

BOOK REVIEWS

THE MEASURE OF THE YEARS. By Sir Robert Menzies. Cassell Australia Ltd. 1970. Pp. 300. \$6.95.

Not least among the flood of paperback commentaries on the Australian scene that has appeared in recent years have been those books whose authors' purpose appears chiefly to have been the denigration of Sir Robert Menzies. Thus Donald Horne in "The Lucky Country", that glib piece of mediocre journalese which enjoyed a brief but outstanding sales success, wrote:

It was a feature of Menzies's long rule that little of what he did seems to matter much. His great talent was to preside over events and look as if he knew what they were all about. His few active interventions proved mainly failures. . . . He was essentially arrogant, although courageous, with a scorn for most other men (perhaps all other men). He used his power to little purpose. . . . Nothing befitted Menzies better than his going. Perplexed by a changing world offering strange problems to which he could not be bothered offering a solution, he modestly slipped out of office, as satisfied with the Lord Wardenship of the Cinq Ports as a head clerk who goes into retirement carrying an engraved gold watch as a token of the firm's esteem. He left his litter behind him but he spared his successors advice as to what they should do with it.

Now, in this the second volume of his memoirs, Menzies has again produced a miscellany of apologia, history, anecdote and vignette which, for all its light-weight heterogeneity may well prove to laugh, if not to argue, his detractors out of court. Just as in "Afternoon Light", so here the author's aim has been equally to entertain as to edify. If the former book were properly criticized on the grounds that it lacked depth, scholarship and comprehensiveness, the present book stands condemned of the same charges. The reply is that whatever their shortcomings for academic posterity both books make perfectly compelling and delightful reading.

Of course, Horne's charge that 'little of what he did seems to matter much', is patently absurd. Slick writing is easy: it cannot stand in the face of a recital of political successes such as constitute a major portion of this book. Take a field like education. The story is clear enough:

uniform taxation is said to have impoverished the States; education—particularly tertiary education—remained untouched by the post-war boom; Commonwealth intervention, however necessary, when it came was undeniably massive and epoch-making both in the shape of the Murray Report of 1957, the Australian Universities Commission and the largesse of which that body has been the distributor. In the nine years 1955-1964 no less than \$249,000,000 was given by the Commonwealth to universities alone, of which \$76,000,000 was granted for capital purposes. Education is but one instance of large-scale Commonwealth intervention both in policy-making and finance the result of which has been a vast increase in Commonwealth power making Australia increasingly a unitary state and making nonsense of our constitutional theory. Much the same kind of revolution occurred in the fields of national health and social services, banking, industrial and airlines policies in the Menzies era, with exactly the same effects. Menzies is frequently charged with having failed in the fields of defence planning and spending. Yet even here (although he doesn't say so) he succeeded, by the appearance of devotion to Crown and Commonwealth, in getting Britain to pay for much of our defence for years after it was not clearly in her own military or economic interest to do so: a wasteful expense which this country was spared at a time of large-scale productive capital expenditure and secondary industrial expansion.

The style of this book reflects the man, and to the discerning reader reveals that Menzies' popular image of urbane condescension and patronising dignity was at least partly a mask, an image he consciously adopted and projected and on which much of his actual power was based. The game over and the political counters put away he now permits the mask to drop, but only just. That Menzies for so long, and so completely, dominated his cabinets is sufficient proof of his sheer political ability; but he enjoyed his power, enjoyed his mask and clearly enjoys revealing both prowess and mask to the reader.

Take, for example, the question of the Canberra lake. The Menzies government had in 1957 set up the National Capital Development Commission under Sir John Overall. Walter Burley Griffin's original design for the city had included a lake. Menzies wanted a lake and had included a sum in the Budget estimates for beginning the work.

I went away to England once more very happy, because the estimates had been accepted; my dream had been given shape; but when I returned I found that the Treasury . . . had induced ministers to strike the item out. At the very first meeting after my return . . . I turned to the Treasurer, who was my good

friend and ultimate successor, the late Harold Holt, and said, with what I hoped was a disarming smile, 'Am I rightly informed that when I was away the Treasury struck out this item of one million for the initial work on the lake?' The reply was yes, and that Cabinet had agreed. I then said, 'Well, can I take it that by unanimous consent of ministers the item is now struck in?' A lot of laughter ran around the Cabinet room . . . needless to say, Overall's men were on the job next morning.

