

BOOK REVIEW:**ANTHONY GRAY, *FREEDOM OF SPEECH IN THE WESTERN WORLD: COMPARISON AND CRITIQUE* (LEXINGTON BOOKS, 2019)**

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Anthony Gray is a former Director of Schools and Community Education at the Queensland Law Society. He is currently Professor of Law at the University of Southern Queensland where he researches and teaches public law in the School of Law and Justice. Professor Gray has published extensively in refereed law journals in Australia and overseas. He is the sole author of more than 100 refereed research articles, and has authored several academic books, including ‘Criminal Due Process and Chapter III of the Australian Constitution’ (Federation Press, 2016), ‘Presumption of Innocence in Peril: A Comparative Critical Perspective’ (Lexington Books, 2017), and ‘Vicarious Liability: Critique and Reform’ (Hart, 2018).

In his latest tome, ‘Freedom of Speech in the Western World: Comparison and Critique’ (Lexington Books, 2019), Professor Gray compares and critiques the legal protection of freedom of speech in jurisdictions such as Canada, Australia, the United Kingdom, the United States, and Europe. He notes important similarities and differences in terms of how freedom of speech is protected in these Western democracies, what causes these differences, what one system might learn from the others, and whether convergence in approach can be expected.

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History has taught us about the tendency of governments to suppress political dissent. There is a timeless tendency of those in power to seek to retain such power by suppressing reasonable dissent from those who might be thought to threaten their status quo. Thus Gray starts his book by reminding us that the fight for free speech has been a long one, with some martyrs paying with their lives or going to prison for expressing unwelcome views.

Part of the checks and balances existing in a constitutional democracy include the role of the courts in preserving freedom of speech. Chapter 1 discusses the various theories said to support freedom of speech. It traces the historical clash between the will of individuals to speak their mind and the will of ruling elites to try to suppress dissenting or critical views. Gray traces the slow movement towards recognition of freedom of speech in England, which is particularly important when all common-law jurisdictions are analysed, given they all share this legal tradition.

Chapters 2-5 are devoted to a description of the case law in each of the chosen jurisdictions – namely the Australia, Canada, the United States, and Europe, discussing both United Kingdom and European Court decisions. Thus a critical analysis is offered with respect to the jurisprudence in each of these jurisdictions, which is entirely possible given their common law basis (with the partial exception of ‘Europe’), and their shared legal history and traditions.

Chapter 6 is dedicated to a comparative analysis of similarities and differences that have been observed across the case law. This chapter discusses the cultural and historical differences between these jurisdictions, concretely explaining the differences in approach regarding to the protection of freedom of speech. The chapter points out an important distinction between the use of proportionality in some jurisdictions and a category-based approach in others.

Professor Gray explains the distrust of government in the United States, and how such distrust permeates the nation’s political culture and reflects the history and experience of its citizens. By contrast, democracy in the Old Continent took a much longer time to more fully develop. Thus a necessary correlation is traced by the author between democracy and free speech. Since democracy came much more slowly to Europe than the United States, Gray contends that this may be one of the reasons as to why the protection of freedom speech is, to a certain degree, considerably stronger in the United States than in the European countries.

Professor Gray then reminds us that, in Europe, there has been such a constant call for further restrictions on speech coming from an apparent concern for protecting members of the ruling elites as well as other privileged groups from “insult” or “offence” by others. One of the highlights of this book is its author’s masterful explanation of how the ruling European elites have constantly used the law to limit speech that might pose a threat to the existing power structures. Thus the book explains the extent to which the European courts often validate legislation which is contrary to free speech and in such a way that would most likely not occur in the United States.

To conclude, Professor Gray must be congratulated on this remarkable book. ‘Freedom of Speech in the Western World’ is striking in its depth and breadth. It superbly describes the relevant case law in regards to the extent to which freedom of speech has been protected in the United States, Canada, United Kingdom/Europe and Australia. Because it is so erudite, well-written, and well-researched, this book undoubtedly is destined to become a seminal reference on the subject. I thoroughly enjoyed reading his book and I wholeheartedly recommend it to everyone who is interested in the legal protection of this most fundamental right of every truly functional democracy – our right to freedom of speech.