

Spiller concludes by commenting that the legal profession has reached 'a crucial phase in its development', partly because the public perceives lawyers to be too expensive and unworthy of trust. We are, however, rarely given much insight into public attitudes toward the legal profession, the courts and the law, and it is incongruous to raise such an important point in the last paragraph. I hope future editions will attend to the social dimension, attempt to situate New Zealand legal developments more firmly in the changing society in which they occurred and break away from the inward-looking approach that dominates an otherwise commendable book.

*Stefan Petrow**

Treaty-Making and Australia: Globalisation Versus Sovereignty

Edited by Philip Alston and Madelaine Chiam

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No provision of the Australian Constitution has generated more public interest and ire than section 51(xxix), the external affairs power. The use of the power through the World Heritage Convention by the Commonwealth to unilaterally resolve the Franklin Dam dispute in 1983, the confirmation of that use by the High Court in *Commonwealth v Tasmania*¹⁰ and its subsequent use in other environmental disputes such as the Lemonthyme, Southern Forests¹¹ and Daintree¹² have ensured that this placitum, above all others, has a fixed and permanent place in the popular mind. More recently, the decision in *Minister for Immigration and Ethnic Affairs v Teob*¹³ has created significant publicity regarding the impact of international conventions upon the operation of Australian law.

This work, edited by Philip Alston and Madelaine Chiam, seeks to explore the relevance of international instruments to Australian law from a surprising variety of sources. Partly drawn from the proceedings of a significant conference held in Canberra in May 1995, the book brings together a complete range of views on the role and im-

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¹⁰ (1983) 158 CLR 1.

¹¹ *Richardson v Forestry Commission* (1988) 164 CLR 261.

¹² *Queensland v Commonwealth* (1989) 167 CLR 232.

¹³ (1995) 183 CLR 273.

pact of treaties in Australia's legal system. The adjective 'complete' is particularly appropriate: in addition to some of Australia's leading constitutional and international legal academics, the work includes commentary representative of all the major political parties, trade unions, employer groups, the judiciary, government and even consumer organisations. This unique combination of interests demonstrates the importance of international law on the Australian polity, and gives the book a refreshingly wide scope.

The book is divided into six parts, tied together with a thought-provoking introduction by Philip Alston. In another context, Alston's introduction might have been considered populist and taking on too expansive a subject. However as an introduction to this work it neatly brings together the diverse threads of discussion that make up the bulk of the book, without rehashing the time-honoured pastime of listing the individual contributors and summarising their views.

The first part sets the legal and constitutional framework in which the debate over treaty-making in Australia should rightly take place. George Winterton gives a succinct analysis of the High Court's development of section 51(xxix), and the case for its reformation put forward over recent years, including the efforts of the 1988 Constitutional Commission. Tasmanians and Queenslanders may be disturbed to observe the almost nonchalant ascription of the title 'principal drafter of the Constitution' to Edmund Barton, ahead of Andrew Inglis Clark and Sir Samuel Griffith, but this is a minor complaint indeed. The first part continues with instructive accounts of the implications of international law on democracy, federal-State relations and the judiciary, and an excellent discussion by Ivan Shearer of the potential impact of customary international law on Australia through section 51(xxix). This aspect of the external affairs power is often neglected by publicists, yet as Shearer rightly notes, it potentially has a more pervasive impact on Australia than the adoption of treaties, as obligations attaching to states are binding without reference to any formal ratification or accession.

The second part examines economic dimensions of the globalisation of international trade. While of great interest, this part is perhaps the most disappointing, as it deals with an aspect of international law of central importance in a space of less than 20 pages. As an area of discussion, the increasingly international nature of trade and business regulation was deserving of consideration in greater depth.

The third part of the collection deals with specific issues in relation to the domestic implementation of treaties: Hilary Charlesworth considers the inadequacy of the Commonwealth's response to the imple-

mentation of the International Covenant on Civil and Political Rights and other human rights conventions; Matthew Neuhaus examines the legislative history behind Australia's ratification of the Geneva Protocols in 1991; Penelope Mathew describes procedures in the processing of asylum-seekers; and Martin Tsamenyi looks at the evolving international obligations imposed by international environmental law. Each author takes a critical view of the limitations of the present system of legislative adoption of treaty obligations and, while the authors start from very different points of origin, it is apparent that their critiques reach common conclusions.

Those charged with reform of present legislative arrangements are Federal Parliamentarians, and the fourth portion of the book draws from the three major political groupings currently upon the Australian political stage. While the 1996 Federal election has dated the expositions somewhat, the resultant discussions are made even more interesting. The proposals advanced by the then-Opposition spokesman, Daryl Williams, have subsequently been taken up by the same individual in his more recent guise as Commonwealth Attorney-General. His contribution can be used as a convenient yardstick by which to measure the present Government's attitude to the issues surrounding the ratification of treaties within Australian law. Senator Vicki Bourne's exposition gives additional insight into the view of a party holding great influence within the Senate, and is therefore both illuminating and instructive.

The book's penultimate section brings together a diverse collection of what are described as 'sectoral perspectives'. This is apt, given that there is representation from the Australian Council of Trade Unions, the Australian Chamber of Commerce and Industry, the Australian Council of Social Service, the mining industry, the environmental movement and the National Farmers' Federation. As might be expected, a significant range of opinions on the implementation of international instruments in Australia are offered, although interestingly there was common ground between business, environmentalists and farmers on the increasing role of parliament in the ratification of treaties.

The book concludes with three useful comparative essays by Christine Chinkin, Rosemary Rayfuse and Sir Kenneth Keith on the same perspectives on international law from the United Kingdom, Canada and New Zealand respectively. Such comparative points of view should always have a place in any significant constitutional debate, and these articles serve to end the work most effectively.

This work squarely addresses what is clearly a highly contentious area within Australia's political landscape, and one where there are a number of different proposals for substantial reform. Although the book addresses an impressive range of sectoral interests, it is a little disappointing that six of the largest stakeholders in the debate, the States, do not find an individual contributor representing their point of view. When one considers that, with the exception of *Teoh*, the great cases on the impact of international law in Australia have involved a State as one of the protagonists, the omission is especially unfortunate. Nevertheless, this book is a substantial and useful contribution to an on-going debate that will serve to enlighten and assist those wishing to continue that debate in the years to come.

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