THE YALE JOURNAL
OF INTERNATIONAL LAW
Volume 36, Number 2, Summer 2011

Abstracts

Articles

This Article analyzes whether managerial judging reforms introduced to expedite the procedure at the International Criminal Tribunal for the Former Yugoslavia (ICTY) achieved their goal. Using multivariate survival analysis, the Article tests the hypothesis that the higher the number of reforms a case was subjected to, the shorter the pretrial and trial phase of that case should be. Our four models for pretrial and trial reveal that the number of reforms is significantly correlated with longer pretrial and trial phases. The Article explains that the reforms made the process longer rather than shorter because they added new procedural steps, requirements, and work without delivering promised results, such as lower numbers of incidents under discussion at trial, live witnesses testifying at trial, and interlocutory appeals entertained by the Appeals Chamber. The reforms did not deliver these promised results because ICTY judges either did not use their managerial powers or used them deficiently, and the parties managed to neutralize the implementation of the reforms. To explain judges' behavior and the parties' ability to neutralize the reforms, this Article argues that an unnoticed challenge for managerial judging is that the court is likely to have limited information about the case, which may lead judges to restrict use of their managerial powers to avoid making inefficient or unfair decisions, and enables the parties to neutralize the court's decisions. In addition, the ICTY lacked an implementation plan to encourage judges to change their behavior. The Article also explains the incentives that prosecution and defense had to neutralize the reforms.

This Article argues that the functional test articulated in Boumediene v. Bush, *which determines whether the Constitution's Suspension Clause applies to executive detention abroad, is in considerable tension with the fundamental norms jurisprudence that underlies and pervades the Court's opinion. Drawing on Supreme Court precedent and lower court jurisprudence regarding the extraterritorial application of constitutional rights, as well as comparative and historical practice—including the intent of the Framers—the Article seeks to reintegrate the fundamental norms strands of the* Boumediene *opinion into its functional test, and thus to normatively ground the opinion. It does so by arguing that the functional test for extraterritorial application of habeas rights should be informed by international law, a consideration that the* Boumediene *decision omitted from its analysis. The Article concludes that utilizing international law's substantive, fundamental, nonderogable norms to help determine whether constitutional protections apply abroad would both allay the Court's practical concerns and ground the Court's test in the important normative principles that in fact underlie its* Boumediene *opinion. Applied to the habeas context, this analysis suggests that detainees held by the United States military for a prolonged period of time at a military base or other secure facility without being afforded adequate due process are constitutionally entitled to habeas review to assert claims that they are civilians and not enemy combatants.*

Note

Gender discrimination in property law often prevents displaced women from returning to their homes and communities after conflict, leaving them homeless or dependent upon relatives for housing and land. This Note argues that, for the sake of both equality and a peaceful recovery from conflict, property restitution programs need to correct for this discrimination and restore property to women who did not have formal legal rights to their property prior to conflict. Through property restitution, domestic and international actors can use transitional justice as an opportunity to create long-lasting property rights reform in post-conflict states.