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Human Rights and Equality under Attack: The Difficult Challenge Ahead

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Human rights and equality discourse is under attack in many parts of the world. The assumption that equality is a social ideal has been hijacked, hoodwinked, and misrepresented in even the most advanced human rights jurisdictions. The anti-equality discourse is being led by those with agendas that are not at all commensurate with the promotion and continuance of a human rights culture that has advanced the rights of marginalized people all over the world since the inception of the [Universal Declaration of Human Rights](#). Errors, distortions and outright lies have tainted the discourse about the purpose and importance of human rights commissions and other implementation tools devised for the realization of human rights and equality (see Pearl Eliadis's new book, [Speaking Out on Human Rights](#)).

What is most startling about the critics of human rights and human rights enforcement is that they are so uninterested in what is really happening. Exacerbating the problem is a biased media. Instead of being neutral reporters and commentators, a substantial portion of the media has become advocate, judge and jury against human rights and human rights machinery (see International Council on Human Rights Policy, [Journalism, media and the challenge of human rights reporting](#) (2002)). In Canada for example, the very existence of human rights commissions and some of the protections they offer against discrimination has been seriously debated in the press and in some of the highest political circles, for all the wrong reasons (see e.g. [National Post, "A Bit Late for Introspection"](#)).

What I do in this post is identify some of the false or misleading claims about human rights and their implementation and present alternative views. I believe if we are to move forward in a positive and beneficial way to protect and advance human rights for all, the attack on human rights must be directly confronted and the fundamental role of human rights in free and democratic societies clarified and understood as well as the mechanisms needed to advance and protect them.

The Need to Reinforce Fundamental Principles

A foundational premise that must inform thinking about human rights is that human rights exist for all. The idea that only some people should enjoy human rights must be firmly and absolutely rejected. The dialogue going forward only makes sense if it is centered on strengthening human rights for all, not weakening them. History has taught us that human rights cannot be downgraded, ridiculed, marginalized or devalued for some. If that happens, societies will revert to the [law of the jungle](#) where only the fittest and those with the most power, survive.

History has also taught us the second most fundamental principle, that no human rights are absolute (see e.g. [Mark Cooray, *Human Rights are not Absolute*](#)). The challenge for successful human rights implementation is to constantly find the right balance to maximize protection for all. When this balancing takes place it must be understood that not all humans are born equal, that asymmetrical human rights endowments are given at birth. Some are privileged by history, genetics, race, orientation, health, age, social status, sex, wealth and power. Those not so well endowed need help if the goal of universal human rights is to be realized, with all of the consequent benefits to humanity (for a discussion in the context of religious minorities, see [Mitch Avila, *Political Liberalism and Asymmetrical Rights for Minority Comprehensive Doctrines*](#)).

At the same time, the human rights community must come to grips with the fact that the world has changed considerably since World War II when the present international human rights system was first conceived (Anthony D'Amato, "The Concept of Human Rights in International Law" (1982) 82 Columbia Law Review 1110). Reinforcing human rights requires understanding why human rights leadership has waned (see Los Angeles Times, "[Group Says Commitment to Human Rights Waning](#)"), support for human rights around the world has decreased, and necessary resources to educate the public and enforce human rights guarantees have been steadily eroded (see George Andreopoulos and Richard Claude, eds, [Human Rights Education for the Twenty-First Century](#)).

Reclaim Respectful and Truthful Discourse about Human Rights

One of the most destructive developments for human rights has been the political co-option of them as an instrument to advance the politics of power whether this be at the state level or the level of individual actors. When human rights are used this way it is very difficult to re-claim the discourse to protect the weak from abuse.

