

just a casebook. The notes, comments, and review problems make it the main resource for a student in an introductory course on the law of torts in Canada. When used along with Professor Linden's equally superb textbook, *Canadian Negligence Law* the professor and the student are in a position of strength in their studies. The sixth edition is Linden's. The seventh, perhaps in two volumes, should be in his name.

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CONSTITUTIONAL PROTECTION OF EQUALITY: Edited by T. Koopmans. Leyden: Sijthoff. 1975. Pp. vii and 255.

Of late there has been an increasing number of publications within the field of comparative law, and interest in the European Community as well as in human rights appears to have provided much of the impetus for this. The Netherlands Association of Comparative Law has recently instituted a series of 'Studies', of which the first was concerned with security over corporeal movables. The second volume edited by Professor Koopmans of the University of Leyden is devoted to *Constitutional Protection of Equality* and comprises essays on the position in the United States, Canada, the German Federal Republic, France and the Soviet Union, a diversified even if somewhat small group, for one might have expected the United Kingdom, the Netherlands or one of the Scandinavian countries to be included. The explanation given by the editor for the choice of countries included in the survey (pp. 6-7) is satisfactory so far as it goes; the United States and Germany as "countries in which the role of the judiciary in defining and interpreting the notion of equality has been paramount [,while] Canada, with its intermediate position, serves as a bridge to the discussion of the countries without judicial review", France and the Soviet Union (p. 9). But it would have been interesting to see an explanation of the omissions.

Professors Lusky and Botein begin their survey of the position in the United States with the statement that "since World War II, the [Supreme] Court has become the leading exponent of the equality ideal" (p. 13), and conclude "it has also taken the lead in publicizing and condemning the discrimination against minority groups that has so long prevailed American society. Moreover, it has generalized the concept of legally required equality beyond equal treatment of minority groups, and insists on the greatest possible equality in enjoyment of rights which it considers to be fundamental. Finally, as the recent federal statutes show, its efforts have stimulated a broad political movement which in the long run may prove to be the most solid basis of further progress toward unification of the national community" (pp. 47-8). Unfortunately, no date is given to indicate when this was written. Since the retirement of Justice Douglas and the possibility that 'the four dissenters' in, for example, the *Pittsburgh Press Case* (p. 39) may well constitute the new majority, this statement of the role of the Court may no longer be true,

particularly in view of the more restrictive attitude to welfare and equality generally being taken by the present administration.

Dr. Klein opens his analysis of the position in Germany by pointing out that the Federal Constitution not only guarantees equality before the law, but also provides for the equal treatment of men and women, forbids discrimination on account of sex, parentage, race, language, homeland and origin, faith, religious or political opinion, and stipulates that illegitimate children shall be treated equally with those of legitimate birth. It also forbids any discrimination in so far as access to public office is concerned and equally in the enjoyment of political and civil rights, while providing that "every German shall have in every *Land* the same political rights and duties." In addition, similar provisions appear in the constitutions of the *Länder*, and, in so far as these exceed the stipulations in the *Grundgesetz*, they remain valid so long as they are not inconsistent with the Federal law. To ensure that these rights are in fact enjoyed, the Federal Constitutional Court acts as guardian, although there are limits to its authority as, for example, its inability to examine a denial of mercy, while possessing the right to look at a revocation of mercy (p. 84). In view of current discussion in Canada concerning the rights of landed immigrants and of aliens generally, it is interesting to note that some of the constitutional rights in the Basic Law are reserved for Germans, such as the rights of assembly and association, although foreigners may take part in meetings and form associations (p. 95). For the main part, however, there is little difference in their treatment. It is one thing to guarantee equality. It is, however, another to ensure that it is enjoyed and the Federal Republic does not protect enjoyment of this right by criminal process, although electoral falsifications are punished, but "this legal protection is given in order to attain legitimate and democratically irreproachable election results rather than to protect the equality of the franchise as a right of the individual citizen" (p. 110).

For France the principle of equality dates from the 1789 Declaration of the Rights of Man and of the Citizen, and to the extent that there are semblances of inequality in the French system they result from "the building up, one on top of another, of different "layers" of conceptions that [over the years] people have had of the meaning of equality" (p. 127). A point that is well made by Professor Venezia and which ought to be kept in mind by anybody writing on equality is that "one does not have the right to talk of a breakdown of the principle of equality once different rules are laid down for a distinct category of legal subjects. Discriminations in the legal order will only threaten the principle of equality to the extent that they take the form of the grant to one category of privileges, the benefit of which will be refused to other categories, or, on the other hand, where there exists, to the detriment of one category of persons, an obligation which is not imposed on other categories" (p. 128).

It has often been said that the Soviet Union is the example par excellence of the fallacy that all that is required for the protection of individual freedom is a written constitution embodying a statement of fundamental rights, although recent developments in India have shown that the USSR is not alone from this point of view. The Declaration of Rights in the 1936 Soviet Constitution leaves little to be desired, but the record and the treatment of such persons as Sukharov and Solzhenitsyn

and the existence of punitive psychiatric hospitals and the like indicate that theory and reality are often miles apart. No one will quarrel with the statement that "to be free is to be responsible and responsibility calls for self-restraint on the part of all free men. There is no such thing as absolute freedom, for freedom is only a cognitive necessity" (p. 204). One can even understand an argument that freedom and equality can only be enjoyed by those who are not enemies of the state (p. 203). It is in the definition of the latter that problems arise. It is also interesting to note that while Soviet law forbids discrimination, "classifications are a necessary part of lawmaking and the equal protection doctrine does not of necessity require an end to all classifications based on the recognition of human differences. . . . A classification based on national origin, religious belief or sex, as long as it is designed to further a compelling state interest, would not be a violation of equal protection under contemporary Soviet law" (p. 204).

The editor of the collection has described Canada as standing between countries using the judicial process to protect equality and those in which judicial review is absent, and the position in Canadian constitutional law is discussed by Professor McWhinney in the shortest paper in the book. He rightly points out the historical reasons for the absence of any Bill of Rights from the B.N.A. Act, commenting that the Diefenbaker Bill of Rights is "an attempt by a personally intellectually radical, Conservative Party leader as Prime Minister, to reconcile—because of still-continuing constitutional exigencies—the British bias against any formal constitutional Bill of Rights or formalized constitutional guarantees [—although there is now strong pressure in Britain for such a formal Bill of Rights—] and the American model for a Bill of Rights in the constitutional Charter itself" (p. 62-3). He explains *Drybones* as an attempt, to some extent, to achieve for the Indian "genuine equality—in the concrete, as distinct from merely in the abstract" (pp. 64-5), and contends that much of the Quebec agitation for equality is in fact economically motivated. It is his opinion, "that the key battles of Canadian constitutional law of the last quarter of the century will be directed towards achieving some greater measure of economic equality—of opportunity and also of actual possessions—in the concrete" (p. 66).

This collection of essays, small though it might be, should prove of inestimable value and interest to those concerned with the study of comparative law, with constitutional law and with the law of human rights and civil liberties. It is to be hoped that the Netherlands Association of Comparative Law will publish further symposia of a similar calibre.

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