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Book Reviews

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Evidence Before International Tribunals (Revised Edition)

Durward V. Sandifer; University Press of Virginia, Charlottesville, Va. 1976.
xiv and 519 pp. \$27.50.

Reviewed by ALWYN V. FREEMAN

When the first edition of Sandifer's treatise appeared in 1939 it won quick recognition as an outstanding contribution to the literature of international claims law. Until that time, government agents and claimants' counsel had experienced considerable difficulty in determining just what the practice of international tribunals was with respect to the production and admissibility of evidence before international fora. During the ensuing decades it has remained the one indispensable guide to that practice. It has been of particular value to the Anglo-Saxon lawyer accustomed to following technical rules of evidence with its various hearsay restrictions and exceptions, but of almost equal worth to practitioners in civil law countries whose principles are less alien to the international jurist. As Judge Jessup points out in his perceptive introduction to this volume, international judicial procedures reflect more of the civil law influence with respect to the extent of the judge's functions in the court room than that of the common law.

Post World War II claims proceedings and the work of the International Court of Justice, unfortunately circumscribed though it has been, demanded that the work be made more current; and this is what Mr. Sandifer has successfully accomplished. He has re-evaluated and restated the law and practice of international claims commissions, as well as of such national commissions as the United States Foreign Claims Settlement Commission. His fidelity in this objective has impelled him to cover not only published materials, but manuscript records in the Department of State and in the National Archives. The assignment has been deftly handled, with a lucid felicity of expression that converts what is frequently regarded as a tedious exercise into a readable and enjoyable exegesis.

The evolution of the ICJ's own practice in various evidentiary areas is appropriately noted. Among other instances, Mr. Sandifer cites the contrast between the old Permanent Court's attitude (in the case of *German-Interests in Silesia*) and the ICJ's approach in *Corfu Channel*, with respect to the taking of oral testimony from witnesses before the Court. And although the PCIJ (in the *Diversion of Waters from the Meuse*) did conduct an investigation of the facts by a visit to the place in issue (*descente sur les lieux*), the ICJ (in *Corfu Channel*) instead of making a local inspection of the area directed experts to view the situs and submit their report to the Court.

The revised edition retains the same formal subdivisions as the original, with its chapter headings on the nature and sources of the rules of evidence, order and time of submission, production and admission of documentary evidence, authentication and translation, testimonial evidence, admissibility and evaluation, judicial notice, and rehearings based upon newly discovered or fraudulent evidence. The treatment has been expanded, old interstices filled in with much recent material, and three new sub-sections added, on the burden of proof before the ICJ as compared to the Permanent Court; ICJ practice on the use of experts; and newly discovered evidence, in the United States Foreign Claims Settlement Commission.

Because the work offers so much, this reviewer admits to some diffidence in calling attention to what in his judgment is, for a definitive work, a bewildering omission by the author. Apart from a passing quotation from a secondary source (Bishop's *Cases*) on the mass of documentary evidence submitted in the Nuremburg Major War Criminals trial, there is not a single reference in the volume to the extensive consideration of rules of evidence in the Law Reports of Trials of War Criminals after World War II (selected and prepared by the United Nations War Crimes Commission). Nor is there any mention of those source materials in the 25 page bibliography (a most useful compilation) appended to the volume, or to any of the literature in the United States and abroad on the work of the war crimes tribunals in Germany and Japan.

These secondary strictures notwithstanding, the legal profession is profoundly in Mr. Sandifer's debt for having presented us with a work of exceptional quality and thoroughness, which will substantially lighten the labors of scholars and practitioners in what otherwise would surely be an elusive, time-consuming chore.

The King's Parliament of England

George O. Sayles; W.W. Norton & Company, Inc., New York, 1974, 164 pages, \$7.95.

Reviewed by STEVE HUGHES

This is the seventh book in the Norton series on the history of England. Although short, it contains an extensive amount of information, much of it—according to Professor Sayles—that has never before been in print.

Professor Sayles makes the point early that most history books merely copy older history books, which generally contain inaccuracies because, by an inversion of history and a great deal of egotism, historians make our ancestors speak our language, conduct themselves by our standards, and pursue our ends. He has attempted to rid us of this festering by presenting his own enlightening ideas or views.

Chapter two deals with the early development of the *commune consilium* and *parliamentum*. The author reminds the reader that at that time (the 1100s), the kings of England were not Englishmen; they were Frenchmen. Government had the problem of ruling in *absentia*. The king had to rule Normandy while he was in England; he had to rule England while he was in Normandy.

In 1204 King John lost Normandy and irretrievably changed the entire basis of government administration. From that time forward, the king was to be a stay-at-home monarch. In 1236 the word "parliament" was seen on the plea rolls of the court of king's bench. Chapter three discusses the emergence of this parliament, as well as its functions. At chapter's end, the reader is nearly brought up to 1258, when parliament first possessed a written constitution.

The fourth chapter describes the hopeless financial position of Henry III in 1258 and how, in order to avoid bankruptcy, he made a promise to the Oxford parliament that if they would help him, he would obey whatever new rules the majority of parliament might decide to make.

This is followed by a discussion of the parliaments of Edward I, which compares and contrasts his reign and procedures with that of Henry III. Much is made of the fact that, because of the increased access to parliament, it was swamped with petitions from throughout the empire. Edward's reign is characterized by Professor Sayles as being one of legislation on a grand scale.

Chapter six shows the development of parliament during the reigns of Edward II and Edward III. It was during this period that the conception of peers as judges and commoners as petitioners became established and changed the method of procedure.

The final—and most extensive—chapter places the parliaments of the later middle ages into perspective. Judicial work decreased; politics increased, with Parliament reflecting the party in power. A forerunner of today's common practice, much parliamentary activity was performed behind the scenes in committees. The volume concludes in 1529, during the reign of Henry VIII.

Professor Sayles has put together an informative and quite interesting book, whose brevity enhances its appeal. Unfortunately, the audience for *The King's Parliament* may prove limited. However, those whose interests run toward English history and the evolution of the legislative body will find it most enlightening.