Book Notes: Litigating Health Rights: Can Courts Bring More Justice to Health, Edited by Alicia Ely Yamin and Siri Gloppen

Crystal Chung

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/ohlj

Book Note

Citation Information
http://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss3/7

This Book Note is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.
LITIGATING HEALTH RIGHTS: CAN COURTS BRING MORE JUSTICE TO HEALTH?, edited by Alicia Ely Yamin and Siri Gloppen

CRYSTAL CHUNG

WHAT IS THE RIGHT TO HEALTH? Article 12 of the International Covenant on Economic, Social and Cultural Rights states that it is the right to "the enjoyment of the highest attainable standard of physical and mental health." It is not the right to be completely healthy, but it does imply the provision of certain preconditions to health, such as food, housing, clean water, and a safe and healthy environment. Like other rights, when these rights are violated, one can turn to litigation for recourse to hold governments accountable. The courts are tasked withremedying wrongs and redistributing resources to vulnerable groups. Yet, within the specific context of health care, it is questionable whether litigation is the ideal mechanism to improve access to care and uphold the right to health. For example, litigating health rights may intensify health care inequalities by allowing wealthier groups to obtain better health care while poorer groups struggle to obtain access to justice.

The objective of Litigating Health Rights is to clarify when right-to-health litigation is available, appropriate, and effective. Alicia Ely Yamin and Siri Gloppen bring together scholars from law, health care, politics, and other disciplines to present a comparative analysis of right-to-health litigation across different countries and to discuss factors that influence access to health.

Gloppen prefaces the multi-country analysis with specific criteria upon which each litigation system is evaluated throughout the common stages of formation, adjudication, implementation, and social outcomes of health claims.

3. "Litigating Health Rights: Framing the Analysis" in Yamin & Gloppen, supra note 1, 17.
3 through 8 explore the specific right-to-health litigation systems available in Argentina, Brazil, Colombia, Costa Rica, India, and South Africa. The editors are careful to point out that the selection of the six health systems is both beneficial and detrimental to the analysis. These systems offer different combinations of population densities, public/private care, civil/common law, access to justice, and social-demographic factors. While the range of jurisdictions is helpful in presenting a balanced analysis of systems, the studies can only conclude that the need for, and value of, health rights litigation is highly contextual.

After the comparative analysis, four articles review current trends and observations that may offer guidance on the role of health rights litigation. Health care is a highly complex field where multiple parties must collaborate to improve access. Roberto Gargarella discusses whether courts have a legitimate role in distributing health care at all (chapter 9). In order to improve the system for the entire population, there must be an effective process of implementation and judicial enforcement after litigation ends. In chapter 10, Mindy Jane Roseman and Gloppen explore influential factors that encourage health rights litigation globally. Chapters 11 and 12 analyze whether health rights litigation has actually improved health care within the six systems from both economic and equality points of view. Each piece offers profound insight into the intricacies of the right-to-health.

Yamin and Gloppen succeed in facilitating an extensive dialogue surrounding health rights litigation. In the process, there is a realization that numerous other issues must be explored before the viability of health rights litigation can be assessed. For example, is health equity best measured in economic terms? What is improved health? What if litigation significantly improves the health of middle-income families but does nothing for low-income families? Yamin’s concluding piece explains why great limitations exist in health care—namely, inefficiencies, corruption, and poor legitimacy—and outlines the major barriers to change within this industry. She encourages deeper inquiry into the appropriate role of the judiciary and the social forces that determine the distribution of care. While she acknowledges that there are no sweeping answers, Yamin states that the real question “revolves not around absolute resources but around incorporating equity considerations into decision-making processes and institutional design at all levels (i.e., local, national, and international).” While litigation remains only a small piece of the health care mosaic, Litigating Health Rights delivers a thought-provoking glance into how law interacts with, and contributes to, inequities that threaten the fundamental right to health.

4. “Power, Suffering, and Courts” in Yamin & Gloppen, supra note 1, 333 at 369.