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Articles

The Many Faces of the State

Owen M. Fiss

Abstract

The author examines the state's role in ensuring freedom of speech. Because what is at stake is less the expressive interest of the speakers than the interest of the citizenry hearing debate on issues of public concern, the state, primarily through the judiciary, should act to ensure equal access to the debate. In the controversial areas of hate speech, pornography and campaign finance, the state should serve as a parliamentarian, using its power to guard against the silencing of less powerful voices. A too rigid adherence to the requirement that regulation of speech be content-neutral would seriously impair the state's capacity to serve in this way as a friend of freedom.

Searching for Multinational Canada: The Rhetoric of Confusion

Alan C. Cairns

Abstract

The phrase "multinational Canada" has recently emerged in scholarly analysis, in the report of the Royal Commission on Aboriginal Peoples and elsewhere as a label for a claimed sociological reality that deserves constitutional recognition. Unfortunately, the phrase has acquired a certain legitimacy before its credentials have received the scrutiny that should be accorded all future visions. This article undertakes that task. It concludes that a full-blown "multinational Canada" is conceptually incoherent and has limited utility for policy-makers. Any comprehensive attempt to redesign Canada as a multinational polity would come with a heavy price tag. Most significantly, the civic solidarity we now share with fellow citizens would be replaced by a much weaker solidarity with the members of other nations, now viewed as quasi-strangers. The members of Aboriginal nations would be the major losers. While a full-blown response to multinational Canada would be unwise, a carefully modulated, less ambitious response deserves consideration.

Canada, Criminal Appeals and the Judicial Committee of the Privy Council in the 1880s

Jacqueline D. Krikorian

Abstract

In 1887 and 1888, the government of Canada enacted legislation to abolish criminal appeals to the Judicial Committee of the Privy Council. Exactly why the government took this action

has been the subject of limited and somewhat contradictory analysis. An examination of the circumstances leading up to the passage of the legislation reveals that, after a series of problematic criminal cases, the federal government abolished such appeals for pragmatic reasons. A concern about the delay to the administration of justice was by far the most important consideration. Senior officials in both Ottawa and London believed that the enactment was necessary to improve the efficiency of the criminal justice process. Both the Colonial Office and Lord Chancellor's office accepted and supported the Canadian legislation in principle, although they were uncertain as to whether it accomplished its objective. To avoid the appearance of interfering in the Dominion's autonomy, they decided not to alert Canadian officials to their concerns about its validity.

Ethical Considerations in Media Coverage of Hate Speech in Canada

Raphael Cohen-Almagor

Abstract

In many democracies, freedom of expression and freedom of the media are guaranteed by the same constitutional provision. The author addresses the issue of media coverage of hate speech in Canada, one of the world's major exporters of hate literature. It is argued that the media should not cooperate with hate-mongers by providing them an uncontrolled platform for disseminating their ideas. This is not to say that the media should fail to report about the conduct of hate-mongers. Instead, it is argued that media coverage of hate speech should be cautious, sensitive to the interests of the group under attack and responsible. The free media should assist the democracy that enables their functioning in fighting the enemies of democracy.

Book Reviews

G. Anderson (ed.)

Culture, Nonsense and Rights: Contemplating the Human Rights Act. Rights and Democracy: Essays in U.K. - Canadian Constitutionalism

Book Review by Ian Ward

Christopher Edward Taucar

Canadian Federalism and Quebec Sovereignty

Book Review by Claude Couture

Mariam Smith

Lesbian and Gay Rights in Canada: Social Movements and Equality Seeking, 1971-1995

Book Review by Catherine Kellogg