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Book Reviews

BOOK REVIEWS

AN INTERNATIONAL BILL OF THE RIGHTS OF MAN. By H. Lauterpacht, New York, Columbia University Press, 1945, pp. VII—230. $3.00.

Many persons and groups have recently taken up the advocacy of an international bill of rights, the studies by the committee of the American Bar Association being perhaps the most complete. Some, like Justice Owen Roberts, with much logic insist that these rights cannot be achieved until an international government operates on and in favor of individuals. Some, like Professor Sterling Edmunds,[1] urge that the natural rights of man cannot longer be protected nationally until they are also protected internationally and that this cannot be accomplished until we do away with the sovereignty of states. Few have attempted to set forth an actual listing of the rights; fewer still have sought to key these rights to the present situation and justify their application. But rare indeed is the author who not only attempts all this but seeks also to substantiate jurisprudentially the necessity for such rights.

It remained for Professor Lauterpacht of Cambridge University, whose pen has notoriously tackled the difficult areas of international law, to approach the problem from all these angles.

His book is divided into three parts. In the first, entitled "The Law of Nature, the Law of Nations, and the Rights of Man," the author puts behind him the historical and analytical trends in jurisprudence and justifies the adoption of an international bill of the rights of man upon a reconverted "natural law" or "natural rights" basis. But he does not stop there. He recognizes that "there is nothing arbitrary about the law of nature. On the contrary, it has been a constant challenge to arbitrariness in the name of what is in the long run universal. . . ." He goes on to recognize the "Achilles heel of the notion of natural rights of man so long as they depend for their validity and their practical recognition upon the uncontrolled will of the sovereign State. . . ." He constructs his legal philosophy logically: "The relation of the individual to the State has always been the main problem of law and politics." ". . . the fundamental rights of man . . . has become . . . a general principle of the constitutional law of civilized States." " . . . the Stoics marked the beginning, not the end, of that inevitable association between inherent human rights, the law of nations as the expression of a universal order, and the law of nature." He scans philosophic heights in paragraphs like this:

"This picture of the most intimate connection between the rights of man, the law of nature and the law of nations may appear to some to be dialectical to the point of ingenuity. Nevertheless, it is this picture which probably represents a true account of the history of political and legal thought on this central issue. Moreover, it is believed to be expressive of a deeper unity. In the theories of the law of nature the starting point and the irreducible element has been the individual human being. The law of nations and, we may say, the law of nature, by denying, as they needs must do, the absolute sovereignty of States, give their imprimatur to the indestructible sovereignty of man. It is probably the natural law of humanity—as it is certainly its moral duty—to develop its capacities to all attainable perpection. That duty man has a natural right to fulfill—through freedom. Inasmuch as freedom means the fullest development of the possibilities of human personality, it is not a means of the very highest order, but an end in itself. The State is to

1. STERLING E. EDMUNDS, THE LAWLESS LAW OF NATIONS, (1925).

ensure that freedom. The law of nations, conceived in the fullness of its proper function, exists for the purpose of accomplishing that object by making man's freedom secure from the State and by rendering the State secure from external danger. It is only within the scheme of an overriding international order that we can give reality to the otherwise contradictory notion that the supreme authority of the State is limited and that the rights of man must be based on that limitation. It is not enough to say that the law of the State is circumscribed by its purpose and by the external nature of its power. Democracy, although an essential condition of freedom, is not an absolute safeguard of it. That safeguard must lie outside and above the State."

At one point in particular this reviewer must question and perhaps take issue with Dr. Lauterpacht. At one point he insists that "the right of resistance . . . is the supreme assertion of the inalienable rights of man."[2] Yet, later he subordinates his bill of rights to "obligations of compulsory military service . . . (and) conscription of youth for compulsory labor. . . ."[3] If the right of resistance to which the author refers is non-violent resistance, as part of his citation of Grotius would imply, I should accept the first statement; if he includes resistance by force, I should have to deny it. And it would appear to the reviewer that granting the right of the state to conscript (totally order the life of) a person effectually nullifies much of the bill of rights. The Supreme Court has directly pointed this out in the second flag salute case.[4]

Chapter V will prove particularly interesting to many American readers for it sets the rights of man in the pattern of British Constitutional Law.

