13 410 US 113 (1973).
14 See, inter alia, Katherine O'Donovan, *Sexual Divisions in Law* (1985).
15 448 US 197 (1980).
16 *American Booksellers, Inc.* v. *Hudnut* 598 F Supp 1316 (S.D. Ind. 1984), 771 F 2d 323 (7th Circ. 1985) *affirmed* 106 S Ct 1172 (1986).
17 (1984) 2 *Yale L & P Rev* 321.
18 "Not by Law Alone: From a Debate with Phyllis Schlafly", also published in (1983) 1 *Law & Inequality: A Journal of Theory & Practice* 341.

International Law and Australian Sovereignty in Antarctica, by GILLIAN TRIGGS LL.B. (Melb.), LL.M. (S.M.U.), Senior Lecturer in Law, University of Melbourne, (Legal Books, Sydney, 1986), pp. 1-324, with Appendix, Bibliography and Index. Cloth recommended retail price $39.95 (ISBN O 949553 23 9).

Australia is one of the seven States that claim sovereignty over sectors of Antarctica. Its area is the largest, being 42% of the Antarctic continent. Australia also claims, as a consequence of its sovereignty over the land mass, exclusive jurisdiction over the continental shelf and maritime zones adjacent to the Australian Antarctic Territory (the AAT).

Are these claims soundly based in international law? Even if the general answer to this question be yes (as Dr Triggs, with scrupulously fair attention to opposing points of view, concludes) can Australia's exclusive sovereignty be maintained at the political level in the face of demands for a different legal order in Antarctica, especially those that are based on the concept of the common heritage of mankind? That the new order proponents represent a greater challenge to Australia and the other Antarctic Treaty Parties than hypothetical counter-claimants is even more evident since September 1985, which was the effective date of completion of this book. The United Nations General Assembly has had the question of Antarctica on its agenda since 1982. After 1985 it was no longer possible to proceed by consensus and contentious resolutions were put to the vote, including one which affirmed that the exploitation of resources in Antarctica should ensure the "non-appropriation and conservation of its resources and the international management and equitable sharing of the benefits." Malaysia has played a leading role in promoting the debate in the United Nations on the 1959 Antarctic Treaty regime. In November 1986 its Representative said that the Treaty was not fair, nor universal, neither was it compatible with its declared objective of promoting the interest of mankind. The Treaty's consultative Parties had defended their monopoly on decision-making by regulating access to Consultative status. They had also worked to circumvent the Treaty by negotiating a minerals regime, ignoring the fact that the Treaty had no legal order for the exploitation of resources. The state of law in Antarctica

was indeterminate and inconsistent with international law in many respects; it was too restrictive for the promotion of legitimate global interests beside scientific research; and changed circumstances since 1959 made it necessary for "the United Nations to intervene to correct a situation that could develop into an international dispute."[1]

Dr Triggs' excellent book gives the necessary background to evaluate criticisms such as these. In a thorough and balanced manner she explores the competing views as to sovereignty over the Antarctic mainland and the seabed and maritime zones of Antarctica, and analyses the regime for the Conservation of Antarctic Marine Living Resources, as well as the, as yet not completed, regime for Antarctic Minerals. The book concludes with a critical evaluation of the "common heritage of mankind" concept as it has been sought by some to be applied to Antarctica, and a stimulating chapter of general conclusions.

Chapter 1 surveys the international law of territorial acquisition. The valuable point is made that in each of the cases on disputed sovereignty before international tribunals the question has been which of two claimants had the better title. Legal rules applied by these tribunals favour the vindication of Australian claims. It is unlikely, however, that a dispute as to sovereignty claims in the Antarctic would arise in this way; most probably the challenge, if made, would be in the form of a request for an Advisory Opinion from the International Court of Justice at the instance of the United Nations itself acting under pressure from non-Antarctic Treaty States. The outcome of such proceedings, the author says, is more difficult to predict having regard to the dynamic nature of international law, but she concludes that the common heritage principle, or the notion of *res communis,* have not yet developed to the extent that a title consolidated under traditional international law would be overturned.

In Chapter 2 the author applies the principles of international law relating to territorial acquisition to Australia's claims in Antarctica. She concludes that, up to the "critical date" of the entry into force of the Antarctic Treaty in 1961, customary international law permitted sovereignty claims to be made in Antarctica. The question then arises whether Article IV of the Antarctic Treaty prevents any acts occurring thereafter from attaining significance so far as the assertion, maintenance or consolidation of title are concerned. Paragraph 2 of Article IV provides:

> [n]o acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

Together with paragraph 1 this Article seeks to set aside the sovereignty issue in order to permit claimant and non-claimant parties to co-operate in Antarctica without prejudice to their legal positions. It is repeated, or incorporated by reference, in all other Conventions relating to Antarctica. While as between the parties the position seems clear, it is not at all clear whether the parties are bound vis-à-vis non-parties and thus whether

sovereignty claims, or the evolution of customary law, are affected by the Treaty. In the absence of a convincing demonstration that Antarctica has been regarded as *res communis* and the development and application to Antarctica of the common heritage concept, the author concludes that activities since 1961 are of significance vis-à-vis non-party States, but that in any event Australia had perfected its title prior to 1961.

