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Human Rights in International Law: Legal and Policy Issues

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HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES. 2 Vols. Edited by Theodor Meron. Oxford: Clarendon Press, 1984. Pp. 566. \$79.90.

Reviewed by Daniel C. Turack*

With very little reflection, academics can think of many cogent reasons for teaching a course on international human rights, yet the subject has not entered the mainstream of university education. One reason for the subject's absence from the standard university curriculum has been the paucity of teaching materials and teaching tools such as casebooks and textbooks. Of late, these shortcomings have been remedied¹ and Professor Meron has admirably added to the sources available.

This book is comprised of thirteen chapters, each contributed by a different international lawyer specializing in the human rights field; it is organized into three distinct parts: "The Setting" (I), "Global Protection of Human Rights" (II), and "Regional Protection of Human Rights" (III). With the exception of the first chapter, which is more than an overview on the teaching of human rights, the format for each of the succeeding chapters shows the legal and policy considerations of the particular topic that forms the core of the book, teaching suggestions, a brief syllabus, a mini-syllabus, a bibliography and a mini-bibliography. Easily, the best review of the book's contents is to reproduce Professor Meron's introductory chapter. Aside from his summary, comments on each author's contribution, and purposes behind the book, the editor makes us aware of the status of human rights, the conflicts that exist with implementation and political realities, and possible pedagogical tactics that can

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1. The teaching of human rights has received an enormous boost from the availability of the following: R. LILICH & F. NEWMAN, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY* (1979); M. McDUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* (1980); L. HENKIN, *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* (1981); K. VASAK, *THE INTERNATIONAL DIMENSION OF HUMAN RIGHTS* (P. Alston ed. 1982); A. ROBERTSON, *HUMAN RIGHTS IN THE WORLD: AN INTRODUCTION TO THE STUDY OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (2d ed. 1982); T. FRANCK, *HUMAN RIGHTS IN THIRD WORLD PERSPECTIVE* (1982); P. SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* (1983).

be employed in teaching the subject. He makes us aware that this work does not embody the entire corpus juris of international human rights.

The second chapter, by Professor Louis Henkin, provides a comparative philosophical study of American constitutional and other rights with those in the international system. It is not a structured comparative study in fine detail. Rather, it compares United States and international human rights in spirit and jurisprudential perspective. He believes that to understand the international law of human rights, one must comprehend their relation to rights in a national system. Consequently, Henkin traces different notions of the concepts of rights and their place in United States national political theory, as well as the role of judicial review. Based upon the method adopted in this study, it is suggested that one might teach national and international human rights as comparative constitutional law.

The third and concluding chapter of this part, by Jerome J. Shestack, offers a theoretical framework for human rights. He examines the philosophical underpinnings of these rights and looks into the norm-making process creating them. He provides insight into the nature of human rights, their sources, and various approaches to the subject. In sum, his purpose is to introduce human rights and alert the reader to some of the principal issues in the area, with the hope of encouraging further intellectual exploration. His teaching suggestion is to raise philosophic issues throughout the course.

Part II, "Global Protection of Human Rights," commences with Professor Richard B. Lillich's investigation of civil rights following the pattern of articles 3-18 of the Universal Declaration of Human Rights, and its companion counterparts in the International Covenant on Civil and Political Rights. He does not create a comprehensive map of all civil rights, but rather emphasizes those rights which cannot be derogated under the Covenant. His approach is analytical rather than historical, and he stresses process over substance in his teaching suggestions. In chapter five, Professor John P. Humphrey stresses in historical context the development of political rights first enunciated in articles 18-21 of the Universal Declaration and their counterparts in The International Covenant on Civil and Political Rights. These are the freedoms of thought, conscience and reli-

gion, of peaceful assembly and association, of participation in the government of one's country, of equal access to public service, and the right of all peoples to self-determination. He looks at two approaches to teaching the subject: the "historical-structural" (dynamic) method and the "analytical-exegetical" (static) method, and outlines the pros and cons of each approach.

