



Exploring Social Rights

Between Theory and Practice

Edited by Daphne Barak-Erez and Aeyal M Gross

Exploring Social Rights Between Theory And Practice

Manisuli Ssenyonjo



Exploring Social Rights Between Theory And Practice:

Exploring Social Rights Daphne Barak-Erez, Aeyal Gross, 2007-12-19 Exploring Social Rights looks into the theoretical and practical implications of social rights. The book is organised in five parts. Part I considers theoretical aspects of social rights and looks into their place within political and legal theory and within the human rights tradition. Part II looks at the status of social rights in international law with reference to the challenge of globalisation and to the significance of specific regional regulation such as the European System. Part III includes discussions of various legal systems which are of special interest in this area: Canada, South Africa, India and Israel. Part IV looks at the content of a few central social rights such as the right to education and the right to health. Part V discusses the relevance of social rights to distinct social groups: women and people with disabilities. The articles in the book while using the category of social rights also challenge the separation of rights into distinct categories and question the division of rights to civil vs social rights from a perspective which considers all rights as social. This book will be of interest to anyone concerned with human rights, the legal protection of social rights and social policy. Social rights are the stepchildren of the human rights family. Are they really rights? Can courts enforce them? And does it make any difference when they try? This remarkable collection of essays by distinguished scholars offers important new responses to all the basic questions. Ranging across disciplinary and national boundaries and brimming with both theoretical and practical insights, the book is especially welcome in this moment of mounting inequalities and growing interest in the possibilities and perils of social rights. William E. Forbath, Lloyd M. Bentsen Chair in Law and Professor of History, University of Texas at Austin. At the auspicious moment of the sixtieth anniversary of the Universal Declaration of Human Rights and more than half a century since the beginning of the Human Rights Revolution, a time characterized by the end of the cold war, globalization and privatization comes this important compilation which critically revisits the international commitment to social rights and reconceives its core distinguishing principles from crosscutting comparative theoretical and practical perspectives illuminating our commitment to human security. Ruti Teitel, Ernst Stiefel Professor of Comparative Law, New York Law School. Author, *Transitional Justice*. OUP, 2002. [Social and Economic Rights in Theory and Practice](#) Helena Alviar García, Karl Klare, Lucy A. Williams, 2014-09-19 Since World War II a growing number of jurisdictions in both the developing and industrialized worlds have adopted progressive constitutions that guarantee social and economic rights (SER) in addition to political and civil rights. Parallel developments have occurred at transnational level with the adoption of treaties that commit signatory states to respect and fulfil SER for their peoples. This book is a product of the International Social and Economic Rights Project (ISERP), a global consortium of judges, lawyers, human rights advocates and legal academics who critically examine the effectiveness of SER law in promoting real change in people's lives. The book addresses a range of practical, political and legal questions under these headings with acute sensitivity to the racial, cultural and gender implications of SER and the path-breaking SER jurisprudence now emerging in the Global South. The book brings

together internationally renowned experts in the field of social and economic rights to discuss a range of rights controversies from both theoretical and practical perspectives Contributors of the book consider specific issues in the litigation and adjudication of SER cases from the differing standpoints of activists lawyers and adjudicators in order to identify and address the specific challenges facing the SER community This book will be of great use and interest to students and scholars of comparative constitutional law human rights public international law development studies and democratic political theory

Exploring Social Rights Belinda Brooks-Gordon, Daphne Barak-Erez, Aeyal M. Gross, Fatemeh Ebtehaj, Jonathan Herring, Martin Johnson, 2007 Looks into the theoretical and practical implications of social rights This book is of interest to anyone concerned with human rights the legal protection of social rights and social policy

Social Rights in the Welfare State Toomas Kotkas, Kenneth Veitch, 2016-12-08 At a time when the future of the welfare state is the object of heated debate in many European countries this edited collection explores the relationship between this institution and social rights Structured around the themes of the politics of social rights questions of equality and social exclusion inclusion and the increasing impact of market imperatives on social policy the book explores the effect of transformations in the welfare state upon social rights and their underlying rationalities and logics Written by a group of international scholars many of the essays discuss a number of urgent and topical issues within social policy including the social rights of asylum seekers the increasing marketization and consumerization of public welfare services the care of the elderly and the obligation to work as a condition of access to welfare benefits International in its scope and interdisciplinary in its approach this collection of essays will appeal to scholars and students working in the fields of law and socio legal studies sociology social policy and politics It will also be of interest to policy makers and all those engaged in the debate over the future of the welfare state and social rights

