

BOOK REVIEWS

The Courts and Criminal Punishments, by SIR JOHN VINCENT WILLIAM BARRY, (Government Printing Office, Wellington, New Zealand, 1969), pp. 1-91. Price \$1.50 (N.Z.).

Sir John Barry, who died at the end of 1969 after serving for over twenty years on the Supreme Court of Victoria, showed throughout his career a strong interest in all the various aspects of criminology and penology. His work was internationally recognised and in 1968 he received an invitation to deliver three lectures in New Zealand on the subject of criminal punishment. The illness which was eventually to prove fatal struck him down, and he was unable to deliver them as scheduled in 1968 or at a later date in 1969 to which they had been postponed. He had, however, completed the text and the New Zealand government have now published it in this small volume.

Everyone who is interested in this topic will be indebted to them for taking this step. It is true that these lectures cover ground which in the main is not new, and it was, indeed, scarcely to be expected that they would contain some epoch-making revelation. What they do contain is a statement of the guiding principles and practices in the matter of criminal punishment, informed throughout by the wise, humane commentary of a man who was deeply compassionate towards his fellow human beings.

There is perhaps one feature which stands out strongly in this book, that might not have been expected. Sir John makes a strong and, to the mind of this reviewer, convincing defence of the principle that a punishment imposed by the court should be justly deserved and should be related to the wrong committed by the criminal. That is to say, he insists upon the retributive aspect of punishment although the theory of retribution has fallen into disfavour in contemporary thought. As Sir John explains, however, this is the result of a confusion between the idea of retribution and the passion for revenge, and he is at pains to explain just how far apart are these two notions. This is not to say that he fails to be keenly aware of the need to introduce a reformatory element into the punitive process. It is rather to say that he is insistent upon the recognition that a criminal is a human being entitled to human rights.

There is one major point on which one might well quarrel with Sir John's exposition. In his second lecture he discusses the view constantly advanced that individual judges vary greatly in the punishments they award for basically similar offences, and rejects this as contrary to the evidence. His view, however, may well be questioned. Detailed statistical information on the problem is rarely made available, but such studies as are made from time to time do reveal great disparities between various judges. It would seem that Sir John was basing himself on the very limited sample of cases which came before him, in the guise of appeals against sentence, in the Court of Criminal Appeal, though of course his knowledge would have been supplemented by the information available to him as chairman of the Parole Board of Victoria. This latter source of information, however, would not readily reveal the existence of the problem. And the reliability of the information available to an appellate judge is considerably lessened by the practical difficulties which hedge appeals against sentences. Not the least of these is the fact that our present legislation forces a prospective appellant to gamble with 'the system' if he wishes to appeal against his sentence, for the Court is given power, should he appeal, to increase the sentence—a power which it does not possess if he remains inactive.

Clearly it is a good book in which the reviewer can only find one small passage to criticise. Sir John's lectures fall into this category. They are warmly recommended to everyone who is prepared to give more than a passing thought to the fate of others unluckier than themselves.

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U.N. Protection of Civil and Political Rights, by JOHN CAREY, LL.M. (N.Y.). (Syracuse University Press, U.S.A., 1970), pp. i-xii, 1-205. Price \$7.50 (U.S.).

This is the eighth volume resulting from research carried out under the auspices of the Procedural Aspects of International Law Institute and published in the Procedural Aspects of International Law Series under the general editorship of Professor Richard B. Lillich.

It follows such studies as: *International Claims: their adjudication by National Commissions*, written by the editor and published in 1962, and Richard A. Falk's study of *The Role of Domestic Courts in the International Legal Order*.

The volume under review maintains the high standard set by its predecessors. Mr Carey has carefully analysed and documented a vast amount of United Nations' material dealing with the protection of human rights. He commences with a discussion of the need for international protection of human rights and regrettably, this need is all too obvious to the observer of the contemporary international scene.

His approach as outlined in chapter 1 is to investigate the techniques employed to protect human rights and to evaluate their effectiveness.

Chapter 2 is entitled 'International Legislation to Establish Human Rights'. This is unfortunate terminology because, at the level of international law, it is quite clear that there is no such thing as 'legislation' in the commonly accepted municipal law sense. It is only fair to mention that the author himself in his summary and conclusion refers to 'The Use of Declarations or Treaties for International "Legislation"' and so would appear to agree with this observation. There is no doubt that the establishment of standards in this way, even though treaties only bind those states which are parties to them, is helpful in protecting human rights. Conferences to draw up any such treaties provide a forum for discussion and if a number of states agree with the principles enunciated, then an international standard is established. This may become a part of international customary law, for those states which accept it as such. States which refuse to accept it may still be affected through the medium of international public opinion.

A long range method of protection of human rights is education, and the author draws attention to the fact that the United Nations has actively carried on a programme of seminars and fellowships to achieve this objective.

As in all areas of international law the real difficulty arises when a state refuses to comply. Can force be used to coerce governments to respect human rights? It seems beyond argument that the states themselves can no longer use force by virtue of the provisions of the Kellogg-Briand Pact and the United Nations Charter. The United Nations has power to use force pursuant to Chapter 7 of the Charter, but it cannot do so unless the states, members of the Security Council, are willing to allow it to act. Mr Carey refers to the 'twin drawbacks' of the United Nations in this area as being 'ineffectiveness and political sensitivity'. This criticism should be read not as a criticism of the United Nations itself but rather as a criticism of those member states who at times will not allow the organization to fulfil its functions.

He discusses the possibility of 'protection through non-criminal adjudication', but as he rightly points out in chapter 8, at the present time, 'state against state Court actions have little appeal for Governments'. The usefulness of this sort of

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