

A.W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*. Oxford: Oxford University Press, 2001. Xiv + 1161 pages. ISBN 0-19-826289-2. Price

Historically, the concept of human rights is a development of the earlier notion of natural rights. It has become received knowledge among historians of political ideas that this notion of natural rights - or simply, as the English language political philosophers say, "rights" - evolved in the context of the European struggle to legitimate its overseas expansion and the setting-up of colonial empires. This goes for the Spanish late-scholastics, such as Vitoria, and seems equally valid for the Dutchman Hugo Grotius. This historical link between the older concept of natural rights and human rights explains the claim of the universality of human rights (though the French Revolution linked human rights to citizenship in a manner which seems to reduce the universal meaning of human rights).

The Universal Declaration of Human Rights - which has clear roots in notions of natural and universal rights - and its direct descendants, the UN Covenants and the European Convention on Human Rights, were formulated "for export", particularly the Communist countries and some of the independent countries in what is now called the Third World, and not so much for application to the countries engaged in drafting these instruments themselves. It is an interesting irony that they were immediately turned against the Western countries, and in particular their colonial policies, by the anti-colonial movement with the active support of the Communist countries. The conclusion which suggests itself is that the notion of early modern natural rights of mankind originated in the context of the build-up of empire (just as the notion of a *ius* and even *iura* as a common law of mankind originated during the Roman empire), but the 20th century human rights developed in the context of the breakdown and ending of the colonial empires.

The story of the genesis of the Universal Declaration and the European Convention as far as the British were concerned, is told in A.W. Brian Simpson's voluminous work of narrative history.

As a work of "narrative history", it claims not to develop a general theory of legal or political evolution. "This book is indeed written in the spirit which inspires the journalist who features as the letter 'J' in Edward Gorey's illustrated alphabet. He, after contemplating the scene of some disagreeable yet attractively newsworthy disaster, consoles himself with a gin and water, and thus refreshed, *wonders how it came about*. So it is, for me, with the European Convention", the author submits in the preface. He doubts the truth of Oliver Wendell Holmes' claim that "we have too little theory in the law rather than too much", but claims that the establishment of a narrative account of the European Convention is a necessary precondition to any useful theoretical enquiry. Though theoretical enquiries are by definition "useful" already in themselves, it is quite true that there can be no theory without knowledge of the facts upon which it reflects: the introduction of this book review formulated a paradox which could only be formulated after reading this admirable book.

A voluminous book it is indeed. This reviewer admits to having spent two summer holidays reading it - holidays, because the normal chores of the life of an academic lawyer no longer permit reading books of this size. Perhaps the occasional lure of other activities detracted from finishing it, but the pace of the book is also slow. However, it covers a great deal, in historical perspective too. Completing this book was helped because the author, usually just in time to avoid becoming tedious in the sometimes minute detail, manages to throw in an aside, a good joke or anecdote, or a very personal observation. These made reading the book a pleasure.

To give an impression of the pace of the book: after some 90 pages on such seemingly disparate issues as the 17th century roots of British concepts of liberty, and the means and methods of repressing colonial insurrections and disobedience, chapter 3 begins on "The Protection of Individual Rights before 1939"; after 461 pages the Universal Declaration is adopted; at page 542 the story of the initial, abortive attempts to draft a UN Covenant on human rights, comes to an end, which virtually coincides with the moment that the ECHR was signed; the story of how the ECHR came about is told from pages 543 to 753, followed by a chapter on the negotiation of the First Protocol, in which some important loose ends, about which huge disagreement had arisen in negotiating the Convention itself, had to be ironed out; from page 808 onwards follow three chapters on the consequences of ratification of the Convention for Britain as a colonial power, in which the first two Cyprus cases, brought by Greece against the UK, are dealt with; a concluding chapter, entitled "Coming In, Rather Reluctantly, From the Cold", tells the story of the resistance to the right of individual petitions and accepting the power of the Court and how the final dismantling of the empire made it possible to accept it all and thus eventually made the incorporation of the main substantive provisions of the ECHR in the Human Rights Act at all possible.

