

Law and the Cultural Heritage. Volume 1. Discovery and Excavation, by P. J. O'Keefe and L. V. Prott. Abingdon, Oxon: Professional Books Limited, 1984, xxvii + 434 pp. \$39 (hard cover), \$25.50 (paper).

This book, by two members of the Faculty of Law of the University of Sydney, is the first of a series which is intended to run to five volumes. The subject, the protection of the cultural heritage, is one which has come to the fore very much recently. Examples are the continued demand of the Greeks for the return from the British Museum of the Elgin marbles; the furore over the Franklin dam in Tasmania and the unsuccessful attempt of the New Zealand Government to secure the return to that country of a Maori door which was put up for sale by auction at Sothebys in London.¹

The first volume in the series is concerned, naturally and logically, with the discovery and excavation of cultural objects. The second volume will deal with the creation and preservation of cultural objects and will thus dispel the impression, which might have been created by the first volume, that by "cultural heritage" is meant only the protection of antiquities. In the third volume the authors will tackle the important question of the movement of cultural objects. This will involve considering export and import controls and the extremely controversial topic of restitution (e.g. Elgin marbles). In the fourth volume the authors will concentrate on the immovable cultural heritage, involving monuments and sites, and in the fifth and possibly final volume they will discuss in general terms the development of laws for the protection of the cultural heritage and the question of how effective the enforcement of these laws has been.

As S. A. Williams has pointed out, in her excellent book, *The International and National Protection of Movable Cultural Property: A Comparative Study*,² once property is designated "cultural", it assumes a different character from other forms of property. It is no longer subject to the exclusive control of the sovereign State where it is located, but that State assumes an obligation towards mankind for the protection of such property. Lest it should be thought that the protection of the cultural heritage is a new "trendy" idea, it may be pointed out that Article 27 of the Hague Regulations respecting the Law and Customs of War on Land, 1907, provided that "in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments . . ."; and that a similar provision was contained in Article 5 of Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War, 1907. The 1954 Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, instigated by UNESCO, contained a much wider definition of "cultural property" and was also far more specific in the obligations it laid down. The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1972 Convention for the Protection of the World Cultural and Natural Heritage, both also sponsored by UNESCO, as well as some European conventions, have finally established that the

¹ *Attorney-General of New Zealand v. Ortiz* [1983] 2 W.L.R. 809.

² (1978) at 64.

protection of the cultural heritage has a positive aspect, and is not limited to the negative purpose of protecting cultural objects against damage in time of armed conflict. The 1972 Convention, the one considered in the *Franklin Dam Case*, has further widened the issue by bringing the "natural heritage", as well as the "cultural heritage", within the scope of international protection as well.

It will thus be seen that the research being undertaken by Mr. O'Keefe and Dr. Prott is a *magnum opus* indeed, wide-ranging in scope, yet also going into very great detail. From the legal point of view the research stretches across public international law, private international law, environmental law, the law of salvage and comparative law, the legislation of nearly three hundred separate jurisdictions being under consideration. Also the research is by no means limited to laws and legislation, philosophical, historical, aesthetic, archaeological and anthropological considerations also being taken into account. There is no better illustration of this than the decision of the authors, taken no doubt with some hesitation, to eliminate footnotes and "use the reference method most widely used in the natural sciences (i.e. author, date, page) within the text, rather than the more complex system normally used in legal treatises" (p. 5). Some legal reviewers may look askance at this practice, but in this reviewer's opinion it was a wise decision because the five volumes of this series—and probably a sixth volume will be needed by the time that the fifth one emerges, to bring together developments that have occurred since the project was started—are likely to find a place in the shelves of archaeologists, curators of museums, auctioneers and government officials dealing with cultural matters, just as much as in law libraries.

From the Australian point of view the protection of the cultural heritage—as distinct from "natural heritage cases", such as the Franklin Dam—is likely to involve mainly Aboriginal artefacts, and objects which went down off the coast of Western Australia in the holds of merchantmen making the hazardous voyage from Europe to the Indies two or three centuries ago. But it is highly gratifying that this valuable piece of research of worldwide significance is being carried out by two Australians, hailing as they do from a country not normally noted in European circles for taking a pre-eminent interest in the arts. Finally, in the context of this review, one is entitled to add that it is especially gratifying that both authors should be members of the Faculty of Law of the University of Sydney. By their work in this novel and important area, the authors are bringing great credit both to the University and to the Faculty.

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