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Human Rights And World Order. By Moses Moskowitz.

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such as the inspection of wearing apparel, blood tests, corporate records, fluoroscopic examinations, truth serum, urinalysis and voice identification. Unquestionably Professor Maguire has assembled a nearly exhaustive body of authority to define, delineate and illuminate each of these areas.

The book is well rounded, for in scrutinizing these essential rules of evidence, Professor Maguire traces their history from their points of origin to the most recent decisions which take cognizance of special legal phenomena having contemporary relevance. He dramatically demonstrates how the means utilized by some law enforcement officials, anxious to apprehend those suspected of crimes, have come into collision with our state and federal constitutions. This conflict is epitomized by the McNabb-Mallory doctrine, which is meticulously and expertly examined.

Professor Maguire, in dealing with each of the five vital rules of evidence, critically evaluates them within our present day legal framework and then prognosticates as to their survival in the future.

In the reviewer's opinion, one of the book's greatest contributions is the manner in which it lends order and consistency to what otherwise appears to be a maze of conflicting rules and decisions. Through Professor Maguire's keen analysis and careful cataloging of the leading authorities, he is able to show some direction in the development of these less than precise rules.

For the New York practitioner there is an abundance of New York authorities cited in each of the problem areas. Every attorney facing these problems will surely welcome Professor Maguire's book as a much needed guide when charting a client's course through hazardous litigation.

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HUMAN RIGHTS AND WORLD ORDER. By Moses Moskowitz. New York: Oceana Publications, Inc., 1958. Pp. 239.

Suppose that Citizen is awakened one night by the heavy knock of the gloved hand on his door. A group of uniformed troopers force their way into the house, ignoring his request to see a warrant. The leader informs him that the government has information that he is an atheist, and that by a recent decree atheists were declared enemies of the People and subject to summary execution. He is imprisoned, locked alone in a cell, permitted to see no one, and awaits his execution without even the pretense of a trial.

Has Citizen any legal redress? Did he have any legal rights violated, and, if so, how may they be vindicated? Of course, this raises the question what are legal rights—but that I pass over for this review. We may view Citizen's position by scanning the hierarchy of laws. Moving from the lower to the higher rungs, one first looks to the local subdivision of government and its laws,

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and from there moves up (depending upon whether the state is unitary or federal) through the laws of the regional subdivision (such as New York, for example) to the constitution of the state. This organic law (written or unwritten) may contain limitations upon the action of governmental institutions.

Unfortunately for Citizen, the laws of his nation contain no rights, privileges or immunities which will help him. There is no guarantee of freedom of conscience, no guarantee of a fair trial. What has been done to Citizen is valid under the legal system of his nation. Is there no other recourse?

There is one possibility. Can Citizen look to the system of international law for protection against his own state or nation? If the answer is yes, it must be because these human rights are protected either by customary or treaty law. But it is "hornbook" law that customary international law affords protection to the individual *only* in his status as an alien. Thus, an alien may receive some degree of protection in his relation with a foreign state. But, minimal as these standards may be—and they are very minimal—they are not applicable to the relation of a citizen to his own state. What then of treaty law? It is also "hornbook" law that treaties between states are binding obligations, that treaties (in the orthodox view) limit only the states parties thereto, but that treaties may alter traditional relationships and thereby afford protection to the citizen against his own state.¹

Thus, treaties may be used to "redress the balance," so to speak, in favor of the individual. Mr. Moskowitz's little book is a review of the efforts which have been made since the end of World War II to promote the international protection of human rights. Mr. Moskowitz is Secretary-General of the Consultative Council of Jewish Organization, and has been consultant to the Economic and Social Council of the United Nations. He has long been active in the movement to promote the international protection of human rights. If the opening of this review has been somewhat lengthy, it is an effort to set forth as simply as possible the overall structure of legal systems. A lack of awareness on the part of the uninitiated may cause some puzzlement concerning the emphasis given the treaty as the instrument to redress the balance.

