

BOOK REVIEW/ COMPTE RENDU

Dominique, Clément. *Debating Rights Inflation in Canada: A Sociology of Human Rights*, with contributions from Nathalie Des Rosiers, Pearl Eliadis, Rhoda E. Howard-Hassmann, and Gert Verschraegen. Waterloo: Wilfrid Laurier University Press, 2018, paper (9781771122443).

This book consists of an introduction and a long article by Dominique Clément on “rights inflation” in Canada, followed by four commentaries. Rights inflation refers to the tendency to frame almost any grievance as a human-rights violation. Clément’s main objective is to understand how this came about.

To this end, Clément surveys the evolution of rights in Canada. During the nineteenth and early twentieth centuries contests were waged over civil and political liberties, which were usually justified in terms of democracy, Christianity, or British traditions. In the second third of the twentieth century, there developed opposition to discrimination on the basis of race, religion, and national origin, and eventually gender. In the 1970s, the range of rights issues broadened further to comprise disability, sexual orientation, hate speech, and Indigenous rights, and more recently rights to a healthy natural environment, and to social justice, including material equality, adequate food, health, housing, and access to education.

Clément also examines the expanding discourse around human rights and the growing use of this term since the 1970s. He believes that we should avoid framing environmental causes and social justice in this way “not because they are less important, but because human rights offers a poor language for articulating such grievances. Decisions as to when and where to take resources from others in order to provide education or health care must be negotiable, because neither is an absolute right” (49).

Clément identifies what he calls “core rights,” which have always been integral to rights talk in Canada. They include voting rights, religious freedom, equal treatment, due process, and political freedoms (speech, association, assembly, and press). He believes that discussing these core rights will assist the debate about what rights should be framed as human-rights violations rather than social injustices.

By way of criticism the commentators contend that rights are inter-dependent. Hence, they reject any hierarchy of rights or separation of core rights from other rights. Indeed, they hold that it is impossible for people to enjoy Clément's core rights unless they enjoy social-economic rights as well: poor people may have a right to free speech, but their ability to be heard is limited. It is also asserted that Clément's opposition to what he calls rights inflation would impede progress and allow the oppression and inequities that still exist in Canadian society to persist. In addition, they believe that judicial and quasi-judicial institutions are appropriate for advancing rights in Canada. These institutions permit flexibility and bring about positive change. They offer another way in which to achieve social justice; and they empower those segments of society with fewer resources. They also provide accountability and oversight of governmental budgetary choices and ensure that "governmental decisions are grounded in evidence and facts" (101).

Debating Rights Inflation does not contain a reply by Clément to these comments. So we can only surmise how he might respond. He would certainly reject the notion that judicial and quasi-judicial institutions are the most appropriate for advancing social justice. Are they really the most equipped to determine whether governmental decisions are grounded in evidence and facts? Are they able to assess all the ramifications of what they decide? Can they determine if governments are distributing resources effectively and fairly?

Clément would also object to the implication that he is opposed to the progress that would be required to overcome injustices in Canadian society. He certainly believes that measures to advance social justice will require innovation. And his historical writings make it clear that he knows full well that legal rights are not carved in stone but are contingent and change over time. Indeed, arguably Clément's greatest contribution to the rights debate is this historical perspective. In *Human Rights in Canada: A History* (2016) he examines – in more detail than in *Debating Rights Inflation* – the evolution of universalistic rights through different historical stages: when they were first articulated during the seventeenth and eighteenth centuries, when they were proclaimed in the American Declaration of Independence in 1776 and the French Declaration of the Rights of Man and of the Citizen in 1789, when they were promoted by liberalism, socialism, and defenders of civil and political liberties during the nineteenth and twentieth centuries, and when human rights became the basis for present-day rights claims.

This story is well known. What is not sufficiently recognized – in *Debating Rights Inflation* or in the rights debate as a whole – is the history of rights that were less universalistic. I do not have the space to do more

than touch on the subject, but if our objective is to figure out how we got to where we are today, understanding this history is just as important as understanding the evolution of universalistic rights.