The book makes it amply clear that the making of the Universal Declaration and that of the ECHR are closely linked. In a sense the book's title suggests a certain scope for the contents, but this turns out to be much wider. Predominant in the history of the making of these documents is the permanent tensions and struggling between the Foreign Office and the Colonial Office. Most striking is the fact that although the British played a major role in the making of both instruments, in practice this was dealt with mainly by fairly low-ranking

officials in the Foreign Office, certainly in the early stages of drawing up human rights instruments, particularly the Universal Declaration: and the policies set out during these early stages proved decisive for many of the policies to be followed regarding the ECHR's drafting. The role of the Home Office seems to have been negligible at least in the earlier stages, but as the author does not tire of pointing out, the real role of the Home Office cannot be described, because all evidence in its archives of human rights issues with which it must have been involved has been destroyed. The very late - mainly unhelpful - role of the Lord Chancellor in the bringing about of the ECHR is further witness of the fact that it was the civil servants at the Foreign Office who designed not only the policy in the negotiations but also the actual scheme of large parts of the ECHR. The Cabinet was only very rarely involved, as were ministers, as long as matters could be sorted out between the relevant officials within the ministries themselves.

Very many things on many different topics can be learned from this book. For instance, the story of the exile of the Kabaka of Buganda (1877-1884), which informed this reader of aspects of colonial policies in present day Uganda in the 1950s of which he was not aware. This story is told for its relevance under Article 5 of the ECHR and the policy of derogations - a matter to emerge to its full extent when the British wished to expel (and did expel) bishop Makarios from that one British colony in Europe which was governed in a most colonialist manner, but to which the ECHR was extended: Cyprus. The policy was that the human rights instruments had to be drafted in such a manner that they lived up to the high standards of legal draftmanship which prevailed in British legislative instruments. At the same time it was necessary that a resultant human rights instrument could also be extended to the colonies, as in fact they mostly were. (This, incidentally, meant that the ECHR was operative in very many countries in all parts of the world, where its operation soon lapsed again after those countries' independence.)

We also learn much about all kinds of persons involved in the process of negotiations and even more of those in preparing negotiations and instructions. One thing which happens in the course of the book is the fairly thorough demolition of René Cassin's acquired reputation as father of the Universal Declaration, a reputation which earned him the Nobel Peace Prize of 1968. That year's presentation speech calls him one of the two Declaration's architects - the other being Eleanor Roosevelt, who chaired, but Cassin being the one who drew up, "held a key position. He formulated, defined, and clarified. He was crystal clear in his formulations"(see <http://www.nobel.se/peace/laureates/1968/press.html>). Cassin's not being the father of the Declaration is spelled out in the many places in this book where he is mentioned (pp. 365, 420-422, 448, 459, 512, 516, 522, , 531, 615, 652, 657, 691, 1084). Nor is the picture sketched of Fernand Dehousse always very flattering. On the contrary, the important role played by Charles Malik (who was not under instructions from his government, like Cassin and Dehousse at least in the beginning of the negotiations of the Declaration) is confirmed.

Also in the sphere of legal doctrine things are to be learnt, particularly from the chapters on the Cyprus cases. Among many other things, they trace the origin of the doctrine of the margin of appreciation in the Strasbourg case law (pp. 1000-1003) in the first Cyprus case. In this case, although the doctrine did not have its name yet, it was used in the interpretation of the very strict language of Article 15 ECHR. One of the major conclusions is that, in hindsight, the European Commission on Human Rights's judgment on the derogation from Article 15 was more illiberal than the Colonial Office had been at the time. The author makes the case that here, just as on the issue of curfews on Cyprus, the majority of the Commission - unlike the Greek dissenter Evstathiades - was probably on the wrong track in their approach and assessment of the facts of the situation.

This big book lends itself better to reading than to summarizing. It is an exemplary study which calls for equivalent studies of the role of other countries and their policies in the drawing up of the documents dealt with by Brian Simpson. It makes one long for similar studies of the drawing up of other European documents. This kind of study may reveal the huge divergence between the original intent and contingent motives of those drawing up these documents and their eventual legal lives of their own.

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