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Full Issue

Articles

The Crisis of Multi-National Federations: Post-Charlottetown Reflections
Philip Resnick

Abstract

Recognizing the inevitability that constitutional issues will again emerge for public discussion in Canada, the author discusses three competing visions of nationhood and identity which have emerged as between English Canada, French Canada and Aboriginal peoples. The solution offered to these difficulties is to separate the concept of nation from that of the state, and to recognize the sociological reality of the three nations within the territorial structure of a single state. The author submits this can be accomplished by observing three principles: (i) Fundamental reforms must be undertaken to our existing federation along asymmetrical of confederal lines; (ii) Nationalism must be viewed as self limiting since negative consequences of intolerance and one's ability to live in harmony with one's neighbours inevitably emerge and; (iii) Sovereignty is an irrelevant option owing to current economic forces of globalization, and the integration of regions and continents. The author concludes by noting that the emergence of multiple national identities within Canada is necessary to avoid break-down experienced by other federations in recent years, notably in Eastern Europe.

Patently Confused: Complex Inequality and *Canada v. Mossop*
Mary Eaton

Abstract

Gays and lesbians traditionally have been defined out of equality rights protection. As Mary Eaton writes, there is a tiresome history of adjudicators reading human rights provisions in a heterosexually exclusive way. Mary Eaton discusses the ruling in *Canada v. Mossop*, where the Supreme Court of Canada held that the *Canadian Human Rights Act* prohibition against discrimination on the ground of "family status" does not protect gay and lesbian families. Eaton argues that this result was by no means demanded by the logic of the *Canadian Human Rights Act* nor by the rules of interpretation normally applicable to human rights laws. Moreover, the interpretive approaches adopted by the majority and minority of the Court fail to comprehend the complexity of "overlapping" oppression, where discrimination is experienced on more than one prohibited ground. Eaton argues that forcing claimants to choose between one prohibited ground or another reduces these

complex forms of discrimination to simple, unidimensional terms. Equality rights thereby continue to have the effect of subordinating disempowered groups to the authoritative power of the law.

The Draft Constitution of Ukraine: An Overview
Keehan H. Kohol

Abstract

With Ukraine's declaration of independence from the USSR in 1991 came the creation of a new constitutional document which moves away from Soviet "socialist legality" and Marxism-Leninism and which moves toward Western democratic constitutionalism. This article provides a comprehensive overview of the most recent attempt at constitutional reform, the fourth draft constitution presented for expert discussion in May 1993. The author indicates that the resulting document, while revolutionary in its attempted application of the rule of law, popular sovereignty, equality before the law, limited government, and an extensive bill of rights, is in need of much further revision before it will truly reflect the Western constitutionalism that it is modelled upon. One example of his concern is the lack of practical separation between executive, legislative, and judicial branches of government. The provisions which attempt to balance control in the new structure of government will in effect produce political stalemates, where no progress is possible. As well, a lack of true judicial independence and several "claw-back" clauses will render the human rights provisions totally ineffective. The author concludes that to ensure the effectiveness of the document, several contradictory and ambiguous articles in the draft must be revised.

Nude Dancing and the Charter
June Ross

Abstract

In this article the author argues that prohibitions of nude dancing, as evidenced by regulatory prohibitions of nudity in striptease dancing in licensed establishments and other similar venues, clearly infringe section 2(b) of the *Canadian Charter of Rights and Freedoms*. Nude dancing is seldom considered an expression worthy of constitutional protection, nor serious debate; however, the author illuminates an important underlying issue which becomes evident when one underrates the seriousness of such expression. What type of protection, if any, does such 'important' expression deserve? To answer this question in the context of prohibitions of nude dancing, the author first examines both the provincial and federal regulatory provisions in the area. The author then examines the past unsuccessful *Charter* challenges to these provisions, and through an examination of the leading Supreme Court of Canada cases on freedom of expression, points to inconsistencies between the decisions in these challenges and the general principles for the application of section 2(b) set out by the Supreme Court. Finally, the author undertakes to analyze the application of section 2(b) and 1 of the *Charter* in light of current Supreme Court jurisprudence. In conclusion, the author shows that prohibitions of 'unimportant' expression

which is not clearly harmful are constrained by the *Charter* in the same way as are restrictions on 'important' expression.

Book Reviews

Book Review of William W. Van Alstyne (ed.)
The Academic and the Political: *Freedom and Tenure in the Academy*
Frederick C. DeCoste

Book Review of Ronald J. Fiscus (ed.)
A Review of the Constitutional Logic of Affirmative Action
Stephen L. Wasby