Research Handbook on International Law and Social Rights Christina Binder, Jane A. Hofbauer, Flávia Piovesan, Amaya Úbeda de Torres, 2020-08-28 This comprehensive Research Handbook offers a comparative overview of the history nature and current status of social rights at the universal and regional level Tracing their evolution from rather modest beginnings to becoming the category of rights responding most accurately to the 21st century's policy objectives of poverty eradication and equitable resource allocation this Research Handbook assesses the mechanisms used to enhance the implementation and enforcement of social rights

Feminist Pragmatism and Social Rights Judy D. Whipps, 2024-12-16 In an exploration of the little told legacy of early feminist pragmatists who pioneered social rights in America *Feminist Pragmatism and Social Rights* delves into the transformative efforts of trailblazing figures including Jane Addams Julia Lathrop Florence Kelley Grace Abbott Mary Church Terrell Mary McLeod Bethune Emily Greene Balch Molly Dewson and Frances Perkins As Judy D Whipps reveals these women created and led organizations that were prototypes for later federal programs Their relentless advocacy reshaped U S politics and culture from grassroots organizations to federal legislation paving the way for constitutional recognition of social rights decades before the United Nations International Covenant on

Economic Social and Cultural Rights This book is the first to cast the philosophy behind these women s political and judicial activism as feminist pragmatism Each chapter illuminates their struggles and triumphs from combating child labor to advancing women s rights and after their research gathered popular support for reform they continued that work by writing drafts of legislation and legal briefs This book not only chronicles a pivotal fifty year movement but also serves as a poignant reminder of their enduring impact

Borrowing Justification for Proportionality João Andrade Neto,2018-11-11 The proportionality test as proposed in Robert Alexy s principles theory is becoming commonplace in comparative constitutional studies And yet the question are courts justified in borrowing proportionality has not been expressly put in many countries where judicial borrowings are a reality This book sheds light on this question and examines the circumstances under which courts are authorized to borrow from alien legal sources to rule on constitutional cases Taking the Supreme Federal Court of Brazil and its enthusiastic recourse to proportionality when interpreting the Federal Constitution as a case study the book investigates the normative reasons that could justify the court s attitude and offers a comprehensive overview of its case law on controversial constitutional matters like abortion same sex union racial quotas and the right to public healthcare Providing a valuable resource for those interested in comparative constitutional law and legal theory or curious about Brazilian constitutional law this book questions the alleged universality of the proportionality test challenges the premises of Alexy s principles theory and discloses more than 68 Brazilian Supreme Court decisions delivered from 2003 to 2018 that would otherwise have remained unknown to an English speaking audience

Human Rights Futures Stephen Hopgood,Jack Snyder,Leslie Vinjamuri,2017-08-31 With authoritarian states and global culture wars threatening human rights this volume weighs hopes the for effective human rights advocacy

Human Security and Human Rights under International Law Dorothy Estrada-Tanck,2016-12-01 Human security provides one of the most important protections a person centred axis of freedom from fear from want and to live with dignity It is surprising given its centrality to the human experience that its connection with human rights has not yet been explored in a truly systematic way This important new book addresses that gap in the literature by analysing whether human security might provide the tools for an expansive and integrated interpretation of international human rights The examination takes a two part approach Firstly it evaluates convergences between human security and all human rights civil political economic social and cultural and constructs an investigative framework focused on the human security human rights synergy It then goes on to explore its practical application in the thematic cores of violence against women and undocumented migrants in the law and case law of UN European Inter American and African human rights bodies It takes both a legal and interdisciplinary approach recognising that human security and its relationship with human rights cuts across disciplinary boundaries Innovative and rigorous this is an important contribution to human rights scholarship

