

Pearl Eliadis

Speaking out on Human Rights: Debating Canada's Human Rights System. Montreal and Kingston: McGill-Queen's University Press, 2014, 429 pp.

In *Speaking out on Human Rights*, Pearl Eliadis explores how opponents of hate speech laws have stimulated a public debate in Canada on the legitimacy of human rights law. She rejects the claim that human rights law and institutions should be discarded. The book provides a systematic survey of Canada's human rights system and describes how it operates, its historical origins, some of the controversies surrounding it, and what happens when rights such as non-discrimination and freedom of religion conflict. It is intended for a general readership and makes human rights law intelligible to readers without a legal background. Eliadis takes an interdisciplinary approach that demonstrates how law interacts with or underlies social, historical, and political processes. Legal scholars and practitioners will most likely find the last chapter, which suggests concrete ways to reform Canada's human rights law, most valuable. The book also demonstrates how public support is often necessary for the effective performance of state institutions.

Eliadis documents three major criticisms of Canada's human rights system: rights law is unnecessary because discrimination is no longer a social problem; human rights law does not operate according to the same rules as 'normal' courts and is therefore unjust; and prohibiting hate speech violates free speech. But these criticisms, as Eliadis demonstrates, are unfounded. Discrimination has evolved into different forms, including systemic discrimination. Although the law has successfully discouraged some forms of discrimination, new forms emerge as attitudes evolve. For example, while Canadians did not view disability as a human rights issue in the 1970s, the largest numbers of complaints today are on the grounds of disability. Similarly, the ostensible discord between human rights law and the criminal justice system originates from a misunderstanding about their purposes. The purpose of the criminal justice system is to punish offenders while the purpose of human rights law is to prevent discrimination. Finally, the tension between hate speech and free speech likewise emerges from a misunderstanding about the nature of rights. Whereas free speech preserves the right to express one's identity, hate speech is the act of denying others' identities. All rights are interrelated, no right is absolute, and they do not exist in a hierarchy. It is necessary to find balance when rights conflict. Neither freedom of speech nor the right to be free from hatred automatically take precedent.

A central theme in this book is the interdependence of law and society. Eliadis demonstrates that human rights law cannot be effective unless it receives broad public support. Human rights law can therefore be integrated into any socio-legal framework, but the key measure of its success is whether the public views it as legitimate. An implication is that human rights law does not depend upon a particular form of government or set of institutions and will ultimately reflect the particular values of the government that wields it, whether that be a democracy or dictatorship. This may be a useful way to position Aboriginal rights, which can conflict with individualistic approaches to rights, within a human rights framework. Human rights law will reinforce individualist values within a liberal democracy

but can also espouse the collectivist values of Aboriginal communities. It is possible to reconcile human rights law with Aboriginal values, but only insofar as Aboriginal peoples implement it on their own terms and within their own institutional frameworks.

Eliadis acknowledges that Aboriginal rights present significant challenges to Canada's rights culture but underestimates the seriousness of these criticisms. The failure of human rights law to respond to Aboriginal peoples' concerns undermines the legitimacy of those laws. Rights law, when integrated into the framework of the state, can only be as effective at protecting citizens as the state allows it to be. In Canada, law is an extension of the colonial state, and human rights law reproduces its colonial logic. The Canadian government has historically used human rights law to deprive Aboriginal peoples of their rights, for example by preventing people living or working on reserves from filing human rights complaints relating to the Indian Act. Aboriginal peoples living in Canada are particularly reluctant to call upon human rights law to settle grievances. Many view it as ineffective and at odds with the values of their communities or fear that the community will exclude them if they make a claim against the local government. The distrust of human rights law reflects a deeper mistrust of a colonial state that has functioned to marginalise Aboriginal peoples for centuries. Human rights law will not protect those who the state itself has historically failed to protect and continues to actively marginalise.

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