We need to go back some way to do so. Early Modern European society contained a large number of particularistic groups and corporate bodies (nobility, guilds, incorporated towns, et cetera), each asserting special rights. They varied from one region to another, but there was no country where such organizations could not be found. They were constantly promoting their legal privileges and facing challenges to them. In addition, the most effective way in which to oppose the state was usually to go to a court of justice. Along with disputes over property, it meant lots of work for lawyers, especially in France, which historians have referred to as a “judicial society.”

Many of the Early Modern particularistic bodies did not survive into the nineteenth century. This did not mean, however, that universalism was in any meaningful sense achieved. Obviously, as Clément has emphasized, universalism was in reality limited to those belonging to the same political community. Even within such communities, large segments of the population were excluded from the “rights of man.”

Moreover, relatively particularistic organizations and movements did not disappear in Western societies. In fact, two types actually expanded in number. The first were occupational associations. In Canada this expansion took off in the last half of the nineteenth century, though a small number were organized earlier. The second type consisted of associations representing the interests of particular segments of the population, such as veterans, women, indigenous populations, those experiencing disabilities, the elderly, different ethnic groups, students, the body positivity movement – to mention just some of what has added up to a distinctive and pervasive feature of Modern Western societies.

Obviously most of these are very different from the particularistic bodies of Early Modern Europe. First, though the groups that enjoyed special rights then were by no means composed only of the rich and powerful, most claimed higher status and advantage on the grounds that they had superiority in providing a contribution or service to society. In striking contrast, most of the more recent organizations representing particular groups in the population have made claims to rights on the grounds that these groups are disadvantaged and suffer from lower status than they deserve.

Second, universalism and particularism have come together in a way that they never have before because these organizations frame their assertions in universalistic language. Although many contemporary human-rights demands are not particularistic (such as claims to a de-

cent living standard, housing, or assisted death), an equal number are made on behalf of people who require what the courts and tribunals have deemed to be “special needs” (109, 113). Even more remarkable is how particularism and universalism have been conjoined in Canada by members of the Indigenous population, whose demands are based on their particular rights as indigenous people but also on universal human rights. This merger of universalism and particularism has been facilitated in Canada by the fact that a violation of human rights is legally defined as discrimination against persons by virtue of their membership in a “disadvantaged group.”

All this has entailed a surge in litigation. Although Canada is certainly not a “judicial society,” since the 1960s it has moved in that direction. Among those who object to the rights revolution a major concern is the expansion in power invested in judicial and quasi-judicial institutions at the expense of other institutions. The rights revolution has had institutional as well as cultural and political origins. It was preceded by and has co-existed with a significant increase in the number of persons belonging to the legal profession, many of whom are willing to take up grievances that can be framed in terms of human rights. And of course, the *Charter of Rights and Freedoms* was the pet project of a prime minister who was a lawyer and legal scholar.

In the end, however, those who support the rights revolution would make a pragmatic argument that, regardless of whoever carries it out and by whatever means, the important thing is that serious injustices are being corrected in Canada and that much more still needs to be done to make Canada a “just society.”

University of Western Ontario

Samuel Clark

Samuel Clark is Professor Emeritus at the University of Western Ontario. His publications include *Social Origins of the Irish Land War* (Princeton University Press 1979); “Nobility, bourgeoisie, and the Industrial Revolution in Belgium” *Past and Present* (1984); *State and Status: The Rise of the State and Aristocratic Power in Western Europe* (McGill-Queen’s University Press 1995); “International competition and the treatment of minorities: seventeenth-century cases and general propositions.” *American Journal of Sociology* (1998); and *Distributing Status: The Evolution of State Honours in Western Europe* (McGill-Queen’s University Press 2016); and “Generalization in comparative history” *Comparative Sociology* (2019).