Chapter 3 outlines the history of British and Australian exploration and scientific activities in Antarctica, as evidence of occupation. Chapters 4, 5 and 6 deal with Australia's treaty practices in relation to the Antarctic Treaty, the protection and conservation of the Antarctic environment, and the Antarctic minerals regime, respectively. Chapter 7 analyses Australia's legislative and administrative activities in the AAT as evidence of consolidation of title. While rejecting the proposition that the Antarctic Treaty has created an objective regime, valid *erga omnes,* the author concludes that none of the co-operative practices in which Australia has engaged in relation to Antarctica have seriously compromised its sovereignty. She points, however, in several places to Australia's failure to claim a 200 mile fishing zone adjacent to its Antarctic territory as a possible weakening of Australia's position. This is correctly identified on page 195 as an "exception" of the AAT from Australia's 200 mile fishing zone, but the implications of the legislative steps by which this was achieved are not fully explained. These steps are more plausibly to be interpreted as a suspension of application rather than a failure to claim. The author is correct to imply that the EEZ does not inhere *ipso facto* and *ab initio* like the continental shelf, but more discussion should have been given to this important point: compare D. Attard, *The Exclusive Economic Zone in International Law.*[2]

Chapter 8 deals with the topics of recognition, acquiescence and estoppel. The AAT has been recognised only by Norway, France, the United Kingdom and New Zealand. The absence of protest is not significant, as the author says, because of the absence of conflicting claims to the AAT. But to establish acquiescence on a large scale is now made more difficult by the promotion of the common heritage concept in the UN. In Chapter 9 the author analyses the common heritage concept in relation to outer space and the deep seabed and finds significant differences between those areas and Antarctica. However, as she concludes:

> [i]t is possible and indeed probable, that in time the demands of the international community that Antarctica be subsumed within the common heritage concept will become politically, if not legally, irresistible.

A summary of conclusions, the texts of the important treaties relating to Antarctica, a comprehensive bibliography, and an index complete the book.

Dr Triggs' monograph is essential reading and reference in contemporary discussions of Antarctica in relation to Australia. Together with W.M. Bush's three volumes of documents *Antarctica and International Law* (1982) and F.M. Auburn's *Antarctic Law and Politics* (1982) it reflects the importance attached to Antarctica by Australia's international lawyers.

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FOOTNOTES

1 The above summary of Malaysia's views is taken from a paper by W.J. Farmer, "The Antarctic Treaty System and Global Interests in the Antarctic" reproduced in Dept of Foreign Affairs, *Backgrounder*, No. 567, 15 April 1987, citing UN Doc. A/C 1/41/PV.49, 13-26.
2 (1987), 54-61.

Rights, Persons, and Organizations: A Legal Theory for Bureaucratic Society, by MEIR DAN-COHEN, (University of California Press, Berkeley, 1986), pp. i-xi, 1-271, with Index. Cloth recommended retail price US$35.00 (ISBN 0 520 04711 7).

Rights, Persons, and Organizations is a clever attempt to unfathom some of the deeper mysteries which surround the legal status of corporate entities. Given the incisive analysis provided, it is a work which deserves to be widely read. In my view, however, the methodology and philosophy which underlie *Rights, Persons, and Organizations* are too cramping. Although the author has done much to salvage Kantianism from the depths of corporateness, much is not enough.

The argument advanced in *Rights, Persons, and Organizations* may be reduced essentially as follows:

1. Large and complex organisations, public and private, dominate modern industrialised societies;
2. The treatment of organisations in law has been shaped by the concept of juristic personality, which is rooted in the assumption that the individual is the paradigmatic legal actor;
3. The failure of the law to differentiate between human persons and organisations is unrealistic and fundamentally problematic, especially in relation to the allocation of rights;
4. A legal theory is needed to help differentiate between human persons and organisations otherwise the development of the law is likely to be irrational and inconsistent;
5. A basic postulate, derived from organisation theory and metaphorical thinking, is that a corporation is "an intelligent machine" which is used to seek specific goals;
6. Another basic postulate, derived from liberal theories of justice, is that autonomy is the most fundamental value to be protected and should be protected regardless of any competing considerations of utility;