the suggestion that the Crown acts on different advice in these different areas, then we again reach the first objection — what is sauce for the Commonwealth should be sauce for the States. The extent to which the people of a particular State, or of all the States, regarded as separate political organisms, secure consultation in the making of a federal statute is a matter of political fact and degree varying from case to case, and the view of the federal body can in point of political fact be just as much or as little considered in the State legislative process. The most one can say is that the federal parliamentary arrangements increase by some disputable degree the possibility that the views of the people of all the States, or of a majority of them, will be considered in the course of the

15 *M.U.L.R.*, 2 (1960), 454. I still disagree with the view he adopts about s. 52 (i) as applied to the 'seat of government.'

16 (1819) 17 U.S. 316 at 428, 431, 434.

17 (1870) 78 U.S. 113.

18 Further considered *post*.

federal legislation, but there is no such probability in relation to the view of the State *governments*.

Next, the suggestion of Dixon C.J. that a different treatment for the Commonwealth is justified by its 'paramount' position. The Commonwealth is not in a general sense 'paramount.' Indeed, it is a premise of the doctrine in the *State Banking Case* that 'State governments . . . in respect of such powers as they possess under the Constitution, are not subordinate to the Federal Parliament or Government',[19] and 'the maintenance of the States and their powers is as much the object of the Constitution as the maintenance of the Commonwealth'.[20] Such propositions cannot stand alongside any general assertion of the paramountcy of the Commonwealth. The Commonwealth has some exclusive *powers* and its *laws* under any head of power prevail over inconsistent State laws, s.109. This is the full extent of its 'paramountcy,' and these considerations justify no special treatment for the Commonwealth as compared with the States in the argument under discussion, where we are concerned not with a relation between *laws*, but a relation between Commonwealth laws and the States as *subjects* of laws.

Next, it is possible that particular Commonwealth powers may by their special character require application to the States; this has been claimed for the conciliation and arbitration power.[21] But it is an unconvincing claim unless eked out by a great deal of political and economic argument, and on that footing the same is true of powers left to the States after the maximum possible assertion of Commonwealth power. For example, the States can make powerful claims for the application of their laws on health, public order and traffic to activities carried on by the Commonwealth within the States.[22] But in any event, this possibility of a special character for particular Commonwealth powers provides no justification for a general differentiation between the Commonwealth and the States.

We come then to the main substantive point — the suggestion that the political entity known as the Commonwealth, and the juristic entity or collection of entities corresponding to it, never were and are not persons within the range of potential obedience to State laws, or, taking a less Austinian view, were never and are not now units in a set of legal relationships determined by State law.

As already suggested, there is no hint of any such doctrine in the *Engineers' Case*, where a High Court majority sought to lay down the broad general principles governing the relations between the Commonwealth and the States; if such a doctrine were available to explain such

19 *Per* Latham C.J., 74 C.L.R. at 50.
20 Starke J., *id.* at 70.
21 *Id.* at 73.
22 Cf. *Roberts* v. *Ahern* (1904) 1 C.L.R. 406 and the comments of Higgins J. and Fullagar J., (1925) 36 C.L.R. at 213, (1952) 89 C.L.R. at 268. In justice to the first High Court, however, it should be pointed out that the decision in *Roberts* v. *Ahern* was in no way related to the doctrine of immunity of instrumentalities, but to the Court's view that the State Act in question did not bind the Crown at all, and that the 'Crown' included contractors to the Crown.

