



Rights, Scarcity and Justice

Can human rights really protect people from want? If one is lacking medical care or housing, can one really go to a judge and ask for the provision of such goods and services? These questions have proved divisive for academics, politicians and judges working in the field of human rights. Some consider that there is no real difference between civil and political rights and economic, social and cultural rights. Others think that economic, social and cultural rights have structural features that make their judicial protection unwelcome.

The book studies the possibilities of judicial engagement with matters of welfare in situations of scarcity. First, it isolates the real problems that such forms of judicial engagement entail. Afterwards, it presents three distinct strategies for protecting welfare duties judicially: reasonableness, prioritization and deliberative democratic dialogue. Reasonableness is based on the practice of reasonableness review present in the Constitutional Court of South Africa. By contrast, prioritization and deliberative democratic dialogue constitute more novel alternatives to reasonableness that are loosely inspired in various developments in comparative constitutional law. Finally, it discusses the relative merits and demerits of these strategies in an analytical framework based on qualitative comparative analysis.

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