sary conditions and limitations of these defences have seldom been so thoroughly explored.

The present status of the felony murder rule is investigated with thoroughness and Professor Howard boldly suggests that its counterpart in the case of manslaughter, the rule that killing even accidentally in the course of or as a consequence of performing an unlawful and dangerous act, even if less than felony, amounts to manslaughter, may well be no longer in force in Australia. His arguments will have to be taken into account when the point arises. He has some forceful remarks on the highly unsatisfactory law of conspiracy. There will be widespread agreement about 'the mysteriousness of the view that an agreement can be more socially menacing than its fulfilment'. Professor Howard thinks that *Shaw's case*[6] is not likely to be followed by the High Court. It is to be hoped that he is right.

There are, as is to be expected in a book where the author expresses trenchant views on tendentious topics, many matters where issue could be joined with Professor Howard. In doubtful matters he advocates what to most contemporary minds would seem the desirable solution, sometimes perhaps too sanguinely. It may well be, for example, that it is too favourable to the accused to say that superior orders are a defence unless the act is known to be unlawful or is manifestly so. It may well be that superior orders are never a defence to an unlawful act, even if the unlawfulness only ultimately appears *ex post facto* from a majority decision of a superior court. The very fact that the book is capable of such fertility of controversy is an eloquent proof of its merits. Professor Howard is to be congratulated on the breadth of his research, the incisiveness of his logic and the boldness of his conclusions.

J. J. BRAY*

The Inductive Approach to International Law, by GEORG SCHWARZENBERGER, published under the auspices of the London Institute of World Affairs (London: Stevens & Sons; Australia: The Law Book Company Limited), pp. i-xv, 1-192, Index 193-209. Price $7.00.

In this volume there has been assembled a selection, with a certain amount of revised and new material, of the author's writings on the inductive approach to international law. Professor Schwarzenberger is here concerned not with doctrine as such but the methodology by which doctrines of international law are determined; that is, in an investigatory sense. So the inductive approach is a device for selecting relevant source material, analyzing it, and then assessing its meaning.

In performing the task, the author invokes the disciplines and ambitions of Socratic dialectics; these he summarizes as a search for truth, an address of challenge to others, and that nothing be taken for granted. It is beside the point to question this as a faithful assessment of Socratic dialectics, the reference to which, in the author's exposition of the inductive approach, is more as a preliminary exhortation than an essential. However, the point is made that this approach involves the application of conscious disciplines and the task ahead is seen by the author to be analysis, synopsis and guidance.

The inductive approach admits as sources treaties, international customary law, and the law recognized by civilized nations. The law-formative

6 [1962] A.C. 220.

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agencies will include decisions of courts, though a warning is given against accepting as precedent the decision of a court where jurisdiction is conferred by consent and is said, therefore, not to be a precedent at all. The opinions of law officers, however, are cited also as legitimate source material.

As well as explaining the inductive approach, the author denounces the deductive or eclectic approach, which depends upon natural law or an abstract sense of right as an inspiration of correct principle. Naturalism, then, may enable the deduction of a law which is unacceptable internationally; it will be recognized only by those who accept the precepts of natural law.

In the concluding chapters the author answers attacks which have been made on the inductive approach and provides practical examples of the application of the inductive approach.

This book has been written with Professor Schwarzenberger's usual vigour of argument and outright criticism of what he disapproves. One needs little encouragement to support his reasons for rejecting the deductive approach, which, at all times could only be regarded as an effective theory of the methodology of international law where force and the Church were capable of supporting concepts of natural law over a sufficiently wide area to have an effect internationally.

At the outset the inductive approach should be distinguished from the so-called inductive method used in common law systems at the national level. By means of accepted aids such as law reports, digests, and texts, it is possible to select relevant precedents which, considered together, disclose principles applicable by analogy to new facts. Except as to questions of relevance and consistency, there is no problem of initial selection because the binding character of decisions and the acceptance of the court's jurisdiction to pronounce them are predetermined by constitutional theory and practice. Also, in the field of international law, selection of source material is complicated by the absence of any heirarchy, so an initial step is the assessment for the purpose of selection even of decisions. Of course, with international law, the principles of selection are necessarily relative. That is, there is no world wide rule about selection of sources any more than there is about principles themselves.

