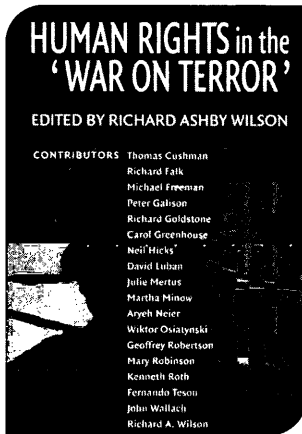


Reviews



Human Rights in the 'War on Terror'

By Richard Ashby Wilson (ed), Cambridge University Press, March 2006

pp 336

\$49.95

Human Rights in the 'War on Terror'

Human Rights in the 'War on Terror' is a collection of essays written by a number of eminent human rights lawyers, policy makers, activists and scholars. Each essay examines the various ways in which the 'war on terror'—or the counter-terrorism policies employed by the United States since 11 September 2001—has affected human rights. Have efforts to combat terrorism rendered human rights redundant? Is it necessary to sacrifice rights, such as freedom of speech and religion, in the pursuit of national security? Are we helping terrorists destroy democracy by allowing respect for our human rights to be eroded? These are just some of the questions raised and discussed by the contributors to this engaging and informative book.

An interesting threshold issue is whether it is appropriate or desirable to describe the response to terrorist attacks on countries such as the United States as a 'war on terror'. Mary Robinson argues that use of the language of war in this context may have contributed to the growing political emphasis on national order and security as opposed to human rights and democracy. Michael Freeman argues that use of the language of war demonises 'terrorist' groups and prevents any understanding of those groups that might assist in addressing the problem of terrorism. Further, Richard Goldstone notes that use of the language of war has enabled the Bush Administration to label its opponents 'unpatriotic'.

Many contributors discuss specific United States counter-terrorism policies, such as the *USA PATRIOT Act*, as well as the wars in Afghanistan and Iraq. Thomas Cushman argues that the war in Iraq was morally justified because it liberated Iraqis from a brutal dictator,

thus protecting their human rights. However, Kenneth Roth, the executive director of Human Rights Watch, argues that the war in Iraq can not be classified as a humanitarian intervention. In his view, the war in Iraq demonstrates the need for clearer international consensus as to when a military intervention can be justified on humanitarian terms.

Another issue is the way in which the United States counter-terrorism policies have affected the perception and treatment of human rights in other countries. Some contributors argue that the Bush Administration has damaged the cause of human rights worldwide by: using force to impose democracy and respect for human rights in Middle Eastern countries, so that human rights supporters are automatically perceived as being sympathetic to the United States; forming strategic political alliances with countries with poor human rights records, such as Pakistan; and, violating the human rights of detainees at Guantánamo Bay Naval Base in Cuba and the Abu Ghraib prison in Iraq.

In addition, several contributors examine whether it is possible to develop counter-terrorism strategies that adequately respect human rights. In doing so, they analyse counter-terrorism policies in other countries that do not impinge on human rights, and question whether these types of policies could be employed by more countries struggling to ensure the safety of their citizens.

In summary, *Human Rights in the 'War on Terror'* is a comprehensive and thought provoking publication about an issue of vital importance to all modern democracies. The authors raise difficult questions, discuss topical issues, and offer many considered and rational opinions on the perceived conflict between human rights and national security.

△ Althea Gibson

Ever Yours, C H Spence

Catherine Helen Spence was a social reformer, journalist, novelist, lecturer, philanthropist and self-described 'New Woman', who lived from 1825 until 1910. She was a pioneer in late nineteenth-century politics who became the first Australian female political candidate. Her picture was on the five dollar note issued to mark the centenary of Federation.

Spence's main passion in life was electoral reform. As she put it herself, wryly but sincerely, '...the main object of my life is proportional representation'. She argued that 'Effective Voting', as she called it, would naturally lead to greater social justice, particularly for women and the impoverished.

If 'Effective Voting' sounds a bit dry as a lifelong cause, for Ms Spence it was anything but. She had a dry wit which shines in her autobiography and diary, and great compassion and warm feelings for family, friends and the disadvantaged alike. Her wide range of interests and involvements included literature and conversation, land taxation and criminology, and she traveled widely and often, meeting many famous figures of the nineteenth-century world in America, Europe and England.

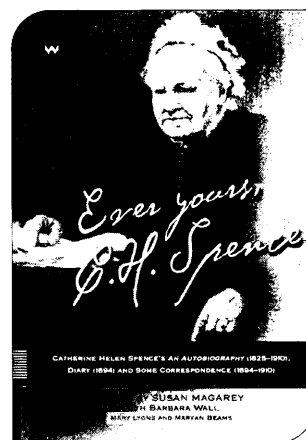
Her description of her trip to America, in 1893, demonstrates her humour and determination. She begins with 'I felt that it was a big order for a little woman of 68 to undertake the conversion to electoral reform of 60 million of the most conceited people in the world. Still I went.'

