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Articles

Human Rights: Southern Voices Francis Deng, Abdullahi An-Na'im, Yash Ghai, and Upendra Baxi
William Twining

Abstract

In the context of "globalization," Western jurisprudence has largely ignored non-Western viewpoints, interests, and traditions. This article takes a modest step towards de-parochializing our juristic canon by introducing writings about human rights of four "Southern" jurists: Francis Deng (Southern Sudan), Abdullahi An-Na'im (Sudan), Yash Ghai (Kenya), and Upendra Baxi (India). All were trained in the common law and have published extensively in English, so their work is readily accessible, but their perspectives show some striking differences. Deng argues that traditional values of the Dinka of the Southern Sudan are basically compatible with the values underlying the international human rights regime. For An-Na'im, a "modernist" interpretation of Islam is mostly reconcilable with international human rights, but acceptance of such ideas depends far more on conversations within Islam than on cross-cultural dialogue or external efforts. Ghai questions claims to universal human rights; however, from his materialist stance and his experience of postcolonial constitution-making, human rights discourse can provide a framework for negotiating settlements in multi-ethnic societies. Baxi argues that as human rights discourse is professionalized or hijacked by powerful groups, it risks losing touch with the suffering and needs of the poor and the oppressed, who are the main authors of human rights.

Anti-Terrorism, the Charter, and International Law
Alex Conte

Abstract

States have a duty to protect their societies and to take effective measures to combat terrorism. The implementation of counter-terrorism measures may, where permissible, necessary, and proportionate, limit the full enjoyment of human rights. This is an integral feature of human rights law that provides for various means of rights limitation, as well as appropriate safeguards to guard against over-reaching or arbitrary limits. Determination of the proper boundaries, however, is a difficult task to achieve. This article considers the position in Canada. It concludes that so long as limitations upon rights and freedoms are consistent with section 1 of the *Charter of Rights and Freedoms*, such limitations are also consistent with international standards and guidelines on the subject of human rights compliance while countering terrorism, including those of the UN's former High Commissioner for Human Rights.

Legal Modesty and Political Boldness: The Supreme Court of Canada's Decision in *Chaoulli v. Quebec*

Thomas M.J. Bateman

Abstract

When the Supreme Court of Canada decided in June 2005 to strike down Québec's ban on private health insurance, the impression was quickly created that the Court effected a legal and political revolution. This article suggests that the impression is only partly correct. The Court applied a jurisprudentially modest and well-established interpretation of the right to personal security to dispose of the appeal in Chaoulli v. Quebec. It created a right neither to public health care nor to private health insurance. However, in applying the reasoning in R. v. Morgentaler to a complex area of social policy, it inserted itself into the public policy process and may well have contributed to basic changes in health care policy in Canada. Morgentaler secured the ability to operate private abortion clinics in 1988 – a curious legacy of that victory may be the increasing privatization of health care following Chaoulli.

Legislatures and the Quest for a Constitution: The Case of Israel

Ruth Gavison

Abstract

Israel is a country where constitutional debates center not on the questions whether it should have a constitution and what should be in it but on whether it has one. This undesirable and anomalous situation results from the fact that constitutional reality in Israel has been the result of a long process characterized in recent decades by legislative ambivalence and by a resolute constitution-making drive by the judiciary.