CANADA'S RIGHTS CULTURE: FIFTY YEARS LATER

DOMINIQUE CLÉMENT

Dominique Clément is an Associate Professor of sociology at the University of Alberta, which he joined in 2008. He is a Canadian historical sociologist who specializes in human rights law and activism as well as social movements. His is an adjunct professor in the Departments of History and Classics, and Educational Policy Studies at the University of Alberta. He is the founder and creator of Canada's Human Rights History, which is a popular teaching and research portal on the history of human rights in Canada

Amidst Canada's centennial celebrations in 1967, another, less conspicuous celebration was taking place. Nova Scotia and New Brunswick passed their first human rights laws. Except for Ontario's precedent-setting *Human Rights Code* in 1961, these were the first such statutes in Canadian history. Within ten years every other jurisdiction had passed similar laws. It was a genuine revolution in Canadian law. The Supreme Court of Canada would later declare that these statutes were quasi-constitutional and among the most fundamental laws in the country. By the twenty-first century, Canada had produced one of the most sophisticated human rights legal systems in the world.

The transformation of Canada's rights culture over the past fifty years is astounding. One of the most difficult lessons to teach about human rights is that people have not always framed their grievances in the language of rights. When rebels sought to overthrow British rule in 1837-8, they framed demands for free speech and responsible government as 'British liberties' rather than universal rights. In 1923, when the Chinese Consolidated Benevolent Association mobilized a campaign against segregated schools, they argued that "segregation is contrary to all British Ideals of Justice [and] Fair Play." Such a limited conception of rights – premised on citizenship rather than humanity – partly explains how even ardent defenders of liberty at the time could deny women the vote or equal treatment for minorities.

One of the great misconceptions of Canadian history is that the horrors of the Holocaust inspired Canadians to embrace universal human rights principles. In fact, the federal government was opposed to the 1948 Universal Declaration of Human Rights. Discrimination remained a fact of life for many Canadians for decades after the war. The real trans-

formation began around the time of the centennial. Governments began passing sophisticated human rights laws while revising other statutes to better protect individual freedoms. The federal government also embraced human rights as a component of foreign policy. By the 1970s, Canada was imposing sanctions on human rights violators abroad, funding international human rights organizations and acceding to numerous treaties. Meanwhile, social movements dedicated to human rights proliferated across the country. There was an unprecedented level of mobilization and activism in the late 1960s. Finally, many political elites and social movements began advocating for a constitutional bill of rights, which culminated in the *Charter of Rights and Freedoms* in 1982.

The most significant development, however, was far subtler. By 1967, human rights had become the common vernacular for framing grievances. A search of the term 'human rights' in two of the country's largest newspapers – *the Toronto Star* and *The Globe and Mail* – show very little use of the term for most of their history. Beginning in the 1960s, however, there was a dramatic shift as it became increasingly common to frame social problems as human rights violations.

The pervasiveness of 'rights talk' has since become manifest in almost every aspect of Canadian life. The original anti-discrimination laws only applied to race, religion and ethnicity. Fifty years later, these laws ban discrimination on more than a dozen grounds, from sexual orientation to family status. At the same time, laws that have existed for over a century have been struck down because they violate the principle of human rights. In the past few years alone, the Supreme Court of Canada has ruled against solicitation laws, recognized a right to collective bargaining and struck down prohibitions on assisted suicide. Rights-talk has also transformed politics. During the Parliamentary hearings around a proposed federal bill of rights in 1947 and 1950, most Parliamentarians and community organizations only asked for recognition of speech, association, assembly, press, religion, equal treatment and due process. In 1980-1, however, during the hearings over the *Charter of Rights and Freedoms*, people demanded constitutional recognition of rights to language, learning, health care, education, minimum wage, self-determination, rest and leisure, meaningful work, abortion, day care, mobility, family reunification, cultural retention and much more. More recently, during the cross-country hearings in 2009 for the Canadian Museum for Human Rights, people framed an even broader range of issues as human rights violations: Aboriginal peoples' loss of language, culture and beliefs systems; poverty and violence against women; bullying on school yards; ecological devastation; underemployment; social exclusion; and more.

What is significant is not that people were demanding redress for these and other social problems. People have been mobilizing around poverty for generations. Rather, for the first time in history, it was now common for people to frame these problems as violations of fundamental human rights.

The transformation of Canadians' rights culture is evident today in everything from opinion polls to positions adopted by advocacy groups. 70% of respondents to a 1960 poll overwhelmingly agreed that married women should not be given equal opportunity with men for jobs. A 1968 poll asked

