Book Reviews

The International Protection of Human Rights. Edited by Evan Luard. London: Thames and Hudson. 1967. Pp. 324. 3 Appendices. ($11.00)

The General Assembly of the United Nations designated 1968 as the International Year for Human Rights. And since the furtherance of human rights is one of the most impressive of the achievements of the United Nations, this symposium is most timely. It is particularly valuable to Canadians since the Royal Commission on Bilingualism and Biculturalism has recently published the first volume of its report, and the federal government has proposed the adoption of a constitutionally entrenched Canadian Charter of Human Rights binding all legislative bodies in Canada. There is much to be learned from international experience in the field of promotion and protection of human rights and fundamental freedoms, and perhaps inspiration may be gained from the progress achieved by co-operation between societies far more disparate in historical and ideological makeup than the disparaties between our two main societies spread over our five regions.

In this book ten distinguished international authorities in the field of human rights outline the development of international assumption of responsibility for promoting fundamental rights and freedoms, and the evolution of techniques for supervising their protection. What makes this work particularly useful is that the contributors — seven British, one Canadian, one Swiss and one South African — in addition to being distinguished scholars in their own right, are also activists. Each has had years of practical experience in movements or institutions which have been engaged in the promotion of international protection of human rights.

The editor, who was formerly a foreign service officer, an Oxford research fellow, and is now a British Member of Parliament, sets the perspective with the opening chapter on "The Origins of International Concern over Human Rights", and then sums up in the last chapter. He shows how, until recently, human rights were considered to be a matter solely within the domestic jurisdiction of the sovereign state. "Only in the period between the two world wars, and above all after the Second World War, did the idea become widespread that there existed a responsibility to secure respect for certain standards that was universal and was independent of national

boundaries."[1] What induced this widespread assumption of international responsibility? Mr. Luard suggests that two of the factors are the glaring violations of human rights occurring in this period, and the shrinking of distances. In our global village the sufferings of any man must be the immediate concern of every other man. Perhaps one could suggest as well two other interrelated factors which are twentieth century phenomena — total involvement of the populations in the wars, and the propaganda apparatus established to sustain these efforts. In other words, the victorious powers in each of the two World Wars urged their peoples to support the struggle to "vanquish barbarism" and to establish a world order based upon respect for elemental human values. They sought allies all over the world and tried to induce them to achieve the same aims. President Roosevelt proclaimed the Four Freedoms, and he and Prime Minister Churchill issued the Atlantic Charter. If the victorious United Nations (a term in use by 1942) set the attainment of these rights as an objective, then surely the new international organization would have to promote them.

One of the results of World War I was that a large number of East and Central European states arose as a new expression of the national hopes of peoples long subject to the German, Austrian, Turkish, and Russian Empires. It was impossible to draw boundaries without including national minorities within the new states. C.A. Macartney, who is probably the leading authority on Central Europe and its minority groups, gives a concise summary of the Minorities System which was devised to enable the League of Nations to protect the subject minorities. The Minorities Treaties, which the newly created countries had to sign, were an important breach of the principle of domestic jurisdiction of states. Probably as a result, they were the source of such bitterness and friction that the practice was not continued by the United Nations. Professor Macartney concludes that perhaps a minorities system could work if these obligations were imposed only where "minority situations exist which might really endanger the peace of the world."[2] But is this not an affirmation of the same object which defeated the Minorities System? In other words, one ignores those minorities which do not have a strong foreign patron, and becomes embroiled in the disputes which threaten the peace because a strong power, like Nazi Germany, asserts a right to protect its *Herrenvolk*.

It is interesting, in this consideration of the evolution of international protection of human rights, to compare the emphasis of

[1] P. 306.
[2] P. 37.

the League with that of the United Nations. The League Covenant made no reference to individual rights, but did attempt to protect group rights through the Minorities System and the Mandates System. The United Nations Charter, on the other hand, although it continued the Mandates System through the Trusteeship System, dropped the minorities' protections, but placed considerable emphasis on the promotion of the human rights and fundamental freedoms of the individual.

