

Book Review: Civil Liberties in Canada, by D. A. Schmeiser

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Book Review

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Civil Liberties in Canada. By D. A. SCHMEISER. Oxford University Press, 1964. pp. 302. (\$7.50)

Very little has been written in Canada on the subject of civil liberties. When the Bill of Rights was introduced, the *Canadian Bar Review*, in the March 1959 issue, published a symposium on the subject. With this one exception, however, there had been no major work on civil liberties in Canada until the publication of Mr. Schmeiser's book. This book constitutes a most exciting beginning at a time when there seems to be a wave of civil liberties problems, with hate literature, immigration, Fanny Hill and the Hutterites all vying for our attention.

The Bill of Rights, which seemed to promise us much, has not caught the fancy of our Courts. Because of its vagueness and indefinite drafting, the Bill has tended to deter the Courts from extending

existing civil liberties. Mr. Schmeiser points out that in the decade before the Bill was passed the Supreme Court had been extraordinarily protective of the basic rights of freedom of speech and association.

Mr. Schmeiser indicates that recently there has been a slight shift in some Judges' approach to civil liberties; they have become more willing to recognize the power of Parliament to restrict fundamental freedoms. The problem of Parliament and our liberty is essentially a negative one. It is not whether the legislators may give us our basic freedoms but rather which ones may they interfere with or remove. The traditional theory is that Parliament has complete power; it would, therefore, appear to be able to remove even free speech.

The author discusses the appearance of natural law in some constitutional cases. In the case of *Chabot v. Commissioners of Lamo-randiere*¹ the Quebec Court of Appeal decided that some rights find their source in natural law and could not be taken away by positive law. The Court declared itself ready to hold invalid any act or regulation which would have the effect of imposing Catholic religious instruction on the child of a Jehovah's Witness. In the words of Mr. Justice Casey:

If these rights find their source in positive law they can be taken away. But if, as they do, they find their existence in the very nature of man, then they cannot be taken away and they must prevail should they conflict with the provisions of positive law.²

Another case questioning the power of Parliament to curtail civil liberties is *Switzman v. Edelberg and the Attorney-General of Quebec* in which Mr. Justice Abbot said:

Although it is not necessary, of course, to determine this question for the purposes of the present appeal, the Canadian Constitution being declared to be similar in principle to that of the United Kingdom, I am also of opinion that as our constitutional Act now stands, Parliament itself could not abrogate this right of discussion and debate.³

Mr. Schmeiser's book is particularly timely in light of the current problem of hate literature. It supplies a comprehensive summary of the status of the present criminal law and its inability to prevent group vilification. Mr. Schmeiser reviews all of the potentially pertinent sections and at page 214 concludes:

Under the existing authorities, accordingly, any group, organization, nationality, race or religion may be attacked in intemperate and abusive language. The individual who baits any of these groups, stirring up unrest and hatred, or who brings governmental institutions into contempt and disrespect, is legally untouchable. The fact that what he says is a complete falsehood does not matter.

The author at all times makes concrete proposals for change where he feels that the law requires it. His suggestions range from

¹ 12 D.L.R. (2d) 796.

² *Id.* at 807.

³ 7 D.L.R. (2d) 337, 371.

the extension of privilege to penitent-priest communications to the repeal of the Lord's Day Act.

Other interesting topics discussed by the author include a comparison of the American and Canadian approaches to civil liberties generally, the position of Church and State in the two countries, and the American treatment of contempt of court.

Mr. Schmeiser's survey is never too involved or cumbersome, and yet it qualifies as a good constitutional text since it attempts to clarify many areas of the law where confusion abounds.⁴

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⁴ For example, the author attempts to bring order out of the plethora of judgments in the cases of *Saumar v. Quebec*, [1953] 4 D.L.R. 141, and *Birles v. Montreal*, [1955] 5 D.L.R. 321.