Part II of the book enumerates the rights as follows: Art. 1: liberty from unauthorized arrest, executive action or detention. Art. 2: freedom from slavery. Art. 3: full freedom of religion. Art. 4: freedom of speech and press. Art. 5: freedom of assembly. Art. 6: sanctity of home and secrecy of correspondence. Art. 7: equality before the law. Art. 8: continuance of nationality of birth until acquisition of another. Art. 9: emigration and expatriation. Art. 10: choice of governments on footing of equality of all citizens in free an periodic elections, (modified in Art. 11 as to trusteed or mandated territory). Art. 12: freedom of ethnic minorities to own cultural centers and schools. Art. 13: right to work, education, and public assistance in case of old age, sickness, or unemployment. Art. 14: just and humane conditions of work.

Part III is an analysis of Articles 15 to 20 of the bill which create the procedures for effectuating the rights. Wisely, Mr. Lauterpacht relies on national action by making the rights part of the fundamental law of each nation. This is the basis for such decisions as *Missouri v. Holland*[5] and *Re Drummond Wren*.[6] He also makes the international bill of rights "an integral part of the Law of Nations," "under the guarantee of the United Nations. . . ."

It is to be noted that though this book was written by Professor Lauterpacht in 1944 and part of it was a paper read earlier, the American edition was not

2. Page 43.

3. Page 103.

4. West Virginia State Board of Education v. Barnette, 319 U. S. 624, 642 (1942). Note 19: "It follows, of course, that those subject to military discipline are under many duties and may not claim many freedoms that we hold inviolable to others in civilian life."

5. 252 U. S. 416 (1920).

6. Ont. L. R. 778 (1945).

published by Columbia University Press until toward the close of 1945. A provocative little book for those interested in international law.

HARROP A. FREEMAN†

HANDBOOK OF INTERNATIONAL ORGANIZATIONS IN THE AMERICAS. By Ruth D. Masters and other Staff Members, Washington, D. C., Carnegie Endowment for International Peace, 1945, pp. 453. $5.00.

To the reader who believes that you have no international organization until you have an adopted constitution (whether he looks with pride on U.N. or seeks a World government created by and operating upon individuals) and who assumes that constitutions are what "create" government this book will appear as of only passing interest. He may even insist that reliance on non-constitutional, non-integrated co-operative agencies merely weakens constitutional government.

But to the student who holds that a constitution is a "mere scrap of paper" until cooperative functioning agencies existing between the persons or states, who seek to operate under the constitution, give the constitution life, this little volume will prove a very handy sourcebook. Much has been written to show that the United States Constitution and other like documents did not create "union" and might have failed in such purpose had not other cooperative endeavors so drawn the peoples together that they could not afford to permit the Union to fail and that the League of Nations lacked that very substantial undergirding by functional agencies, therefore failure.

In this book will be found synopses of 109 international cooperative agencies located in the Americas which have gone far toward creating whatever Pan-Americanism exists. With some minor exceptions only those organizations—public or private—having permanent international membership and operating at the international level are included.

The history, purpose, functions, membership, administration, meetings, voting, finances, language, publications and work done are listed for each agency. This book will raise the hopes of the student of administrative law and then disappoint him. The synopses reveal a very limited view of administration—merely a catalogue of the committees, boards, congresses and officers.

On the whole, however, the volume is, as many of the Carnegie Endowment publications are, valuable in its very cataloguing and bringing together in one place material which would otherwise remain scattered. The researcher who desires to explore the subject further will find the book a helpful starting point. Its material justifies the remark of George A. Finch in the Foreword:

> "The day-to-day accomplishments of international agencies, both governmental and private, are seldom spectacular; yet, added together, they constitute a surprisingly large total in the way of international cooperation."

