to make comparisons between his earlier and later work and certainly there is an attempt to portray this with the pieces being, mostly, arranged chronologically within the sections.

In terms of the choice of articles for each section, some are less logical than others. A glance at the bibliography, which is usefully provided, raises the question as to why certain pieces were not included, for example, in the section on *Racial Discrimination and Freedom of Religion*. Similarly, some of the contributions to the *Miscellaneous* section could arguably have been better placed elsewhere.

Despite these concerns, in general the manner in which the sections have been arranged and the breadth of material covered does result in a book which provides an overview of human rights law. The question is, to whom would this book be of interest. The authors state in their preface that they have chosen the particular pieces for two reasons, being those 'dearest to his heart', or those which would be 'most worthwhile for the reader'. Certainly, this is an innovative way of producing a general academic reference on international human rights. In this sense one might argue that it could be a possible choice as a starting text for postgraduate courses on human rights. The only difficulty with promoting this wider readership and regular use is its rather prohibitive price. At £107 many lecturers would not feel able to recommend purchase by their students, particularly when the chapters have been published elsewhere. Those, however, who are interested in obtaining a general indication of the development of human rights law, which touches upon many of the issues relevant to the study of human rights from the perspective of an individual eminent in the field, will find this work a welcome addition.

RACHEL MURRAY

Building the Rule of Law: Francis Nyalali and the Road to Judicial Independence in Africa. By JENNIFER A. WIDNER. [W.W. Norton & Company: London. 2001. xxii + 454 pp. ISBN 0–393–05037–8. £24.00 (H\bk).]

'BUILDING' presupposes deliberate and purposive action targeted at achieving particular outcomes. It implies a process of careful selection and application of particular resources and particular energies at the builder's disposal. At best it is a positive energy filled constructive activity. At worst, it is energy and resource depleting. Thus, the title of Widner's book, 'Building the Rule of Law' is an enigmatic choice that induces a sense of desirability of both its purpose and the process that it describes. 'Building the rule of law' as a process is promissory in nature. Any community that engages that task assumedly purchases for itself a most desirable tool of social control—the law. But exciting as the promise may be, it is problematic for two reasons. First, the law is anything but neutral. It is constantly selecting and rejecting practices, constantly privileging and subordinating positions in a society. That in turn may affect whether or not people generally will make use of the courts. Secondly, it inspires a hope that is predicated on an abstract notion. The phrase 'rule of law' is itself a descriptive term of art and not a legal concept. Therefore, it is subject to interpretation. For Aristotle it signified 'the rule of reason'. That view has since been rejected, and substituted by the one that regards the rule of law as presence in a community of institutions that control and prevent abuse of public authority, usually summed up in the term 'separation of powers'. Therefore, as its title suggests, Widner's book examines allocation and distribution of public authority in post-independent African traditions, focusing particularly on the relationship between the executive and the judiciary as the defining test of whether the rule of law has been established. It evaluates the progress that has so far been made in the project of building the rule of law.

Clarity and concise discussion of the issues coupled with a thorough knowledge of the subject make Widner's contribution to anthropology of modern African jurisprudence a compulsory read for students and scholars of African law. The book examines processes and forces that facilitated the emergence in Africa of common law notions of rule of law common to western democracies. The author's mission is to discover the circumstances that enabled courts in some African countries to gain greater independence from presidents and legislatures, while in others they were

undermined by partisan political influence. The book divides into three main parts. The first chapters set the context. The middle chapters examine the distribution of public authority and the creative application of that authority by judges in southern Africa to heighten judicial independence. The final chapters examine the challenges that still face southern African countries in their effort to entrench the rule of law in their respective countries.

Widner premises the rule of law on the doctrine of separation of powers. Application of this doctrine enables judicial independence and impartiality of the courts—the twin posts of her thesis on what constitutes the rule of law. Without being overly apologetic about judicial sustenance of successive colonial administrations in the region, the author examines how institutions and processes of government created after independence fared in the effort to establish the rule of law. This period is important for Widner because political independence implied also 'new beginnings' that required sanctification of old institutions of the State that had been associated with oppression and injustice. The author argues that economic, social and political factors combined to create conditions that privileged progressive resort to the law by all sectors. This faith in the law was not wasted by lawyers who saw this as an opportunity to set the ground rules both in their own courts and at commonwealth and international conferences. Widner argues that this dynamic prioritised on the agenda of African lawyers' concerns that the law should be predictable and public; that due process should be guaranteed; and that principles of natural justice should characterise judicial activity. Judicial independence was the matrix on which these tenets could be actualised.

