

BOOK REVIEWS

THE CONSTITUTIONAL FOUNDATION OF PRIVACY by Dean Irene R. Cortes, U.P. Law Center, Diliman, Quezon City, Philippines, 1970, 113 p.

This book is an answer to the dearth in Philippine legal literature of works on the subject of privacy, a broad field in English and American tort law and which has in recent years been gaining increasing significance in American constitutional law. It comes at a time when the issue of civil liberties is foremost in the public mind and the threat to individual constitutional rights is so immediate that the author's concern over the inevitable incursions against privacy brought about by computerization seems to lose relevance in the light of recent political developments.

In this book the author shares not only her grasp of constitutional law but also her acute perception of inroads against the individual's constitutional rights.

A combination of the sociological and legalist approaches to the subject has been adopted so that the relevancy of the work to contemporary society is apparent not only to those in the legal profession but also to the layman. The book deals not only with settled doctrine and jurisprudence but ventures into problem areas brought about by the incessant advance of technology and the complexities of modern society. Such an approach is unfortunately lacking in most Philippine legal literature.

Privacy as a legal concept was first developed in tort law. Violation of the right to privacy or "the right to be left alone" was considered to be a transgression of property rights. The scope of the right of privacy in private law has since then broadened particularly in the American jurisdiction. While the New Civil Code and special laws provide adequate protection, litigations involving the right of privacy in our jurisdiction is practically nil.

The main thrust of this book is the development and the foundations of the right of privacy in constitutional law in American and Philippine jurisdictions. Privacy in the public law concept was originally conceived in relation with other specific constitutional guarantees owing largely to the fact that the term "privacy" does not appear in the United States Federal Constitution. It was only in 1965 in *Griswold v. Connecticut* that the right of privacy was established by the United States Supreme Court as an independent constitutional right.

Unlike the United States Constitution, the Philippine Constitution contains an express reference to privacy in Article 13, section 1(5) which

provides for the inviolability of communication and correspondence. The other facets of privacy are protected by the constitutional guarantee against unreasonable searches and seizures, self-incrimination, the constitutional guarantee against the liberty of abode, the right of association and the right to due process, if not the whole Bill of Rights. It remains, however, for the Philippine Supreme Court to establish the right of privacy as an independent constitutional right.

The author is very much concerned over the fact that the Constitution allows an exemption to the inviolability of communication and correspondence not only upon lawful order of the court but also "when public safety or order require otherwise." This has opened the door to abuse by ministerial officers particularly those belonging to the law enforcement agencies and if unabated the author foresees the realization of the Orwellian spectre symbolized by the omniscient Big Brother and the omnipresent telescreen. Statutory limitations on the powers of government functionaries in this regard like the Anti-Wiretapping Act do not provide adequate protection from abuse, for, as the author notes, what Congress has enacted it can repeal or amend, apart from the fact that there is no guarantee that the law shall be implemented properly if at all.

The book makes a review of recent developments in Philippine and American jurisprudence touching on the many facets of the right of privacy. The impact of *Katz v. United States* on the guarantee against unreasonable searches and seizures, the case of *Camara v. Municipal Court* and *See v. City of Seattle* on the particular aspect of administrative searches and the *Miranda* and *Escobedo* and *Rochin* rulings on the right against self-incrimination are analyzed.

The author shares in the general sense of relief generated by the decision in *Stonehill v. Diokno* which reversed the unpopular ruling in *Moncado v. People's Court*. Dissatisfaction is expressed, however, with the ruling in the old case of *Magoncia v. Palacio* to the effect that in cases where contraband is seized in the course of an illegal search the same should not be returned to the owner but could be used as evidence. While the author shares the opinion that the contraband should not be returned she vigorously maintains that it should not be used as evidence for, "between allowing a crime to go unpublished and allowing the state to play an ignominious part through the use of evidence illegally obtained the former is the lesser evil."

Emphasis is placed on the right against self-incrimination. The author doubts the wisdom of the present rule obtaining in this jurisdiction that a confession made by the defendant in a criminal case is admissible in evidence without direct affirmative proof that it has been freely and voluntarily made. Apart from the fact that it is out of line with recent developments in criminal procedure the rule becomes the more objection-

able when the method of in-custody interrogation by local law-enforcement agencies is considered. The author also comes out against the use of the polygraph and similar devices which she condemns as a nullification of the constitutional guarantee against self-incrimination.

A theme which underlies the work is an apprehension over, if not fear of, government, particularly of a strong executive. While this could be attributed to the author's stand on the question of the power distribution of constitutional powers it finds particular relevance to the present problems of our political system which, however, derive not only from the existing constitutional distribution of powers but primarily from the peculiar political style of a unique breed of government officials.

The book comes out with several proposals the most significant of which is the adoption of clearer and more comprehensive constitutional provision guaranteeing the inviolability of communication and correspondence and the outlawing of extra-judicial confessions and admissions.

It would be dangerous, however, to presume that the adoption of these proposals will actually produce the results expected for as the author herself admits in connection with the Anti-Wiretapping Act, "It would be naive to think that the enactment of a law by itself effectively puts an end to the practices prohibited by it and makes real the protection it provides." It is but an affirmation of the rule borne out of experience that legal reforms attain their objects only within the context of a favorable political climate.

NOE B. BAGA
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