decisions as *D'Emden* v. *Pedder*,[23] one might have expected it to have been mentioned, but all such earlier decisions were said, if sustainable at all, to depend on the supremacy of Commonwealth *law* over State *law* under s. 109. Furthermore, however, the *Engineers' Case* rested on a number of general premises, one of which was the indivisibility of the Crown. It has become fashionable to regard the *Engineers' Case* as containing a vast quantity of rhetoric and only a little law. The joint opinion is expressed in the repetitive, somewhat over-emphatic and over-elaborate style characteristic of Isaacs J., and like any single decision can be given a very narrow or a very wide interpretation or something in between. Fairly treated by reference to its history in the development of the Constitution, the whole of its argument hangs together and there is little surplusage. For example, the references to responsible government support an argument that in the Australian system, as distinct from the American, the Courts can and should leave relatively more of the problems of adjustment in a federal system to the decision of the electorate. It is a view with which one can disagree, but it is not rhetoric. Similarly, the view that the Crown is indivisible is used to exclude the very sort of approach which the Dixon-Fullagar theory involves—that the respective executive governments of the Commonwealth and the States should be treated as completely independent juristic persons. The various governments of the old Empire were not so regarded, and it is difficult to see why the new Commonwealth executive should be any different in this respect from all the other new bodies politic which have come into existence under the British Crown.

We have in fact no juristic entity corresponding to the Commonwealth as a whole, or to a State as a whole. It is in some respects an unfortunate lack, but shared with most of the constitutional systems of the world. It is not 'natural' for those who make constitutional structures to include legislature, judicature and executive in a single public corporation.[24] The question is one of the position of the Crown in a particular 'right.' Now, the Crown existed in all the Australian States before federation, and did so potentially in all its possible aspects. The Crown in right of the Commonwealth, from the moment of its creation, similarly existed, spatially so to speak, in every part of every State; see *Commonwealth* v. *Dalton*.[25] The considerations which made the High Court treat the Crown in right of the States as subject to federal law in the *Engineers' Case* apply just as much to the relationship of the Commonwealth Crown with the States in which it is notionally present. The Commonwealth and the Crown in right of the Commonwealth came within the sphere of operation of State law as soon as they could be said in any sense to exist in State territory, just as much as all the other various persons, natural

---

23 (1904) 1 C.L.R. 91.

24 *Legal Personality and Political Pluralism* (ed. Webb), 165 *ff.*

25 (1924) 33 C.L.R. at 457, *per* Isaacs and Rich JJ.: 'The King is juridically present in every part of his dominions', and therefore the Commonwealth was within the territorial limits of jurisdiction of a Tasmanian local court.

or legal, which did not exist when the State Constitutions first became law but subsequently came into existence and could be said literally or notionally to be within those territorial limits.

The theory of the indivisibility of the Crown has its absurdities and its critics,[26] but it seems still to be official doctrine. Even if it were not, however, and we were required to think of the 'Commonwealth Crown' as a legal person in every respect distinct from the 'State Crowns,' the view of Dixon C.J. need not follow. It would still be the case that the activities of the Commonwealth brought it in various ways, notionally as a corporation, literally in the person of its servants, within the territorial area of the States. Hence, the answer to his Honour's question concerning the origin of a State power to affect the Commonwealth would still be—from the general power of the States to legislate for the peace, order and good government of their respective areas. The answer to his Honour's further question, whether the kind of law dealt with in *Uther* is not a law for the peace, order and good government of the Commonwealth rather than of the State, is that it is a law for both[27]; it affects the Commonwealth, but only in situations which also concern the State. But such an approach is open to be rebutted in particular cases by the operation of s. 109, or from the inferences to be drawn from the Commonwealth having exclusive powers as to certain matters, or by the consequences of the *State Banking Case*.

There are two ways in which a law can affect a government; first, so far as the government is incorporated or otherwise treated as a distinct legal person, by being made subject to a law binding it as such person; secondly, by regulating the activities of the government's servants and officers, whether they in turn be 'natural' or 'legal' persons, in the course of their employment or office. The potential subjection of the Commonwealth to State laws appears to be settled, as a matter of authority, in both these respects by *Uther*, and by *Pirrie* v. *McFarlane*.[28]

Uther cannot be explained on the theory of the Commonwealth subjecting itself to the operation of State law by its mode of entering into a legal relation. The majority opinions reject any such notion so far as the liquidation was concerned; the Commonwealth did not come in 'under' the liquidation, but adversely to it. The dissent of Dixon J. rests on the ground that the tax liability in question was imposed on the company by federal law which contained a complete statement of the respective rights and duties of the Commonwealth and the taxpayer, and needed only the addition of the share of the prerogative enjoyed by the Commonwealth to complete a federal claim outside the reach of any State legislation, so that there was no need for State law to complete the transaction. In holding the priorities provisions of the New South Wales Companies Act to be applicable to the Commonwealth's claim, the

26 *E.g.*, *per* Latham C.J. in *Minister for Works* v. *Gulson* (1944) 69 C.L.R. 338 at 350 *ff*.

