

BOOK REVIEW

ROS MACDONALD*

John Squires, Malcolm Langford, Brett Thiele (eds), *The Road to a Remedy: Current Issues in the Adjudication of Economic, Social and Cultural Rights* (Australian Human Rights Centre, Sydney and Centre for Housing Rights and Evictions, Geneva, 2005) 250 pp

The editors of this volume are closely associated with the Australian Human Rights Centre (AHRC) at the University of New South Wales and the Centre on Housing Rights and Evictions (COHRE) in Geneva. These organisations are working to increase public awareness of and scholarship in domestic and international human rights issues on the one hand, and towards providing a practical means of promoting rights in housing and confronting violations of these rights on the other.

The papers in this volume were first presented at an Economic, Social and Cultural Rights Litigation Strategy Workshop held in November 2003 in Switzerland. Although the papers have been updated for inclusion in the book, its overall usefulness has been diminished somewhat by the lack of the usual aids one finds in a legal monograph. While it is understandable that funds for publishing works of this nature are very limited, the book would have benefited enormously in itself and possibly attracted a wider audience if there had been a bibliography, an index, a table of statutes and a table of cases. Another lesser criticism of the work is the language. In parts the writing is dense and repetitive: some of the chapters could have been improved by judicious editing of the language that at times made the review tedious. That said, this is still an interesting and useful book for anyone with a research or practical interest in justiciability and enforceability of the economic, social and cultural rights primarily in the *International Covenant on Economic, Social and Cultural Rights*(ICESCR).

The basic premise of the book is that some, if not all, of these rights are justiciable, if not at the international level, then at a domestic level. The approach the editors have taken is to group the contributions under six headings –an assessment of progress so far, positive obligations, remedies, comparative case studies, and suing non –state actors for violations of these ESC rights. A short overview of the discussion at the workshop in 2003, and a copy of a 1998 communication of the Committee on Economic, Social and Cultural Rights – *General Comment No 9 (1998) The domestic application of the Covenant* complete the work.

* PhD QUT, Senior Lecturer in Law, Queensland University of Technology.

The debate that emerges in the theoretical discourse in the book is that between adjudication based on a universal 'minimum core' standard of ESC rights and that focusing on a jurisdictional approach that takes into account the necessary content of these human rights within a particular context.

This first part of the monograph is headed 'Assessment of Progress'. There are chapters on justiciability and indivisibility of human rights, progress in adjudication of ESR rights, and what one author characterises as the crisis in human rights and strategies for dealing with it. These chapters define the theoretical base from which the authors of other parts of the book take their lead. Martin Scheinin in his chapter attempts to show that a developing principle of the interdependence and indivisibility of all human rights is giving impetus to an understanding of their justiciability.

Matthew Craven addresses the problem of adjudication first by describing the difficulties of aligning rights and adjudication. The problem he sees initially is that human rights discourse is inextricably intertwined with the principles of 'progressive realisation' and 'availability of resources'. The issues become ones of distribution of resources rather than the fundamental need to address human rights protection failures. A way around this barrier is to frame the problems in one of two ways – reduce all human rights violations to matters of discrimination, which may be appropriate in circumstances where there is evidence of discrimination within a state, or articulation of a minimum core content for all ESC rights. This approach creates a fundamental minimum level of ESC rights, not affected by problems of progressive realisation or resource allocation, and to which all members of the state are equally entitled. But Bruce Porter, in the last chapter in this first section, takes issue with this approach. He sees, among other things, a crisis looming for the proper adjudication of ESC rights if the 'minimum core' ESC rights approach is accepted, rather than one that requires an examination of the actual content of the rights violated in each case. This latter approach allows the enlargement of the content of the rights alongside the growth in resources of the state to support them.

The following chapters contain practical illustrations of the adjudication of these rights. The South African model of reasonableness review, and problems that resource scarcity imposes on rights adjudication, as well as remedies and litigation strategies are reviewed. The substantive work ends with case studies - litigation of ESC rights against multinational corporations and against the World Bank.

While it is evident from the list given at the end of the monograph that the interests of the participants are firmly settled elsewhere, it would have been useful to include in the workshop deliberations some discussion on the adjudication (or lack of adjudication) of ESC rights within Australia, where there is little constitutional or legislative support *per se*, and the United Kingdom, which has had human rights legislation for some time. Limited attention was given to the United States, and the Canadian experience is with a Charter of Rights and Freedoms. Agitation is increasing in Australia for a human rights Act and a comparative study of human rights jurisprudence that could be used more effectively to inform the current Australian debate, would have been welcome.

Overall, this is a book for academics and students writing and working in this specialised area of human rights practice. There should be a copy in every law library,

as the book does have a place in the reading list for any postgraduate course on international human rights.