

~~overview of the subject matter being treated. Each essay is also very well written with valid arguments supported by a good number of references.~~

Mainly Human Rights:

Studies in Honour of

J.J. Cremona,

Busutil, Salvino (ed.), 320 pp.

Malta: Fondation Internationale
Malte 1999.

DAVID E ZAMMIT

The sheer diversity of the contributions to this *Festschrift* reflects the versatile character of the man it honours. Drafter of Malta's Independence Constitution, internationally acclaimed scholar, Chief Justice and Vice President of the European Court of Human Rights as well as Chairman of CERD at the United Nations; these are only some of the roles John Cremona has occupied in the course of his long and distinguished career. In this volume, several of his international colleagues have collaborated to produce a high-powered scholarly work, which is a fitting tribute to one of the great Maltese jurists of the twentieth century. In it a European colleague also refers to

him as "one of the great Strasbourg judges." It comprises twenty-four papers, in English and French, addressing various legal issues. These are 'mainly human rights', but also deal with such matters as the role of the jury system, constitutional drafting, the relationship between international and municipal legal systems, environmental law and legal philosophy.

John Cremona's international reputation is indelibly linked to the European Court of Human Rights (henceforth: 'the Court'); on which he served as a judge for twenty-seven years and to which he was twice elected to the post of Vice-President. These were the years in which the Court evolved from a hazy political ideal, into what is generally regarded as the most effective international organ for the enforcement of human rights standards. Consequently, it is appropriate that most of the papers in this volume relate to this court or to the European Convention on Human Rights (ECHR) under which it was established. They are a uniquely authoritative guide, the contributors' names reading like a 'Who's Who' of judges and other personalities associated with the Court. One advantage of having contributions from 'insiders' is

that they provide rare insights into the informal working practices of institutions. Thus the paper by Rudolf Bernhardt – a former Court president – explores the role of comparative law research in the Court's deliberations. He shows how its interpretative activity leads it to explore and contrast different legal systems and argues that there is a need for more comparative legal research when applying the European Convention.

The experience possessed by the authors equips them to give comprehensive and historically grounded accounts of the control organs established under the Convention, the nature of the Court's jurisdiction and the various special procedures involved, such as the inter-state application contemplated under article 24 of the Convention. Particularly noteworthy is the paper by Carlo Russo, a former minister in Italy and judge of the Court, which examines the drafting history of the European Convention. Russo, who participated in many of the events he describes, provides a fascinating account of the tortuous political processes of consensus building, conflict and compromise, which accompanied the drafting of the Convention. His account illustrates the ability

of legal history to reveal the contingent and negotiated character of legal texts. Rolv Ryssdal, a former President of the Court, also highlights the evolution in the Court's role and caseload over the past few decades. This has enhanced the importance of its judgements within the domestic legal systems of state parties to the Convention, creating tensions between national and international law, addressed in other papers.

Various contributors review the Court's case law. Most of them focus on cases invoking Article 6 of the Convention, which contains the basic procedural guarantees of a fair trial in civil and criminal proceedings. Thus one author seeks to investigate that 'unreasonable delay', pending the delivery of the final judgement in a trial, which constitutes a violation of the Convention. In addition, through a rigorously argued and intellectually stimulating analysis, former Commission President Stefan Trechsel seeks to define the precise scope of the right of the person accused of a criminal offence to be informed of the nature of the accusation levelled against him. Finally there are two papers which explore the guarantees of judicial in-

dependence and impartiality during a trial. One of these is co-authored by Alphonse Spielmann, a former judge of the Court. He tackles Article 6 from the perspective of the judgements of the courts of Luxembourg, given that Luxembourg applies Monist doctrines of international law. The other paper is contributed by Claudio Zanghi and is an original analysis of the extent to which the structure of the new Single European Court of Human Rights itself conforms to the requirements of Article 6. He concludes that in fact it does not, since in his view, the requirement of judicial impartiality is not strictly observed in the composition of the Court.