Public Interest Litigation in International Law Justine Bendel,Yusra Suedi,2023-09-25 In a world of growing public interest in global matters and criticisms of multilateralism to

adequately address them the role of international courts and tribunals in the resolution of disputes is shifting A central aspect of this shift is whether and how international courts and tribunals can be used to resolve such disputes in the public interest This practice referred to as public interest litigation is the object of this collection which identifies some recent developments trends and prospects in this growing practice Its aim is to assess the degree to which the bilateral design of international courts and tribunals can adapt to the shift towards a public approach to international litigation Engaging with various fields where public interest litigation exists such as human rights climate change global health and criminal law it identifies recent developments trends and prospects in this practice The selected pieces provide a flavour of the types of issues that have arisen before international judicial bodies for instance the International Court of Justice the International Tribunal for the Law of the Sea international arbitral tribunals regional human rights bodies or criminal courts and explores issues that may arise in the future Law and Social Policy in the Global South Ulrike Davy, Albert H.Y. Chen, 2022-12-13

The book is an in depth study of the origins and the trajectories of the law governing social policies in Brazil China India and South Africa four middle income countries in the global South with a history in social policy making that starts in the 1920s The policies of these countries affect almost half of the world's population The book takes the legal framework of the policies as a starting point but the main interest lies behind the letter of the law What were the objectives and goals of social policy over the course of the last 100 years What were the ideas ideologies and values pursued by relevant actors The book comprises four country studies and a comparative study The country studies concentrate on the political and social context of social policy making in Brazil China India and South Africa as well as on the ideas ideologies and values underpinning the constitution statutory laws and case law that frame and shape social policy at the national level The country studies are complemented by a comparative study exploring and describing the commonalities and differences in the ideational approaches to social policies across the four countries nationally and in the formative decades internationally The comparative study also identifies the characteristics that make Brazilian Chinese Indian and South African social policies distinct from European social policies With its emphasis on law and drawing on legal scholarship the book adds a new dimension to the existing accounts on welfare state building which so far are dominated by European narratives and by scholars with a background in sociology political science and development studies This book is relevant to specialists and peers and will be invaluable to those individuals interested in the fields of comparative and international social security law human rights law comparative constitutional law constitutional history law and development studies comparative social policies global social policies social work and welfare state theory The Open Access version of this book available at www.taylorfrancis.com has been made available under a Creative Commons Attribution Non Commercial No Derivatives 4.0 license **Justice and Unjusticiability** Ermanno Calzolaio, Luigi Lacchè, 2019 The book tries to identify the main contours of unjusticiability and non justiciability from an historical and comparative perspective distinguishing between common law

world and civil law tradition In the light of a general overview the aim of this publication is to reflect on the utility of paving the way for a much wider approach to unjusticiability More precisely some scholars have recently suggested that such a notion could embrace all the situations where a court does not decide a case so that it is impossible for the plaintiff to have the case decided by a court A first category covers the situations where the court refuses to judge because it does not want to judge A second category is related to all the cases where there is an impossibility to reach a decision Any case where the judge cannot or does not wish to make justice *si iudex non facit iustitiam* continues to indicate a series of new and old questions

Children's Socio-Economic Rights, Democracy And The Courts Aoife Nolan, 2011-09-15 This book is concerned with children's economic and social rights sometimes referred to simply as children's social rights Despite increased academic interest in both children's rights and socio economic rights over the last two decades children's social and economic rights remain a comparatively neglected area This is particularly true with regard to the role of the courts in the enforcement of such social rights Aoife Nolan's book remedies this omission focussing on the circumstances in which the courts can and should give effect to the social and economic rights of children The arguments put forward are located within the context of and develop long standing debates in constitutional law democratic theory and human rights The claims made by the author are supported and illustrated by concrete examples of judicial enforcement of children's social and economic rights from a variety of jurisdictions The work is thus rooted in both theory and practice The author brings together and addresses a wide range of issues that have never previously been considered together in book form These include children's socio economic rights children as citizens and their position in relation to democratic decision making processes the implications of children and their rights for democratic and constitutional theory the role of the courts in ensuring the enforcement of children's rights and the debates surrounding the litigation and adjudication of social and economic rights This book thus represents a major original contribution to the existing scholarship in a range of areas including human and specifically social rights legal and political theory and constitutional law Children's rights were often thought to be synonymous with economic and social welfare prior to the adoption of the Convention on the Rights of the Child in 1989 Ironically since that time remarkably little scholarship has been devoted to the vitally important economic and social rights dimensions of children's rights Nolan's book singlehandedly remedies that neglect and does so in a sophisticated nuanced and balanced way It provides a superb account of the pros and cons of judicial activism in promoting these rights Philip Alston John Norton Pomeroy Professor NYU Law School Thus far the burgeoning literature on the judicial enforcement of socio economic rights has failed to engage in a sustained systemic manner with this topic from the perspective of children and the complexity of their status as citizens within contemporary democracies This book fills this gap and makes a major contribution to the literature in the three interrelated areas of the judicial review of socio economic rights claims children's rights and democratic theory Nolan navigates skilfully through the dense but rich literature in these areas as well as relevant

