

Human Rights, Comments and Interpretations (Book Review)

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few of the actual problems with which lawyers must deal are reflected in upper court opinions. It follows that legal training which limits itself exclusively to such opinions is inadequate. Perhaps in partial recognition of these considerations, over the years since Langdell first startled law schools with his innovations, case books, themselves, have more frankly become collections of "materials" as well as cases. Professor Prashker's book is in line with this trend, and the inclusion of "materials" naturally led to reduction of space allotted to "cases." Frequently, Professor Prashker includes only excerpts, and he also makes excellent use of mere abstracts of cases; a technique, I believe first, and certainly brilliantly, used by Llewellyn in his casebook on Sales.⁴

Statutory material, particularly New York material, is ample; and there are a good index and table of cases. The book is copiously annotated, particularly with references to recent law review writing, so that if more intensive study of particular topics is desired, the student can readily find his own way. Most chapters are introduced by short statements by the author highlighting the problems, which should prove helpful to the novice. I am not sure that it was an equally happy idea to include questions addressed to the student; perhaps, such matters are best left to the classroom.

Like most other case books on corporations, Professor Prashker's contains examples of the more usual corporate forms. In each case, his are forms of almost schematic simplicity, which seem better adapted for student use than the more complicated ones usually included. After all, the best way to understand the complex is to recognize it as no more than an elaboration of the simple.

The judgment about choice of topics is good. Perhaps there is a little too much on corporate entity, *ultra vires*, and *de facto* corporations, but at any rate the newer and more important topics have not been neglected. For example, there is material on the SEC; liability for costs in stockholders' derivative actions and the effect of the income tax law on dividend policy are at least touched on. On such matters compromise is inevitable, and I think Professor Prashker's is a fair one.

On the whole, it is an excellent book which students will want to carry with them into practice and which even many practitioners may find useful for quick reference.

BRUNO SCHACHNER.*

HUMAN RIGHTS, COMMENTS AND INTERPRETATIONS. A Symposium edited by UNESCO. New York: Columbia University Press, 1949. Pp. 288. \$3.75.

This collection of papers on human rights, representing the effort made by UNESCO to formulate a declaration of such rights as are deemed indispensable for man, will provoke varying degrees of cynicism. For some, the very number of conflicting interpretations given to the notion of human rights will be cause enough to disparage the entire issue, and others, having in mind the obvious practical ineffectiveness of UNESCO, will unhesitatingly group

⁴ LLEWELLYN, *CASES AND MATERIALS ON THE LAW OF SALES* (1930).

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these writings with certain notorious eighteenth century proposals for universal peace. And, since the theoretical differences are now unsurmountable and any chances for the enforcement of such rights as may be agreed upon are infinitesimal, the reader who regards this collection as a harmless, rather pointless academic gesture may appear to be quite sensible. Professors and philosophers, he may think, judge history but the men who make it are politicians and occasionally statesmen. And, if any further evidence were needed for this opinion, it could easily be found in the very poor way in which a number of essays are written. What is poorly written is poorly thought out.

This last observation, on style, if applied to specific essays will reveal at least one partly concealed stand. It is clear that a poor expression reveals an incomplete thought; it is not quite so obvious that a thought may be as purposefully vague as its expression. Far from indicating a simple confusion, then, this lack of style, of coherence, reveals a fact of primary importance. It points to the possibility of a deliberately willed inadequacy of expression, of the absence of real concern for ideology as a coherent body of doctrine. This observation alone may offer an insight into the complexity of the Communist position in this collection such as an intelligent but limited estheticism would never have revealed.

The close resemblance of the professor to the man of politics among the Communist representatives is also evident among the other groups. If one makes history, one judges it. No one has ever seriously denied the interpenetration of spiritual forces that make history and which preclude the possibility of a pure "historian" as distinguished from a pure "political man of action." There is obviously a philosopher in every practical man of action, be he statesman or politician, and to think of a marked distinction between the two is to think in very crude terms. It would also make it impossible to understand how this collection of papers, written by professors and philosophers, is conspicuously devoid of any Utopian tinge. No contributor has any illusions as to the practical adoption, or at least the immediate practical adoption, of his contribution.

The contribution of Jacques Maritain and the preface he has written are illuminating in this regard. The eminent Thomist, whose works have centered in the speculative field, approaches the problem of human rights as a predominantly practical problem. Considering an agreement on the idea of Natural Law, on which human rights should be based, a present impossibility, he asks for agreement only on a narrow isthmus of man's actions where, in spite of the vast difference of the lands which have led to the isthmus, a brief moment of unity may be attained. Far from being "impractical," this concept may appear to many as an excessive minimizing of the importance of theoretical claims. Maritain, in disagreeing, suggests that prior to the erection of a morality based upon a philosophic system, there is a substratum, a morality based upon "spontaneous reason," pre-philosophic and pre-scientific, which is conditioned by all historic circumstances. Of greater importance than the divergence found in systems, there appears in the working of this spontaneous reason a unanimity, which is what matters in the moral progress of mankind. For it is in the "apprehension for experience which works apart from systems and on a different logical basis—assisted by such systems when they awake the