HARROP A. FREEMAN†

† Associate Professor of Law, Cornell University Law School.

ANNUAL SURVEY OF AMERICAN LAW 1942, 1943, 1944. (3 Volumes) New York, New York University School of Law, 1942 pp. lxiii—994, 1943 pp. lvii—962, 1944 pp. lxxxi—1252. $5.00 each.

The School of Law of New York University has undertaken to do for the legal fraternity of the United States what has been done for nearly two decades for the profession in Great Britain,[1] that is, to produce an annual survey of the significant trends in our law. Thus far three volumes have been published containing respectively the surveys for the years 1942, 1943, and 1944. The year 1942 was chosen as the starting point, Dean Vanderbilt says in his "Foreword" to the 1942 volume, because "Pearl Harbour marked as definite a transition in American life as the Declaration of Independence or the election of Abraham Lincoln. The year 1942 thus becomes a convenient starting point for comparing the old era and the new. Furthermore, the volumes covering the war period should be of especial value to the many returning lawyers and law students whose legal careers have been interrupted by military service."[2]

The contributors of the surveys are nearly all members of the teaching staff of the sponsoring law school. When one considers the number of opinions published by the courts of the forty-eight states, of the several territories, of the District of Columbia and by the federal courts, and then the mass of legislation turned out by the state legislatures and by Congress, together with the awesome numbers of quasi-legislative-judicial regulations, rules and opinions promulgated by the myriad alphabetic agencies of the national government and of the states, one can only describe as Herculean the task of examining all those sources which was set for the contributors to these volumes. With what misgivings they approached their task we can only guess, but their accomplishment is worthy of all praise. This reviewer, for one, makes deep obeisance as he tries to imagine their painstaking, patient ploughing through the stacks of printed pages in search of those judicial, legislative and administrative pronouncements which may be deemed to chart the course of law (at the same time thanking his lucky star that his Dean didn't conceive the idea first).

The breadth of the field covered is extraordinary. The results of the contributors' research is presented under five headings, *viz.*, Public Law: In General (including international law and relations, conflict of laws, constitutional law, civil rights, administrative law, federal taxation and local government); Public Law: Social, Business and Labor Regulation (including among ten sub-headings, social security and welfare, the antitrust laws, and, of course, labor law); Private Law (with twenty-two sub-headings, covering the classical subjects such as contracts, sales, property, torts and crimes); Adjective Law; and Legal Philosophy, History and Reform (this last including "Legal Education, Bar Organization and Economics"). The above really gives but a poor idea of the ground covered; only a reproduction of the tables of contents would be adequate.

Opinions will differ, of course, as to the significance to progress of the law of this case or that—whether or not in some instances a case chosen for comment represents anything more than the application of a well-established principle without containing any suggestion that the law is striking out on a new path. Dean Vander-

1. ANNUAL SURVEY OF ENGLISH LAW, published by the London School of Economics and Political Science since 1928.

2. ANNUAL SURVEY OF AMERICAN LAW (1942) VII.

bilt in his foreword disarms criticism in advance, however, by quoting a sentiment ascribed to Plato, to wit: "As it is the commendation of a good huntsman to find game in a wide wood, so it is no imputation if he hath not caught it all."[3] Neither is it any imputation that the huntsman hath brought in a few good red and brown deer among the albinos. The important thing is that the bag contains a good feast.

One of the valuable features of the contributions is the reference to important law review articles of the year which deal with the subject under discussion. The legal periodicals are a gold mine of material not worked enough by both students and lawyers,—and judges too, for that matter. A well reasoned and well documented law review article, comment or even case note, may on occasion be worth a hundred citations or a dozen textbooks and it may save an immense amount of time in research. A table of the articles referred to might well be added to each volume to enable the reader to keep abreast of the best legal literature—and an index of important books would also be useful.

