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Full Issue

Articles

Sovereignty, Racism, Human Rights: Indian Self-Determination and the Post-Modern World Legal System
Robert A. Williams Jr.

Abstract

Among the numerous challenges facing indigenous peoples in their struggles for self-determination is that of engaging with the dominant discourse of colonizing powers. The paper identifies three such challenges to indigenous claims of self-determination. The first is the role of `sovereignty' both as a legal concept which structures claims of indigenous rights in the United States and as a political concept invoked to delegitimate indigenous claims to self-determination. The second is the legacy of colonialism and racism which helps give shape to the legal model of sovereignty and defines the acceptable parameters of indigenous self-determination. In order that these two challenges be overcome, an alternative means to promote the decolonization efforts of indigenous peoples is suggested in the sphere of international human rights law. In the postmodern world one shaped by sophisticated communication technologies, emergent international institutions, and a heightened awareness of global interconnectedness indigenous peoples are capable of exerting influence at the international level invoking the discourse of human rights. The openings provided by the new international human rights agenda may prove to be the most effective vehicle with which to promote the decolonization efforts of indigenous peoples, transform the domestic policies of the advanced democracies and also improve the condition of indigenous peoples in other countries.

Domestic Legal Aid: A Claim to Equality
Patricia Hughes

Abstract

The provision of legal aid in domestic matters is severely circumscribed when compared to the resources devoted by government to the provision of legal aid in criminal matters. Examining these practices in light of the Charter of Rights and Freedoms, the author argues that by providing inadequate resources in matrimonial matters, governments are engaging in discriminatory practices which reinforce already existing relationships of domination and subordination. By making the provision of legal aid in domestic disputes equivalent to that in criminal matters, the author concludes access to justice would be facilitated equally and the legal system would be better equipped to respond to claims of social inequality.

Sex, Tax and the Charter: A Review of *Thibaudeau v. Canada*

Lisa Philipps and Margot Young

Abstract

Section 15 of the Charter offers the promise of redressing many systemic inequalities in the law. This paper considers the implications of section 15 for the taxation of child support payments, an issue raised in the Thibaudeau case. While endorsing the Federal Court of Appeal's decision that the current tax regime is unconstitutional, the authors take issue with the Court's reasoning in reaching this result. In the first part of their paper, the authors address a number of shortcomings in the Court's equality analysis, arguing that the process employed by the Court ignored critical aspects of equality theory. The process of categorization in equality analysis (its inevitability, inexactness and complexity) is discussed. In the paper's second part, the arguments raised by the federal government to justify its legislative scheme are examined. Most troubling, the authors argue, is that each rationale proceeds from and reinforces familial ideologies which render child support largely a matter of private transfers from men to women. Lastly, a cautionary note about the use of the Charter to redress social and economic inequality is provided. Judicial decisions under section 15 of the Charter should be considered only as the beginning of a larger political process intended to relieve conditions of disadvantagement.

The Puzzle of Constitutional Asymmetry: Recent Canadian and European Debates
Robert Harmsen

Abstract

The author examines the use made of the European Community as a political model in recent Canadian constitutional debate. It is argued that both the 'decentralist' reading of the Community prevalent in Quebec and the opposed 'federalist' reading dominant in English Canada have neglected the increasing importance of a logic of 'variable geometry' within the process of European integration.

The acceptance of this logic of variability is highlighted through a detailed examination of key aspects of the Maastricht Treaty. Both the 'three-pillared structure' of the European union and the principle of subsidiarity are seen as reinforcing a pre-existing 'structural variability' at the core of the EC. The Treaty provisions concerning the establishment of an Economic and Monetary Union, as well as various 'opt-outs' accorded to Denmark and the United Kingdom, are conversely shown to constitute more innovative forms of 'jurisdictional variability'.

The final section of the article explicitly compares European debates over the question of 'variable geometry' with Canadian debates concerning the notion of 'asymmetrical federalism'. Parallel questions of communitarian legitimacy, institutional design, and policy capacity are shown to arise.

Opposition to Continental Integration: Sweden and Canada
Gordon Laxer

Abstract

While the shape of continental integration in Europe and North America differs in a number of important respects, they share a number of interesting characteristics which are explored in this paper. One is their foundation in a new free trade ideology, favouring corporate mobility rights and restrictions on democratic sovereignty. Another is the response of the citizens of two countries, Sweden and Canada, who in large numbers opposed entry into the European union and the U.S.-Canada Free Trade Agreement, respectively. The author analyzes those forces opposing and those favouring continental integration in Sweden and Canada, finding similarities and points of contact in the debates which raged in each country. As contintental integration continues apace, the author concludes that the forces marshalled in their domestic debates likely will continue to play an important role in future debates about free trade ideology.

Review Essay

Essay Review of Cass R. Sunstein
The Partial Republic: The Partial Constitution
Andrew Fraser

Book Reviews

Estimated Prophet: A Review of Sexy Dressing Etc.
David Fraser