conscience to knowledge of itself, hampered by them when they dim the apprehensions of spontaneous reason, or when they cast suspicion on a genuine acquisition of moral experience by linking it with some error of theory or false philosophy," that mankind progresses. It is quite possible, and Maritain might admit to it, that at the present time the sphere of "spontaneous reason" has been linked almost indissolubly to some error of theory or false philosophy. The power of evil in man and the ubiquity of modern technique can have brought about such a condition. Yet it is the hope of the philosopher and Catholic Maritain that there is still a possibility for construction, no matter how small the land may be, and that the powers of good in man are not suffocated. This search for a place whereon to build explains his hope that an understanding may be reached with those who believe in natural rights only as deriving from society and custom. Let them observe certain primary rights as irrevocable, and an understanding can be worked out with relation to secondary rights. Economic and social rights, without which many feel primary rights are meaningless, can be granted as historical conditions permit. There is no reason to expect unrelenting opposition on the part of those who believe in transcendental rights. Those who adhere to a Christian concept of Natural Law do not claim that that law is known in all its fullness, nor that it is a static concept which has no need of the addition of new rights as historical circumstances may demand.

It is Maritain's belief that a common ground may then be found and, by implication, that the Liberals will be co-workers. Among the Liberals who have contributed to this collection, Benedetto Croce has given us one of the most interesting essays. The Italian, whose interest in law and politics has led him from early publications in legal philosophy to the difficult leadership of the South Italy government which worked with the United States forces soon after the Allied invasion, considers the problem a purely theoretical one. Eloquently sustaining the moral superiority of Liberalism over Communism, he urges that a debate be held in the United Nations in which all the ambiguities of the terms would be dissipated and a conclusion arrived at. No mention is made of the Christian personalist approach. Putting aside this tremendous blind spot in Croce's thought, it should not be forgotten that Croce has made Communism impossible for a large part of the Italian non-Catholic intelligentsia. Yet however much one might be tempted to believe that the political thought of Liberalism is a more worthy opponent for a Christian-Catholic doctrine of rights, the weakness of its present practical position must be recognized. Italy itself may not be considered as sufficiently important, but throughout all Europe the Liberals have more often than not met with conspicuous failure. The Communists, who have a genius for the essential, do not regard them as the opponent, but rather those political groups which may be loosely called Christian Democrat. The group, therefore, to which Maritain looks most for assistance is that group which is most precariously situated. The processes of collectivization and technique seem to have presented problems which the Liberals have not resolved. The Communists have not resolved them either, but they have acted upon them, at times deliberately without a purpose.

This very problem of collectivization is dealt with by Father De Chardin, whose essay is the most courageous and penetrating in the book. For him, the twentieth century presents a unique problem for the working out of the principles of the Natural Law. In our times the emphasis or the need of a new definition of the rights of man "must be no longer as hitherto, to secure the greatest possible independence for the human unit in society, but to lay down the conditions under which the inevitable totalization of humanity is to take place, in such a way as not to destroy but to enhance in each of us . . . not . . . independence but—what is quite a different thing—the incommunicable uniqueness of the being within us." For a number of reasons, the rapid increase of economic, ethnic and political ties, the individual is drawn "in an irresistible process directed towards the establishment on earth of an interdependent organo-psychic system." The menacing note in the word "irresistible" is quickly repeated in the sentence which immediately follows: "Whether we like it or not, humanity is totalizing itself." The results of this process, which cannot be calculated, and which have produced a great horror in technology and government, have caused a number of men to insist desperately that only a complete break with the process can save mankind. It is a tribute to Father De Chardin's insight that he unreservedly acknowledges that that process is the actual frame of reference outside of which we cannot act, and it is a tribute to his courage that far from evidencing resignation, and much less a delicate nostalgia for a better past, he urges that we act and experience and manipulate for our greater good a movement whose force is dangerously close to that of a vortex. How strong the awareness of that danger is can be seen by the distinguished Jesuit's terse statement that together with other rights, "each human being has an absolute duty to work and personalize himself": the duty is absolute, since the process is irresistible. That is why there must also be the relative right that each human being "be placed in the best possible condition for personalization" and that coercion of the individual must be at no time permitted. Such is the schematic outline of Father De Chardin's contribution and, although regrettably limited in length, it is hardly so in suggestive power.

It is unfair to discuss the Communist contributions after Father De Chardin's paper. Their forte, their arguments, are not those expressed on paper. It is, notwithstanding, disconcerting to find in the pages of one of the most eloquent of the Party a picture of the Brothers Karamazov and Stalin engaged in a common cause. Not even the grave is a refuge and whatever the dreams of the future that Dostoyevsky may have had, this vision has undoubtedly surpassed all his imaginative powers.

It is absurd, however, to look upon the Communist declarations with a sense of superior amusement. The very absence of a unified ideology and their "hand to mouth" thinking have proven themselves fearful forces. In this debate on human rights, it is the Communist irrationality which will more effectively oppose the resurgence and reelaboration of concepts of Natural Law than any reasoned opposition. How effective that irrationality is can be attested by their partial success in concealing the core of this collection of essays: an angry, at times hopeful, at times despairing cry of indignation against the de-humanization of man.

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