While some aspects of human rights enforcement need improvement and deserve to be criticized, disrespectful and false claims about human rights should be recognized and named as such. For example, the election platform of the official opposition party in the last provincial election in Alberta contained a promise to dismantle the human rights commission (see [here](#)). This position was later changed when the party lost the election (see [Miles Fish, "Wildrose Shifts Towards Center", Red Deer Advocate, October 27, 2013](#)). The Wildrose position followed a campaign in the media describing the provincial Human Rights Commission as a place of "fanatical devotion to political correctness," and "a Kangaroo Court" that ignores rules of evidence and standards of proof, and a body that provides no protection against frivolous and vexatious law suits (see Barry Cooper, "It's Time to Close Our Kangaroo Courts", [Montreal] Gazette (23 October 2009)). On the basis of these false and inflammatory accusations the leader of the majority Conservatives, instead of defending the human rights legislation protecting citizens from hate speech, called for [amendments](#) to it that would significantly limit its jurisdiction, its effectiveness and its accessibility to the citizenry. The amendments were promised but never passed, and the media once again led the fight to force the government to fulfill its promise.

Other influential critics have attacked all human rights commissions in the country, calling for their destruction. For example, in a prominent Canadian national newspaper, editorialist George Jonas wrote "[Kill the human rights commissions before they kill our freedoms](#)." His astonishing assertion was that human rights commissions exist to deny the very human rights the state constitutionally guarantees to people. He failed to tell his readers that the Supreme Court of

Canada has clearly stated that human rights legislation and the *Charter* reflect the highest Canadian values and are mutually reinforcing (For example, see *Canada (Attorney General) v. Johnstone*, [2013 FC 113](#)). The result of this kind of misleading grandiloquence confuses voters, plays to their deepest fears and makes them think that denying basic human rights protection is a legitimate political goal.

The anti-human rights lament begs the question, whose freedoms are they talking about? Their rhetoric ignores the fact that human rights commissions exist to protect those who are not powerful mainstream people – those who are disadvantaged minorities because of a history of discrimination, including women who face sexism, minorities subjected to racism and gays and lesbians who are vilified and attacked. To advocate for the destruction of human rights commissions implies these groups no longer need or deserve the protection from discrimination that human rights commissions offer them. Replacing them with the myth that human rights commissions are not required conceals the reality that discrimination is endemic, widespread, harmful and debilitating to those that experience it.

In order for constructive discussions to take place about the path ahead for human rights, the dialogue must be reclaimed to reflect the fundamental working assumption that equality has not been achieved, that discrimination exists and that the goal is to improve our institutions and laws in order to achieve equality. The methods to achieve these goals certainly should be debated but we debate the premise that the protection of human rights is essential to making governments more democratic and the world a better place to live at the peril of reverting back to an intolerant and abusive past.

Another related example of misleading rhetoric – the accusation made by the right wing media that human rights commissions are places for “[political correctness fanatics](#)” – cannot withstand scrutiny. The accusation of “political correctness” conveys the view that some people or groups of people are imposing a certain way of thinking on everyone backed up by draconian human rights enforcement mechanisms. In this discourse, the “bad guys” who advocate for human rights and equality, whether that be through multiculturalism, feminism, gay rights, indigenous rights, environmental rights or human rights commissions, are lumped into a single, evil conspiracy.

The “political correctness” canard has been successfully marketed to the general public as a catchall put down permeating our culture like no other sound bite of recent memory. “Political correctness” has essentially become a powerful conspiracy theory to manipulate resentment against all progressive thinkers (see [John K. Wilson, *The Myth of Political Correctness*](#)). Following the “political correctness” ideology to its end leads believers to the conclusion that the true victims of oppression are those accused of human rights violations. This inversion of reality says these “victims,” usually conservative white male Christians, are oppressed by politically correct feminists and minorities who violate their freedom of speech, religion, business choices or other “freedoms” they feel they should enjoy. The difference between the old victims and the new reactionary white male “victims,” is that the new victims are not victims at all. They are still the same privileged people they have always been.

Like most conspiracy theories, distortions like this abound in the discourse. The accusation of “political correctness” feeds on exaggerated and misleading anecdotes, not facts. The litany of scattered anecdotes used to justify the claim of “political correctness” fail to demonstrate the central claim that there is a national pattern of repression by those advocating for human rights. But by force of repetition, the anecdotes are woven into tales and the tales become more important than reality.

