



Sexual Orientation and Human Rights: The United States Constitution, the European Convention, and the Canadian Charter

Robert Wintemute

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"Lesbian and gay rights are human rights!" Is this just a political slogan to be chanted outside legislatures, or are there legal arguments to support the claim that the right to be free from sexual orientation discrimination is a human right? In particular, can national constitutions or international human rights treaties be interpreted as prohibiting discrimination against gays, lesbians, and bisexuals? Robert Wintemute attempts to answer these questions by examining three of the most commonly used arguments in favor of such an interpretation: sexual orientation is an "immutable status", sexual orientation is a "fundamental choice" (or part of "privacy"), and sexual orientation discrimination is sex discrimination. To assess their merits, he looks at the relative success and failure in cases argued under three of the world's most influential human rights instruments: the United States Constitution, the European Convention on Human Rights, and the Canadian Charter of Rights and Freedoms. He also considers the potential impact of the United Nations Human Rights Committee's recent interpretation of the International Covenant on Civil and Political Rights in *Toonen v. Australia*.

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