She was a member of the Destitute Board, the State Children's Council, the South Australian Single Tax League, and helped to form many other organisations for better government, social welfare and education. She believed, for example, 'education that is compulsory should be free'. She was a fearless lobbyist and supporter of the disadvantaged and helped to achieve a later school-leaving age in order to keep children out of poverty and off the streets. She also helped with the passage of the *Women's Suffrage Act* in South Australia, the first Australian colony to enfranchise women.

This volume is the autobiography and selections from the diary and correspondence of a truly remarkable woman. Real justice is done to her stature and eloquence by editors Susan Magarey and Barbara Wall, whose scholarly introduction, editing, footnotes and indexing are of the highest quality.

This combination—of Spence's own well-written life story and the added notes from the editors fleshing out the background details—gives a fascinating and entertaining insight into social progress worldwide in the late nineteenth century. It is a compelling story.

△ Carolyn Kearney



Ever Yours, C H Spence

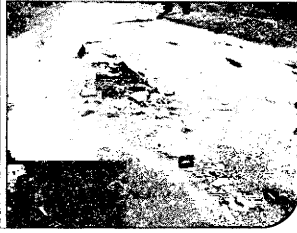
By Susan Margarey and Barbara Wall (eds),
Wakefield Press,
May 2005 .
pp 392

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The Road To A Remedy

Current Issues in the Litigation of Economic, Social and Cultural Rights

Edited by
John Squires
Malcolm Langford
Bret Thiele



The Road to a Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights

By John Squires,
Malcolm Langford, Bret
Thiele (eds),
Australian Human Rights
Centre, distributed by
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The Road to a Remedy

The road to a remedy for victims of violations of Economic, Social and Cultural (ESC) rights is a long one. It is fraught at every turn with pitfalls and disappointment, but sometimes ends in relief and vindication. This road, however, is more travelled than many might think, or wish to acknowledge. 'The Road to a Remedy' is a collection of papers and essays by commentators, many of whom have been at the forefront of the charge to seek relief from courts for violations of ESC rights.

This book is a valuable resource for litigators and theorists alike. Not only does it address the philosophical issues and underpinnings of the recognition of ESC rights but it also examines jurisprudential standards set by courts and practical challenges faced by litigators. It makes useful and realistic suggestions and provides invaluable guidance on how appropriate cases should be litigated and remedies sought. Despite its inescapably academic flavour, this book is written in a language that litigators can also understand.

The book comprises five sections, each of which addresses a different aspect of ESC rights litigation. The first section deals with the justiciability of these rights. Whereas the justiciability of civil and political rights is beyond doubt, the question of justiciability of ESC rights has seen ongoing and fierce debate. The authors argue that discussion on this question has been more muted, however, after the judgment of the Constitutional Court of South Africa in the *Grootboom* decision. The authors go on to caution against an overly universalistic interpretation of ESC rights, a methodology that may lead to unintended consequences. They address the false bases in the traditional arguments regarding the role of the judiciary vis-à-vis the legislative and executive branches in the power to allocate resources. They also question the rigidity of some legal concepts and categories within which victims are put. This analysis leads one of the authors to suggest a way of thinking about ESC rights that is more consistent with the fundamental principles of human dignity.

The second section focuses on jurisprudence from various high courts on ESC rights cases. Liebenberg articulates the reasonableness model for a range of positive obligations and provides an in-depth analysis of the

reasonableness standard developed by the Constitutional Court of South Africa. This standard is considered to underpin one of the key approaches to the adjudication of positive duties imposed by ESC rights. Langford, in his chapter, looks at the resource implications for governments if these standards are applied.

The section that I found most interesting deals with remedies that ESC litigators have sought from courts and at times even obtained. The comfort that one takes from reading this section is from knowing that courts have devised innovative ways to remedy breaches of ESC rights. The two other chapters in this section focus on lessons learnt from the Argentinean *Viceconte* decision and courts' willingness to make remedial orders for forced evictions with particular reference to South African decisions.

Section four focuses on litigation of ESC rights in Kenya, Argentina, and India. Abramovich's chapter is valuable in that it expounds judicial strategies that can be used to complement political strategies to further the recognition of ESC rights. The final chapter discusses interesting issues in litigating ESC rights violations by non-state actors including international financial institutions. In what is a disturbing and disheartening account of brutality and failures of law and legal institutions, Thiele and Gomez explore the grounds for suit against international financial institutions on the count of atrocities committed to enable the construction of the Chixoy Dam in Guatemala.

The road to a remedy is strewn with potholes of ineffective and dispassionate governance, inexperienced litigators, and lack of authoritative judicial guidance. This book provides the next generation of litigators with a road map to effectively navigate through the courts, and seek and obtain relief for ESC rights violations.

△ Pouyan Afshar Mazandaran