

2008

## **Introduction: Law and Rights: Global Perspectives on Constitutionalism and Governance**

Penelope Andrews

Susan Bazilli

## INTRODUCTION

It has been noted that “[C]onstitutional supremacy is one of the splendid achievements of North American and European legal culture.”<sup>1</sup> This “achievement” has of late been exported to countries in the developing world, and the past two decades have witnessed a proliferation of constitutionalism in newly-democratized countries of Africa, Eastern Europe and elsewhere. Indeed, across the legal and political spectrum, it is currently the conventional wisdom that a democratic society cannot function without a constitution, or at least an entrenched system of constitutional review. Legal and other scholars, in this new age of constitutionalism, argue that constitutionalism is a precondition for democracies to flourish.<sup>2</sup>

The field of comparative constitutionalism has grown exponentially in the past two decades, and particularly since the end of the Cold War. Of worthy note is the ascendancy of bills of rights, and the concomitant explosion of constitutional review. Although entrenched in the United States since the landmark case of *Marbury v Madison*<sup>3</sup> (seen as the gold standard for judicial review), and also well-established in Europe in the post-World War 2 era, especially in the formation of the European Court of Human Rights, the notion of judicial review is of recent vintage for most of the developing world. Although bills of rights have been around at least since the beginning of the decolonization period in Africa and elsewhere, for the most part they have been dormant, until a revival since 1989, generated by the collapse of communism in Eastern Europe. It has been argued that as the language of rights increasingly replaced the language of redistribution, bills of rights and the rhetoric of rights, became the “lingua franca of progressive politics”,<sup>4</sup> and that in fact this language began to supplant “all other ethical discourses”.<sup>5</sup>

The project of constitutionalism therefore raises key questions: How should a constitution regulate human relationships? How does a constitutional framework embody shared values whilst at the same time recognizing minority derogations from such values? How does the constitution balance competing rights claims? How are the constitutional values internalized by the broader citizenry? Regarding the field of comparative constitutionalism, further questions are generated: What relationships do national constitutions have to their foreign counterparts? What analogies and distinctions can be extracted from comparative constitutional frameworks? How are national constitutions impacted by the global legal context within which they operate? Does constitutional governance strip the elected legislature of its central role of governance?

These were some of the questions raised at the conference entitled *COMPARATIVE CONSTITUTIONALISM AND RIGHTS: GLOBAL PERSPECTIVES*,<sup>6</sup> held at the University of KwaZulu-Natal in South Africa in December 2005. As the title of the conference suggested, the purpose was to explore comparative perspectives on rights enforcement, despite a diverse array of political, economic, cultural and legal contexts. The purpose was to engage some of the theoretical debates pertaining to the project of rights enforcement in a constitutional context, but also to engage in analyses of rights enforcement at an empirical level. The contributors to this volume bring to the discussion a host of questions, both standard and unique ones, regarding the project of constitutional governance and the enforcement of rights.

They demonstrate in their respective chapters the growth of the field of comparative constitutionalism, pointing out the relationship between the theoretical discourse mostly found in academic writing, on the one hand, and the organic and exciting movements for change generated by civil society, on the other. They also analyze the contested nature of rights incorporation and enforcement, and in particular the multi-layered and contested nature and context of legal interpretation.

In the first section of the volume, Dwight Newman argues, in the opening chapter, that comparative constitutionalism, thus far grounded in substantive and moral considerations, can be enriched by attention to procedural norms. Describing "process" as the "human bridge between justice and peace", Newman sees "rich possibilities" in such an exploration, choosing as his point of illustration the use of international law in the process of domestic constitutional interpretation. This focus, he argues, will highlight the issues raised by a comparative approach to normative constitutional processes. Unproblematic in the South African context, where the Constitution there mandates consideration of international law, but highly vexed in the USA, on both legal and political grounds, he suggests a framework that allows for a principled incorporation of international law. His approach respects the normative evolution of domestic constitutional law, whilst at the same time allowing the comparative constitutional project to permit a "principled intermingling" of local and international law. Although unclear as to the final result of this incorporation, that is, an improvement in domestic constitutional interpretation, or the opposite, Newman nonetheless argues that the process may generate methodological possibilities of enormous benefit to the project of comparative constitutionalism.

