

# Volume 8.2 (2003)

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## Articles

### **Is the Constitution a Contract for Legitimacy?**

*Frank I. Michelman*

*Abstract*

The author examines whether a state's constitution has a role to play in determining how a liberal political order fends off the dangers that emerge from disagreements over morally contentious issues of public policy. He asks how a constitution can contribute to governmental respect-worthiness and legal legitimacy, and concludes that the "contractual constitution" theory alone cannot adequately answer the question.

### **The Liberal Duty to Recognize Cultures**

*Alan Brudner*

*Abstract*

The author argues that the dissonance between a liberal constitutional order and the recognition of diverse cultural communities is surmountable. He argues that there is a way of legitimating the application of liberal constitutional norms to non-liberal cultures provided that one assumes that all self-reproducing cultures are equally good. One can then reconcile the liberal duty to recognize cultures with constraints on cultural practices that are non-threatening.

### **Prophylactic Use of Force in International Law: The Illegitimacy of Canada's Participation in "Coalitions of the Willing" Without United Nations Authorization and Parliamentary Sanction**

*Ikechi Mgbeoji*

*Abstract*

The author examines the legitimacy of Canada's participation in acts of non-defensive aggression in light of Canada's international obligations and international law. He contends that in the domestic terrain, constitutional conventions, practices, and applicable laws as factors that shape Canada's decisions to participate in international conflicts, must also be critically reconsidered.

### **The Transition to Constitutional Democracy: Judging the Supreme Court on Gay Rights**

*Bruce M. Hicks*

*Abstract*

The idea that Canada was transformed into a “constitutional democracy” in 1982 is widely believed by the public, yet rarely examined in academic literature. This article identifies what it calls a “theory of constitutional democracy” and then applies it to a test case, the Supreme Court of Canada's decisions on the equality claims of lesbians and gay men. It concludes that if the public expected such a transition, it has yet to be made.

**Sexual Orientation Equality and Religious Freedom in the Public Schools: A Comment on *Trinity Western University v. B.C. College of Teachers and Chamberlain v. Surrey School District 36***

*Richard Moon*

*Abstract*

The author examines the development of sexual orientation equality in the Supreme Court of Canada when balanced with issues of freedom of religion. In *Trinity Western University and Chamberlain*, the Supreme Court attempts to reconcile these competing constitutional interests, and in both cases it adopts an artificially narrow view of sexual orientation equality and an unworkable approach to religious inclusion or neutrality.