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Gaëtan Cliquennois, Foreword by Rachel Cichowski
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EUROPEAN HUMAN RIGHTS JUSTICE AND PRIVATISATION

With the decline of public funding and new strategies pursued by interest groups, foreign private foundations and donors have become growing contributors to the European human rights justice system. These groups have created their own litigation teams, have increasingly funded NGOs litigating the European Courts, and have contributed to the content and supervision of European judgments, all of which has had direct effects on the growth and procedure of human rights. *European Human Rights Justice and Privatisation* analyses the impacts of this private influence and its effects on international relations between states, including the orientation of European jurisprudence towards Eastern countries and the promotion of private and neoliberal interests. This book looks at the direct and indirect threat posed by this private influence to the independence of European justice and to the protection of human rights in Europe.

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EUROPEAN HUMAN RIGHTS
JUSTICE AND
PRIVATISATION

The Growing Influence of Foreign Private Funds

GAËTAN CLIQUENNOIS
Université de Nantes, France



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FOREWORD

LISA MCINTOSH SUNDSTROM
*ASSOCIATE PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF
BRITISH COLUMBIA*

Private charitable foundations – such as the Open Society, Ford, MacArthur, and Oak Foundations – generously provide funding to NGOs around the world to support their efforts to litigate violations of human rights in international courts. So what is wrong with that? In this book, Gaëtan Cliquennois provides a thought-provoking answer. In doing so, he makes a significant contribution to literatures on international courts, legal mobilisation, privatisation of state functions, and the politics of NGOs and their funding sources. As such, this book is at the cutting edge of questions to which new scholars of litigation in international courts are turning.

Focusing on two major European regional courts, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), Cliquennois deftly links the efforts of private foundations to encourage litigation by NGOs against European states in these courts to the neoliberal agendas of private foundation leaders. He draws together a number of patterns that some other authors have observed: the classic observation that better resourced litigants with repetitive experience before a court hold considerable advantage in winning victories in them; the disproportionate focus of foundations and these courts on particular kinds of human rights violations, especially in the Eastern portion of the European Union and the Council of Europe; and recent reforms at the ECtHR and CJEU that filter and reduce the number of cases that make it to the stage of admissibility.

By adding a novel focus on the involvement of private foundations in particular, Cliquennois reveals the roles of private foundations in influencing the activities of those individual activists and NGOs that litigate at the ECtHR and CJEU. In addition, he tracks how private foundations ‘capture’ these courts internally in other respects: for instance, through ‘revolving door’ relationships between judges appointed to the ECtHR after working for NGOs funded by private foundations or for the foundations themselves; and through the courts’ reliance on information from

foundation-funded NGOs as case evidence and their roles in monitoring post-judgment implementation.

For those who would ask my initial question – what could be wrong with private foundations supporting the human rights work of activists where violations are occurring? – Cliquennois points out how foundations have exhibited considerable emphases and blind spots in their support. He documents how they have generally ignored certain types of rights violations, such as socio-economic rights and inequalities caused by government economic austerity programmes. He argues that this could be explained by the economic interests of foundation benefactors and founders themselves. Moreover, according to Cliquennois, the emphases of private foundations represent an effort to stigmatise the governments of certain Eastern European countries and Russia, branding them as dangerously authoritarian and nationalist. Their goal is to dismantle nationalist regimes in order to smooth the way for a neoliberal global economy where borders are not barriers to economic exchange.

The argument is extremely provocative and will inspire more research by scholars who follow in his footsteps. Most valuably, Cliquennois cautions us that we must not allow our normative goals of advancing human rights to blind us to the instrumental goals of particular actors who are supporting international human rights advocacy.

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My ever thoughts go to Sophie, Tristan and Arthur.