lation on gas and oil resources in off-shore areas, which will include a mining code governing the rights and activities of off-shore operators. The text of the joint statement announcing the agreement, and a summary of modifications agreed to in July 1966, are given in the final chapter. However, it is relevant to point out that since the book was published, some further outstanding matters, including the subject of interstate sales of gas, were dealt with by supplementary terms, agreed to jointly on 7th April 1967. As at the date the present review was written, the complementary Federal and State legislation still remains to be introduced and passed.

Some of the Gordian knots of constitutional law have been cut, and many of the difficulties by-passed through this achievement of a joint Federal-States agreement and the preparation of complementary legislation, but it would be rash to predict that *all* constitutional litigation will be precluded. Even if the Commonwealth and States have estopped themselves from raising points of constitutional validity, there still remains the possibility that an unlicensed off-shore operator may dispute the title of licensed operators, and claim some free right of exploration or exploitation.

In addition to the supplementary agreement of 7th April 1967, there has been another development since the book was published. This was the announcement by the Commonwealth Government on 15th March 1967 through Mr Adermann, Minister for Primary Industry, that the Government had decided to extend from three miles to a distance of twelve miles the limit of coastal waters within which fisheries, whether by Australian or foreign citizens, are to be subject to the exercise of sovereign rights by the Commonwealth. Although Australia has adopted this twelve-mile fisheries limit, it will continue neo-platonically to adhere to a three-mile all purposes limit.

Dr Lumb is to be congratulated on a lucid and competently written work, of value to constitutional and international lawyers alike, while indispensable also for those interested in the growing field of Australian oil and gas law.

J. G. STARKE

THE TREATY-MAKING POWER IN THE COMMONWEALTH OF AUSTRALIA. By Günther Doeker. Martinus Nijhoff, The Hague, 1966. Pp. xxviii, 262 and 23 (tables and index). 35 guilders.

In this book the author 'aims to present a comprehensive study and analysis of actual treaty-making procedures and practices in Australia

against the setting of the relevant constitutional and other legal norms of the Australian political system.' The study proceeds on three distinct bases: first, an historical exposition showing the development of international legal personality amongst the nations of the British Commonwealth generally and of Australia in particular; second, an empirical account of the processes of negotiation, conclusion and ratification of treaties in Australia by the Commonwealth Executive, and of the practices of implementation by the Commonwealth and State Legislatures; third, normative analyses of the prerogatives of the Crown as the source of treaty-making power in Australia, of the provisions of the Commonwealth Constitution conferring treaty-implementing power on the Commonwealth, and of the relationship of international law to the problems of treaty-implementation raised by the division of legislative competence in the Australian context.

On the factual side the author's work has been thorough and painstaking. Chapter 2 contains a useful account of the discussions, both at the National Convention debates of the 1890s and in the debate on the Constitution Bill in the Imperial Parliament, on the scope of the international personality of the Commonwealth and of its power to legislate with respect to external affairs under Section 51 (xxix) of the Constitution. It also presents a synopsis of original academic opinion on the scope of Section 51 (xxix), and a detailed review of Commonwealth-State and Commonwealth-Imperial relations in external affairs after 1901. Chapter 3 comprises a discussion of the work of the Royal Commission on the Constitution of 1927,'at which Section 51 (xxix) was regarded by many witnesses as too narrow a basis for Australia's effective participation in the League of Nations, and of the Joint Committee on Constitutional Review of 1959. The latter Committee recommended no amendment of Section 51 (xxix), and the external affairs power therefore remains a sufficient if indefinite source of legislative authority for the Commonwealth in treaty-implementation. Much of the material in these chapters should be of interest to Australian legal and political historians. In Chapters 5 and 6 the author presents an informative step by step account of the diplomatic and executive procedures in treaty-making by the Commonwealth government. Chapter 8 is devoted to considering the competence of the Australian States in external affairs and contains a review of Commonwealth-State co-operation (and lack of it) in the field of treaty-implementation. It suggests the setting up of a body to co-ordinate the activities of Commonwealth and States in this field.

For all this, it is difficult to appreciate the class of reader at which this book is principally directed, and one's difficulties in this respect are by no means lessened when its normative side is considered. From the nature of its subject-matter it is clear that this is not a student's book and is not intended as such. One would have supposed its appeal to lie with a rather specialized class of international and Australian constitutional lawyers. But Chapters 4, 7 and 9, which deal with the prerogatives of the Crown, constitutional limitations on treaty-implementation, and the relationships between the concepts of 'federalism, constitutionalism and internationalism' respectively, are disappointing. One of the reasons for this, it seems, is precisely the fact that in endeavouring to make the dual appeal necessitated by the subject-matter the author has fallen between two stools by presenting his accounts of both the international and constitutional normative orders at too superficial a level. The substantial references to the law of treaties in Chapter 6 and to the nature and effect of the competing theories of monism and dualism as the basis of the relationship of international law to municipal law in Chapter 7 will be commonplaces to the international lawyer. More importantly, the Australian constitutional lawyer will not be particularly interested in section 1 of Chapter 3, which outlines the basic structure of the Commonwealth Constitution, nor in section (i) of Chapter 4 dealing with the elements of the question of Crown divisibility under the Constitution, a matter which is again canvassed in section (iv) of the same chapter. Most of the remainder of Chapter 4 is concerned with establishing the accepted constitutional doctrine that treaty-making power is vested in the Executive, and much of Chapter 9 is devoted to a generalized re-statement of basic constitutional doctrines and problems. All these things have been said before and they have been said more effectively.