international and comparative law In so doing she illuminates both the pitfalls and potential of resorting to courts in a partial response to the multifaceted and deeply entrenched global phenomenon of child poverty Professor Sandra Liebenberg HF Oppenheimer Professor of Human Rights Law University of Stellenbosch Law Faculty Winner of the Kevin Boyle Book Prize 2012 awarded by the Irish Association of Law Teachers to a book that is deemed to have made an outstanding contribution to the understanding of law *Social and Political Foundations of Constitutions* Denis J. Galligan, Mila Versteeg, 2013-10-14

This volume analyses the social and political forces that influence constitutions and the process of constitution making It combines theoretical perspectives on the social and political foundations of constitutions with a range of detailed case studies from nineteen countries In the first part leading scholars analyse and develop a range of theoretical perspectives including constitutions as coordination devices mission statements contracts products of domestic power play transnational documents and as reflection of the will of the people In the second part these theories are examined through in depth case studies of the social and political foundations of constitutions in countries such as Egypt Nigeria Japan Romania Bulgaria New Zealand Israel Argentina and others The result is a multidimensional study of constitutions as social phenomena and their interaction with other social phenomena **The Right to Work** Virginia Mantouvalou, 2015-01-22 The value of work cannot be

underestimated in today's world Work is valuable because productive labour generates goods needed for survival such as food and housing goods needed for self development such as education and culture and other material goods that people wish to have in order to live a fulfilling life A job also generally inspires a sense of achievement self esteem and the esteem of others People develop social relations at work which can be very important for them Work brings both material and non material benefits There is no doubt that work is a crucial good Do we have a human right to this good What is the content of the right Does it impose a duty on governments to promote full employment Does it entail an obligation to protect decent work There is also a question about the right holders Do migrants have a right to work for example At the same time many people would rather not work What kind of right is this if many people do not want to have it The chapters of this book address the uncertainty and controversy that surround the right to work both in theoretical scholarship and in policymaking They discuss the philosophical underpinnings of the right to work and its development in human rights law at national level in jurisdictions such as the United Kingdom Australia Japan France and the United States and international level in the context of the United Nations the European Social Charter the International Labour Organization the European Convention on Human Rights and other legal orders *The Right to Housing* Jessie Hohmann, 2013-03-01 A human right to housing represents the law's most direct and overt protection of housing and home Unlike other human rights through which the home incidentally receives protection and attention the right to housing raises housing itself to the position of primary importance However the meaning content scope and even existence of a right to housing raise vexed questions Drawing on insights from disciplines including law anthropology political theory philosophy and geography this book is both a

contribution to the state of knowledge on the right to housing and an entry into the broader human rights debate It addresses profound questions on the role of human rights in belonging and citizenship the formation of identity the perpetuation of forms of social organisation and ultimately of the relationship between the individual and the state The book addresses the legal theoretical and conceptual issues providing a deep analysis of the right to housing within and beyond human rights law Structured in three parts the book outlines the right to housing in international law and in key national legal systems examines the most important concepts of housing space privacy and identity and finally looks at the potential of the right to alleviate human misery marginalisation and deprivation The book represents a major contribution to the scholarship on an under studied and ill defined right In terms of content it provides a much needed exploration of the right to housing In approach it offers a new framework for argument within which the right to housing as well as other under theorised and contested rights can be reconsidered reconnecting human rights with the social conditions of their violation and hence with the reasons for their existence Shortlisted for The Peter Birks Prize for Outstanding Legal Scholarship 2013

