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Lead Articles

Manufacturing Statelessness

Neha Jain 237

Having recently emerged from its unenviable status as the runt of international law, the phenomenon of statelessness nonetheless eludes traditional international legal instruments. Confronted with questions of nationality that typically fall within the domain of sovereignty, international and regional human rights bodies struggle to rein in the increasingly creative measures that states adopt to obscure the production and persistence of statelessness. This Article uncovers and dissects the different ways in which states manufacture statelessness not through explicitly discriminatory laws and unequal treatment, but through manipulating ostensibly neutral criteria for nationality. The Article identifies three such criteria that are not traditionally considered “suspect” categories for the grant or denial of nationality: time, territory, and administrative practice. It also suggests doctrinal, policy, and strategic tools for identifying and responding to the types of statelessness that are not a collateral consequence of state failure or incompetence, but the outcome of state intentionality.

Making Sense of Security

J. Benton Heath 289

This Article theorizes “security” as a site of continuing struggle in the international system between competing approaches to identifying and responding to urgent threats. Rather than endorsing a single approach, this Article argues that a claim to “security” can imply any one of four approaches to law and policy, each of which has radically divergent implications for who is empowered by a security claim and how that power interacts with existing legal rules. By moving among these four approaches, security claims can disrupt established systems of knowledge-production and redescribe the world in new ways.

The Road Not Taken: Comparative International Judicial Dissent

Jeffrey L. Dunoff and Mark A. Pollack 340

This Article analyzes long-standing disagreements over dissent’s effect on judicial legitimacy, independence, and legal doctrine by undertaking the first comparative study of dissent practices across three leading tribunals, the International Court of Justice, the European Court of Human Rights, and the European Court of Justice. Surprisingly, we find that each of the central claims in debates over dissent at international courts is mistaken. We find that the presence of dissents has little systematic impact on legitimacy; the key factor instead is patterns of dissent that suggest bias among international

judges. We find that the effects of dissent on judicial independence are mediated by a third factor, namely the length and renewability of judicial terms of office. Finally, we find that dissents promote law development, but little evidence that today's dissents form the basis for future majority rulings. We then outline a research agenda to examine the impact of dissent at the larger universe of international courts.

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- File 03378-2019-PA/TC* (Juan-Pablo Pérez-León-Acevedo) 403
- Peruvian Constitutional Tribunal on the tension between a woman's right to live free from domestic violence and an accused aggressor's right to a hearing in Peruvian Constitutional Law, International Human Rights Law, and within the Inter-American human rights system.
- Advisory Opinion OC 26/20* (Mariela Morales Antoniazzi) 409
- IACtHR on the consequences of a member state withdrawing from the American Convention on Human Rights and the OAS Charter, and the ongoing effects of the collective guarantee embodied by the Inter-American human rights system.

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