Dr. John Humphrey, the Canadian who left McGill University in 1946 to become the Director of the Division of Human Rights in the United Nations Secretariat and continued to hold that position until 1966, sums up the transition and the recent developments in a chapter on "The United Nations Charter and the Universal Declaration of Human Rights". He shows that although "effective international machinery for the protection of human rights was never formally envisaged as a peace aim,"[3] the pressure of the smaller powers and non-governmental organizations (N.G.O's) resulted in the Charter making seven references to human rights and fundamental freedoms. Perhaps the greatest achievement of the United Nations was the adoption of the Universal Declaration of Human Rights on December 10th, 1948. Dr. Humphrey describes the drafting and negotiation stages leading to its adoption. This achievement is all the more remarkable when one considers that this took place when the "cold war" was just setting in, when Czechoslovakia fell under Communist control, and Yugoslavia was expelled from the Cominform. What is almost as remarkable, as Dr. Humphrey suggests, is the subsequent effect of the Universal Declaration as a standard of achievement all over the world. It has been incorporated into treaties, constitutions, and judgments of national courts, and may now even be a part of customary international law.

The drafting of the Universal Declaration, and the subsequent conventions and covenants that have followed from it, was the work of the United Nations Commission on Human Rights. A member of this Commission since 1962, and a former head of the International Division of the U.K. Home Office, Sir Samuel Hoare, gives a detailed (perhaps too detailed) description of the work of this Commission, not only in drafting the human rights instruments of the United Nations, but also in undertaking studies and drawing up various recommendations and proposals in this field for the consideration of the Economic and Social Council of the United Nations. In view of the amount of effort expended, it is regrettable

[3] P. 39.

that more publicity about the Commission's activities has not been given elsewhere. How many people in Canada know of these materials, much less about the availability, through the Commission, of research fellowships in the field of human rights?

Other United Nations bodies have discussed specific instances of violations of human rights. The editor describes these in a chapter on "Promotion of Human Rights by UN Political Bodies". These activities of the United Nations, involving political rights in such places as Spain, Korea, and the East European countries, received more publicity at the time, but have probably had less lasting effect than the adoption of the various human rights instruments. Somewhat more effective have been the debates of the General Assembly and the Security Council on questions of self-determination in Indonesia, and in the countries of the Mahgreb, Cyprus, Cameroun, and Togoland. However, even here, as Mr. Luard acknowledges, the successes have been scored in those regions which were already recognized as being ripe for self-determination.

One of the most successful experiments in the international protection of human rights has been the European Convention on Human Rights. This is discussed in a chapter by A.H. Robertson, one of the most eminent authorities on European institutions, and currently Head of the Directorate of Human Rights of the Council of Europe. The European Convention has accorded a new status to the individual in international law in allowing the right of individual petition to the European Commission of Human Rights. Although this right is only accorded to the nationals of states members which expressly declare acceptance, it is encouraging that eleven of the eighteen members have done so. The Convention represents one of the clearest breaches of the principle of domestic sovereignty. It has induced some member governments to bring their own legislation into line, and in the case of Norway has even resulted in an amendment to the constitution. It has been applied in national courts in over 200 instances. Finally, it has been the blueprint for the Bills of Rights that English constitutional lawyers have drafted for many of the newly independent members of the Commonwealth.

Several of the writers acknowledge the important role played by unofficial organizations both in establishing standards and in inducing governments into action. Peter Archer, a British Member of Parliament and an Executive Member of Amnesty International, surveys the activities of these organizations, starting with the Anti-Slavery Leagues of the late eighteenth century. The need for these organizations is cogently summed up by Mr. Archer: "The protection of individuals from government officials can never safely be left to

government officials."[4] The activities of private organizations in a specific professional field are described by a Swiss journalist, Armand Gaspard, in a chapter on "International Action to Preserve Press Freedom". The United Nations has been singularly ineffective in this field, and the work has had to be carried on by international associations of editors, publishers, and journalists.

The International Labour Organization has probably been one of the most effective of the international specialized agencies in the field of economic rights. Its more recent activities in promoting and protecting the right of association and organization of workers in their trade unions is described by C. Wilfred Jenks, a Deputy Director-General and previously Legal Adviser of the International Labour Office. Despite the difficulties of attempting to supervise industrial relations in countries widely disparate in ideology and economic development, the I.L.O. has devised investigative and reporting techniques which have been amazingly successful even in the most difficult circumstances. Some of the difficulties faced by the various I.L.O. Committees involved in the protection of trade union rights illustrate the patience that is required in a field where two major sets of countervailing forces have to be recognized. The first of these is the necessity of protecting the labour movement without so alienating governments as to induce them to defy international pressures. The second is the necessity of ensuring that an over-zealous promotion of one type of right or freedom does not result in the overriding of another.