But it is questioned whether the field for selection of sources should not be narrower still than Professor Schwarzenberger suggests. Treaties, of course, are unquestionably international law between the treaty parties. In a secondary sense, they will be relevant also as a source only insofar as their history and content together provide evidence of an element of international customary law. And, in this and other respects, it is difficult to distinguish international customary law from the principles recognized by civilized nations. The use of the adjective 'civilized' seems to introduce an unnecessary qualification of what otherwise is merely evidence of an international practice or custom based upon regulation by international law. If the distinction has any real purpose it seems that it cannot be a useful one if it differentiates between international practice from customary law itself.

Also, as a formal source of law, Professor Schwarzenberger would accept the opinions of law officers. Such opinions seem to involve almost limitless complications. Normally they would be either inaccessible or of a confidential character, unless revealed by a state as a reason for justifying its action in the conduct of its external affairs. It is inherently unlikely that disclosure will be made of state documents which demonstrate that

the opinion of a law officer was opposed to a decision made by the responsible minister of a modern state.

Consequently, apart from a treaty which regulates the relations between any two or more disputants themselves, it seems that customary law is the real product for consideration, albeit that it will be evidenced perhaps by treaties and other ultimate source materials.

In assessment, the inductive approach, it is thought, has an outstandingly important function. Its disciplines necessarily involve the rejection of all sources but those which faithfully reveal acceptable international law which is recognized by most states in the international community, whether evidence of that recognition be in the form of treaties, decisions of courts or other forms. What is produced will have been induced from selected source material which has been analyzed and evaluated at the beginning and subjected to a stage of verification which is the constant assignment of any who truly apply a dialectic method of investigation.

In case any are tempted to think that international law is merely an academic toy, it may be pointed out that there are many situations, even in the administration of domestic law, when some principle of the international law of peace must be investigated and determined. For instance, it is a principle of statutory interpretation that every effort should be made to construe a statute so as to avoid breaches of international law: *Polites v. Commonwealth.*[1] Such a task cannot be undertaken without, either consciously or unconsciously, implementing some form of methodology.

So the formulation of ideas concerning methodology is a most important function and, in this field, is likely only to be performed by the text writers. The author's task, seen in this light, has been well achieved, and the book will be of considerable interest to any who are prepared to reactivate their thinking in a field where Professor Schwarzenberger is a skilled commentator.

R. G. DEB. GRIFFITH*

Manual of the Law of Income Tax in Australia, by K. W. RYAN, B.A., LL.B. (Qld), Ph.D. (Cantab.), Barrister-at-Law, formerly Reader in Law, University of Queensland (Australia: The Law Book Company Limited), pp. i-xxvii, 1-245, Index 247-251. Price $6.50.

In the preface of his *Manual* Dr K. W. Ryan states that his book is designed to serve as a short and simple introduction only, and that it is not intended as an exhaustive statement of Australian income tax law nor as a treatise on its fundamental principles. His object he says is to discuss those provisions which are of most significance in every day legal and commercial transactions.

The present Income Tax Assessment Act was first enacted in 1936 and at that time contained two hundred and sixty-six sections and filled eighty-five pages of the statutes. Every year since then it has been amended, sometimes as many as three times and has now approximately five hundred sections and occupies four hundred and fifty pages.

To deal briefly and clearly with an Act as long and as complex as the Assessment Act and to select for discussion from its numerous provisions those only which are most significant in every day transactions could not be regarded as an easy task. There was a real need for a book which could do this and it is considered that Dr Ryan's *Manual* meets that need.

1 [1945] 70 C.L.R. 60, 68.

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