

Using rights to gag free speech

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TO be honest, I didn't really think much about "freedom of speech" until I found myself the subject of three "hate speech" complaints in Canada in 2007.

I mean I was philosophically in favour of it, and I'd been consistently opposed to the Dominion's ghastly "human rights" commissions and their equivalents elsewhere my entire adult life, and from time to time when an especially choice example of politically correct enforcement came up I'd whack it around for a column or two.

But I don't think I really understood how advanced the Left's assault on this core Western liberty actually was. In 2008, shortly before my writing was put on trial for "flagrant Islamophobia" in British Columbia, several National Review readers e-mailed from the US to query what the big deal was. C'mon, lighten up, what could some "human rights" pseudo-court do? And I replied that the statutory penalty under the British Columbia "Human Rights" Code was that Maclean's, Canada's biggest-selling news weekly, and by extension any other publication, would be forbidden henceforth to publish anything by me about Islam, Europe, terrorism, demography, welfare, multiculturalism, and various related subjects. And that this prohibition would last forever, and was deemed to have the force of a supreme-court decision. I would in effect be rendered unpublishable in the land of my birth. In theory, if a job opened up for dance critic or gardening correspondent, I could apply for it, although if the Royal Winnipeg Ballet decided to offer Jihad: The Ballet for its Christmas season I'd probably have to recuse myself.

And what I found odd about this was that very few other people found it odd at all. Indeed, the Canadian establishment seems to think it entirely natural that the Canadian state should be in the business of lifetime publication bans, just as the Dutch establishment thinks it entirely natural that the Dutch state should put elected leaders of parliamentary opposition parties on trial for their political platforms, and the French establishment thinks it appropriate for the French state to put novelists on trial for sentiments expressed by fictional characters.

Across almost all the Western world apart from America, the state grows ever more comfortable with micro-regulating public discourse-and, in fact, not-so-public discourse: Lars Hedegaard, head of the Danish Free Press Society, has been tried, been acquitted, had his acquittal overruled, and been convicted of "racism" for some remarks about Islam's treatment of women made (so he thought) in private but taped and released to the world. The Rev. Stephen Boissin was convicted of the heinous crime of writing a homophobic letter to his local newspaper and was sentenced by Lori Andreachuk, Alberta's "human rights" commissar, to a lifetime prohibition on uttering anything "disparaging" about homosexuality ever again in sermons, in newspapers, on radio-or in private emails. Note that legal concept: not "illegal" or "hateful," but merely "disparaging."

Dale McAlpine, a practicing (wait for it) Christian, was handing out leaflets in the English town of Workington and chit-chatting with shoppers when he was arrested on a "public order" charge by Constable Adams, a gay, lesbian, bisexual, and transgender community-outreach officer. Mr. McAlpine had been overheard by the officer to observe that homosexuality is a sin. "I'm gay," said Constable Adams. Well, it's still a sin, Mr McAlpine said. So Constable Adams arrested him for causing distress to Constable Adams.

In fairness, I should add that Mr McAlpine was also arrested for causing distress to members of the public more generally, and not just to the aggrieved gay copper. No member of the public actually complained, but, as Constable Adams pointed out, Mr McAlpine was talking "in a loud voice" that might theoretically have been "overheard by others." And we can't have that, can we? So he was fingerprinted, DNA-sampled, and tossed in the cells for seven hours.

In such a climate, time-honored national characteristics are easily extinguished. A generation ago, even Britain's polytechnic Trots and Marxists were sufficiently residually English to feel the industrial-scale snitching by family and friends that went on in Communist Eastern Europe was not quite cricket, old boy. Now England is Little Stasi-on-Avon, a land where, even if you're well out of earshot of the gay-outreach officer, an infelicitous remark in the presence of a co-worker or even co-playmate is more than sufficient.

Fourteen-year-old Codie Stott asked her teacher at Harrop Fold High School whether she could sit with another group to do her science project as in hers the other five pupils spoke Urdu and she didn't understand what they were saying. The teacher called the police, who took her to the station, photographed her, fingerprinted her, took DNA samples, removed her jewelry and shoelaces, put her in a cell for three and a half hours, and questioned her on suspicion of committing a Section Five "racial public-order offence." "An allegation of a serious nature was made concerning a racially motivated remark," declared the headmaster, Antony Edkins. The school would "not stand for racism in any form." In a statement, Greater Manchester Police said they took "hate crime" very seriously, and their treatment of Miss Stott was in line with "normal procedure."

