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Book Review: International Human Rights Law in the Commonwealth Caribbean

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INTERNATIONAL HUMAN RIGHTS LAW IN THE COMMONWEALTH CARIBBEAN

Edited by A.D. Byre & B.Y. Byfield. Dordrecht/Boston/London:
Martinus Nijhoff, Publishers 1991 Pp. xiii, 398. \$79.50

*Reviewed by Daniel C. Turack**

This volume is the fourteenth in a series of International Studies in Human Rights by the publishers designed to shed light on current legal and political aspects of process and organization relative to human rights. The papers contained in the book served as background material for a workshop on human rights held in Jamaica in 1987. Interights, the London, United Kingdom, based International Centre For Legal Protection of Human Rights and the Organization of Commonwealth Caribbean Bar Associations jointly convened the workshop and the editors collaborated in producing this book on behalf of the former body. The papers presented during the workshop appear on a thematic basis followed by a summary of the discussion embracing the attendees interchange. The names of the contributors and their affiliations are compiled at the end of the book, therefore I shall refer to them by name.

Twenty-nine essays plus discussions comprise the ten thematic sections of this book. Under the title, "Using the Available Remedies," four contributions appear. A.R. Carnegie, in a matter-of-fact way, writes on the "Caribbean Constitutional Remedies" with reference to the fundamental rights provisions and provisions for judicial review of administrative actions found in the 12 Commonwealth Caribbean Constitutions. He addresses issues confronted by those who have *locus standi* to pursue a remedy. The procedure by which one proceeds, redress available and against whom and how the courts react to illegally obtained evidence are briefly considered. Sir Nicholas Browne-Wilkerson provides a British judicial perspective on fundamental human rights. He concentrates on the extent to which the absence of a written constitution has affected the legal protection of human rights in the United Kingdom. Given the Caribbean experience with written constitutions, the essay is really of tangential comparative interest when the primary concern of the

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English judiciary is whether the court has jurisdiction in the particular case.

Peter Jackson's paper on "Appeals to the Judicial Committee of the Privy Council: Problems and Prospects," shows the limited jurisdiction of that august body in entertaining petitions for leave to appeal. He provides a useful guide for instruction and cooperation between Caribbean counsels and their London counterparts. Christina Cerva provides the basis for a comparative overview with a brief history of the Inter-American system's experience and a synopsis of the procedures involved. Her message is that the Commonwealth Caribbean States could have more of a direct impact if they ratified the American Convention on Human Rights and recognized the jurisdiction of the Inter-American Court of Human Rights.

The second theme, "Liberty and Security of Person," contains two papers of limited value when considering the title of the book except for comparative purposes. Sally Dolle looks at Article 5 of the European Court on the subject. She feels there is still a need to accelerate improvement of the continental investigatory process. Margaret Burnham briefly discusses recent developments in the law of the United States concerning unlawful arrest and detention without trial. Her commentary is based on both criminal and detention of refugee cases.

"The Right To A Fair Trial" denotes the third theme and comprises three essays. Delroy Chuck pursues the subject under Jamaica's constitutional practice. His focus is on three key issues: pre-trial publicity; determination within a reasonable length of time; and, whether the hearing is before an impartial court. One gains a fairly good impression of how the Gun Court of Jamaica operates. Beverly Byfield provides an insight into the operation of the concept of the right to a fair trial as it appears in the European Convention and has been developed by the Convention's institutions. She provides a very good analysis of the case-law that has emerged in the European system. Finally, Nathaniel Jones looks at the development of the constitutional guarantees of a fair trial in the United States in a review of key cases before the Supreme Court of the United States.

"Access to Court," the fourth theme, involves three essays. Initially, Margaret Demerieux focuses on questions of constitutional redress and pursuit of collateral relief with alternative remedies as based on the authority of Caribbean constitutions and judicial opinion. Soli Sorabjee contributes an Indian perspective with a short review of Indian case law, while Cristina Cerna invites comparisons of the Caribbean process with that provided in the Inter-American system. Because ten English-speaking Caribbean countries are

members of the Organization of American States, ratification of the American Convention on Human Rights would provide access to the Inter-American Court of Human Rights with its jurisdiction in contentious cases and advisory opinions on the compatibility of state law with the operation human rights instruments of the Americas.

The fifth theme is devoted to "Right To Life and Human Dignity." Dennis Daly examines the Jamaican experience with regard to the death penalty. Case law reflects implementation of this punishment as constitutional although it continues to be challenged as amounting to inhuman and degrading treatment of the individual. His discussion of the police policy approving summary executions during the performance of their functions is alarming. Respect for human dignity receives a failing grade when considering the living conditions of many Jamaicans and prison conditions.

Sally Dolle provides an excellent review of the strengths and weaknesses of the European Convention as demonstrated in the relevant case law. Here the reader becomes aware of how matters concerning use of lethal force, protection of life in respect of extradition, deportation, abortion and torture have been handled and where gaps remain in the system. Margaret Brunham gives us a succinct review of United States cases regarding torture committed abroad, the death penalty and the treatment to which prisoners are entitled.