Professor David M. Trubek writes on the meaning, nature and protection of economic, social and cultural rights, which he treats collectively as "social welfare rights," in a Third World context. He delves into the effect of political and social vitality in shaping law, and the role of law in shaping political and social circumstances. His focus is also on the behavior of United Nations Specialized Agencies in the overall implementation system of these rights. He considers a process-oriented approach most beneficial in teaching the subject.

Francis Wolf, Legal Adviser in the International Labour Organization, (I.L.O.), uses his expertise with the activities of that body to analyze the functioning of national and international machinery for supervising the application of I.L.O. conventions. He concentrates on the various I.L.O. contentious and noncontentious procedures for investigating alleged violations and complaints.

Jack Greenberg brings the perspective of an American civil rights practitioner to the topic of "Race, Sex and Religious Discrimination in International Law," in chapter eight. His exposition highlights international instruments dealing with affirmative action, and provides an interesting insight as to how certain United States cases could have been resolved under relevant international instruments, rather than under statutes or the United States Constitution. He advocates the use of the case method as a means of teaching the subject. In a short ninth chapter, Professor Yoram Dinstein conveys the essence of human rights in armed conflict. Moreover, he outlines the interplay of human rights during peacetime and wartime, as well as the problems of enforceability and supervision. With respect to teaching this aspect of the subject, he finds it preferable to incorporate specific problems into the course relating to actual armed conflicts occurring at the time of teaching.

Professor Louis B. Sohn presents a survey of the progress and mechanisms for implementation and supervision of human

rights in the United Nations context. Some developments are still in inchoate form, such as resort to the good offices of the Secretary-General, fact-finding groups and use of independent experts. He is optimistic about the many constructive steps that the United Nations has at its disposal to promote and protect human rights. The contribution of various non-governmental organizations to the human rights cause is the subject of Professor David Weissbrodt's twelfth chapter. He describes the work techniques of non-governmental organizations and encourages students to become involved in their activities. Teaching suggestions include problems suitable for class discussion and role-playing.

Part III contains the final two chapters on regional protection of human rights. The two distinct legal sources comprising the inter-American system are discussed by Judge Thomas Buergenthal. He describes the manner in which the regimes under the American Convention on Human Rights and the Charter of the Organization of American States evolved, their practice, and how they interact. The role of country studies, on-site inspections and individual communications is emphasized. Judge Buergenthal suggests that it would be best to teach students about this regional system by discussing and comparing it with the European system.

Professor Rosalyn Higgins contributes the final chapter, which deals with the system developed under the European Convention on Human Rights. She begins with a brief discussion of the conceptual issues, to show where human rights jurisprudence is rooted, then moves into the Convention's implementation machinery and its operation. The final component for understanding the European Convention in action is seen in her detailed discussion of case studies on some specific rights, such as freedom from torture. She believes that the case method could be best used to teach the subject.

While the legal and political considerations do not purport to offer an exhaustive analysis of any of the topics, they do reflect an extensive and diverse range of legal, political, and social issues. The teaching suggestions offer a broad spectrum of approaches. The substantive scope of each chapter is not mutually exclusive with the rest. Authors make cross-references and allude to the considerations of other authors in this work. Profes-

sor Lillich, for example, in his discussion of Civil Rights under the International Covenant, consistently refers to the American and European Conventions. Mini-syllabi and mini-reading lists are included along with their expanded counterparts for teachers who cannot devote an entire course or seminar to human rights in general or to a given area. The mini-bibliography is not always a shorter version of references contained in the bibliography, as shown in Professor Humphrey's chapter.

The structure, content and diversity of teaching suggestions demonstrates that the book is particularly well-suited for teaching human rights to students at least on the graduate and law school levels. It could be used, with more introductory materials, at the undergraduate level. Professor Meron and his co-authors have gone the extra distance to help in the cross-fertilization between law and the other social sciences.

