be conferred on the High Court or (by virtue of sec. 77(ii) and (iii)) on another federal court or a State Court exercising federal jurisdiction [the answer the authors suggest is "yes"];

(2) if so, whether any of the jurisdiction of a territorial court is outside the scope of sec. 76(ii) [the authors suggest that the answer is "yes"];

(3) if the answer to the previous question is yes, whether original jurisdiction can be conferred under sec. 122 on the High Court or another federal court.

After outlining a number of decisions of the High Court, the authors conclude that the issue is far from resolved.

"The Autochthonous Expedient: The Investment of State Courts with Federal Jurisdiction" concludes the five essays encompassed within the book. As has previously been described, investing state courts with federal jurisdiction involved a departure from the American precedent. In this essay the authors examine the possible confusion which exists when a state court assumes jurisdiction under a Commonwealth enactment: it may not necessarily be exercising federal jurisdiction depending upon the source of the grant of jurisdiction rather than the law being applied.

There is a brief discussion (pages 178-233) of the character of state courts invested with federal jurisdiction; the limits of the power to invest state courts with federal jurisdiction as prescribed by section 77; the power of the Commonwealth Parliament to interfere with the constitutional organisation and jurisdiction of state courts; the conferring of state courts with federal criminal jurisdiction; the application of section 39(1) and (2) of the Judiciary Act 1903 (Cth) in relation to concurrent state and federal jurisdiction; and finally the exercise of Admiralty jurisdiction by the state courts.

The essence of the authors' work is twofold: first, it argues for a reconsideration of the philosophies that in part underlie Chapter III of the Constitution; and secondly, it surveys, in a comprehensive manner, the constitutional law that relates to the topics chosen as the subject-matter of the five essays. In terms of achievement, one must have profound admiration for the quality of argument, which pierces the mystery of an intriguing and complex area of the law.

John Lockhart*

Royal Commission into the Non-Medical Use of Drugs, South Australia, *Final Report* (South Australian Government, Adelaide, 1979), pp. i-xv, 1-440 (ISBN: 0 7243 2911 0).

In January 1977 the Royal Commission into the Non-Medical Use of Drugs was established. The three Commissioners were Professor Ronald Sackville (Chairman), Earle Hackett and Richard Nies. In April 1979, some two years later, the *Final Report* of the Commission

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was presented to the South Australian Government. During this period the Commission published three discussion papers—*Education* (June 1978); *Cannabis* (August 1978); and *The Social Control of Drug Use* (October 1978). These papers, which aimed at stimulating public debate on important issues and educating the community, are important documents in their own right and, as the *Final Report* states, essential to "a complete analysis of the work of the Commission".[1]

Under its terms of reference, the Commission was to inquire generally "into the factors underlying or relating to the non-medical use of narcotic, analgesic, sedative and psychotropic drugs or substances of dependence, not including nicotine or alcohol",[2] and in particular, to (a) gather information about the nature of these substances, and the extent and character of their use or abuse; (b) examine the existing laws relating to these drugs and the educational, preventive, treatment and rehabilitation programmes in South Australia; and (c) make recommendations for change in the law or these programmes.

While the specific focus of the terms of reference is on South Australia, much of the Commission's work is of direct relevance to the whole of Australia. This is true not only of the *Final Report*, but also of the research reports prepared for the Commission, many of which provide valuable information that was either not known or difficult to locate.

The major method of controlling the drug problem in Australia for the last decade has been the criminal law—a law notable for obscurities, draconian penalties and an abandonment of the normal criminal law principle that the Crown must prove all elements of an offence beyond reasonable doubt. Judicial interpretation of the legislation has all too often been motivated by the desire to achieve conviction rather than to uphold the rights of the accused by an insistence on standard principle. In some states, and particularly New South Wales, courts have adopted approaches to sentencing that seem both unrealistic and excessively harsh. Thus, the Court of Criminal Appeal of New South Wales in *R.* v. *Peel*,[3] despite the strongly worded submissions of the trial judge, insisted that for sentencing no distinction was to be made between cannabis and heroin. The relevant legislation and its judicial interpretation have been subjected to little published academic or professional analysis or criticism. Law schools, the major source of such work, have neglected the area, despite its obvious relevance and pedagogical potential for comparison with traditional crimes. Sentencing, too, has been a neglected area, an omission that Murphy J. recently commented on in *Veen* v. *R.*[4] Two of the research projects of the Commission make especially valuable contributions in this area. M. Goode's *Drugs and the*

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[1] Royal Commission into the Non-Medical Use of Drugs, South Australia, *Final Report* (1979) 1.

[2] *Ibid.*

[3] [1971] 1 N.S.W.L.R. 247.

[4] (1979) 23 A.L.R. 281, 309: "Although sentencing is often a much more difficult task than ascertaining guilt, it is neglected in legal education and in professional practice."

