

Gladstone). The pertinent question here is: to what extent are provinces entitled to limit Aboriginal and treaty rights?

The Supreme Court of Canada has declared that provinces have no authority to extinguish Aboriginal rights. This is so, in part, because the provinces have no constitutional capacity to do so: the subject matter "Indians, and Lands reserved for the Indians" is allocated to the federal government. But in an unfortunate passage in *Delgamuukw*, Chief Justice Lamer declared that provincial laws, like federal ones, could limit Aboriginal rights and that, in both instances, the same test of justification applies. As some commentators have argued, this cannot be right according to the division of powers, and that provinces have no authority to limit or extinguish Aboriginal rights (McNeil 1998; Wilkins 1999). If the commentators are correct, then provinces should be expected to respect, without qualification, obligations arising under Aboriginal and treaty rights.

International Human Rights

There is no requirement on the part of the Courts, when interpreting the Charter or the Aboriginal rights clause, to consider international human rights norms or comparative constitutional law (but see the new South African Constitution). Nevertheless, Canadian Courts often have taken these considerations into account. According to former Supreme Court Justice Gerard La Forest, the Court has applied international human rights principles "consistently, with an international vision and on the basis of international experience" (La Forest 1996, 100).

In a series of decisions, the Supreme Court has strengthened its commitment to interpreting the Charter in light of international human rights principles. These principles, the Court stated, should inform the meaning given to the content of Charter rights and freedoms (*Re Public Service Employee Relations Act*), and in determining when limitations on rights and freedoms are justifiable (*Slaight*: 1056-57). The Court suggested that the Charter provides protection "at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified" (*Re Public Service Employee Relations Act*: 349). In the recent *Baker* case, a majority of the Supreme Court extended this reasoning even where international law has not been incorporated into domestic law by Parliament or the provinces (*Baker* para.70, and see discussion in Scott 1999).

Globalization and Human Rights

Globalization is understood as something that is happening to us, as a "fact," as something entirely beyond our control. In the globalized world, states appear as "hollowed out" and cease to play any relevant regulatory role -- relevant, that is, to the mass of people. Political power moves away from the national state to supranational institutions like the United Nations and the WTO, to regional institutions, like the Inter-American Court of Human Rights or the European Union, to centres of local administration, cities such as London, New York, and Tokyo, and to private actors entirely outside the control of the state system. It is not my object here to question the magnitude of globalization. Rather, I want to connect claims about globalization to the difficulty of promoting human rights in a federal state.

Ambiguities