In his thoughtful chapter, Michael Plaxton explores the distinctions between constitutional rules and prophylactic rules, arguing that such distinction allows lawyers and legal scholars to "make better sense" of constitutional cases and doctrines. Plaxton argues that such distinction may also "clarify the relationship" between the legislative and judicial branches, particularly in the contemporary climate of accusations and counter-accusations of "judicial activism". Plaxton believes that although caution should be applied in the use of American constitutional jurisprudence, that occasional borrowing of American legal concepts may "bring order to constitutional thinking".

Taunya Banks wades into the increasingly contentious waters that concern the incorporation and justiciability of socio-economic rights. She notes that the jurisprudence on civil and political rights in the United States has resulted in a court-sanctioned hierarchy of rights, namely fundamental versus non-fundamental rights, and that the Court's balancing of these rights do not always lead to consistency or predictability. In short, Banks argues that these neatly categorized hierarchy of rights are not absolute. She cites, for example, the seminal decision of the United States Supreme Court in *Brown v Board of Education*,<sup>7</sup> in which the court jettisoned a fundamental right like the freedom of association, in favor of one that prioritized equality under the law.

She argues for the inclusion of socio-economic rights in constitutional frameworks, even though they may test the balancing capacity of courts even more, and may raise difficult separation of powers issues. Banks argues that the normal process of

creating a hierarchy of rights, and the concomitant balancing required of courts, will merely incorporate another set of rights, namely socio-economic ones. Evaluating the socio-economic rights jurisprudence of the South African Constitutional Court, she is sanguine that the vexed questions raised by the incorporation of socio-economic rights in national constitutions need not tip the balance against legislatures ultimately retaining the control over state expenditure.

Martin Chanock, utilizing the metaphor of "cutting and sewing", explores the many endeavors at constitutional democracy in post-colonial Africa, and particularly the disappointing results of such endeavors. By linking the "conceptual worlds" of political science and law, Chanock analyzes the wave of "constitutional revival" in post independence Africa. Chanock laments the fact that bills of rights and judicial review have superseded notions of political accountability, separation of powers and the rule of law in the project for constitutional democracy. Arguing that the latter processes are actually the "primary core" of constitutional democracy, not least of which because so few of Africa's peoples "speak or are literate in the languages of constitutions, bills of rights and constitutional discourse". In fact, Chanock argues that for Africa's citizens, the "rights language" is "literally meaningless".

Using his deft skills of historical reflection, Chanock engages in a chronological narrative of post-colonial constitution making in Africa. In this account, he pays particular attention to the current concern with "failed states", a preoccupation with contemporary rule of law and good governance projects, the "explosion" of constitutional drafting in the wake of the end of the cold war, and the emergence of the contemporary global moment of free markets and diminished state oversight. Chanock ultimately reduces his chapter to the central question of the future of constitutional democracy in Africa, namely, "where to" and "how to".

The next section examines the issue of separation of powers and the role of the judiciary in the enforcement of rights. It begins with a discussion by Brian Flanagan who raises the issues of judicial review, and whether the constitutionalization of economic rights is appropriate to protect minorities. Noting the ideological polarization that the constitutional enforcement of socio-economic rights generates, he suggests a model for addressing the justiciability of economic rights on the basis of protecting welfare interests on moral grounds, one that may be accepted outside of ideological boundaries. Kirsty McClean, in her chapter continues the discussion on socio-economic rights by examining decisions of the Canadian Supreme Court and that of the South African Constitutional Court involving the right to health care. She locates her questions within the concept of "constitutional deference" in evaluating the decisions the judges reach.

Denise Meyerson explores the "complex connections between the doctrine of separation of powers and the rule of law". She argues that the "separation of judicial from executive and legislative power" furthers the rule of law because it places "the adjudication of controversies" in the judiciary that "can be relied upon to adjudicate disputes independently and impartially". This argument leads her to question the approach taken by South African and Australian courts "to the exercise of non-judicial functions by judges", an approach that she believes is too "flexible" and does not serve to protect the rule of law, and in fact contradicts the very aim of the doctrine of separation of powers. Meyerson therefore suggests that a "blanket

prohibition" on non-judicial functions should be placed on judges as a means of protecting judicial independence.

Focusing on the limitation of a constitutional right, Gregoire Webber engages in an analysis of the concept of a "dialogue" between the judiciary and the legislature, in which he frames the issue of the "dialogic exchange" between the two as one of "justification". He draws on the Canadian constitutional model to explore the evolving concept of "public law as a culture of justification". He sees the Canadian experience as relevant for other democratic societies that also incorporate limitations clauses in their constitutional arrangements.