Law[5] is a substantial critique of drug legislation in Australia, and S. Cole and W. Heine in *Drug Prosecutions in South Australia*[6] have provided some analysis of criteria and trends in sentencing. The *Final Report*, while being more muted in its criticism of the criminal drug legislation, has also recommended the removal of reverse onus provisions from the legislation, noting that they are unnecessary and inappropriate.

However, the *Final Report*, having stated that the maximum penalties for dealing offences (25 years gaol), "which appear never to have been used by the courts in South Australia and which are vastly more severe than the usual penalties imposed on offenders, may create false expectations of the criminal justice system and contribute to a failure to understand the complexities of the 'drug problem' ",[7] nevertheless recommended that these penalties "should be retained for the time being".[8] If there were to be a general legislative reform of sentencing, the *Final Report* recommended that the appropriate maximum penalty for dealing should be 15 years gaol. The reasons for the retention of such high penalties were stated to be the sensitive approach of courts to drug offenders and public anxieties concerning the drug problem. The reasoning is manifestly unsatisfactory: the sensitive approach of courts has been demonstrated in part by their refusals to impose sentences anywhere near the maxima—a refusal based in part, one suspects, on their disapproval of the maxima. The retention of excessive maximum sentences because of public anxiety will not solve the "problem" of community anxiety, but will arguably contribute to it, since these recommendations of an authoritative Royal Commission will be seen as further justification for the community's fear.

In the same vein, the *Final Report* has resiled from the tentative conclusion it expressed in its discussion paper *The Social Control of Drug Use*, that "the criminal law, which has limited value as a deterrent and is difficult to enforce, should make an 'orderly withdrawal' from the field".[9] The reasons given are that such a proposal is too easily misunderstood and that the community is not ready for such reforms.[10] It is easy to see how the Royal Commission has adopted that position. The Commission was established in response to widespread anxiety about the "drug problem"—an anxiety based in great measure on misconceptions. The Commission was clearly aware of those misconceptions and stated that where the terms of reference of an inquiry involve making recommendations on contentious social questions "the role of a Commission is less clear".[11] Should a Commission collect the facts and simply on the basis of these facts boldly make its recommendations, regardless of whether they will be acceptable to the community; or should a Commission consider community attitudes as an important

[5] *Drugs and the Law* (Research Paper 7) (1979).
[6] *Drug Prosecutions in South Australia* (Research Paper 2) (1978).
[7] Note 1 *supra*, 251.
[8] *Id.*, 252.
[9] *The Social Control of Drug Use* (a discussion paper) (1978) 2.
[10] Note 1 *supra*, 262.
[11] *Id.*, 2.

determining factor, and tailor its recommendations in the hope that they will achieve some measure of community acceptance and hence legislative and administrative implementation?

The Commission, keenly aware of the problem, used its discussion papers both as an educational tool to correct these misconceptions and as a sounding-board to test out the strength and inflexibility of community attitudes. In its discussion paper *The Social Control of Drug Use*, the largest chapter, "Twelve Misunderstandings", is essentially an attempt to correct commonly held community attitudes. The criticisms in the discussion paper *Cannabis* of the present use of the criminal law and the presentation of alternative control methods involving decriminalisation of cannabis provoked a wide response, much of it highly critical, including some very negative comments from politicians in a number of states.[12] The apparent failure of the discussion papers to modify public attitudes no doubt affected much of the *Final Report*, and appears to have led to the modification of a number of the Commission's earlier positions. Even so, the *Final Report* has recommended the decriminalisation of the private use and cultivation of cannabis and cannabis resin for personal and non-profit social use.

To judge by the reported responses of the then premier of South Australia, Mr D. Corcoran, this recommendation would not have been implemented by the former Government. In the present Australian context this was probably inevitable. The Australian Government is currently amending the drug provisions of the Customs Act 1901 (Cth) to make the maximum penalty for large commercial dealing in drugs (including cannabis) life imprisonment,[13] and most state governments either share the community's fears or consider that decriminalisation would be politically disastrous.

The *Final Report* has also recommended the creation of Drug Assessment and Aid Panels. All persons charged with simple possession of drugs other than cannabis must be referred to one of these panels. The panel will have power to make broad-ranging inquiries into the person's social background, and can require the person to undertake various treatment programmes for up to six months. The proceedings of the panel are to be in private and no representation is to be allowed. Moreover, no criminal action for simple possession offences can be taken without the consent of the panel. Such consent, it appears, will be given if the individual charged denies the allegations of possession, does not want the panel to handle the matter, or has been charged with other more serious drug offences. These recommendations are of considerable interest and certainly merit consideration. However, there is a risk that an unrepresented individual might be worse-off going to a

[12] On 4 July 1978 the *Age* 5, quoted Mr Wran, the Premier of N.S.W., as saying, "[w]e won't have a bar of that . . . . I have made it quite clear the N.S.W. Government will not legalise marijuana and frankly I don't expect any other Government will either". In the same article, he was also quoted as saying that the lives of tens of thousands of young people were thrown away every year because each state took a different approach to drug offenders.

