

## From the publishers

### Constitutional comparison:

#### Japan, Germany, Canada and South Africa as Constitutional States

by F Venter

Juta (2000)

312 pages

Soft cover R345,00 (VAT incl)

In the preface the author states that the purpose of this book is not so much to discover differences and similarities in the details of the constitutional systems investigated, but constitutional comparison and to demonstrate some of its fruits. If a single insight by the work must be isolated, it is that the contemporary constitutional state is currently the global standard. Despite the overwhelming variety of constitutional structure and approach, the constitutional states share more common roots than meet the eye, and the elements shared by them continue to increase.

The author deals with considerations of comparative methodology. Inexperienced litigants and researchers often forget that constitutional history plays such an important role in the study of any constitutional system. The author makes it clear that conceptual commonalities between different systems can frequently be discovered and understood only against the background of history.

The predominance of the constitution is described in the context of the history and foundations of such predominance in Japan, Germany, Canada and South Africa. Three of these countries obviously have to a greater and lesser degree a fairly recent history of abuse of the rights of subjects.

Chapter 3 deals with selected constitutional rights, such as the right to property, access to the courts, academic freedom, citizenship and state sponsored education. At the same time the limiting and balancing interests are pointed out. It is mentioned, as this is often forgotten, that all human rights are, however, not capable of being transformed literally into concretely enforceable fundamental rights. The classification of constitutional rights is of course important in the context of envisaged litigation aiming to enforce such right or to prohibit its abuse. Without a proper appreciation of the classification of constitutional rights, and in fact in the content of each such right, it is difficult to envisage a successful enforcement action. It is also not coincidental that because of the common history of abuse of subjects in Germany and South Africa, human dignity is the first consideration in a hierarchy of rights.

In Germany human dignity is described as the essence of its civil and juridical conviction, whilst in South African law it is clear that each of the other values emerging from the constitutional text can be seen as deriving from human dignity.

The selected constitutional rights that the author discusses have been selected on the basis of a systematic approach showing how each legal system deals with a "defensive" right (property), a "procedural" right (access to the courts), a "civil society-orientated" right (academic freedom) and a "State-orientated community right" (citizenship) as well as "right to State performance" (education).

Chapter 4 deals with democracy and the distribution of authority. The notion of the constitutional state does not favour absolutism, centralization and concentration of governmental power, obscure procedures or the uncontrolled exercise of authority. The other indispensable foundation of the constitutional state is the notion of democracy; in this chapter the abstract meaning of these concepts is addressed in order to show the application in the four chosen systems.

The author states that all the cornerstones for judicial impartiality and professionalism exist in South Africa. Time however will only tell whether the separation of powers will be strengthened or weakened in the South African constitutional system.

The author lastly, in comparing constitutions in 2000, emphasizes that the constitutional state has three purposes:

- 1 to provide security;
- 2 to ensure the liberty of the individual;
- 3 to guarantee a minimum standard of social security.

The powers that be ought to take note. Recent judgments of the Constitutional Court seem to follow the same line of thought. In this regard we have a long way to go before the State can be said to have complied with its obligations towards its subjects.

This book has filled a vacuum and has filled it well. Any practitioner requires a proper understanding of the fundamental philosophical notions which give rise to the enforcement of constitutional rights and which gave rise to written constitutions in the first place.

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### Administrative Law and Justice in South Africa

by GE Devenish, K Govender and D Hulme

Butterworths (2000)

567 pages

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In a detailed exposition, the authors discuss and analyse administrative law within the context of constitutionalism and justice. Whilst the authors often refer to international administrative law, South African law is not in any way disregarded.

Professor Devenish states in the introduction to the book that "the importance of its principles in ensuring proper and accountable government justifies administrative law being considered as a distinct discipline." Despite this, the authors are at pains to emphasise the view that administrative law is inextricably linked to constitutional law.

There are clearly defined sections within each chapter presenting the reader with little difficulty in exploring the text. In addition to this, comprehensive footnotes refer to decided cases and to publications – both local and international – on related topics. There is considerable reference to recent decisions of the Constitutional Court on administrative and constitutional law issues.

The book comprises seven parts. Part One contains a chapter on the introduction and basic principles of administrative law. The remaining three chapters within the first part discuss the sources of administrative law, the exercise of authority and administrative acts. The first chapter sets the tone for the rest of the book in grounding administrative law firmly within the principles of the Constitution. Part Two contains two chapters devoted to the Promotion of Administrative Justice Act 3 of 2000 and the Promotion of Access to Information Act 20 of 2000, the enactments of which have "resulted in the introduction of a new administrative law regime". Part Three deals with legality, jurisdiction and formal requirements for the validity of an administrative act, whilst Parts Four and Five cover the rules of natural justice and further requirements for validity. Part Six covers both judicial and extra-judicial control of administrative acts and includes a discussion on *locus standi* and administrative appeals tribunals. The final part discusses the role of the state and includes a chapter on public administration. The authors conclude their work, interestingly, with a chapter on state liability.

Its extensive reference to the history of administrative law and its comparison with other legal systems makes this book useful for students and for those who have a special interest in administrative law. This does not, however, detract from its usefulness as a guide to administrative law for practitioners, especially with its emphasis on the interrelatedness of constitutional and administrative principles.

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