Ruthann Robson explores the question whether judicial review is "advantageous for women's sexual freedom", and in particular, "lesbian sexual freedom", and therefore, as a practical matter, whether feminists and lesbians embarking on a project of sexual freedom should "embrace" judicial review. Noting the contemporary significance of this question today as new constitutions are being drafted, she suggests ways that advocates of sexual freedom can conceptualize, to their advantage, the question of judicial review.

Section Three focuses on constitutionalism, citizenship and identity. It also pursues questions of constitutions and gender equality, and particularly how a constitution can best further women's rights, both in the public and private sphere. International and national law historically have conceptualized all forms of domestic violence as a private matter, outside the scope of state regulation. Valerie Vojdik's chapter reviews the treatment of domestic violence under international law, and then contrasts the approaches of the United States Supreme Court and the South African Constitutional Court. These two courts have taken dramatically different approaches to domestic violence under their respective constitutions. The U.S. Supreme Court has resisted efforts to constitutionalize a right to be protected from domestic or gender-motivated violence. In contrast, the Constitutional Court has held that the Constitution imposes affirmative obligations on the state to guarantee a woman's right to be free from violence, and national domestic violence legislation fulfills the state's constitutional obligation to afford women gender equality and other fundamental rights. Such affirmative obligations are also reflected in the socio-economic rights incorporated in the South African Constitution. This reflects an understanding of gender based violence as fundamental to gender inequality.

In her chapter Qudisia Mirza provides a feminist analysis of the complex relationship between issues of race, ethnicity, gender, religion and law in contemporary Britain. This analysis is placed within the context of the revival of certain forms of religious conservatism and the discriminatory attitudes that such conservatism often entails. Mirza points out that this nexus is especially pertinent for Muslim women who suffer oppression in terms of growing Islamophobia in society, and the increased exposure of 'fundamentalist' Islam. She describes a 'hierarchy of oppression' that Muslim women face in seeking legal remedies, with the unenviable task of choosing between different forms of disadvantage. Muslim women face discrimination within their communities on the basis of entrenched, conservative interpretations of scripture. Mirza examines the encounter between English law and Shari'a law which indicates that both legal cultures are being influenced by each other. She concludes that dramatic changes are being effected to Muslim practice as a result of

changes imposed by English law, particularly in the area of gendered rights. She cautions that the law can become a tool by which inequalities are perpetuated leading to discrimination against Muslim women as a 'minority within a minority'. This provides lessons to other jurisdictions where increasing conflict of laws impacts adversely on women's equality rights.

Janet Calvo emphasizes that even in an increasingly globalized world, citizenship is an important basis for the protections of rights. She observes that there has been insufficient and inadequate attention paid to the constitutional protection of the right to citizenship. However, in a globalized world, changing borders and increased migration, citizenship acquisition has become increasingly controversial. There is now substantial scholarship that analyzes citizenship beyond that which is defined by a nation state. Yet citizenship continues to matter, she argues, as the world is still predominately organized by, and into, nation states. Even with unprecedented mobility for individuals, basic rights depend on the acquisition of citizenship in a nation state. Calvo reviews the various contemporary forms of citizen acquisition, before arguing that the "right" to citizenship is often the foundational right upon which other "rights" are based. The right to citizenship is "the right to have rights." But the formal acquisition of citizenship does not always mean full access to constitutional rights, and Calvo illustrates that there are many historical and current instances of second class citizenship imposed on people because of race, ethnicity, gender, and sexual orientation.

Calvo argues that constitutions should be clear and detailed about the nature of citizenship and its attendant bundle of rights. The character of this contemporary period of globalization, and the complexities that it generates with respect to citizenship, birth, descent and consent, and the growing occurrence of multiple nationalities, raises complex and contradictory questions. Calvo concludes with a strong recommendation that nation states should pursue more consistent norms with respect to citizenship, and that there is an urgent need for international standards that seriously address the issue of statelessness.