Briefly, Mr. Moskowitz reviews the efforts within the framework of the United Nations to formulate an international bill of rights and to provide for its effective implementation. He reviews the steps which led to the adoption of the Universal Declaration of Human Rights (which is a statement of principle and not binding upon any state) and the still continuing process of drafting a Covenant (now two Covenants) on Human Rights which would create enforceable rights and provide for means of enforcement. He reveals the clash of cultures which have led to the separation of "political" rights from "economic and social" rights, each to be dealt with, under present plans, by separate Covenants. (Again for the uninitiated, covenant is just another term

1. For example, see the unusual provision in Article XIV of the treaty of 1903 between China and the United States. 1 *Treaties, etc.*, (Malloy, 1910) 261.

for treaty.) The author also looks at the design and structure of the United Nations. Specifically, he considers the domestic jurisdiction clause of the Charter, Article 2(7), as it relates to United Nations efforts to deal directly with problems of human rights. In this respect, he reviews the treatment by the United Nations of the racial situation in South Africa and the forced labor issue. The author proposes vigorous action, and primarily directs his attention to the really crucial problem of enforcement. He has a number of positive suggestions, including individual petition to an international authority and the establishment of an office of a United Nations Attorney-General or High Commissioner for Human Rights. He envisages a global network of regional machineries for implementation, from which an appeal would lie to the central institution.

But Mr. Moskowitz does not concern himself with international protection of human rights just because of their intrinsic merit. He reiterates his thesis, referring to "This inter-dependence between international peace and stability and respect for the rights and liberties of the individual," and argues vigorously that "To establish successfully an international rule of law and an orderly international society, it is necessary to secure freedom and dignity to man everywhere."² Thus, the title of his book: *Human Rights and World Order*.

On many particulars one may disagree with Mr. Moskowitz. For example, one may have some doubt as to his understanding of law and the legal process. There seems to be a bitter "anti-law" and "anti-lawyer" bias cropping up throughout the book.³ One may challenge his apparent notion that there is some sharp dichotomy between law and justice. When he is impatient he sees the legal process as "legal technicalities" occupying the "reverent attention of the jurist."⁴ At other times, when he views some solution with approval, he seems almost unaware that he is describing the legal process.⁵ Others have properly chided the author for his rigid approach to Article 2(7) of the Charter and the concept of domestic jurisdiction.⁶ Also, the reader may be somewhat uncomfortable with repeated reference to and bland reliance on "the moral conscience of mankind" and "the conscience of the world."⁷ And this reviewer is not so willing to accept his strawman version of "the State" (the capital letter is his) with "its own" goals and needs,⁸ a strawman which seems to obscure the fact that states, societies, governments, power groups of any sort, are made up of people and reflect the interest of those people. I am not so sure that by obliterating "the State" one can thereby submerge or destroy the purposes, goals, and motives attributed to "the State."

2. P. 87.

3. For a typical example, see pp. 34-35.

4. P. 34.

5. For example, pp. 153-154.

6. Schweib, *Book Review*, 57 *Mich. L. Rev.* 791, 794 (1959).

7. E.g., p. 161.

8. See pp. 19-20.

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Generally, there is a fuzziness in the author's thoughts which is disturbing—disturbing because one can so unreservedly agree with the primary thesis of the book, namely, that international protection of human rights is intimately tied to world peace and security, and that to work toward such protection is a worthy and necessary endeavor. *Of course* there are other more immediate problems tied to world peace and security. To name only one, the pros and cons of disarmament are daily debated and the problem will not be ignored.⁹ This simply means that attack must be pressed on all fronts.