This passage is illuminating not only in the simple sense that it demonstrates Menzies' relations with his cabinet, but also, more subtly, the egotistically dignified style of its writing nevertheless disarms the reader as the actuality won the cabinet. Menzies' life-style infuriated many people—especially his unsuccessful opponents—but his writing-style can do so only for those who take it more seriously than Menzies took himself. The truth seems to be that it was precisely those who were unable to cope with the mask and to recognize the essential sense of humour which it embodied who were driven, like Horne, to excessive and vicious sentiments. By their inability to match the essential urbanity and, indeed, elegance of his political life-style his opponents were reduced to the cruder tactics of personal abuse which, as the record shows, damaged only themselves. In his present state of ultramontane inviolability Menzies can afford to laugh openly at them and at points in this book he comes close to doing so.

The book is full of humour of many kinds: the humour of the well-turned phrase, of the parliamentary and legal joke, of the kind of anecdote to which only Prime Ministers of long standing have access. The humour underlies every part of the book, the apologia and the analyses. There are several of the latter which purport to be serious but which nevertheless remain very light-weight. One would, for instance, expect rather more of one in Menzies' position in an opening chapter called "A Retrospective Survey of the Science and Art of Politics" than a ten page arabesque on the "thesis" that, in politics, science and art are both essential and interdependent. There is a longer chapter on Sir Owen Dixon, whom Menzies unstintingly admires (again giving the lie to Horne and his ilk), but no attempt at serious analysis of his judicial style or achievement. There is a very long chapter on the Petrov affair ('I have now decided that the full story shall be told') but somehow little of it seems new. This chapter contains a devastating attack on H. V. Evatt, which is the one ungenerous part of the book. Only in these chapters does the book pretend to have depth, and for all their potential interest they are, in the result, disappointing.

The rest of the book succeeds admirably, not least because its pretensions are limited. Menzies may have projected a kind of image of god-like remoteness. But he was always a consummate politician; and it is impossible to believe that the essentially political successes of his legislative programme, which have determined the course of much of our national life, happened in spite of and not because of him.

NEVILLE CRAGO

FAMILY SECURITY AND FAMILY BREAKDOWN. By John Eekelaar. Penguin Education, Penguin Books Ltd. 1971. Pp. 304. \$3.25.

In his brief but inclusive discussion of the literature on the family, Eekelaar appears to accept the Parsonian thesis that in modern society the functions of the family have dwindled to two; the socialisation of children and the provision of emotional security to its members. 1971 is seen as a watershed between the era of individualism and the new social attitude that individual problems are largely symptomatic of family malfunctioning, with recent reforms in the law an expression of the tenet "look after the family and this will take care of the individual". How great, then, is the community's obligation towards the family if its well-being promotes the health of society?

It might perhaps be noted that there is a marked tendency of recent years to transfer back to the family many functions which earlier welfare provisions had largely removed from its sphere. From an era when the mentally defective, the mentally ill, the aged, the handicapped and the delinquent were likely to be incarcerated in "total institutions", the modern trend is towards "community care" which in effect means return to the family and the provision of social support systems designed to relieve excessive pressure which might result in family breakdown. This is a process which illustrates Eekelaar's comment that 'toleration by the majority of reform coupled with its promotion by a few can have effective results' (page 45). With the family now seen as the focal point of social welfare provisions, its maintenance as an intact unit becomes crucially important.

Yet marriage is often undertaken with little understanding of the implications of the marriage contract. English law, which has traditionally taken the attitude of non-interference in domestic matters until breakdown occurs, provides remedies rather than clear obligations on marriage; 'duties of spouses to each other can only be ascertained in the context of hostile proceedings between them' (page 109).