A recent example of this in Canada was the media commentary about a human rights complaint filed in Ontario by a woman who was denied service in a barbershop because she was female and because the barbers were not permitted by their faith to cut women's hair. The "political correctness" tale spun by the right wing media was that radical, militant, anti-religious, lesbian feminists had used the Ontario Human Rights Commission for spiteful, "politically correct" motives against Muslim men ([Ezra Levant, Gay Activists Have Met Their Match With Muslim Barbers](#)). The real issue, fundamental to human rights, was whether those offering services to the public could discriminate on the basis of gender for religious reasons and if so, what balance could be struck between the competing rights and whether was a way to accommodate both interests. This important balancing principle was ignored in the inflammatory "political correctness" [commentary](#) that ended with a call to disband human rights commissions.

This type of media response is commonplace in anti-human rights discourse. Anecdotal tales are never examined to find out what they are really about so deeper questions about equality and human rights can be discussed. When they are closely examined, the "political correctness" tales unravel under the strain of exaggeration, deceptive omission of key facts, and occasional outright invention. What seems to matter most to the critics is not the truth, but the story – the myth of "political correctness" and the need to perpetuate it. The media, in herd-like fashion, accept the myth and race to condemn the "politically correct" mob, the central players of which are human rights advocates and human rights commissions trying to resolve problems.

There is also a curious double standard in the application of the "political correctness" label. Stories of right-wing intolerance are never mentioned in the many articles and books criticizing "politically correct" totalitarianism. The label is reserved only for those on the left. So not only is "[political correctness](#)" a fiction, it is applied in an unfair manner.

What unfortunately gets lost in this type of discourse, is the real success story of human rights legislation and human rights commissions. Even with their shortcomings, human rights commissions across Canada and elsewhere have set new workplace standards on sexual and racial harassment ([Janzen v Platy](#), [1989] 1 SCR 1252; [Robichaud v Canada](#) (Treasury Board), [1987] 2 SCR 84); have protected thousands of women from pregnancy discrimination ([Brooks v Safeway](#), [1989] 1 SCR 1219); have been responsible for fundamental changes to allow persons with disabilities access ([Hydro-Québec v Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 \(SCFP-FTQ\)](#), 2008 SCC 43; [Moore v. British Columbia \(Education\)](#), 2012 SCC 61); have paved the way for same sex marriage by deepening equality rights for gays and lesbians ([Reference re Same-Sex Marriage](#), 2004 SCC 79); and have heightened awareness and corrected cases of race, religious and ethnic discrimination ([Ont. Human Rights Comm. v Simpsons-Sears](#), [1985] 2 SCR 536).

At the international level, while human rights still enjoy support from various groups across the world seeking equality and justice, they are also the objects of suspicion in many countries due to concerns about Western power, especially in societies that were ruled by colonial powers in the West. It used to be that "acting in compliance with universal human rights" was understood as a universal standard by which states could be measured and challenged through legitimate intervention. However, when illegitimate appeals to human rights are employed for selfish reasons to justify political change and interference in the domestic affairs of other states, the door opens for the argument to be made that human rights themselves are "an essentially contested concept" (W. B. Gallie, "Essentially Contested Concepts" (1956) 56 *Proceedings of the Aristotelian Society* 167; see also Anne Jahren, [Use and Abuse of Human Rights Discourse](#)

(2013)). When this happens, even words such as ‘equality’, ‘liberty’, ‘freedom’ and ‘democracy’ can become contested, causing further confusion. The resulting negative impacts on the intrinsic value of human rights threaten alienation from the entire human rights project.

Advancing the Human Rights Agenda

It has to be acknowledged that claims for equality now have a much wider scope than the drafters of the *Universal Declaration* originally imagined. With these new claims have come new controversies with respect to [tensions between traditional values and human rights](#). Human rights advocates must be sensitive to concerns and work to explain why these newly defined rights must be protected and how they can be balanced against existing rights such as religious rights.