The principal constitutional problem of treaty-implementation is, of course, that of Commonwealth legislative competence. The author's discussion of this in Chapter 7 calls for some comment on two points out of a larger number which would require discussion if space permitted. The first relates to conflicts between settled rules of customary international law and specific Commonwealth legislation. We are told that 'the doctrine that "international law is part of the common law" has never been received (in Australia) and was expressly rejected by the Australian High Court in *Polites v. The Commonwealth*.[1] The

1 (1945) 70 C.L.R. 60.

High Court decided that customary rules of international law are not applicable to the domestic legal system. Yet under British practice the doctrine has been applied . . . .'[2] This is clearly wrong, for not only did the decision in the *Polites* case proceed strictly on the basis that the Australian position was identical to the English but that case itself affirmed the principle that, in the words of Dixon J., 'it is a rule of construction that, unless a contrary intention appear, general words occurring in a statute are to be read subject to the established rules of international law.'[3] It is quite misleading to say of the *Polites* case as the author does that 'it leads to the conclusion that, within the Commonwealth of Australia, a regularly enacted law is always necessary for the application of norms of international law by the courts.'[4] The question is always one of construction of the words of the statute.

The second point goes to the question of the limits of Commonwealth power under Section 51 (xxix). The author cites *R. v. Burgess, ex parte Henry*[5] as the leading authority on the question and regrets that due (in part) to the failure of the High Court to agree as to the test appropriate for the interpretation of Section 51 (xxix) 'the members of the High Court do not face up to the great political responsibilities of their functions, since the function of the members of the High Court when determining the validity or otherwise of legislation . . . is much greater than the function of an ordinary tribunal whose members have merely to determine what is right and wrong between individuals.'[6] Apparently the author brings to his study of the Australian judicial process assumptions quite alien to those normally considered to underlie the common law system, at least in Commonwealth countries. He can hardly be heard to complain that his assumptions are not shared. On the other hand it is very much to be regretted that he did not include in this chapter a discussion of the cases of *Airlines of New South Wales Pty. Ltd. v. State of New South Wales (Nos. 1 and 2)*,[7] decided by the Full High Court in February 1964 and February 1965 respectively, before the book went to press last year. The section of the book between pages 181 and 197 is out of date and must be read in the light of these decisions.

This book is bound in stiff paper and has an attractive format. The text is well documented by footnotes and supplemented by an exhaus-

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2 DOEKER 180.
3 (1945) 70 C.L.R. 60, 77.
4 DOEKER 177.
5 (1936) 55 C.L.R. 608.
6 DOEKER 182.
7 No. 1, (1964) 113 C.L.R. 1; No. 2, (1965) 113 C.L.R. 54.

tive bibliography. The author's style, however, tends to be loose and repetitive. Typographical errors were noted at pages viii (where 'Section 59' should read 'Section 51'), 47, 55, 141, 152, 157, 164, 178, 185, 195 and 196, and grammatical errors at pages 41, 58, 64, 137, 143, 161, 164, 252 and 253. The book also suffers from grossly inconsistent and improper use of the comma, at pages too numerous to mention, which necessitates frequent re-reading. Italics and capitals are also employed inconsistently. In some places the same common noun is capitalized at one point but not at another on the same page, as at pages 137 and 138.

In summary, the author has succeeded significantly more in his treatment of the factual side of his subject than in relation to its normative aspects. The book will be useful to international lawyers and others seeking to understand treaty-making procedures and practices and certain parts of it should be found interesting by Australian legal and political historians. But it is questionable whether anything has been said that could not equally well have been said, and with far greater economy, in two or three law journal articles.

NEVILLE CRAGO

JESTING PILATE and other papers and addresses. By the Right Honourable Sir Owen Dixon. Collected by His Honour Judge Woinarski. The Law Book Company Ltd. 1965. Pp. 275 (including table of cases and index). $6.60.

Sir Owen Dixon served as a Justice of the High Court of Australia for a period of thirty-four years, for the last eleven of which he was its Chief Justice. Long before his retirement in 1964 he was acclaimed, by a profession which has never been noted for the unanimity of its views, as the greatest jurist in the English speaking world. His service on the High Court was interrupted during the Second World War when, from 1940 to 1942, he served as Chairman of the Central Wool Committee, Chairman of the Australian Shipping Control Board and in various other offices, culminating with his appointment in 1942 as Australian Minister to Washington, which position he occupied during the critical years of the war in the Pacific until 1944. Subsequently, in 1950, he acted as United Nations Mediator in the Kashmir dispute between India and Pakistan.