Widner argues that for its efficacy, judicial independence depends on a simultaneous provision of financial resources and a sufficiently qualified and efficient human resource base. Where courts lacked money to publish important decisions, the law was hard for magistrates, judges, and litigants to know. In some instances, the statutes themselves were unavailable too. Because judges and magistrates in different courts applied different rules, equal treatment before the law was compromised. Consequently, it was not possible to say whether differences in judicial decisions pointed to exercise of political pressure on judges, lack of legal literature or to differences in the facts. More threatening perhaps were situations where uneven distribution of the human resource base meant that State organs employed the less qualified, less well paid and less enthusiastic public prosecutors while defence attorneys were better qualified, more highly paid and very enthusiastic. Often, the police and the state prosecutors failed to mount successful prosecutions and the populace failed to see any link between common law processes and their customary one. The temptation grew stronger to retaliate, to pressure a magistrate or to use customary procedures. Magistrates and judges agonised over the difficulties created when the community interest was poorly represented by public prosecutors, and they themselves could not in common law systems help litigants argue their case in adversarial proceedings. But progress in the development of the rule of law was hampered sometimes by deep legal pluralism. Customary and religious laws, State law, and international law coexisted alongside one another. This pluralism threatened appropriation by the people as their own, the common law tradition that was encumbered also by lack of human and financial resources required to ensure efficacy and credibility of the law. Through Chief Justice Nyalali's experience, Widner points to a variety of solutions to some of these problems. These include continuous assessment of local practice of the courts, on-going comparative analysis of other jurisdictions' practice and borrowing of good practice from other jurisdictions.

In spite of these and other difficulties demand for the courts flourished. The author argues that national and international processes played a pivotal rule. Tendencies to legalise opposition parties, necessities of economic liberalisation and work of non-governmental and inter-governmental organisations made clear the need of a non-partisan independent judiciary. The author observes that the result was that by the mid-1980s and mid-1990s there were abundant signs of success of the building project. Surveys and other tests of opinion on the rule of law in Tanzania, Botswana, Uganda Malawi, Kenya and Zimbabwe are referred to. Agendas of leading reformists on the continent are analysed alongside the challenges that they had to deal with. The writer does not pretend that problems do not exist that if allowed to develop further can pull back gains made in the effort to create the rule of law in southern Africa. The last six chapters of the book warn of these challenges and hold out hope that these can be overcome. In this sense the book is both posi-

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tive and forward-looking. It is an invaluable encyclopedia on legal culture of southern Africa and on the emergence in the sub-region of the rule of law. More importantly, it is a book about how judges as visionaries of their social orders, political actors, as academics, as social models, as public relations agents of their profession, and as social engineers, bring the executive and legislature, the people they serve, and the international community into agreement with the judicial institution that they create under limited licence of government. This is a very comprehensive book on institution building in more than difficult circumstances. The comprehensive thirty-page bibliography is most useful. So too is the list of government documents and glossary of foreign terms and specialised vocabulary.

BEN CHIGARA

Just War or Just Peace? Humanitarian Intervention and International Law, SIMON CHESTERMAN. [Oxford: Oxford University Press. 2001. xxviii + 295 pp. ISBN 0–19–924337–9. £40.]

SIMON CHESTERMAN's book provides a useful analysis of the complex and controversial subject of humanitarian intervention in international law. Divided into six substantive chapters, the book presents a comprehensive survey of both the theory and practice of humanitarian intervention. In Chapter 1, after a careful historical examination of State practices, Chesterman convincingly advances the position that prior to 1945 'few (if any) bona fide examples of humanitarian intervention can be discerned' (p. 42). Chapters 2 and 3 consider the status of the humanitarian intervention after the adoption of the United Nations Charter (1945). Article 2(4) of the Charter prohibits the use of force subject to the exceptions of self-defence and the authorisation of enforcement action by the Security Council. While the law regarding the prohibition on the use of force may appear straightforward, as Chesterman correctly explains, the State practices have been inconsistent and contradictory. During the 'cold-war' years, amidst the paralysis that prevented the United Nations Security Council from operating effectively, arguments were raised in favour of accepting humanitarian intervention as legitimate exception to Article 2(4). Chesterman, however, is able to counter these arguments both through a detailed scrutiny of Article 2(4) provisions and through a survey of State practices.

The most significant contribution of the book to existing legal literature is contained in its analysis of the role of Security Council in the post 'cold-war' period. The ending of the 'cold-war' and the thaw in East-West relations had led to expectations that the Security Council would deal effectively not only with threats of international peace and security, but a wider interpretation of its enforcement powers under Chapter VII of the UN Charter would also allow it to authorise force to prevent gross violations of human rights. These expectations and hopes, as Chesterman elaborates in Chapters 4–6 (pp. 112–236), were largely misplaced. An interventionist approach was adopted only when it suited the political interests of the permanent members of the Security Council. The cynicism with which Chesterman views the military interventions conducted by States or by regional organisations under the apparent authorisation of the Security Council is realistic and sobering. He points out that 'the plasticity of the Council's mandate to take enforcement actions appears reducible primarily to the political will of those states prepared to act. The danger, here, is that subjecting such an ostensibly legal process to the fickle winds of the political climate diminishes the normative power of international law. It is precisely the aim of an international rule of law to restrain the arbitrary use of power'. (p. 161). As a realistic portrayal of the limitations of international law, there is much to be commended in the present book. On the other hand, the study lacks in proposing policies *lex ferenda* for the effective protection of fundamental human rights—a feature possibly presenting its most significant weakness. Having said that, the work as a whole should prove to be a welcome addition to the contemporary debate on the subject; the book will appeal to international lawyers, political scientists and to other inquisitive readers.

JAVAID REHMAN

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