Without doubt the best known conflict in the international protection of human rights has been that between the United Nations and South Africa. A survey of the history of this conflict and an assessment of its possible future course is provided by R.B. Ballinger, a South African who is now an American academic. It is difficult to argue with some of Professor Ballinger's conclusions. The Nationalist government of South Africa is more firmly entrenched than ever, and there is no evidence that a non-white revolt can be mounted.[5] The simple fact with respect to the effect of United Nations pressure on South Africa is that those who press strongest for sanctions do not have the means to enforce them; while those who have the means are anxious to avoid the consequences. Therefore, it will be the reactions and decisions of the major western powers that will determine future events more than United Nations debates.[6]

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[4] P. 181.
[5] Pp. 271 *et seq.*
[6] Pp. 260-1, 270.

However, while one cannot question these assertions, it is not necessary to adopt Professor Ballanger's implied conclusions that since it is impossible to see how the demand for one man one vote can lead to a peaceful resolution of the South African problem, therefore there is need for more patience, argument, and more limited objectives.[7] Twenty years of United Nations patience and argument has only resulted in more intransigence by South Africa's dominant white minority. This is, unfortunately, not the first time in history that a privileged group has failed to read the handwriting on the wall, and it will, unfortunately, not be the first time that change is brought about only through bloodshed.

The South African dispute in the United Nations serves to bring into focus the fundamental issue in human rights development in this century — the breaching of the principle of domestic jurisdiction of sovereign states by the international community for the furtherance of an ideal to which enlightened mankind has committed itself. This issue is discussed by J.E.S. Fawcett, a member of the European Human Rights Commission since 1962. Although domestic jurisdiction will continue to restrict international competence in the field of human rights because of the occasional emergency needs of security, because it is preferable for complainants first to exhaust domestic remedies, and because it may be difficult to overcome the power of an intransigent state, there is today general ecumenical acceptance of international supervision.[8]

In sum, this is a book that should be read by Canadians, especially those who are immediately concerned in the public affairs of this country. The various contributors have not been able to give a detailed enough survey to meet the needs of the international law specialist, and one might have hoped for more assessment than narrative in some cases, nevertheless the reader cannot help but come away better informed, or at least re-informed.

Walter S. TARNOPOLSKY *

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[7] Pp. 282-3.
[8] Pp. 296-300.
* Dean, Faculty of Law, University of Windsor.

Journal of the International Commission of Jurists: Special Issue for the International Year for Human Rights, vol. VIII, no. 2. Edited by Seán MacBride. Geneva: International Commission of Jurists. December 1967. Pp. xi, 148. ($1.50 U.S.).

Nothing could be more appropriate than that the International Commission of Jurists should devote the two issues of its Journal for 1968 to human rights. 1968 is International Year for Human Rights, having been so proclaimed by the United Nations in celebration of the twentieth anniversary of the adoption of the Universal Declaration of Human Rights. And of all the international voluntary organizations interested in the promotion of human rights, it is the International Commission of Jurists which has been the most active. A quick glance at the table of contents is enough to reveal the richness of the volume; for there are articles by René Cassin, Louis B. Sohn, Sadruddin Aga Khan, J. J. De Arechaga, Morris B. Abram, Lord Shawcross and T. O. Elias, all of them well-known authorities on the international law of human rights and some of them also men of action who have contributed to bringing the law to the point which it has reached today. The two articles on *Freedom of Thought, Conscience and Religion* by Morris Abram (who is the American representative on the United Nations Commission of Human Rights) and *A Free Press* by Lord Shawcross are as good as anything in the literature. Professor Sohn's evaluation of the Universal Declaration of Human Rights is notable and puts him in the forefront of an increasingly large group of international jurists for whom the Declaration has become, whatever the intentions of its authors, binding on states as part of positive international law. "In a relatively short period, the Universal Declaration of Human Rights has thus become," he writes, "a part of the constitutional law of the world community; and, together with the Charter of the United Nations, it has achieved the character of a world law superior to all other international instruments and to domestic law."[1]

Seán MacBride, the Secretary General of the International Commission of Jurists and the editor of the Journal, has contributed an introduction. He is to be congratulated on bringing out a volume which will have an important place in the growing literature on the international promotion of human rights.

John P. Humphrey.*

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[1] P. 26.

* Professor, Faculty of Law, McGill University.