Three essays address the sixth theme, "Freedom of Expression." In the first, Rickey Singh is of the opinion that reality is different from the constitutional provision providing protection in the Caribbean. His view is backed up by examples, and he calls upon the conveners of the workshop to take a greater role towards achieving this constitutional safeguard in practice. Anthony Lester and Susan Hulton collaborate on an excursion into the topic as it exists under the European Convention, in the second essay. It is one of the more thorough papers. Attention is drawn to the case law and to a wider relevance of the convention in domestic and international litigation for resolving uncertainties in national statutes. Interesting contrasts are provided with references to non-European jurisprudence, e.g. India and the Inter-American Court of Human Rights. Nathaniel Jones refers to the leading cases before the U.S. Supreme Court to illustrate how that institution developed the constitutional guarantee of freedom of expression in the United States. Moreover, he points out how the court recognized links between freedoms of speech, assembly and association. He provides a brief contrast of the U.S. situation on free speech with that operating in South Africa.

"Equality Before The Law" is the seventh theme. Sir Denys Williams writes on how the Caribbean courts have interpreted this

constitutional provision based on cases from Jamaica, Antigua, Trinidad and Tobago, Guyana and St. Lucia. One of the threads running through the cases is the presumption in favor of the constitutionality of legislation and a presumption of regularity in officials' acts and conduct; hence, one reason a challenge of discrimination would bear the burden of showing that an enactment violated the Constitution or would need to establish *mala fides* in administering an enactment.

Torkel Opsahl points out how the principle operates under the European Convention and the International Covenant on Civil and Political Rights. He provides a summary of the rich relevant case-law under the European Convention. Although the Human Rights Committee has not drawn conclusions from its study of individual State reports under the International Covenant, problems involving sex or political discriminations have been pursued by individual members. Communications pursuant to the Optional Protocol alleging discrimination have not been stopped at the stage of admissibility; however, they have not been in sufficient numbers to warrant further consideration. Soli Sorabjee's essay portrays the Indian Constitution's provisions on equality before the law and equality before the law and equal protection of the law, and their treatment in the courts. He also discusses three specific areas of discriminatory practices as concerns compensation: the "backward classes," gender, and religion.

Under the theme of "Freedom of Association and Trade Union Activities," three essays appear. Ashton Chase's paper invites a look at the situation in the Commonwealth Caribbean. He draws attention to the restrictive interpretation given this constitutional principle by some of the courts that have held collective bargaining and the right to strike were not embraced by freedom of association. Specific anomalies are alluded to in the Guyana experience. The second essay by Sir William Douglas links this freedom and the role of international organizations. His focus is on the International Labor Organization and the Inter-American texts on freedom of association and in the case of the former, how I.L.O. principles have been interpreted. Procedures for dealing with alleged infringements of international provisions and how the international bodies deal with violation of trade union rights are amply discussed. Angela Byre writes on the experience under the European Convention and the Council of Europe's Social Charter. It appears that a pragmatic approach is taken to union rights issues by European bodies which attempt to ensure that both individual workers and their representative organizations have the freedom to pursue their legitimate aims.

Two essays appear under the theme entitled "The Role of Governments In Strengthening Human Rights Machinery." In the first, E. George Green presents, in very general terms, the need of a legislative framework for creation of specific institutions such as the courts, the police and the office of the ombudsman to provide appropriate human rights protection. He feels that the gauge of human rights enjoyment is measured by a country's scheme of sentencing in criminal cases and treatment of prisoners. Rose D'Sa is concerned with national institutions for the promotion of human rights that have been set up throughout the Commonwealth. To further the rights of the individual in relation to their government, she looks at the domestic institution of the human rights commission, the ombudsman, as well as special institutions created to serve specific groups within the community.

The tenth and final theme involves "The Role of Non-Governmental Organizations in the Protection and Promotion of Human Rights." Florizelle O'Connor contributes an essay on the work of the Jamaica Council for Human Rights. The thrust of the organization's objectives and programs of legal, educational and regional international assistance are identified. Specific issues that concern capital punishment, constitutional appeals, legal representation due to inadequate legal aid, detention without charge and extra-judicial killings by the Jamaica Constabulary Force lead the author to reflect on the long road ahead faced by this organization. Merle McCormack, in a paper on "A Non-Governmental Organization Perspective on Human Rights Action in the Caribbean," makes the case that democratic structures in the CARICOM territories are under stress; and are growing in intensity. She feels that creeping authoritarianism persists in the region flamed by high levels of unemployment, capital flight and mounting debt thus projecting an increase in human rights violations. She shares her experience of the organizations' work to bring about fair trials, restructure media freedom, identify police brutality, assure freedom of movement and maintain fair elections. Her final call is for the regional human rights organizations to develop more operatives on a local basis. In the final essay, Michael Posner outlines the structures of the Non-Governmental Organizations: e.g., board of directors and funding, and their objectives. Furthermore, he acquaints you with some litigation strategies and other strategies: e.g., the process of information gathering. He concludes with a list of indicators of potential rights abuses.

An appendix contains the text of the human rights provisions in the Constitution of Antigua and Barbuda, and a list of references to the broad equivalent sections in the constitutional documents of 12 other Commonwealth Caribbean entities. Neither an index nor a

bibliography have been included. Researchers know of the dearth of legal literature concerning human rights in this region which makes the book that much more valuable. However, only about a third of the essays are directly responsive to the Commonwealth. Most of the essayists are members of the legal profession; a few representatives from other disciplines provide a different perspective. Too few of the essays contained in-depth analysis but one should remember that the papers served as a gateway to discussion in the workshop. Some essays are without any endnotes while others reflect only a preliminary reflection of the subject. In summary, the book is somewhat disappointing for those who want a penetrating analysis rather than a cursory examination.