It is no coincidence that so much scholarly attention is paid to Article 6, since it is one of the most frequently invoked legal provisions before the Court. However this concern with the minutiae of due process also indicates how streamlined and comprehensive the judicial protection afforded by the Convention has become, belying complaints about the vague and programmatic character of human rights norms. One of the strengths of this book is that it allows the reader to assess the progress achieved under this court by examining the experience of comparable

institutions. Thus other papers focus on the Committee on the Elimination of Racial Discrimination (CERD) established under the International Convention for the Elimination of Racial Discrimination (ICERD). Michael Banton, who like John Cremona himself is a former chairman of this committee, reviews its performance. An interesting feature of ICERD is that, like the European Convention, it grants individuals a right of direct petition to the Committee. Yet Manfred Nowak opines that this is a 'forgotten procedure', relating this neglect to the lack of test cases in which the Committee would have pronounced bold judgements sanctioning particular respondent governments. The effectiveness of the system set up under the ECHR is further underlined by contributions which examine the functioning of the EFTA court and outline the American regional system for human rights protection.

These comparisons indicate that international human rights enforcement is heavily dependent on such extra-legal factors as political will and the level of socio-economic development. This might lead some to assert the relative unimportance of legal texts and institutions. Strangely enough, this stand is most strongly refuted by the

contributor who is most critical of the level of compliance with human rights charters. I am referring to R.W. Rideout's brilliant analysis of the subtle manoeuvres through which international labour standards have been undermined in the United Kingdom, substantially reducing the effective protection given to basic political rights. He shows how this attack on labour standards was facilitated by the way in which these standards were given legal effect in the U.K. Thus, for instance, a fundamental freedom to strike was never unequivocally affirmed within the British legal system, which opted instead to grant strikers a legal immunity from prosecution. This made it easier to attack the protection given to strikers on the grounds that it is an unjustified privilege, which distorts the operation of the free market. Similarly he argues that the division between civil/political rights and socio-economic ones has transformed rights of the former category into empty statements devoid of real social and economic significance. Instead he insists that the interdependence of these two categories of rights should be acknowledged. It is better to have carefully drafted legislation protecting both sets of rights, while permitting clearly defined

exemptions on economic grounds, than to have charters of basic principles, which are irrelevant in practice.

Rideout's paper has been discussed at some length because it raises important issues. Firstly, it is clear that attacks on human rights are nowadays as likely to come from neo-conservatives as from radical Marxists. Secondly, he shows how the wording of legal texts can have a very profound effect on the level of protection given to human rights. Finally, he makes a strong case for acknowledging the interdependence of different classes of human rights. Other contributors echo these points. Thus, Alexandre Kiss argues that environmental rights should be incorporated into the system of protection of human rights. Similarly, Nicolas Valticos, another former judge of the European Court of Human Rights, makes the abolition of the distinction between civil and social rights the centrepiece of a thoughtful article on the need to re-write existing rights charters to cater for current global realities.

One aspect of the contemporary situation is the globalisation of human rights consciousness. The effects of this type of globalisation are stressed in the paper by Kader Asmal, a

Cabinet Minister in South Africa and one of the drafters of the first post-apartheid Constitution in that country. He describes the constitution-making process in detail, showing how the different characteristics of this interim constitution reflect compromises between different political groupings and highlighting the role of international concern in spurring this process. This implies that we are moving towards a world where a broader conception of the role of human rights and a growing international preoccupation with them increasingly affects the policies of national governments. These changes will require a new type of legal scholarship, which is both empirically informed and theoretically rich. This is the main conclusion reached by Andrew Phang, in a paper which explores the rationale of the jury system. Phang's approach is deeply analytical. He mercilessly exposes the conceptual contradictions involved in maintaining a belief in jury equity while upholding the distinction between fact and law. Displaying a wide familiarity with various schools of jurisprudence, he successively considers and demolishes different justifications for the jury system, finally concluding that it is impossible, on purely theoretical

grounds, to justify the retention or abolition of this institution. Instead he places his faith in empirical research into local cultural contexts, stressing that while the jury system is disliked in many Eastern countries, John Cremona himself observed that it enjoys broad support in Malta.

Many of the contributions to this volume also suffer from a lack of attention to cultural context and a neglect of empirical research. Other deficiencies, relatively minor in nature, relate not so much to the content of the contributions as to the way in which they are presented. One problem is that there is little effort to bring out the overlaps and connections between the different papers. This could have been achieved by dividing the book into sections and classifying related papers in the same section. Alternatively, an editorial introduction at the beginning could have discussed the various papers and tried to contextualise them. However, contributions to such *Festschriften* are normally disposed in alphabetic order, and in any case this should not be allowed to obscure the substantial merits of this publication. This is one of the few local publications which can confidently be expected to attract an international audience.