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Dominique Clément


British Columbia’s tumultuous politics and unique demographics provide fertile ground for examining the erratic trajectory of human rights in that province. Yet few books have explored that terrain from the place where social and legal histories intersect. This has changed with the publication of Equality Deferred.

Dominique Clément is a sociologist at the University of Alberta who claims membership in what he describes as a “small but growing cohort of human rights historians.” Equality Deferred is one of three books published about human rights law and human rights systems in Canada in 2014.¹ Unlike the other two, Equality Deferred examines a single province and single area of human rights, namely BC and women’s equality, respectively.

Told through narratives from leading human rights practitioners and litigants, Equality Deferred is a textured, granular account of the struggle for women’s equality in BC, positioned alongside analyses of allied social movements, including organized labour and the civil rights movement.

The book begins with a description of the Canadian legal landscape in the nineteenth and early twentieth centuries and an alarming litany of the strictures on women. There were some pioneering exceptions, like BC’s maternity protections for employees in the 1920s, but on the whole, women were effectively and explicitly discriminated against in every area of their lives. For women of colour, the discrimination was considerably worse.

The core of Equality Deferred is bookended by the introduction of fair practices laws in the 1950s and the regressive Human Rights Act in 1984.² What lies in-between are the precipitous and recurrent rise and fall of human rights law in BC, displaying a volatility unique in Canada. Repeated and politicized efforts to pare back human rights protections and institutions and then subsequently reinstate them are what most distinguish BC from other jurisdictions. This has occurred with little regard for the Supreme Court of Canada’s landmark decision in Heerspink, a BC case that found that human rights legislation is “not to be treated as another ordinary law of general application” but rather as a “fundamental law.”³

Clément describes with some astonishment the delayed arrival of the prohibition against sex discrimination, its failure to live up to expectations in specific cases, and the efforts of successive governments to restrict its ambit. He also examines the limitations of what he calls the “human rights state” in

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² Human Rights Act, SBC 1984, c. 22.
addressing systemic discrimination. In these respects, the slow development of
gender equality and the particularities of BC are not as idiosyncratic or indicative
of shortcomings as the book suggests.

The eminent Canadian jurist Roderick A. Macdonald once pointed out that it
is ahistorical to view the evolution of legal remedies in any area of law through the
lens of contemporary legal thought. It is an important insight. The suggestion that
the absence of women’s rights (or disability rights, or LGBT rights, for that matter)
from early anti-discrimination laws should be seen as surprising, anomalous, or
even as a substantive limitation presupposes an inclusive legal framework and a
broad concept of human rights that did not exist in the 1950s and only developed
in a limited, incremental way afterwards.

The limited success of systemic approaches to discrimination is a pan-Canadian
phenomenon. Human rights decisions rendered by tribunals and boards do not
create binding precedent unless they are confirmed by the courts. In fact, many
human rights commissions and tribunals had been crafting systemic remedies for
years, only to be told by the Supreme Court of Canada in the Moore case that they
were casting the net too wide. This is not a failure of human rights laws or sys-
tems, but rather a structural limitation in the ability of the courts to reconcile the
role of administrative law systems designed to address the broader public interest,
on the one hand, with traditional legal systems that only decide the issue between
individual parties, on the other.

Human rights protections in Canada reflect struggles to introduce new rights,
and to establish broad and purposive approaches to defining the contours and
confines of existing ones. The social movements on which Clément focuses, as well
as individual civil society groups and advocates, have been instrumental in doing
so. The staggered sequences of rights recognition, starting with race, colour, and
religion, followed by sex, disability, family and marital status, nationality, sexual
orientation, and, most recently, gender identity, have been the rule in Canada and
elsewhere. As well, most human rights victories have occurred despite the staunch
opposition of governments.

None of this signals exceptionalism or failure of the “human rights state,” but
rather provides a chronicle of its iterative development. When one takes a long
view, as historians should do, that chronicle is one of tremendous progress and,
despite individual shortcomings, substantive areas of success.

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5 Ibid., at 64.
6 Moore v British Columbia (Education), 2012 SCC 61.