More stringent conditions for marriage might well, it seems, obviate many of the social and legal problems which marital breakdown poses, yet this is a matter much deferred by the legislators. The Royal Commission on Marriage and Divorce (1956) suggested a review of the marriage law and the existing arrangements for premarital education and training but it took fourteen years for this recommendation to be put into effect and the views of the Law Commission are still awaited.

Eekelaar divides his discussion into three parts; Family Security, Family Breakdown and the Administration of Family Law. His careful discussion of the law relating to the matrimonial home and other assets of the marriage underlines his contention that it is in marital breakdown that rights and duties are clarified and his comparison of the English with other European systems relating to marital assets is lucid and persuasive, even for the non-legal reader. But the theme of family breakdown tends throughout to predominate, with maintenance orders and divorce matters examined at much more length than family allowances, the family income supplement, income tax benefits and social welfare and insurance, while the question of a basic minimum wage, surely highly relevant to family security, is not considered. "Emotional Security" includes a section on childlessness and impotence in which the author seems to advocate a provision for swift termination of marriage, without the three year wait imposed by the ordinary divorce law. While it seems possible that there may be no necessity for legal marriage unless a union proves fertile (and the suggested abolition of illegitimate status in line with New Zealand law would remove one objection to deferring marriage until this time) it is difficult to see that emotional security is likely to be enhanced if, in the early part of the marriage, either partner fears rejection by the other until fertility has been demonstrated. Perhaps also it is becoming necessary to elevate the importance of childless marriage as a valid social unit, since it may still be concerned with the care of elderly parents, or even the care of the partners for each other. Need for population control may also alter the social evaluation of the childless partnership.

Part 2, concerned with family breakdown, starts with a consideration of the 'family that has failed to mature', that is, the unmarried mother and her child, and then discusses the disintegrated family, broken by death, separation and divorce. An interesting commentary on the provision of pensions by means of social insurance arises here, since the divorced woman ceases to be covered by her husband's social insurance after divorce. Eekelaar also makes it clear how difficult it is for the breakdown of marriage to be complete; the marriage tie and

its attendant responsibilities of maintenance and child care may persist long after divorce and remarriage.

Part 3 concerns itself with the administration of family law. Proposals for the institution of some form of family court with powers to deal with family crisis in its multiple legal aspects, at least in the first instance, have Eekelaar's support. In his conclusion he strongly advocates irretrievable breakdown of marriage as the sole ground for divorce, with the period of estrangement necessary probably no longer than a year. While critical of the state of the law with regard to the rights and obligations of the spouses within marriage, his proposals for reform are much more tentative. Nowhere does he address himself to the question increasingly asked by young people "Is marriage really necessary?" If the family is seen as a crucial welfare resource, it seems that marriage, as the legal concept conferring recognition to socially approved family structures, is urgently in need of redefinition.

Although this book relates to family law in Britain and is therefore of limited informational value in Australia, its critical and welfare oriented approach is likely to stimulate discussion among students of the Australian scene. It is also highly recommended to those large numbers of graduates who seek expansion of their professional experience in the United Kingdom and who need a concise introduction to English welfare provisions relating to family and child care.

M. E. STOCKBRIDGE

SPARE THE CHILD. By N. David Wills. Penguin Educational Specials, Penguin Books Ltd. 1971. Pp. 153. \$1.35.

At first sight, this book would appear to have little to offer to lawyers and Wills' adulation of Richard Balbernie, the central figure in his drama of change in an English Approved School, makes the goodie-baddie dichotomy (Balbernie in the white Stetson, the rigid and authoritarian staff of the Cotswold Approved School in the black) a serious interference with an assessment of the subject matter.

For this reviewer, the baddie role seems essentially to belong to the Ranier Foundation, owners and instigators of the Cotswold Approved School in 1940. From 1940 to 1960 the School was under the head-mastership of C. A. Joyce and acquired "an excellent reputation". Balbernie was appointed in 1967, by which time it appears that grave disquiet was felt concerning a reported sub-culture of violence among the boys, who conducted "protection rackets", initiation ceremonies and general mayhem although these were apparently invisible to

many of the staff. One deduces that conditions at the school were exacerbated by a grave lack of finance:

At the heart were some pleasant enough buildings in the local stone and roughly the local tradition, arranged around two quadrangles, vaguely reminiscent of an Oxford College. But outside these squares around the whole periphery, in flat Wiltshire land among the worked out gravel beds, was a desolation of cheap, one-storey concrete buildings, some decaying, some decrepit, and among them a couple of modern buildings—equally cheap—in glass and weatherboard. Concrete roads and paths, leading apparently nowhere except desolate, derelict buildings, heaps of rubble and metal debris lying about here and there (page 23).