27 Cf. Evatt J., *Huddart Parker Ltd.* v. *Commonwealth*, (1931) 44 C.L.R. at 529.

28 (1925) 36 C.L.R. 170.

majority were simply and directly applying a State law to the Crown in right of the Commonwealth. They looked only for inconsistent federal law, and not finding it they treated the presumption that State law applied as not displaced. The opinion of Latham C.J. makes this especially plain; he proceeds from the proposition that the New South Wales statute could apply to the Crown in any of its manifestations to the view that the 'Commonwealth Crown' is in no different position.

In *Pirrie* v. *McFarlane*[29], a majority of the Court held that State law requiring motor car drivers to hold a driving licence granted by the State, involving driving tests and the payment of a fee, applied to a member of the armed forces of the Commonwealth when driving a vehicle on the roads of that State. This was a strong decision for two reasons. First, the 'submission' theory will not work when the matter at issue is not merely traffic regulation but the selection of a person to drive and his subjection to a tax. Such a degree of interference with a Commonwealth activity involves reducing to that extent the authority of the Commonwealth in the choice of the person to perform a federal function and requiring the person chosen or the Commonwealth on his behalf to contribute to the State treasury as a condition of being able to perform the function. Secondly, the function was defence, and an aspect of defence activity which is expressly made exclusive to the Commonwealth—this being a 'transferred department'. The dissent of Isaacs J., who was always very tender for the defence power of the Commonwealth, and of Rich J., did not rest on any such doctrine as that expressed by Dixon J. in *Uther*, but on the implications to be drawn from the exclusive nature of the defence power. The majority thought the State law could not be called a law with respect to the defence department or the armed forces, which might have made it invalid as a matter of characterisation, and that the mere fact of its operation on the armed forces was irrelevant unless there was inconsistent federal law.

In the U.S.A. elaborate doctrines have been constructed on the basis of Marshall C.J.'s opinion in *M'Culloch* v. *Maryland*, which asserted the immunity of the U.S.A. from State laws on two grounds; inconsistency of State and federal law, and an inherent incapacity of the States to regulate federal activities. The latter doctrine was not based on an *initial* incapacity of the States, such as that suggested by Dixon J. in *Uther*, but on the necessities of a federal system. It was stated in dogmatic and absolute terms because Marshall C.J. was not prepared to undertake the delicate task of discriminating between interferences which went too far and those which did not. He would have disagreed profoundly with the view of Holmes J. that the power to tax was not the power to destroy so long as the Supreme Court sat.[30] However, tax immunity has become a special and complex branch of the subject. That apart, the doctrines developed by the Supreme Court may be divided into three departments.

---

29 The Constitution, s. 52 (ii). A similar conclusion may result from the joint operation of ss. 51 (vi) and 114.

30 *Panhandle Oil Co.* v. *Mississippi*, (1927) 277 U.S. at 223.

First, as to persons contracting with the U.S.A., *e.g.*, for the provision of goods and services, the presumption may now be that State law will validly apply to the *contractor* so long as not inconsistent with applicable federal law.[31] Secondly, when the question is what law should apply to a transaction between the federal government and some other person, the Courts exercise a broad discretion to decide the law most appropriate to the purpose; it may be State law, or it may be federal law. This problem is complicated by the existence not only of diverse State and federal *statutes*, but by the separate existence in principle of fifty different State systems of *unenacted* law and of a 'federal common law' as well.[32] Thirdly, State law may not directly impose duties of obedience on the U.S.A. as such, nor on its agencies or officials when acting within the scope of their employment. Examples under the last head are: federal post office drivers may not be required to hold State driving licences[33] —(cf. *Pirrie* v. *McFarlane*); federal agricultural aid officials when supplying superphosphate to farmers may not be required to comply with State law governing the testing and labelling of manures.[34] It is possible, having regard to dissents in the more recent cases, that the trend of decision is to rely increasingly on the 'inconsistency' and 'practical appropriateness' doctrines, but there is still a strong view that some central area of federal activity exists which no State has the power to regulate in any way, on the basis of inherent constitutional incapacity.