The European Social Charter: A Commentary The Academic Network on the European, Stefano Angelieri, Koldo Casla, Sébastien van Drooghenbroeck, 2024-02-06 This authoritative commentary prepared by scholars from the Academic Network on the European Social Charter and Social Rights ANESC is intended for academic researchers studying social and economic rights in Europe and legal practitioners civil society organisations trade unions and state representatives engaging with the procedures of the European Committee of Social Rights The text comprises contributions from a diverse group of experts bringing together senior and young scholars from various countries and legal traditions expertise in social and economic rights coupled with a commitment to enhancing the European system for regulating these rights The commentary consists of 106 chapters organised into eight volumes on the substantive obligations of State Parties to the European Social Charter and the practice of the European Committee of Social Rights Other chapters delve into the procedures that state representatives international bodies and applicants must follow to engage with the Charter system Volume 3 which encompasses Articles 11 to 19 examines critical ESC welfare rights for the general population and specific groups of people against the jurisprudence of the European Committee of Social Rights and other international standards

Economic, Social and Cultural Rights in International Law Manisuli Ssenyonjo, 2016-10-06 Since the first edition published in 2009 there have been several important treaty developments including the entry into force of the Optional Protocol to the International Covenant on Economic Social and Cultural Rights ICESCR on individual communications and significant developments in the case law on economic social and cultural ESC rights The second edition addresses these developments and explores ESC rights from foundational issues to substantive rights and systems of protection It has been fully updated to include new material and up to date coverage of the case law of human rights bodies and national courts on ESC rights In addition to the rights to health education and work covered in the first edition the second edition analyses new developments

such as the rights to adequate food water and sanitation adequate housing social security and cultural rights It also considers several contemporary issues including the extraterritorial human rights obligations of states in the area of economic social and cultural rights non state actors relationship of the ICESCR to other areas of international law the Optional Protocol to the ICESCR regional protection of ESC rights more examples of the domestic protection of ESC rights the protection of ESC rights of vulnerable groups contemporary challenges to ESC rights including poverty corruption armed conflicts and terrorism It concludes by exploring the possible establishment of a World Court of Human Rights

Research Handbook on European Social Security Law Frans Pennings, Gijsbert Vonk, 2015-10-30 The Research Handbook on European Social Security Law critically examines the various European dimensions of social security The collection discusses a wide range of questions and dilemmas ensuing from the present state of European social security law whilst at the same time identifying future lines of inquiry that are likely to dominate the discourse in the coming years This Handbook encompasses numerous dimensions of European social security law including social security as a human right standard setting in social security the protection of mobile persons and migrants as well as the global context of European social security law It pays attention to both EU law and to various instruments of the Council of Europe Throughout the book s chapters prominent experts analyse contemporary debates discuss new challenges and point out further lines of research Via this exploration the Handbook provides a source of inspiration for the development of this special field of law Covering a breadth of topic and research scholars and practitioners alike will find this Research Handbook to be an invaluable source of information

The International Covenant on Economic, Social and Cultural Rights Ben Saul, David Kinley, Jaqueline Mowbray, 2014-03-06 Economic social and cultural rights are finally coming of age This book brings together all essential documents materials and case law relating to the International Covenant on Economic Social and Cultural Rights ICESCR one of the most important human rights instruments in international law and its Optional Protocol This book presents extracts from primary materials alongside critical commentary and analysis placing the documents in their wider context and situating economic social and cultural rights within the broader human rights framework There is increasing interest internationally regionally and in domestic legal systems in the protection of economic social and cultural rights The Optional Protocol of 2008 allows for individual communications to be made to the UN Committee on Economic Social and Cultural Rights after its entry into force in 2013 At the regional level socio economic rights are well embedded in human rights systems in Europe Africa and the Americas At the national level constitutions and courts have increasingly regarded socio economic rights as justiciable narrowing the traditional divide with civil and political rights This book contextualises these developments in the context of the ICESCR It provides detailed analysis of the ICESCR structured around its articles drawing on national as well as international case law and materials and containing all of the key primary materials in its extensive appendices This book is indispensable for the judiciary human rights practitioners government legal advisers and agencies national human rights

institutions international organisations regional human rights bodies NGOs and human rights activists academics and students alike

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