It was to this salubrious spot that Richard Balbernie came, in 1967, to attempt to set up a "therapeutic community" for delinquent boys in place of the authoritarian institution which had somehow (we are not told how or why) emerged in the foregoing seven years. The Ranier Foundation initiated this experiment, perhaps from a sense of guilt, since they must have been responsible for the crumbling concentration camp described by Wills, but in 1968 they decided, in view of the changes envisaged under the new proposals in the Government White Paper "Children in Trouble", to withdraw from the experiment. Balbernie was thus left, at a crucial point of change, with an uncertain future under three masters, the Home Office, the Wiltshire County Council and the Ranier Foundation as landlords only. Expected finance therefore did not materialise.

Wills makes little in his book of this astonishingly irresponsible behaviour. His interest is with Balbernie, whom he paints as an heroic figure beleaguered by an often malicious staff with an unconscious need to resist change, and his (unsuccessful) attempt to transform the Cotswold School from an authoritarian to a democratic institution without changing the personnel. By the end of Wills' account the recalcitrant staff had been sacked or asked to leave and the hard core of boys had similarly been transferred elsewhere. Twenty-one staff members had been asked to leave by 1968 and the numbers of boys had fallen to 53 from 120. Because of concern with reports of the vicious inmate sub-culture, Balbernie determined that changes must be introduced quickly and he eliminated at once all corporal punishment as well as the system of indeterminate stays with grading and promotion to eventual discharge. Since he did not substitute this system with immediate and tangible alternatives he succeeded in triggering acute anxiety among both staff and inmates, which resulted in vandalism, serious bullying and attacks upon his son and upon the

families of staff who supported him. Such a reaction was predictable from the experience of other, mainly psychiatric, "therapeutic communities" where the introduction of a participant "one culture" concept of management based on the community meeting is known to give rise to initial role confusion and breakdown of controls. The means may or may not justify the end but I could not help wondering whether the child whose face was 'battered to a pulp' (page 59) profited by the experiment, or was justifiably sacrificed to it.

"Spare the Child" is an informative account of the methods and ethos of a therapeutic community. Care, confrontation and control are the three principles upon which Balbernie based his new order, together with the diffusion of perceived authority much more widely through the staff. Wills points out the importance of this diffusion if "good" schools are not to collapse with the loss of the charismatic figure at the head, and perhaps has C. A. Joyce in mind here. The intention was to provide a treatment facility for the emotionally disturbed delinquent and there is an interesting account of the setting up of one unit to deal with the emotionally "frozen" child who is perceived as needing an opportunity to regress to an infantile level before he can emotionally mature. Wills makes it clear that the "Cotswold Community" is not designed for the recalcitrant hard core delinquent who would seem more likely to graduate to adult criminality and of whom it is monotonously reported "there is no psychiatric disorder".

Lawyers with an interest in juvenile offenders and the Children's Courts would profit by a careful reading of this book. On the face of it, they will gain an enlightening account of one technique of treating the young offender. But beyond this, they may gain insight into what may happen to the child committed to an institution by the Court for care and control, often with an indeterminate sentence. They may conclude that the time has come for more rigorous evaluation of the results of such schools and for greater oversight of the children delivered up to them.

M. E. STOCKBRIDGE

THE POLICEMAN'S POSITION TODAY AND TOMORROW. By Paul Wilson and John Western. University of Queensland Press, 1972. Pp. xi, 129. \$3.50.

There is very little fundamentally wrong with the Victoria police force. That, at any rate, is the conclusion reached by Paul Wilson and John Western after an investigation carried out at a time when the

shock waves generated by Dr. Bertram Wainer's exposure of the abortion racket were still reverberating throughout Australia.

