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International Commission of Jurists: The Rule of Law in a Free Society: a Report on the International Congress of Jurists

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THE RULE OF LAW IN A FREE SOCIETY: A Report on the International Congress of Jurists. Geneva, Switzerland: International Commission of Jurists, 1960. Pp. xi, 340. \$2.00.

This volume surveys the activities of the International Commission of Jurists through its second International Congress, held in New Delhi, January 5-10, 1959. Organized in 1952 by an international congress of jurists meeting in West Berlin to consider the alleged deprivation of human rights in East Germany and other eastern European countries, the Commission through its permanent Secretariat in Geneva serves as a sort of watchdog and publicist of the legal traditions of the West. While a number of its activities have related directly to events in the Cold War (the 1957 Conference on Hungary and the more recent report on Tibet prepared by a Committee under the chairmanship of Mr. Purshattam Trikamdas, an outstanding Indian lawyer), it has also investigated and published reports on such critical events in the non-Communist nations as the South African Treason Trial. The Commission is not a mass-membership organization; the number of members is limited by its statute to twenty-five. In twenty-six countries, however, national sections have been organized to cooperate in its work. Although there is an American section and the American Bar Association has established a committee to cooperate with the Commission, the purposes and activities of the Commission appear to be little known among American lawyers.

The theme of the Commission's work is advancement throughout the world of the Rule of Law. The thrust of this much used and perhaps abused term began to emerge in the Act of Athens of 1955 (p. 2 of this volume). The jurists assembled under the auspices of the Commission declared there that the Rule of Law "springs from the rights of the indi-

vidual developed through history in the age-old struggle of mankind for freedom," which rights include freedom of speech, press, worship, assembly, association, and the right to free elections. Those devoted to a greater conceptual precision might with reason complain about this formulation. The "Rule of Law" is derivative from certain human rights, but these rights are themselves the product of historical struggles for freedom, which in certain societies presumably eventuated in legal recognition and protection. One might ask what status these "rights" enjoyed before the struggle was won. If they became "rights" only by legal recognition, the Rule of Law which springs from them becomes only a descriptive cliché for a certain pattern of legal enactments, rather than a norm demanding such enactments.

The Act of Athens did not pause over such niceties. Under the banner of the Rule of Law, the act declares that "the State is subject to the law," that governments should respect and enforce individual rights, that judges, resisting encroachments on their independence, should be guided by the Rule of Law, and that lawyers should preserve their professional independence, assert individual rights under the Rule of Law and insist on a fair trial for every accused. This view of the Rule of Law is fairly familiar. Grounded on a rather fuzzy natural law persuasion, it emphasizes the recurrent tension between individual interests and governmental action and seeks to rally an independent judiciary and bar to erect safeguards around some of these interests. Its import is negative in the sense that government is viewed as the enemy and its restraint the objective.

The present volume concentrates on deliberations of the Congress in New Delhi which sought to refine and elaborate the Rule of Law concept. The central document is a Working Paper (pp. 187-321) prepared by Mr. Norman Marsh, then the Secretary-General of the Commission. The scholarship reflected in this Paper, its objectivity and balance make it an important contribution to legal and political philosophy. After the Athens Congress, Mr. Marsh prepared a questionnaire on a number of significant aspects of the legal order (pp. 183-186) and solicited answers from leading jurists in many countries. Following in the main the outlines of the questionnaire, Mr. Marsh and his consultants prepared the Working Paper under four headings: The Legislative and the Rule of Law, the Executive and the Rule of Law, the Criminal Process and the Rule of Law, and the Judiciary and Legal Profession under the Rule of Law. Each of these principal topics was assigned to one of the deliberative committees at Delhi. A summary of the discussion in each committee is included in the book, and a remarkable amount of the spark these discussions doubtless had is preserved.

The Working Paper organizes and presents much of the information on various legal systems elicited by the questionnaire. While Britain, the United States, France and Germany are emphasized, there are numerous references to the law of the Soviet Union, as well as of India and other nations that have achieved independence in recent years. Under each major

heading a number of conclusions are suggested as the basis for discussion. In general these were accepted by the jurists at New Delhi.

A brief review cannot do justice to the wide-ranging content of the Working Paper, but a few brief comments may suggest the extent to which reflection on the nature of the Rule of Law matured between the Act of Athens and the Declaration of Delhi which emerged from the discussions of the Working Paper. In short, the Rule of Law is now taken as "a convenient term to summarize a combination on the one hand of certain fundamental ideals concerning the purposes of organized society and on the other of practical experience in terms of legal institutions, procedures and traditions, by which these ideals may be given effect." Implicit in this definition are two aspects: (1) certain value acceptances or assumptions concerning man and his place in and relation to society; (2) various procedural devices by which these value acceptances are implemented. Thus, a scheme of critical values or ideals is placed in the center of the stage. The focal point is the recognition of "the supreme value of human personality and . . . [the conception] of all social institutions, and in particular the State, as the servants rather than the masters of [the] individuals." It is worth noting that no validation of this value structure other than the fact of its widespread acceptance is offered. In discussing the procedural devices which translate the value acceptances into practical effects, Mr. Marsh shows a laudable lack of dogmatism. The approach is pragmatic; certain described institutions have in experience shown themselves to be useful. But not all credit is given to specifically legal techniques, and there is a pervasive recognition that no collection of techniques can preserve the essential values in a society that no longer esteems them highly.

The Working Paper, discussions in the committees, and the final Declaration of Delhi reflect one highly significant development in thought about the Rule of Law. In the words of the Declaration, the Rule of Law is "a dynamic concept . . . which should be employed . . . to establish social, economic, educational and cultural conditions under which [the individual's] legitimate aspirations and dignity may be realized. . . ." Thus organized political power is no longer merely "the enemy" to be controlled in the interest of individual freedom; it has become the active instrument of social progress, economic development and cultural enlightenment.

This new affirmative aspect of the Rule of Law could not fail to emerge in a conference meeting in India, attended by numerous jurists from the new nations where the urge for rapid development is acute. Protection of the classical fundamental rights of man does not fill empty bellies, forestall the ravages of disease, or mobilize for effective action the "revolution of expectations" in Africa, Asia and Latin America. Insistent demand for positive governmental action to further individual and social welfare is not indeed confined to the new, "under-developed" nations. It characterizes our era and poses the persistent dilemma which the New Delhi discussions

and resolutions so clearly reflect: how can governmental activism in a complex society be reconciled with traditional interests in individual freedom and self-determination?

The concept of the Rule of Law developed in this volume is not the magic formula for effecting that reconciliation nor does it pretend to be. Perplexing conflicts of legitimate claims will continue to harass thoughtful and concerned legislators, executives, judges, and lawyers. If the Rule of Law is a dynamic concept calling for the creation of social conditions conducive to the aspirations and dignity of man, lawyers and judges can no longer pretend to be its only champions against hostile legislators and executives. Each of these must seek a viable balance of interests in the light of the tradition, value structure and expectations of society. This breadth of view characterized the thinking at New Delhi, although primary emphasis was kept on the essentially negative, restraining aspects of the Rule of Law. Despite this dual affirmation, it must remain an open question whether the individualistic value structure of the West can be established or preserved in awakening societies where dynamic initiative responding to the clamor for rapid social and economic change can realistically be expected only from strong government. For a thoughtful contribution to those concerned about this question, a large debt of gratitude is owed the International Commission of Jurists and Norman Marsh, in particular.

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