



Litigating the Politics of Human Rights

Contemporary U.S. Culture Wars on Trial

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Details

The cases analysed involve litigation concerning a disparate range of contemporary US culture wars including equity in access to public services unrestricted by religious bias, resistance to the teaching of historical facts relating to racial tensions in America including the so-called 'critical race theory' debate, the right of schoolchildren to exposure concerning a diversity of views, current USSC litigation about US university admissions policy that considers 'race' (ethnicity) as one factor amongst many in admission, contemporary cases concerning the constitutionality of US abortion law grounded on Roe v Wade and the scope of State and indigenous sovereign powers. These contemporary culture war US landmark cases are then compared to similar cases in non-US jurisdictions and courts to consider in more depth the underlying core issues in these cases.

The book highlights the risk to a democracy of recasting fundamental human rights litigation as essentially nothing more than the sorting out of political quagmires and cultural conflicts best left to the discretion of government rather than the courts. Then, the major risk is that constitutional controversies will increasingly not be decided by an independent judiciary but rather by self-interested politicians as the courts more often than not decline to weigh in on highly sensitive human rights controversies. A further risk is that instead such cases will be decided through a judicial majoritarian political lens rather than a largely apolitical consensus judicial opinion constructed by both philosophically left leaning (so-called liberal) and right leaning (so-called conservative) jurists.