Craig Lind's shares his decade long preoccupation with elucidating the interaction between cultural norms and legal family regulation. He uses examples of same sex family regulation and polygamous family regulation in several jurisdictions, but primarily in South Africa. How does the legal system cope with real, lived, family forms which the many, if not a majority, in a particular society would prefer not to see embraced? And what effect does this interaction of law with family norm have on the lived family lives and the individual self-identities of those living in multicultural societies? Lind's inquiry seeks to reflect critically on some alternative strategies that appear to be available to the legal system in regulating the family where cultures come into conflict on the issue of family form. He pays particular attention to the fundamental rights discourse that serves as the background to legal reflection on the issues raised.

He is very concerned about the place of law in structuring the social world, and he offers us some extremely thought provoking questions about the difficult places we have reached in relation to the regulation, especially under democratic constitutionalism, of cross cultural family norms. If it is true that one of the values ascribed to multiculturalism is its contribution to the way in which we critique our

own view of the world, our ambition for family regulation and gender equality should not be that it is transformed to satisfy the prescripts of one culture, but that we should be more reflective of our norms and their comparative success at resolving the problems that arise in our societies. Culturally foreign norms shine a different light on social practices and they cause us to see our practices in the light of others. They remind us that there are other ways of seeing the world and that each way provides, not complete answers to dilemmas, but answers that are partial and, at best, suit their cultural context.

Wendy Pettifer's chapter focuses on the loss of a human rights culture in the United Kingdom. Basing her analysis on her experience as both a legal aid practitioner and a clinical educator in the area of refugee and asylum law, she reviews the position of the incoming Labour Party as they prepared for government in their last days of opposition, when passage of the Human Rights Act was the centrepiece of the party's vision of a just and fair society. Pettifer sees the Prime Minister Tony Blair's recent foreign policy misadventures as the end of that vision. She looks at the passage of the Human Rights Act, which incorporated the provisions of the European Convention on Human Rights into United Kingdom domestic legislation, examining the political background within which incorporation took place.

In exploring constitutionalism and economic justice in the next section, the speakers raise the possibility of utilizing bills of rights to pursue economic equity, focusing most of their attention on litigating in pursuit of socio-economic rights on behalf of disadvantaged communities. They also explore the range of socio-economic rights that are, in fact, suitable for incorporation in constitutional texts.

Rebecca Bratspies persuasively argues that the most pressing environmental challenges, namely, global climate change, loss of biodiversity, desertification, destruction of the ozone layer, the spread of toxics and pollutants throughout the world, are beyond the capacity of any single state to resolve. No nation can, by itself, create a healthy environment. Constitutional environmental provisions are certainly a start, but they are no more than that. Although such constitutional provisions may be a necessary part of a global response, they are not, in and of themselves, sufficient. Recognizing this, however, Bratspies argues that by setting a baseline of agreed rights for individuals, and by including environmental rights as a critical counterweight to the right of development, constitutional environmental provisions can play a crucial role in developing more propitious conditions for that cooperation. She illustrates that alongside a growing body of domestic and international law governing environmental protection, there has been an unmistakable trend towards recognizing a right to a healthy environment. Almost every Constitution drafted or revised in the past 20 years has included an express textual recognition of the right to environmental protection.

In her chapter Susan Herman notes that rights discourse can overstate the role of judicially-enforced constitutional rights in effectuating change, while critiques of rights discourse can understate the role of the judiciary in implementing constitutional commitments. As many of the authors in this volume point out, the tension between these two views are often emphasized in comparison between the Constitutions of South Africa and the United States. Several of the authors in this volume question the extent to which the South African courts can truly be effective

in ensuring the fulfillment of commitments to socio-economic rights. Another issue discussed throughout this volume is what, if anything, the South African courts can glean from the experiences of other countries in answering these difficult questions. Some argue that there is nothing relevant in the experience of the United States because the United States Constitution does not guarantee socio-economic rights at all. Herman cautions that this is an overly hasty dismissal of a potentially useful comparison. She argues that the experiences of the United States after the Civil War, and of South Africa after the end of apartheid, show that even a profoundly transformative event may not result in a lasting societal commitment to follow through on promised changes. In drafting a constitution, framers may accurately express their constituents' altruistic intentions to help the victims of slavery or of apartheid to build new lives. But when the personal costs of living up to that commitment become apparent, political will can and usually does dissipate. Self-interest, partisan politics, and inertia can all erode the inclination of political actors to live up to earlier promises. It is for that reason that both countries, after transformative and wrenching events, embodied their deeply held beliefs in a constitution and assigned the responsibility for interpreting that constitution to politically insulated courts. Herman answers some of her co-authors whether judicial involvement in socio-economic matters can be justified by stating that the presumption should be reversed. If a constitution confers socio-economic rights, whether explicitly or implicitly, we should have to provide justification for excluding one branch of our government from the conversation about the meaning of those rights.