The style of the numerous contributors is uniformly excellent and makes for easy and even lively reading. The cases, statutes, etc., chosen for attention are not summarized in a pedantic hum-drum way; there is good variety in the style of presentation, even among those offered by the same contributor; the contributors do not hesitate to express their own views and criticisms, which makes for interest. One salty statement, among others, which titilated the taste of this reviewer may be cited. Messrs. Reppy and Pogson, commenting on *Adams v. United States ex rel. Gene McCann*,[4] have this to say: "The case illuminates the contest between authoritarian officials who, in the absence of further amendment to the Constitution, determine the contents of that instrument, a contest which on the one hand involves those who insist on adherence to the policy of determining its content by what is expressly there, or there by necessary implication, and on the other hand those who insist not only on that policy but also on the policy of determining its content by what, from a social or humanitarian viewpoint, should by desirable implication be there."[5] Neat, is it not?

I don't know why particularly, but this penetrating comment reminds me of the statement made not long ago by an administrative officer who said his Board had "followed the law of Congress *as nearly as our consciences and our judgment would allow.*"[6]

The three volumes of this Survey already published and those to come each year are and will be of great value to many branches of the law profession. Teachers will welcome them as furinshing checks on their own efforts to discover from the annual grists of opinions, legislation and regulations significant and interesting material for classroom work; for them these volumes will be desk-books. Judges and lawyers will welcome the assistance provided by these discriminating specialists in the numerous fields of the law to keep them abreast of developments. I should not think that a lawyer with an appeal in hand could close his research without uneasiness if he has neglected to consult these volumes for a recent case of value to his cause which might otherwise have escaped his attention.

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3. *Id.* at VI.

4. 317 U. S. 269 (1942). The case deals with *Habeas Corpus* as an aid to an appeal in the federal courts.

5. ANNUAL SURVEY OF AMERICAN LAW (1942) 875-6.

6. (Italics supplied.) Commented on editorially in the October 5, 1946 issue of the Saturday Evening Post.

To the lawyer-veteran and to the veteran whose law studies were interrupted by his military service these Surveys will be of exceptional value. A study of them will not only bring to his attention recent case law, legislation and administrative law developments of importance but also will refresh his recollection of the law he knew before, for in introducing their reports of the new developments the contributing authors remind the reader how things stood when this case or that statute came down.

All of us, every year, should read Part Five, in which is discussed the clash of the contesting schools of jurisprudence, the outcome of which will be of such consequence not only to lawyers but to every man, woman and child of this nation and indeed of this world. Furthermore we should not only read and ponder the writings to which our attention is drawn in the article on Jurisprudence but we should let our voices be heard on the side of reason and for the preservation of a philosophy of law which, with all its faults in action, has stood and still stands for the liberty and dignity of the individual. Mr. Cahn, in his article on Jurisprudence in the 1944 Survey quotes Plutarch's Life of Solon,[7] in which it is said: "The most peculiar and surprising of his other laws, is that which declares the man infamous who stands neuter in the time of sedition. It seems he would not have us be indifferent and unaffected with the fate of the public, when our own concerns are upon a safe bottom; nor when we are in health, be insensible to the distempers and griefs of our country. He would have us espouse the better and juster cause, and hazard everything in defence of it, rather than wait in safety to see which side the victory will incline to." It is time to stand up and be counted.

We shall miss in future volumes the pen of that wise and temperate, sound legal philosopher and fine gentleman, Prof. Frederick J. de Sloovère, who worked so hard to accomplish the successful launching of this venture.

The contributors to these volumes are entitled to rise and take a bow to the applause of their confreres of the law teaching profession. For the past we say, "Well done",—for the future—"Good hunting".

GEORGE W. BACON†

7. ANNUAL SURVEY OF AMERICAN LAW (1944) 1165.

† Professor of Law and Veterans' Counsellor, Fordham University, School of Law.