

# Volume 8.1 (2003)

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## Articles

### **On Aristotelian Equality, the Fundamental Right to Equality, and Governmental Discretion**

*Ariel L. Bendor*

#### *Abstract*

The author examines the relationship between the principle of equality in constitutional and administrative law and other public law principles governing governmental discretion. He exposes some basic elements of the relationship between equality and rules governing governmental discretion in democratic legal systems, and concludes that while quality limits governmental discretion, it does not fetter it altogether.

### **Using the *Charter* to Cure Health Care: Panacea or Placebo**

*Benjamin L. Berger*

#### *Abstract*

The author critically examines the claim that the Charter can be used to address social concerns about public health care through constitutional means. He concludes that a close examination of recent case law illuminated by the political assumptions underlying the Charter offers a far slimmer basis for hope than might initially appear.

### **Reclaiming the Freedom to Trade: Rectifying *Marshall***

*Paul Groarke*

#### *Abstract*

The author examines the judgments in *Marshall*, and the right of the Mik'maq to harvest natural commodities and trade them commercially. He suggests that these rights can be traced to Aboriginal title, rather than in the Treaty put before the Court. The author sets out some principles that might provide a basis for a legal resolution of these issues, and concludes that we must begin by recognizing that society has an interest in acknowledging the legal validity of Aboriginal title.

### **The Formalist Conception of the Rule of Law and the *Marshall* Backlash**

*Michael Plaxton*

#### *Abstract*

Following the Supreme Court's 1999 ruling in *R. v. Marshall*, Parliamentarians and members of the public vigorously attacked the judgment. This paper discusses the

implications of the public criticism that greeted *Marshall*, and the subsequent Supreme Court "clarification," for formalist theories of the rule of law. Although formalism "fits" the Canadian constitutional environment, *Marshall* suggests that it fails to account for Canadian political life.

## **Book Reviews**

### **Charter Conflicts: What is Parliament's Role?**

*Christopher P. Manfredi*

### **Just Cause: Freedom, Identity, and Rights**

*Stella Gaon*

### **Restraining Equality: Human Rights Commissions in Canada**

*Steve Patten*