Peggy Maisel and Susan Jones review the role of South African legal education in the implementation of the social and economic promise of the Constitution. Progress towards social and economic justice is South Africa's greatest challenge, complicated by the catastrophic HIV/AIDS pandemic. As noted elsewhere in this volume, the South African Constitution recognizes socio-economic rights as a necessary foundation for the enjoyment of civil and political rights. The challenge is translating these rights into opportunities for social and economic advancement by the vast majority of South Africans living in poverty – how do we make Constitutional rights “lived rights”?

Arguably, Maisel and Jones note, lawyers are among the most highly educated professionals in every society, needed to support and lead the transformation away from poverty and inequality by helping to actualize these constitutional provisions. Law students must learn about how law can be used as a tool to promote, rather than inhibit, social and economic development and they must gain the skills, values, and knowledge to assist. Under apartheid, law schools educated lawyers to maintain a system of subordination. Maisel and Jones identify ways in which legal education must continue to change in order to educate lawyers who are able to assist with South Africa's development. They analyze the contributions of clinical legal education since apartheid and some of the obstacles to its growth. It is also ironic that fewer and fewer law students are choosing to enter any form of public interest law, as the remuneration cannot compete with either government or the private sector. This very issue, the decline in human rights legal education in South Africa, was a topic very much on the agenda of the conference itself that gave rise to this volume.



In the concluding section of the volume, Patrick Kelly focuses on the emerging debate between democratic constitutionalists and populist constitutionalists about the appropriate institutions to engage in constitutional interpretation. In the United States., South Africa and other democracies with constitutions that require judicial interpretation, courts have assumed the role of final constitutional authority under the doctrine of judicial supremacy. Populist constitutionalists argue that the elected branches of government, more reflective of popular will, should dominate constitutional interpretation. Kelly is concerned that the constitutionalization of rights has expanded the role of the judiciary, thereby transferring issues of rights articulation and distributive justice from a democratic process to the courts. In this debate between adherents of constitutional democracy, on the one hand, and populist constitutionalism, on the other, there is an overlooked dynamic affecting the articulation of rights and the allocation of resources. Kelly poses the question as to what extent and by what processes international legal norms should be incorporated into domestic constitutions. He raises several concerns about the democratic legitimacy of many international legal norms and about the wisdom of the importation of international legal norms into domestic law.

Steve Ellmann enquires into the nature of war powers under the South African Constitution. He admits that this might at first glance appear a rather strange enquiry, since South Africa, certainly the post-apartheid South Africa, does not locate itself as a "war power". However, Ellmann argues that comparatively speaking, particularly in relation to other African nations, South Africa is a "well-armed state", and that in any event, South Africa is deeply immersed in peacekeeping activities in troubled regions of Africa including the Congo, Burundi and Darfur. He therefore explores what the Constitution provides for with respect to the issue of war. He concludes that the brevity of the constitution's provisions is testament to the belief of the nation's founding fathers and mothers, in the notion of peace in the wake of the brutality and violence of apartheid. In his chapter he analyzes the specific provisions that pertain to war and emergency powers, and posits hypothetical situations to outline what the South African government is enabled within its constitutional mandate of human rights and democracy.

In his chapter Christopher Gale analyzes the recent anti-terrorism legislation in the United Kingdom within a broad human rights framework. He reminds us that, again and again, when legislation is enacted hastily in response to a new and urgent situation, there is little questioning of the principles underpinning the issue the legislation is supposed to address. Governments around the world have used the 9/11 attacks as an opportunity to review anti-terrorism laws and security procedures. Indeed, as part of its own immediate response, the United States Congress hastily passed the Patriot Act. The United Kingdom followed suit by promulgating various anti-terrorism statutes. Gale argues that the legislation will contribute to far reaching infringements of civil liberties that may impede, rather than further, attempts to curb international terrorism.

Gale poses the question of why the fundamental matter of charging terrorists with specific offences has not been addressed expeditiously? He notes that because of their secretive and covert nature, allegations of involvement in terrorism are difficult to investigate. However, to subject individuals to such indeterminate restraints of

liberty flagrantly violates due process rights. Gale is concerned that the current state of emergency in the United Kingdom appears unlikely to end in the near future, and that the "additional powers" provided to the government will continue to violate the due process rights of those arrested. Gale sees this as an indictment of Britain's status as a "liberal democracy".