The authors' investigation arose out of their being commissioned by the Victoria Police Association to conduct a study 'to fix the policeman's position in the community wage structure'. They accepted this commission upon the following conditions: complete independence, full police co-operation, and a widening of the study to include an examination of the general state of the Victoria police force. That part of the authors' findings concerned with wages 'was used by the Association in their successful claim for higher wages put to the Police Service Board in March 1971'; the remainder forms the subject-matter of "The Policeman's Position Today and Tomorrow".

A backdrop against which to assess accurately the state of a police force is, as the authors rightly perceive, community attitudes towards the police. Accordingly, they conducted a sophisticated public survey in the Melbourne metropolitan area in May 1970. Although approximately a quarter of the Victoria police force is stationed in country areas, and although, as the authors themselves show, the distribution of duties carried out by country police is somewhat different from that of urban police—a fact which is presumably liable to induce a different public response—the survey is probably adequate to support the conclusions which are based upon it. Thus 83% believed that the policeman's job of law enforcement is becoming more difficult and 67% thought that the resources made available to the police in doing so were inadequate. Increased pay, better training, higher admission standards and faster promotion were factors, ranked in that order, thought likely to improve the police service in Victoria; the first was specifically thought likely by 67% to improve integrity and efficiency. The importance of the policeman's job to the community was ranked very much higher than firemen, architects, ambulance drivers, plumbers, private detectives and insurance salesmen. All this and other valuable information leads the authors to conclude that 'for the time being at least public support for the successful performance of their tasks is likely to be forthcoming'.

Turning now to the internal workings of the police force the authors reach, *inter alia*, the following conclusions.

- (1) Recruiting standards are reasonably high but could be both higher—educationally, and shorter—physically.
- (2) The present deployment of personnel is wasteful, particularly with regard to the 'horrendous amount of time' devoted to internal police administration. A paradox—familiar to anyone who has worked

in a university—is skilfully exposed, that the most complex and sensitive police tasks tend to be performed by those least equipped to handle them, young and inexperienced uniformed constables. This chapter, based upon data gathered from a work study examination made by self-recording methods, is the best and most valuable in the book.

(3) Cadet and adult training schemes are admirable, though of course could be improved in some details.

(4) The training of executive policemen at the Police College is admirable, certainly better than anywhere else in Australia. ‘In our opinion, the alleged activities [of the officers named in the Abortion Inquiry] cannot be taken as representative of the commissioned police in Victoria’. It is reassuring to discover that the rotten apple phenomenon is not a universal one.

(5) Promotion procedures, based upon seniority, are crippling to morale and incentive. A fundamental departure and the adoption of a merit ethic is urgently needed. This sensible conclusion, which is by now standard thinking about police management almost everywhere except in most Australian police forces, is convincingly fortified by careful analysis and by factual material relating to reasons for resignation.

(6) Policemen do not, by and large, resign from the police force because they dislike the work, but primarily because of inadequate financial rewards and lack of sufficient opportunity for promotion. Both these reasons are what anyone who has had more than a passing acquaintance with policemen would expect to hear; and both are supported by an excellent survey the authors conducted with regard to policemen who had fairly recently resigned.

The book, as can be seen, has many solid virtues. The opportunity for “outsiders” to work so comprehensively within an Australian police department was a unique one, and the findings are bound to remain a valuable source for anyone concerned with police administration. But unfortunately occasional sloppiness and some missed opportunities prevent the book from being as good as it should have been.

For instance, ‘the huge proportional increase in crime in Victoria over recent years’ is described as being the first of nine contemporary problems facing the police. But the figures cited to demonstrate this huge increase are quite inadequate to do so; no attempt is made to relate the absolute figures to changes in population, changes in the crime-prone segment of the population, possible changes in reporting techniques, etc. The proposition advanced by the authors may well

be true; they certainly do not demonstrate that it is, however. Again, it is stated that 19 of the 131 police whose reasons for resignation were surveyed had 1-2 years' service; and it is also stated that 122 of the 131 surveyed were first constables. But as the very earliest time at which a constable can be promoted to a first constable is after two years' service, these figures seem to contradict. Presumably, there is some reconciliation; but if so it does not emerge.

