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Book Reviews

CLIFFORD J. HYNNING, Departmental Editor

Franck, Thomas M. *Comparative Constitutional Process: Cases and Materials. Fundamental Rights in the Common Law Nations.* New York, Washington: Frederick A. Praeger. Pp. xlii 595. Index. \$16.00.

Professor Franck has compiled an especially useful collection of materials on what he terms "those fundamental procedural precepts" that are derived from the English common law and American constitutional law as they are currently "being tested and transformed in the Anglo-phonic parts of Africa and Asia" (p. xxix). The book is organized by chapters on the legal incidence of independence, judicial review, rights to fair trial prior to imprisonment, to a hearing, to fair judicial determination, to an unbiased court, and to counsel, with a very brief chapter on political rights. Excerpts are given from constitutions and other basic legislation, from statutes, and from cases decided by judicial tribunals in such jurisdictions as Australia, Barbados, British Guinea, Buganda, Burma, Canada, Ceylon, Cyprus, Ethiopia, Ghana, India, Ireland, Jamaica, Kenya, Malaya and Malaysia, Malta, Mauritius, New Zealand, Nigeria, Nyasaland, Pakistan, Rhodesia, Sierra Leone, Somalia, and Somaliland, South Africa,¹ Sudan, Swaziland, Tanzania and Tanganyika, Togoland, Uganda, United Kingdom, United States, and Western Samoa. The book also includes occasional political speeches, as in connection with the justification and criticism of the one-party state.

Preventive detention or protective custody, Professor Franck frankly admits, has "become relatively prevalent in the new nations of Africa and Asia" (p. xl). For example, in Tanzania the law "allows the authorities to hold anyone they like for, in effect, as long as they like"

¹ The author specifically removed South Africa "for the time being from the legal community" with which the book is avowedly concerned (p. 236), yet he presents 23 cases decided by South African courts and specifically states "the infringements of human rights are made in South Africa as elsewhere with fastidious attention to due process of law and in the name of the greater good of public safety" (p. 237).

(p. xli). He has a short reference to “the Indian experience with preventive detention—that special powers, however legitimate the reason for their being given, are often used to fight merely ordinary crimes—and the same would appear to be true of the use of preventive detention in other countries where less specific information is made available” (p. 185). These emergency powers have had their wartime parallels in the United States (Japanese residents) and the United Kingdom and constitute part of the imperial heritage of the newer nations (p. xlii). However, Professor Franck is encouraged (p. xli) to find that these powers have been used “extremely sparingly in Tanzania. In 1966 there were believed to be fewer than 24 detainees.” This figure compares with “thousands” in Ghana (p. 236).

The arguments in justification of preventive detention are that the newer states of Africa and Asia are exposed to the dangers of political intrigue and revolution to a greater degree than the older Western democracies and that such newer states have less human and mechanical resources available to their police forces which must be spread thin over rural areas (p. xl and 202). This argument is sophistically restated in connection with the section on statutory presumptions (p. 191) as follows:

Whatever the exact effect of a presumption in law, or of a law shifting the onus of proof to the defendant, their mere existence in Western legal systems admits one of the arguments made by the advocates of preventive detention, particularly those in new states which are beset with logistic and personnel difficulties in crime detection and prevention. They reason that certain courses of conduct although not constituting crime in themselves, arouse such reasonable suspicions as to warrant a conclusion being drawn unless the actor has an evidently credible and innocent explanation for that conduct.

He reproduces in extenso the regulations on preventive detention for Ceylon (p. 206), Kenya (p. 212), India (p. 215), and Tanganyika (p. 228), and gives the necessary legal references to such regulations in Nigeria, Basutoland, Malta, Mauritius, Zanzibar, Sierra Leone and Ghana. Strangely, the laws and regulations on preventive detention in South Africa and Rhodesia, which are placed beyond the pale of the “constitutional process” are stated only inferentially as in the course of excerpts from decisions of the courts of those states. Professor Franck has made a valuable contribution to comparative law in furnishing a starting point for an objective analysis of preventive detention throughout Asia and Africa.

It is regrettable that the materials presented on modernized restrictions on the franchise in the emerging patterns of the one-party

state is so sketchy, especially since that form of political organization prevails so extensively throughout Africa and much of Asia, as well as throughout the entire Communist blocs. Admittedly the latter areas are outside the scope of Professor Franck's instant concern. It is hoped that the legal profession will be afforded opportunity to read more of Professor Franck's comparative studies and that he will address himself to the civilized methods of coping with the increasing level of violence, tribal or otherwise, in Africa and Asia resulting in the killing of thousands of civilians by the minions of the modernized state without reference to constitutional process or trials.

—CLIFFORD J. HYNNING