

WORLD HABEAS CORPUS. By Luis Kutner. [New York: Oceana. 1962. 289 pp. U.S. \$7.50.]

YEARBOOK ON HUMAN RIGHTS FOR 1959. [New York: United Nations; London: H.M.S.O. 1961. iv + 395 pp. 35s. 6d. U.S.\$5.]

RECLAIMING THE NAZI LOOT. By C. I. Kapralik. [London: Jewish Trust Corporation. 1962. xvi + 199 pp. 17s. 6d.]

Whenever a newly-independent State resorts to measures of preventive detention, many people, and at times even the International Commission of Jurists, give the impression that the denial of the right of *habeas corpus* is equivalent to a complete denial of human rights and the virtual breakdown of democracy and the rule of law. Thus, in his introduction to *World Habeas Corpus* Quincy Wright, brought up in the security of the common law and the United States Constitution with its guarantee of due process, contends that “arrest and detention without due process of law is . . . an abuse which threatens all other human rights.”

Mr. Kutner bases his book on the premise that ‘World Man’ is “the beneficiary of just humanity and of divine human worth . . . [whose] existence is founded on a fundamental identification of reason with law and that all of his grievances, be they imaginary or real — shall have a forum of due process of law to air out such grievances.” To this end, he envisages *World Habeas Corpus* as a “competent international legal institution to guarantee and protect individual security, enjoy the adventure of compassion of translating man’s national right and gift of freedom into an authoritative rule of law. World concern, resolved in world collective responsibility, must permit the whole man to seek and achieve his maximum personal development without arbitrary invasion or detention. That must be the inevitable goal of a sensible and surviving free world.”

Mr. Kutner sees the guarantee of this free world in the evolution of international due process of law, which he paraphrases as “accepted international standards of fair play.” He therefore favours the establishment of International Courts of *Habeas Corpus* on a regional basis as keepers of the world’s conscience and the world’s properties, that is to say vested property assets of private individuals. In this connection, he is of opinion — and it would be interesting to know whether Quincy Wright shares it — that the United Nations Charter “finally established the individual as a true subject of International Law, possessed of substantive legal rights outside the scope of the national State.”

As a practical lawyer, Mr. Kutner is aware of the need for remedies as well as rights. He recognizes that a World Bill of Human Rights is not now feasible and suggests that concentrated efforts be made to guarantee by international action "the right to physical security of individuals which is precedent to all others." He proposes, therefore, the enactment of *World-Wide Habeas Corpus* to protect the Right to Individual Security, to be enforced by regional courts established by the "accession by all countries of the world to an International Treaty Statute, *freely adopted by the sovereign nations of the World*" (italics added).

It is submitted, with respect, that it is on this basic matter that Mr. Kutner's proposals fall to the ground and are no more likely of adoption than any other proposal in the field of human rights. If all countries were prepared to adhere freely to the sort of treaty that is envisaged here, there would be little need for any special guarantee of *habeas corpus*, for there would almost certainly be equal willingness to accept a general treaty on human rights.

That the problem of human rights is wider than the guarantee of *habeas corpus* is clear from the Universal Declaration of Human Rights, and the Human Rights Division of the United Nations reiterates this annually with its *Yearbook on Human Rights*. The volume for 1959 contains summaries concerning the development of human rights in their territories submitted to the Division by 89 countries, including Congo — Brazzaville, but not Leopoldville, Byelorussia, China — Formosa, giving the text of the Protective Custody Regulations; Germany — Federal, but not People's Republic; San Marino; Ukraine; and the Union of South Africa — a number of amendments to the Criminal Law Procedure Act, the overall effect of which was further to emphasise the virtually complete denial of human rights in that State. The contribution from the Federation of Malaya records the fact that Federation citizens have been exempted from the Banishment Ordinance, and that the Trade Unions Ordinance deals with the registration and rights of unions.

In addition to the national reports, the *Yearbook for 1959* contains material relating to trust and non-self-governing territories. There is nothing concerning Singapore, and it is interesting to note that Great Britain has, as an administering Power, submitted a report on Northern Rhodesia, while the Federation of Rhodesia and Nyasaland has submitted its own report as a separate State. Finally, there is reference to the work of the International Labour Organization, primarily concerning the welfare of fishermen.

Perhaps the most glaring example of the complete denial of all human rights in recent times arose from the enforcement of Nazi Germany's "final solution" of the Jewish question. The Federal Republic of Germany has, however, tried to make some reparation and recognize the legal existence of some of the rights which were infringed. In addition to signing a Reparations Agreement with Israel, the Federal Government also undertook certain obligations towards private individuals represented by various Jewish organizations of a charitable and welfare character.

Dr. Kapralik's *Reclaiming the Nazi Loot* provides an account of the role played by the (British) Jewish Trust Corporation for Germany Ltd. in this field — by December 1961 £12,750,000 had been recovered in the British Zone alone. It was not only

private property and funds that were recovered, for during the Nazi regime Jewish communal properties were also seized. This book shows how — by application of something in the nature of a *cy-près* doctrine — it became possible to preserve the purpose of extinct foundations by way of old age homes in various parts of the world, as well as by providing communal halls and houses for immigrants in Israel. From the point of view of Malaya and Singapore, perhaps the book will prove most useful as an encouragement and guide to the various organizations which are concerned with seeking reparations from Japan in respect of the Chinese war dead (see 28 *Malayan Law Journal* 1962, p. xlviii).

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