FIGURE 1: THE GLOBE AND MAIL, 1850 TO 2009, NUMBER OF HITS FOR THE TERM HUMAN RIGHTS

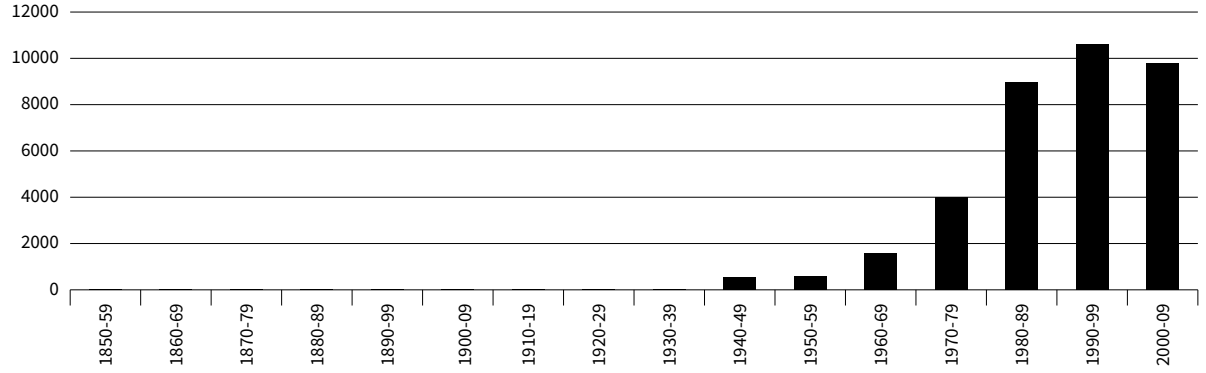
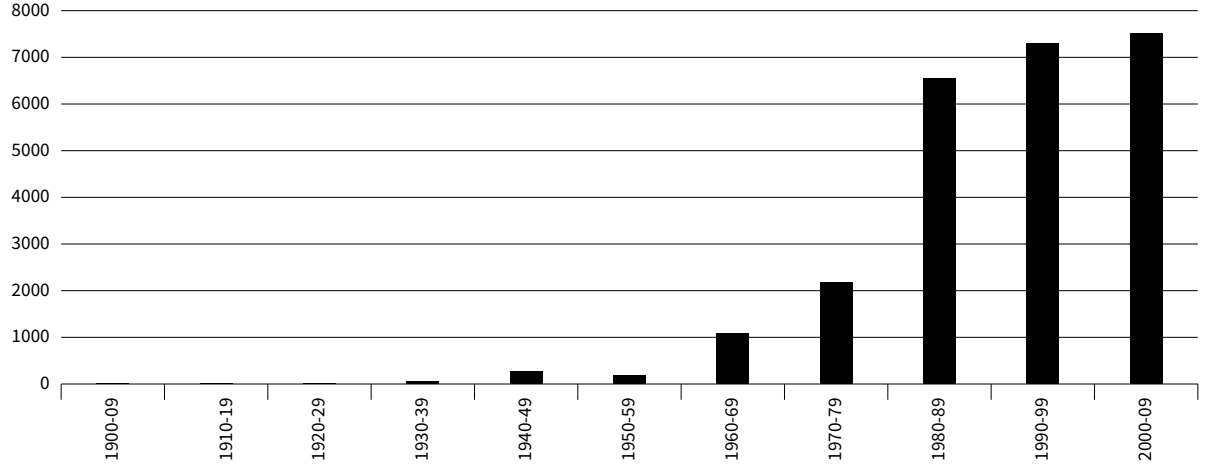


FIGURE 2: THE TORONTO STAR, 1850 TO 2009, NUMBER OF HITS FOR THE TERM HUMAN RIGHTS



whether homosexual behaviour (conducted in private) should be criminalized: 41% answered yes, and 42% said no. In a poll conducted in 1982, however, 69% agreed that discrimination against racial minorities should be prohibited and 77% supported a ban on sex discrimination. A 1999 poll found that a vast majority of people in Québec and Atlantic Canada (over 87%), and 75% in Ontario, supported the inclusion of sexual orientation in human rights legislation. Today, organizations as diverse as Greenpace, B'Nai Brith, the Canadian Labour Congress, the Canadian Conference of Catholic Bishops, the Ontario Coalition Against Poverty, the Elizabeth Fry Society and the Council of Canadians with Disabilities argue that access to medical treatment, housing, homelessness, exploitation of sex workers, clean water, self-determination, peace, security, child care, collective bargaining or labour mobility are human rights.

As late as the 1960s, Canadians framed social problems such as poverty or police misconduct as violations of British liberties or Christian values. In 2017, however, Canadians are more likely to believe that these social problems violate the principle of universal human rights. For many, this is cause for celebration. Framing child poverty on Aboriginal peoples' reserves, as the First Nations Child and Family Caring Society has successful done before the Canadian Human Rights Tribunal, is one strategy for pressuring recalcitrant governments to act on pressing social issues.

Others, however, fear that human rights commissions will become forums for creating social policy. Moreover, there are implications to framing a broader range of grievances as human rights. Human rights is a discourse of absolutes: they are non-negotiable principles. Framing grievances as human rights places them above the pragmatic considerations of policy-making. It frames the issue in stark terms and, thus, limits any option for compromise. But resources, such as money for education or health, are not unlimited. Policy-making requires compromise. Framing issues such as funding for students with disabilities or poverty on Aboriginal people's reserves as a human right sets the stage for a deadlocked conflict between social actors that have come to understand their grievances as non-negotiable rights. It also provides a justification for governments to deny resources to those in need by insisting that they are fulfilling the human rights of others. And there are unintended consequences to encouraging people to frame any and all grievances as human rights. An Ontario judge ruled in 2014 that Aboriginal peoples had a "constitutionally protected right to pursue their traditional medicine." The judge permitted a mother to remove her 11-year-old Aboriginal daughter with leukemia from chemotherapy and place her in a holistic healing centre in Florida.

For most Canadians, the centennial celebrations and Expo '67 symbolized a coming of age for the country and asserting its place on the world stage. The transformation of Canada's rights culture at this time was equally symbolic of a new engagement with the world. For the first time in history, most Canadians used the global language of human rights to frame their grievances rather than the more parochial notion of British liberties. These post-1967 developments constituted an astonishing change for a country that, until then, had no human rights movement, no human rights laws, no concern for human rights abuses abroad and opposed the Universal Declaration of Human Rights. The

generation arising from the centennial celebrations and Expo '67 would redefine Canada as a world leader in promoting human rights abroad. It was, to be sure, a flawed revolution that failed many people. Child poverty remains rampant, women routinely face discrimination, and Aboriginal peoples rank last in almost every study of social equality. Still, it was a genuine revolution that affected almost every aspect of Canadians' lives.