Paul Brietzke begins his chapter, the final one in the volume, with the metaphor of the common law of tort that "every dog gets its first bite," since dogs are not deemed inherently vicious. But once that dog has bitten, its owner becomes strictly liable to prevent future bites; the dog is then said to have a known vicious propensity. Brietzke evocatively postulates that even giving the hierarchy of the United States military and intelligence network that involves private contractors and a civilian hierarchy, the benefit of the doubt, by treating it as not inherently vicious, this hierarchy has now bitten so hard, so often, and in so many contexts since September 11, 2001 that the owner is clearly obliged to take the strictest of precautions. In a democracy, the ultimate owner of this beast is the American people, but they can only exert control through the president, his bureaucratic hierarchy, Congress, the courts, the ballot box, and/or an activist media and civil society networks. Continued savagery under the rubric of torture shows the failure of such accountability devices that otherwise guarantee civilized behavior in mature democracies. Brietzke therefore argues that alternatives must be pursued to call these known vicious propensities to account.

As noted in this chapter by Brietzke, as well as in this volume by Pettifer and Gale, for both Prime Minister Blair and President Bush, the second Iraqi War is a passionately-held belief, desperately in search of a saleable moral justification. Brietzke concludes with Burke's clarion warning call: "All that is necessary for the triumph of evil is that good men [and women and institutions] do nothing". Brietzke concludes that the anti-democratic foundations of a strong and military state will continue to threaten Americans.

We are grateful to the authors of these chapters for their journey to South Africa to present them. Their thoughtful perspectives on the issues raised in this book provided the inspiration for this volume. We particularly want to thank Yasmin Tabi (CUNY School of Law Class of 2007), and Shuva Paul, Shalini Deo and Heather Muwero (CUNY School of Law Class of 2008) for their assistance in checking footnotes and references, and formatting the papers for us. We especially want to thank Wendy Stoffels for her exceptional organizational skills in ensuring that the conference in Durban ran smoothly. A special thanks as well to Dean Mike Cowling, Associate Dean John Mabuganzi, and faculty members at the Howard College School of Law for their participation in, and their support for, the conference. A special thanks to Dean Brent Cotter of the University of Saskatchewan College of Law and faculty members who presented papers at the conference. We are grateful to Chief Justice Pius Langa for introducing the issues covered in this volume in the foreword. This has been a collaborative process for the two co-editors; working together has been intellectually rewarding, and always fun. We are indebted to each other in countless ways.

Penelope Andrews  
New York and Valparaiso  
May 2008

Susan Bazilli  
Johannesburg and Victoria  
May 2008

---

<sup>1</sup> Christian Starck, *The Legitimacy of Constitutional Adjudication and Democracy*, INTERNATIONAL REVIEW OF CONSTITUTIONALISM 251, 267 (2004).

<sup>2</sup> See, for example, RIGHTS AND DEMOCRACY: ESSAYS IN UK-CANADIAN CONSTITUTIONALISM (Gavin Anderson ed. 1999); see also, HEINZ KLUG, CONSTITUTING DEMOCRACY: LAW, GLOBALISM AND SOUTH AFRICA'S POLITICAL RECONSTRUCTION (2000) and RAN HIRSCHAL, THE ORIGIN AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM (2004).

<sup>3</sup> 5 U.S. 137 (1803).

<sup>4</sup> Boaventura de Sousa Santos, *Toward a Multicultural Conception of Human Right*, 1 ZEITSCHRIFT FÜR RECHTSSOZIOLOGIE 1, 1 (1997).

<sup>5</sup> Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 TRANSNATIONAL JOURNAL OF LAW AND CONTEMPORARY PROBLEMS 125, 147 (1998).

<sup>6</sup> The conference was held to celebrate the tenth anniversary of the establishment of South Africa's Constitutional Court. It was organized by Penelope Andrews in her position as the Ariel F. Sallows Chair of Human Rights at the College of Law at the University of Saskatchewan. Participants attended from South Africa and other parts of the African continent, Europe, the UK, the USA, Canada, Australia and New Zealand.

<sup>7</sup> 347 U.S. 483 (1954).