This is an important and provocative little book which could be read with profit by a wide audience. Nevertheless, it would be a disservice to overlook the dark clouds while admiring the silver linings. Reaching the goal of protection of human rights via the treaty route is not an easy road to travel. There are many serious obstacles. First,—and this is so, for any technique—there are the limitations of law itself. Can we legislate the good and the right? The problem of racial discrimination within the United States offers an interesting analogy. As one writer has well said:

Though it is naive to suppose that there are *no* limits upon the effectiveness of legal action, it is equally naive to think that the law cannot affect attitudes in significant ways. It is even more naive to think that law cannot control effectively many kinds of discriminatory conduct resulting from prejudiced attitudes, even without changing the attitudes themselves. The law and the social matrix are mutually interacting—each has effect upon the other, and often the effect is profound.¹⁰

Second, and more serious an obstacle, is the nature of international law and its limitations. To be sure, international is a decentralized system, in its enforcement as in its other aspects. But the facts of life are that compliance with treaties entered into, as well as the decisions of international courts, is the rule rather than the exception.¹¹

Third, one must consider the very real problems which stem from the internal law and organization of the United States if the United States is to be a party to any future treaty protecting human rights. Here, I refer to problems of the treaty power in United States constitutional law. Although the devotees of the Bricker Amendment¹² have argued to the contrary, I suggest that the question is neither one of power nor limitation. The subject matter of the proposed Covenant on Human Rights is within the scope of the treaty power, and the treaty power is subject to the Bill of Rights as are all the other

9. See, for example, the special symposium on "Arms Control," in *Daedalus*, Fall 1960.

10. Kimball, Book Review (Greenberg, *Race Relations and American Law*), 58 *Mich. L. Rev.* 1081, 1082 (1960).

11. E.g., Jessup, *The Use of International Law* 44 (1959).

12. Lest one think that the Bricker Amendment controversy is dead, the ghost still hovers in the shadows, as shown by a review of Moskowitz's book by Holman, in 45 *A.B.A.J.* 838 (1959) and an editorial in the same issue of that journal at p. 830.

powers of the federal government.¹³ There is a very real problem of political wisdom, however. The fact is that the United States is a federal system, and one would have to consider seriously the far-reaching impact on our federalism which such a covenant would have, before deciding whether adherence to such a treaty would be desirable. Perhaps, in this respect, one would want to give serious consideration to the possible use of a "federal-state" clause.¹⁴

However, these are obstacles—and only that. And what are obstacles but to be overcome? It is not inappropriate to close with a statement of Professor Walter Gellhorn, made with respect to freedom within our own society, but surely pertinent to a consideration of international protection of human rights:

The mightiness of some issues that shake the modern world tends to shrink the significance of others. If civilization cannot succeed in avoiding its own incineration, the sorts of problems this book has discussed might as well be forgotten now as later. But the essential values of human life and of national character ought not to be abandoned without a struggle—as they are very likely to be if one despairs of being able to preserve them. If we are in fact to survive not merely as a few blobs on a damaged planet but as a society of free men, we must take pains to keep freedoms as well as men alive and vigorous. Today is a perfectly good day for reminding ourselves that the blessings of liberty have been hard won in the past and should not be softly lost in the present through slothfulness, inattention, or doubt.¹⁵

Nor should progress in the international protection of human rights become bogged down in an obsession with obstacles.

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13. The earliest analysis is Hyman, "Constitutional Aspects of the Covenant," 14 *Law and Contemp. Prob.* 451 (1949). For a recent provocative look at the treaty power, see Henkin, "The Treaty Makers and the Law Makers: The Law of the Land and Foreign Relations," 107 *U. Pa. L. Rev.* 903 (1959).

14. Bishop, "The Structure of Federal Power over Foreign Affairs," 36 *Minn. L. Rev.* 299, 311-312 (1952); Looper, "Limitations on the Treaty Power in Federal States," 34 *N.Y.U.L. Rev.* 1045, 1064-1066 (1959). Also, see the discussion in Hyman, *op. cit.* note 13, at 471-478.

15. Gellhorn, *Individual Freedom and Governmental Restraints* 155 (1956).