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Articles

The *Charter* at 30: A Reflection
John D. Whyte

Abstract - N/A

Les principes constitutionnels non écrits
Luc B. Tremblay

Abstract

In a series of controversial decisions in the last thirty years, including the Reference re Secession of Quebec rendered in 1998, the Supreme Court of Canada has given full legal force to unwritten constitutional principles. These principles, which bind both courts and governments, may not only guide the interpretation of the constitutional text but constitute the premises of constitutional arguments that culminate in "the filling of gaps in the express terms of the constitutional text" and in certain circumstances, "give rise to substantive legal obligations … which constitute substantive limitations upon government action." Conferring such a normative force to unwritten constitutional principles raises a series of theoretical, epistemological and normative questions. What is the status of these principles? What is their source or foundation? How may they be determined? What is the foundation of their legitimacy? What right does the judiciary have to use them to create substantive legal obligations? The purpose of the text is to consider these questions.

The Protective Function and Section 7 of the *Canadian Charter of Rights and Freedoms*
Vanessa A. MacDonnell

Abstract

It is an increasingly common feature of modern constitutional instruments for the state's "protective function" to be explicitly affirmed in the constitutional text. Thus, in addition to prescribing individual rights that may not be infringed by state actors—the conventional negative rights guarantees—the constitutions of Germany, South Africa and the European Union also instruct the state to secure individuals against deprivations of their constitutional interests by non-state actors. This paper considers whether, despite the absence of a clear textual basis for the protective function in the Canadian Charter of Rights and Freedoms, the state's obligations under the Charter might nonetheless include a similar duty to secure individuals against deprivations of their constitutional interests by non-state actors. I explore this question using Section 7 of the Charter as a case study, and conclude that there are compelling reasons for recognizing a constitutional basis for this essential task of the state.

The 23rd Annual McDonald Lecture in Constitutional Studies Dignity in Administrative Law: Judicial Deference in a Culture of Justification
David Dyzenhaus

Abstract

In this article, I argue that the right to dignity is more at home in administrative law than anywhere else. This argument goes against the grain of much constitutional scholarship and jurisprudence, where there is increasing interest in dignity as the foundational value, and of recent work in political philosophy that invokes dignity as the right of rights—the right that grounds all others. I defend the view that we should resist the temptation to make dignity the right of rights. Rather, we should see it as the way of understanding our relationship as rights-bearing individuals with the state. Put differently, the right to dignity is nothing more than the principle that individuals must be treated as equal before the law. Understood as such, dignity has a venerable presence in theories of constitutionalism. Dignity is not merely a synonym for equality, but also a useful, perhaps even an essential, way of making precise the right to equality before the law that is intrinsic to government according to law. My defence takes place in two contexts: the "wicked" legal system of apartheid South Africa and the "decent" legal system of contemporary Canada. These two contexts show in different ways why there is a core of equality—the specifically legal status of equal dignity—to the public law order of any law-governed state.

Book Reviews

Review of ***The Politics of Judicial Independence***, Bruce Peabody
Adam M. Dodek

Review of *Tribal Constitutionalism: States, Tribes, and the Governance of Membership*, Kristy Grover
Pamela D. Palmater