[13] Customs Amendment Bill 1979.

panel than facing a criminal charge, especially given the "sensitive approach" of courts. Moreover, the *Final Report* has stated its opposition to compulsory commitment for treatment; cynics and perhaps realists might see the panels as dressed-up compulsory treatment. But the recommendations have merit; they are potentially more progressive than criminal action, and could well achieve community acceptance. In a survey of the South Australian community, 54 per cent considered that treatment was the most appropriate measure for persons in possession of heroin for personal use.[14] It is paradoxical that the criminal law may well be retained for the possession of the less dangerous cannabis, while heroin users will be treated in a more enlightened, less punitive manner.

Ironically, the community misconception of the "drug problem" is such that the *Final Report* may well be able to achieve some advances in the most serious areas of drug abuse—the free availability of various drugs (especially compound analgesics) through retail outlets and the over-prescription by certain doctors of various dependence-producing drugs. The dangers and widespread abuse of compound analgesics are well documented and have been known for some years.[15] The failure of state governments to act must be seen as a tribute to the lobbying power of the pharmaceutical industry. The *Final Report* insists with vigour that compound analgesics should be available on prescription only. The South Australian Government has rescheduled such analgesics so that they can be sold only through pharmacies and licensed country stores; it has not made them available on a prescription only basis. However, it appears that the pharmaceutical industry is in fact moving towards single analgesics, in part no doubt to maintain the availability of such drugs at retail outlets other than pharmacies. The recommendations of the *Final Report* may well be implemented via a different route. There is considerable evidence that doctors over-prescribe many drugs with dependence-producing capacity, that some doctors are too easily deceived by persons wanting drugs and that other doctors are not complying with the regulations concerning notification and prescription of Schedule 8 substances (the main so-called drugs "of addiction"). The Report recommended that the present regulations be made part of the principal Act, and where a doctor has been convicted of a drug-related offence or has prescribed drugs irresponsibly, that there be provision for cancellation or suspension of his licence to prescribe such drugs. Given the seriousness of such action, the *Final Report* recommends that such action be taken only after an investigation by a special Professional Practice Tribunal. These recommendations have considerable merit and may lead to greater control over a substantial source of much drug abuse.

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[14] W. Heine and A. Mant, "Drug Use in Adelaide 1978. Research Paper 4" in *Three Studies in Drug Use* (Research Papers 3, 4, 5) (1979) 33, 104; Table 4.23, 109.

[15] See *Drug Problems in Australia—an intoxicated society?* Report from the Senate Standing Committee on Social Welfare (1977) Parl. Pap. No. 228, 107-126 and references cited therein.

The Commission in its discussion paper *Education* stated: "Indeed in a certain sense, the present public reaction to the drug 'problem' is a bigger problem than the adverse effects of the drugs themselves".[16] Unfortunately, public attitudes do not seem to have changed significantly, and much of the *Final Report's* recommendations will, as with those of other Drug Reports, gather dust. But that is not to say that the efforts of the Commission have been wasted. In a period of two years, the Commission has produced a substantial body of information, analysed and demonstrated with considerable skill the complexities of the issue and presented an essentially coherent approach to the "problem". One can only hope that the Commission's efforts will generate attention to these issues in academic and professional circles and provide a major base for the kinds of discussion that have been painfully absent in the past.

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Legal Resources Book (NSW), edited by M. MOBBS, LL.B. (A.N.U.), Solicitor of the Supreme Court of New South Wales. (Redfern Legal Centre Limited, Sydney, 1978) loose-leaf service. Recommended retail price $13.00 purchased at the Redfern Legal Centre, $15.00 sent by post or delivered, $6.00 Update service (first year's subscription including postage) (ISBN: 0 9595703 0 6).

Modern legal services commissions are invariably empowered to initiate educational programmes to promote a better understanding by the public of their rights and duties under the law. One could not envisage a better way in which such a mandate could be fulfilled than by publishing and propagating the work under review. In New South Wales the chicken has come before the egg as at the date of writing we are still awaiting the final outcome of a Legal Services Commission Bill.

When launching this book recently at the Redfern Legal Centre, the Attorney-General of New South Wales, the Honourable Frank Walker, referred to it as a "landmark". By so doing, he aptly described a publication which fulfills a large awaited need in this State to provide a reasonably priced practical reference source where the legal principles applicable to the vast smorgasbord of problems confronting the man in the street are set out in a most readable form divorced from any unnecessary legal jargon.

This publication can lay claim to being the first local textbook of which I am aware encompassing the often unclearly defined concept of "poverty law". "Poverty law" is not a self-contained discipline, rather, it is an amalgam of those various branches of existing disciplines that have particular reference to the needs of the socially disadvantaged. The framework of this concept emerges clearly as one progresses through the chapters and headings of the book. For example, the law

[16] *Education* (a discussion paper) (1978) 14-15.

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