The Elizabethan Court of Chancery. By W.J. Jones. Oxford: Clarendon Press. 1967. Pp. xvii, 528. ($15.00)

Equity, equitable principles, equitable remedies and the device of the use and the trust are a cornerstone of the common law system which straddles the world. Yet, one wonders, how many stop to reflect that the core of this law was created through the work of a court which was carried on in a corner (literally) of the great Westminster Hall in London and in a downstairs room of an old house off Chancery Lane? How many know today that the work of Lord Eldon which fills the *Vesey Reports* was done, just across the Lane, in a makeshift court in the dining hall of Lincoln's Inn?

Possibly these are random facts without much significance but their interest springs from the essential curiosity which any man must have for the history of the institutions which are his daily fare.

For some, that curiosity becomes the basis of a career in legal historical work and for others, it is satisfied by the occasional scholarly and readable book which is content to inform and to fascinate and to leave it at that. Modern scholarship in legal history is not so plentiful as the material permits and, as a result, there are large areas where little re-examination has been done of documents originally examined for ponderous nineteenth century works. Indeed, much manuscript material, some of which was unknown to the Victorians, has never been adequately examined. In recent years, however, one of those areas has been brought out of the twilight, namely, the old Court of Chancery which was the origin of modern Equity and suffered its demise in the extensive rearrangement and unification of the English superior courts in the 1870's. Since 1953 Mr. D.E.C. Yale of Cambridge University had edited three period works for publication: Edward Hake's *Epieikeia, a dialogue on equity in three parts,*[1] *Lord Nottingham's Chancery Cases*[2] (in two volumes with a scholarly introduction) and, most recently, Lord Nottingham's *"Manual of Chancery Practice" and "Prolegomena of Chancery and Practice"*[3] (again with an introduction). On the lighter side we have had a publication for the first time of *Lord Eldon's Anecdote Book.*[4] Mr. Yale's carefully edited works, and the new

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[1] (New Haven, 1953).

[2] Vol. I (Vol. 73 of the Selden Society for 1954), (London, 1957); Vol. II (Vol. 79 of the Selden Society for 1961), (London, 1961).

[3] (Cambridge, 1964).

[4] Edited by A.L.J. Lincoln and R.L. McEwen, (London, 1960).

Eldon publication, have contributed considerably to our knowledge of the law and practice of seventeenth and eighteenth century Chancery. Now we have the book under review, originating from a thesis presented to the University of London in 1958, by an author who is of the University of Alberta at Edmonton, on the subject of the Court of Chancery in the period from 1558 to 1603. The author necessarily gives himself a good deal of freedom either side of these dates, marking the reign of Elizabeth I, but this is the central period of his study.

It is both a scholarly and a readable book and the Oxford University Press is to be congratulated for making available to the public something which is not of central academic importance as seen by some contemporary legal publishing criteria. As this is a book which has an appeal for the curious reader as well as the professional legal historian, knowledge of its general thesis may be of value to the reader of this review. Dr. Jones sets out to show the impact of Tudor administration upon Chancery and how there emerged between the reign of Henry VIII and 1617 a distinct court of record equal in terms with King's Bench, Exchequer and Common Pleas, which would ultimately eliminate the opposition of local courts and concentrate all 'equity' in its own hands. This was the emergence of the modern concept of equity jurisdiction. The author reveals very effectively how much this period in Chancery was watershed, as indeed was the whole Elizabethan period. Social and economic change on a vast scale was going on and Chancery, like the other courts both central and local, was caught up in it, whatever its inborn desire for change. During this period, then, the structural and procedural pattern of Chancery was set for the final three hundred and fifty years of the court's existence thereafter.

In part, as Dr. Jones explains, the lawyers of the day in the central courts at Westminster desired change. In Chancery, men like Nicholas Bacon and Thomas Egerton, both of whom held judicial office during this period as Master of the Rolls, the latter being also Lord Keeper, certainly desired change. Egerton in particular (who is something of a hero for the author, despite the author's better judgment one feels) not only fiercely defended his office against encroachment but attempted to give the administrative structure and procedure of Chancery a degree of order and permanence. In order to create fixed rules and procedural precedent, he made every use of the entry books and decree rolls introduced during Henry VIII's time. And it was this kind of change which translated Chancery above the level of the older traditions of local equity courts, on to a plane of importance with the other courts of Westminster Hall.

