

# Book Review

Constitutional Deference, Courts and Socio-Economic  
Rights in South Africa

*Kirsty McLean*

Pretoria University Law Press (2009)

Since the inclusion of socio-economic rights in our Constitution the focus has shifted from debates regarding their justiciability, to the actual interpretation and judicial enforcement of these rights. The Constitutional Court when tasked with interpreting socio-economic rights has from the starting point been reluctant to impose additional policy burdens on government, notwithstanding the imperative to give some content to the rights as contained in the text of the Constitution.<sup>1</sup>

This publication explores and addresses the concept of constitutional deference in relation to socio-economic rights litigation, and provides a framework in which to understand the unique role of South African courts when interpreting these rights.

The book is divided into five chapters with the first two chapters dedicated to discussing the concept of judicial deference followed by a discussion on socio-economic rights in relation to judicial review (chapter three) and a detailed analysis of the relevant case law (chapters 4 and 5).

Specifically, chapter one explores the concept of deference in judicial review through a comparative study with the relevant Canadian and British jurisprudence. With the necessary background provided, chapter two further constructs the theoretical framework for the concept of constitutional deference. Here the author argues that deference comprises of three intersecting principles, namely, the court's views on the democratically legitimate role of a court in a

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<sup>1</sup>Davis D 'Adjudicating the socio-economic rights in the South African Constitution: Towards 'deference lite'?' (2006) *SAJHR* 301 at 304.

constitutional democracy, the court's views on its appropriate role given its institutional limitations, and the nature of the dispute before the court. Accordingly, these principles should construct a court's approach to deference.

Chapter three discusses the various objections to the judicial review of socio-economic rights. This analysis clearly illustrates the continued relevance of debates regarding the nature and justiciability of socio-economic rights as, according to the author, these are usurped in the highly deferential approach followed by our courts when reviewing these rights. The rest of the publication is dedicated to an analysis of the relevant case law. Chapter four focuses on all the major socio-economic rights decisions through the lens of constitutional deference, whilst chapter five identifies four sub-themes for further discussion, these being reasonableness, minimum core entitlements, budgetary limitations and remedies.

The publication, based on the author's PhD, tends to be theoretical but aptly addresses one of the most pertinent questions in socio-economic rights litigation – when to defer to the other arms of government? This book is recommended to all studying the intricacies of socio-economic rights jurisprudence and those wishing to gain a better understanding of our court's interpretation of socio-economic rights over the past twelve years through the lens of constitutional deference.

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