When Marshall C.J. developed his doctrine, the concept of inconsistency between federal and State laws was not well established, the doctrine of 'pre-emption' or covering the field was unknown, and the possibility of the federal government defending its activities and agencies by appropriately framed legislation was not clearly seen. Many States were actively hostile to federal agencies, and the danger of deliberate disruption of federal activities was great. Hence the establishing of the doctrine in *M'Culloch* v. *Maryland*, even if as Higgins J. was fond of saying an act of statesmanship rather than of interpretation,[35] was well justified—the sort of statesmanship a federal judge is entitled to display. As time has gone on the necessity for that kind of protection has grown less so far as the original reasons are concerned, and the tendency to leave the federal government to protect itself has grown greater as the methods for doing so have become better understood. But even today, self-protection may not always be easy because of the scale of the activities concerned—fifty States, an enormous population, a high degree of municipal decentralisation, great diversity of State legislative policies and executive competence. Hence the see-saw of decision and dissent in the cases cited *supra* n. 31.

---

31 *Penn Dairies* v. *Milk Control Commission* (1942) 318 U.S. 261. The position is more clearly established for taxation of contractors than in other cases; cf. *Public Utilities Commission* v. *U.S.* (1958) 355 U.S. 534.

32 *U.S.* v. *Standard Oil* (1946) 332 U.S. 301.

33 *Johnson* v. *Maryland* (1920) 254 U.S. 51.

34 *Mayo* v. *U.S.* (1942) 319 U.S. 441.

35 *Baxter* v. *Commissioners of Taxation* (1906) 4 C.L.R. at 1164.

In Australia, none of the circumstances of practical necessity which led to the *M'Culloch* doctrine and its *sequelae* exist or ever have existed. The Federal Government has ample power to protect its activities and those of its agencies by suitably framed law, and the techniques for doing it are well understood. With only six States, a high degree of social homogeneity and uniformity of State statute law, and an unenacted law which is in principle and almost entirely in fact uniform for Australia, the federal authority has little to fear from *prima facie* subjection to State law. When wide divergencies between States or other inconvenient features of State law necessitate protective federal action, the necessity is quickly seen and the remedial measures can be quickly taken, as Mr. J. T. Lang found to his cost in 1932. We have a presumption that the Crown is not bound, and a further presumption that if the Crown is bound by State law it is only the Crown in right of the State.[36] The chances of State legislation surviving all these obstacles to its valid application adversely to federal interests are slight.

A doctrine that the Commonwealth is *prima facie* subject to State laws purporting to apply to it or its agents is simple and elegant. The alternative Dixon-Fullagar theory would require the development of the complex distinctions of the American system, with the additional complexity caused by the absence in this country of any specific federal contract or commercial common law and the consequent wider necessity for resorting to the fiction of Commonwealth submission to State law where federal law cannot fulfil the transaction. If a Commonwealth agency making a tenancy contract in the State is 'subject' to the State law of contracts, why should it escape State law, expressed to apply to the Crown in general as well as subjects, which restricts rents, or regulates eviction rights? By what new principle of natural law are we to extract the part of the State legal system intended to apply to 'every Crown' which is relevant, and reject that which is not? On the principles derived from the *Engineers' Case*, such exercises are unnecessary. It would, indeed, be more conducive to the maintenance of the rule of law if Commonwealth and States were regarded as *prima facie* subject to the whole body of laws, federal and State, as they exist in any one State from time to time.[37]

---

36 *Essendon Corporation* v. *Criterion Theatres Ltd.* (1947) 74 C.L.R. 1.

37 I am indebted to Mr. D. K. Singh for his help in connection with this paper, particularly in the classification of the American cases.