Indeed it was. And that's the problem. When I ran into my troubles up north, a very few principled members of Canada's bien-pensants stood up to argue that the thought police were out of control and the law needed to be reined in. Among them was Keith Martin, a Liberal MP and himself a member of a visible minority-or, as he put it, a "brown guy." For his pains, he and a few other principled liberals were mocked by Warren Kinsella, a spin-doctor for the Liberal party and a chap who fancies himself Canada's James Carville. As Kinsella taunted these lonely defenders of freedom of speech, how did it feel to be on the same side as Steyn . . . and anti-Semites . . . and white supremacists? Eh, eh, how'd ya feel about that, eh?

Mr. Kinsella was subsequently forced to make a groveling apology to "the Chinese community" after making a joke about ordering the cat at his favourite Chinese restaurant in Ottawa: Even the most censorious of politically correct enforcers occasionally forget themselves and accidentally behave like normal human beings. But, before the Chinese cat got his tongue, the Liberal hack was, like so many of his ilk, missing the point: "Free speech" doesn't mean "the brown guy" is on the same side as the "white supremacists." It means he recognizes that the other fellow is entitled

to have a side. By contrast, Canada's "human rights" commissions and Britain's gay-outreach officer and Europe's various public prosecutors seem to think there should be only one side of the debate, and they're ever more comfortable in arguing for that quite openly.

Thus, after Anders Breivik gunned down dozens of his fellow Norwegians, just about the only angle on the story that got the Western Left's juices going was the opportunity it afforded to narrow the parameters of public discourse even more. They gleefully fell on his 1500-page "manifesto," wherein he cites me, John Derbyshire, Bernard Lewis, Theodore Dalrymple, and various other names familiar round these parts. He also cites Winston Churchill, Thomas Jefferson, Mahatma Gandhi, Mark Twain, Hans Christian Andersen, and my leftie compatriot Naomi Klein, the "No Logo" gal and a columnist for *The Nation* in the US and *the Guardian* in Britain. Just for the record, my name appears four times, Miss Klein's appears four times.

Yet the British, Canadian, Australian, European, and American Left - and more than a few likeminded Americans - rose as one to demand restraints on a very narrow sliver of Anders Breivik's remarkably - what's the word? - diverse reading material.

"I cannot understand that you think that it is fine for people to go out and say we should kill all Muslims," sighed Tanya Plibersek, the Australian minister for human services, on a panel discussion, "and that that has no real effect in the world." Because, after all, calling for the killing of all Muslims is what I and Bernard Lewis and Theodore Dalrymple and Naomi Klein and Hans Christian Andersen do all day long.

She was addressing Brendan O'Neill, a beleaguered defender of free speech on a show where the host, the guests, the studio audience, and the post-broadcast tweeters were all lustily in favour of state regulation, and not of human acts but of opinions. And not just for inciters of Norwegian nutters, but for Rupert Murdoch, too. To one degree or another, they were also in favour of the government's taking action to whip the media into line. Into line with what? Well, with the government, presumably. Whether or not they'll get their way Down Under, in London the British state is being actively urged to regulate the content of the press for the first time in four centuries.

How did we get to this state of affairs? When my travails in Canada began, somebody reminded me of an observation by the American writer Heywood Broun: "Everybody favours free speech in the slack moments when no axes are being ground." I think that gets it exactly backwards. It was precisely at the moment when no axes were being ground that the West decided it could afford to forgo free speech. There was a moment 40 or so years ago when it appeared as if all the great questions had been settled: There would be no more Third Reichs, no more fascist regimes, no more anti-Semitism; advanced social democracies were heading inevitably down a one-way sunlit avenue into the peaceable kingdom of multiculturalism; and so it seemed to a certain mindset entirely reasonable to introduce speech codes and thought crimes essentially as a kind of mopping-up operation.

Canada's "human rights" tribunals were originally created to deal with employment and housing discrimination, but Canadians aren't terribly hateful and there wasn't a lot of that, so they advanced to prosecuting "hate speech." It was an illiberal notion harnessed supposedly in the

cause of liberalism: A handful of neo-Nazi losers in rented rooms in basements are leaving Xeroxed white-supremacist flyers in payphones? Hey, relax, we'll hunt down the extremist fringe losers and ensure they'll trouble you no further. Just a few recalcitrant knuckledraggers who decline to get with the beat. Don't give 'em a thought. Nothing to see here, folks.