Why then, the reader asks, did Chancery procedure become such a mess by the late eighteenth century that it was a national scandal? This is the other aspect of Dr. Jones' thesis. By its written records affording precedent, Chancery was caught up in change and became the court of Equity but Egerton and those who succeeded him were part of the system which was changing and which they were helping to change. They were essentially men of limited vision at a crucial period and their legacy lasted; they failed to see that 'due process' was not enough if it was painfully 'slow process'. Did the Chancery lawyers of this period ever really know why the litigant came to court? It sounds an odd question today but litigants themselves helped the confusion by demanding all sorts of services from the Chancery of the time. This in itself was a product of the prolix procedure. Some sought to delay the vindication of others' rights, others sought to gain temporary solutions, others were content to go along with procedural complexity as if it were part of life, and probably only a few sought final arbitration in the modern sense. Even if the judges of Chancery saw what litigants should be able to expect, Dr. Jones points out, they did not know what to do about it. And no Chancery judge did know until the great reforms of the nineteenth century got under way after 1832. To hack away procedures seemed merely to deprive the litigant of his rights; he now got 'quick process' without 'due process'.

Another fascinating thing to emerge from this book is the importance which attached to patronage during this period. Administration, the Tudor genius, meant politics; politics meant power; and power was achieved by the control of offices and preferments. He who lost the right of patronage lost power and without power no changes could be pushed through. The struggle for patronage during this time is therefore crucial as a clue to the men the time produced and the horizons they were bound to have. The Elizabethans never solved this problem, however considerable they were in administrative skills. And the men of Chancery in the seventeenth and eighteenth centuries could not escape from the same malaise of patronage and all the muddle and pointless procedure which it brought. Here was the beginning of the saga that, in the nineteenth century, in the dying years of the Court of Chancery, was to produce Charles Dickens' immortal novel *Bleak House*. If there was ever a case of a court of law getting a bad press, so to speak, this was it.

Dr. Jones presents his thesis in three sections. The first deals with the personalities of this period in Chancery, especially Thomas Egerton who, as we have seen, had a key role as Master of the Rolls and Lord Keeper; in this section the author also includes a

description of the Chancery offices. The second deals with the procedures of Chancery right through from the initial writ of subpoena to the final stages of determining an action. The third traces the relationship of Chancery with other courts, both local and central, during the period. It is a useful breakdown of the material and the three are well knit together. Even the casual reader will find that, though the section on procedure provides the stiffest reading, its introduction through the personalities gives it an immediacy of interest. In the reviewer's diagnosis Dr. Jones has softened the treatment of personality in order to secure an even development in the first part of his thesis on the Court of Chancery as such. This was no doubt a sound decision but the reviewer found the judicial personalities not making the individual impression more regular biographical treatment might have given. The author does not, even of Thomas Egerton, paint a totally rounded picture of a man. Far too little serious biographical work has been done on English judges and, as people give flavour to the period, so it might have given more flavour here.

Legal historians will find that the book is well researched; there has not been too much reliance on published sources and a great deal of interesting work has been done in tracking down and valuably interpreting sixteenth and seventeenth century manuscripts. The style is also lively and for all his knowledge the author does not expose his reader to the rigours of fact indigestion. It is regrettable that this book is solely concerned with the administration, the procedure and the personalities of the Court of Chancery; substantive law has the slightest treatment but that decision to exclude no doubt was forced upon the author. There is a chapter on Fraud and Fair Play but it does not seem to carry the reader further than existing publication would carry him. However, it must be said that to have included a discussion of the substantive law of this period on any considerable scale would probably have upset the balance of the book and proved most difficult to work satisfactorily into the theme. Dr. Jones does truly imply that procedure is the vehicle for substantive law and that to understand the procedure is to achieve a good deal. This allows him to talk about the injunction, for example, and no doubt he is justified in leaving it at that.

The book is attractively produced in the usual high standard of the O.U.P. and the whole production is a tribute both to author and publisher. By why could not we have had a photograph? There is not a single reproduction of a painting (what did Egerton look like?), a print (what did the interior of Westminster Hall look like?) or an etching (where *was* the Rolls Court situated?). The reviewer for one

would have enjoyed any or all of these and so, he suspects, would most people. Watch scholar or man on the Clapham omnibus in a bookstore! The visual is the first thing to stir his imagination; the word may be more communicative but it is a different and complementary process. Is there some kind of convention about the kind of book that can carry photographs or reproductions? If there is, it is surely time to reconsider it.

D.W.M. Waters*

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* Professor, Faculty of Law, McGill University.