New understandings about the scope of human rights protection should also be balanced against enforcement mechanisms and remedies. Human rights commissions and procedures need to be re-thought. Inefficient procedures bog down and create unacceptable delays with the result that claimants are denied the access to justice that human rights commissions were created to rectify (see Thomas Buergenthal, “The Normative and Institutional Evolution of Human Rights” (1997) 19 *Human Rights Quarterly* 703). Exacerbating the problem are human rights enforcement mechanisms that lack independence, causing equality seekers to lose confidence in them, especially those with complaints against the government or those who do not share the government’s political views. A more contextualized and nuanced procedural approach would go some distance to bringing needed reforms to the promotion and implementation of human rights around the world.

To alleviate delays and streamline the processes, mechanisms should be reformed to give claimants options to deal with their human rights claims. Choices should include the option of taking complaints before the courts or taking them through mediation or administrative tribunal adjudication processes where claimants can be assured of the adjudicator’s independence and expertise. The Alberta Human Rights Tribunal is now doing this through its [tribunal dispute resolution](#) processes.

Independence and local relevance would be enhanced if regions and communities were empowered to play a role in ensuring strong, accessible and responsive human rights systems. This could include the provision of services for claimants, advocacy, the development of strategic partnerships with community organizations and establishments of test case funds to achieve systemic change.

Reforms should be tested on the basis of whether they will measurably advance equality and reduce discrimination at the broad, systemic level, not just at the individual level. Discrimination as understood 50 years ago was an individual problem. This view has turned out to be wrong, or at least, not effective as an underlying assumption (Buergenthal, *supra*). All of the studies done in the area of equality, certainly since the 1985 [Royal Commission Report on Equality in Employment](#) by Judge Rosalie Abella, point to the fact that the major problem is the widespread, deep-rooted patterns of systemic discrimination inflicted on identifiable groups of people. Any reform must therefore be looked at from this perspective (see e.g. Chaim Fershtman and Uri Gneezy, “[Discrimination in a Segmented Society](#)”; Constance Backhouse, [Colour-coded: A Legal History of Racism in Canada](#); Fischer, Reuber and Dyke, “[A Theoretical Overview and Extension of Research on Sex, Gender and Entrepreneurship](#)”).

Governments at all levels would advance and protect human rights and increase their legitimacy if they were more proactive in building compliance cultures as public policy, including putting equality targets into human rights institutions to relieve claimants from being forced to file claims. When required, effective claims processes should ensure that the decision makers are independent and expert in human rights as opposed to being political appointees.

Conclusion

Language is a source of power, and perhaps especially so within the sphere of human rights. Despite advances in human rights, the language of human rights and its meaning has become confused and contested. Going forward, clarity, compromise and understanding should be the goal.

A thoughtful and respectful discourse is essential if citizens are to benefit from human rights protection and realize their own potential in the best ways possible. In other words, if we want to move forward in the advancement and protection of human rights, the level of debate must improve. Progressive human rights advocates must speak up, debunk the lies and distortions and clarify pressing issues that have been obscured by the angry and exaggerated pronouncements of anti-human rights advocates – issues to do with poverty, inequities in education and health care, water quality, social services and just about every public service, as well as issues to do with the promotion of hatred against minorities, especially gays and lesbians, and inequalities disadvantaged groups continue to experience throughout the world. New perspectives on the environment, marriage, equality, religion, multiculturalism, freedom of expression and other economic, social and cultural topics must be aggressively defined, defended and respected. At the same time, human rights advocates must call out and condemn countries that abuse their power by invoking human rights as an excuse to violate sovereignty of other countries for selfish gain. It must be constantly stressed that institutional, legal, constitutional and intellectual change requires democratic societies to move forward, not back, and that reversing the gains made by the human rights movement can only be counterproductive and dangerous.

It must also be acknowledged that reform in the machinery of human rights is long overdue. The processes of human rights commissions, administrative tribunals and courts need to be questioned and reformed to assure greater efficiencies to restore confidence in the human rights project. Effective enforcement will go some way to combatting the distortions and directing attention to legitimate goals and aspirations of the human rights movement and empowering the people and groups of people who seek to achieve their equality rights in whatever human rights legislation applies to them.

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