The crippling nature of the promotion rules is demonstrated forcibly; but the point would be an even better one if manpower figures were given by rank somewhere in the book. They are not, however; and the omission seems an important one.

A more important omission concerns an examination of the operation of internal disciplinary procedures. As 20% of the resignees surveyed wrote-in the issue of superior-subordinate relationships as one of the main factors leading to resignation, the gap is an important one. The opportunity afforded the authors by their unique access to police records seems to have been missed on this occasion.

Of course, it is possible they felt that any aspect of discipline was too close for comfort to the vexed question of police corruption. As a matter of policy, they decided at the outset not to concern themselves with this: 'any attempt to "investigate" police corruption would have quickly destroyed the necessary rapport which had been established between the authors and all sections of the police'. This was probably a fair assessment; yet, unfortunately, the omission is fundamental. Any evaluation of how a police force can be improved can only be a partial one if it ignores the fact that one "improvement" is the elimination of motives, means and opportunity for corruption. The same can be said about brutality. Improved pay and promotion procedures may well attract a type of man less likely to be corrupt or brutal (though that is not necessarily so). In the meantime, however, methods of controlling such conduct are an important, on-going aspect of the policeman's position in society. Firearms continue to be used, often properly and sometimes improperly. Cell beatings still occur. Yet the authors manage to write this book as if this were not so. It is a fundamental, if inevitable, weakness.

R. W. HARDING

THE AUSTRALIAN YEAR BOOK OF INTERNATIONAL LAW 1968-69. Edited by H. B. Connell. Butterworths 1971. Pp. 247. \$12.00 (\$40.00 for set of four volumes).

After an uncertain start the Monash Law School has published the fourth volume of international law and the series must be regarded as firmly launched. The proliferation of law journals, reviews and year books is a matter of some concern as the volume of material threatens to bury us all beneath a huge mound. Nonetheless there is room for specialised material. With a substantial immigrant population from many parts of Europe it is perhaps surprising that there is not a greater volume of litigation in private international law than at present exists. Public international law is almost a closed book to the practitioner and problems seldom arise which demand his attention. Nevertheless international law must play a more substantial role in the future and this series will provide an opportunity for the examination of current problems which are of direct interest to Australia.

Mr. Edeson has clearly taken an opportunity to do this in respect of Australian bays. His article must rate as a valuable contribution to this subject. The other contributions are also of pertinent reality. If any broad conclusion can be drawn from an examination of a wide range of articles it is that the uneasy demarcation line which lies between federal and state governments has an inhibiting effect on Australia's role in international law. One looks forward to the time when Australia can play a more positive role in the formation of the rules of international law and perhaps the day when national law recognises that the international rules are authoritative sources of law even in preference to national legislation.

DOUGLAS BROWN

THE INTERNATIONAL LEGAL SYSTEM—CASES AND MATERIALS. By W. E. Holder and G. A. Brennan. Butterworths, 1972. Pp. xl, 1048. \$25.00 (hard cover), \$19.00 (soft cover).

In the wake of sound textbooks on public international law by O'Connell, Starke and Greig, the appearance of a casebook from another Australian stable is timely and welcome. The Australian student now has a reasonable choice of textbooks and if he pleases he can supplement his choice with this casebook.

The distinctive feature of this work is that it contains Australian material which is not readily available to the diligent student even in

some of the better university libraries. In addition to the cases, articles, textbook extracts, statutes, conventions, ministerial statements and the like, the authors have included notes on the Australian practice and general comments of their own. The notes and comments are often more readable than the passages selected for inclusion.

Strictly speaking international law should be studied without national bias, but the realities of life necessitate that it should be viewed through local spectacles. The small scattering of municipal cases are carefully documented, but tend to illustrate how few of the great issues in international law impinge themselves on municipal courts.

Students who do not have the resources of a library readily available will find this casebook a valuable asset in assisting them with their studies.

DOUGLAS BROWN