

# Book Review: Some Civil Liberties Issues of the Seventies, edited by Walter S. Tarnopolsky

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## Book Review

### SOME CIVIL LIBERTIES ISSUES OF THE SEVENTIES

Edited by WALTER S. TARNOPOLSKY

Toronto: Osgoode Hall Law School, York University, 1975. Annual Lecture Series, 1973-74. Pp. 230 (\$15.00)

This collection is a welcome addition to the relatively small body of civil liberties literature in Canada. It is a heartening manifestation of the shift in emphasis in our law schools and legal scholarship to the broader matters of public policy and administration.

The first paper by Alfred Blumrosen of Rutgers University is a thoughtful analysis of recent American experience in respect to legislation for equal opportunity in employment and a tempered argument that numerical quotas are needed for groups which have been permanently disadvantaged. Daniel Hill, former Director of the Ontario Human Rights Commission, responded somewhat tentatively that the American experience was not directly applicable to Canada: the visible minority is a much smaller proportion of our population; Canadian human rights commissions are much newer and may not have exhausted the possibilities of the voluntary and educational approaches; and native peoples may not accept the integrationist thrust of American policies. On the last point, Douglas Sanders, legal counsel of the Union of British Columbia Indian Chiefs asserted that the American equal opportunity legislation directed toward the employment of urban blacks in industry "has no relevance for Indian reserve communities". The relevant analogy for Sanders is French Canada; both communities are concerned with safeguarding the legal position of lands and of financial claims on the federal government.

The paper of Sir Brian MacKenna of the High Court of Justice, Queen's Bench Division, deals with the complex issues of reverse onus statutes and the rights of the accused to withhold self-incriminating evidence. These issues are discussed in the context of law reform in the United Kingdom. In a spirited attack on the traditional safeguards, Mr. Justice Haines of the Supreme Court of Ontario, High Court Division, stated, "The right of an accused to remain silent will be taken away eventually by an aroused public opinion refusing to tolerate the ever increasing volume of successful crime in this country". Under the new regime the criminal trial would become "an enquiry into 'truth'" rather than "an exercise in 'proof'" and the major activities of lawyers would be in the correction and reformation of offenders.

The third paper, "The Control of Police Behaviour", by Alan Grant of Osgoode Hall Law School argues that the increasing power of police forces requires more adequate external controls over police behaviour. Grant opts for a model "which would emphasize the importance of some office outside the police structure to record the complaint, to supervise the investigation of it and to make the decision on appropriate further action. If that further action should take the form of a disciplinary trial I have suggested a board of three, comprising an independent chairman plus an appointee of both sides to the dispute. . . ."

The last symposium dealing with the adversary system provided a more clear-cut confrontation of opposing viewpoints than did the other sessions. In his paper George Adams makes a powerful defence of this system and applies his general analysis to small debts courts. He calls for reforms to "mobilize" the adversary process in these tribunals and to eliminate inquisitorial procedures by establishing defendants' and plaintiffs' offices staffed by law advocates and paralegal personnel. John Hogarth's brilliant essay, "Alternatives to the Adversary System", is by far the most wide-ranging in the collection and is the best Canadian defence I have seen of what may be called the communitarian-participant approach to legal reform and social change. He argues, rightly, that the allegedly "objective" posture found throughout the social sciences sustains hierarchical and elitist structures of power. Yet a commitment to overreaching and radical ideologies is an "escape". Thus "The most genuinely radical movements in today's society appear to be those which eschew a specific ideological orientation. They are issue-specific and are able to catalyze change in a way that few of the ideologically oriented movements appear to have done. Examples include the ecological movement, the womens' movement, ratepayer and neighbourhood groups". Hogarth cogently outlines his "social-educative model of criminal justice" characterized by changes of this nature: ". . . legal organizations are no longer hierarchical in structure, control decisions are disbursed and the criminal process returns to its main task of peace-keeping through dispute settlement".

Any reviewer of such a collection will have his own cavils about the selection of issues and the way in which the issues are analyzed. One of mine is that Canadian civil libertarians have almost totally ignored French-English relations. In his "Introduction" Walter Tarnopolsky focuses on the failure of egalitarianism with respect to women and the native peoples. But a strong case can, I think, be made for examining the even more complex matter of equality as it relates to members of Canada's two historic communities. At another level, Hogarth's paper should lead to a radical questioning of the assumptions of such groups as the Canadian Civil Liberties Association (CCLA). The main thrust of CCLA activities is in strengthening existing safeguards and extending protection to new kinds of social interaction. Whether this kind of preoccupation is the best tactic to preserve and extend human dignity perhaps needs to be questioned.

By DONALD V. SMILEY\*

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