When you accept that the state has the right to criminalise Holocaust denial, you are conceding an awful lot. I don't just mean on the specific point: The Weimar Republic was a veritable proto-Trudeaupia of "hate speech" laws. In the 15 years before the Nazis came to power, there were over 200 prosecutions for "anti-Semitic speech" in Germany - and a fat lot of good it did. But more important than the practical uselessness of such laws is the assumption you're making: You're accepting that the state, in ruling one opinion out of bounds, will be content to stop there.

As is now clear, it isn't. Restrictions on freedom of speech undermine the foundations of justice, including the bedrock principle: equality before the law. When it comes to free expression, Britain, Canada, Australia, and Europe are ever less lands of laws and instead lands of men-and women, straights and gays, Muslims and infidels-whose rights before the law vary according to which combination of these various identity groups they belong to.

Appearing at a Vancouver comedy club, Guy Earle found himself obliged to put down a couple of drunken hecklers. Had he said what he said to me or to Jonah Goldberg, we would have had no legal redress. Alas for him, he said it to two drunken hecklers of the lesbian persuasion, so they accused him of putting them down homophobically and he was fined \$15,000. Had John O'Sullivan and Kathryn Lopez chanced to be strolling by the Driftwood Beach Bar on the Isle of Wight when, in the course of oldies night, Simon Ledger performed "Kung Fu Fighting," they would have had no grounds for complaint, even if he'd done the extended dance remix. However, the passersby in question were Chinese, and so Mr Ledger was arrested for racism.

In such a world, words have no agreed meaning. "There were funky Chinamen from funky Chinatown" is legal or illegal according to whosoever happens to hear it. Indeed, in my very favourite example of this kind of thinking, the very same words can be proof of two entirely different hate crimes. Iqbal Sacranie is a Muslim of such exemplary "moderation" he's been knighted by the Queen. The head of the Muslim Council of Britain, Sir Iqbal was interviewed on the BBC and expressed the view that homosexuality was "immoral," was "not acceptable," "spreads disease," and "damaged the very foundations of society." A gay group complained and Sir Iqbal was investigated by Scotland Yard's "community safety unit" for "hate crimes" and "homophobia."

Independently but simultaneously, the magazine of GALHA (the Gay and Lesbian Humanist Association) called Islam a "barmy doctrine" growing "like a canker" and deeply "homophobic." In return, the London Race Hate Crime Forum asked Scotland Yard to investigate GALHA for "Islamophobia."

Got that? If a Muslim says that Islam is opposed to homosexuality, Scotland Yard will investigate him for homophobia; but if a gay says that Islam is opposed to homosexuality, Scotland Yard will investigate him for Islamophobia.

Two men say exactly the same thing and they're investigated for different hate crimes. On the other hand, they could have sung "Kung Fu Fighting" back and forth to each other all day long and it wouldn't have been a crime unless a couple of Chinese passersby walked in the room.

Andrew Bolt, one of Australia's leading columnists, wrote a couple of columns on the theme of identity-group opportunism. He's now been dragged into court and denounced as a "racist". But, if the law confers particular privileges on members of approved identity groups, I believe how we define the criteria for membership of those groups is surely a legitimate subject for public debate.

One of the great strengths of common law has been its general antipathy toward group rights—because the ultimate minority is the individual. The minute you have collective rights, you require dramatically enhanced state power to mediate the hierarchy of different victim groups. In a world of Islamophobic gays, homophobic Muslims, and white blacks, it is tempting to assume the whole racket will collapse under the weight of its own absurdity.

Instead, the law increasingly bends to those who mean it the most. In some of the oldest free societies in the world, the state is not mediating speech in order to assure social tranquility, but rather torturing logic and law and liberty in ever more inane ways in order to accommodate those who might be tempted to express their grievances in non-speechy ways. Consider the case of Elisabeth Sabaditsch-Wolff, a Viennese housewife who has lived in several Muslim countries. She was hauled into an Austrian court for calling Mohammed a pedophile on the grounds that he consummated his marriage when his bride, Aisha, was nine years old. Mrs. Sabbaditsch-Wolff was found guilty and fined 480 euros. The judge's reasoning was fascinating: "Pedophilia is factually incorrect, since paedophilia is a sexual preference which solely or mainly is directed towards children. Nevertheless, it does not apply to Mohammad. He was still married to Aisha when she was 18."

Ah, gotcha. So, under Austrian law, you're not a pedophile if you deflower the kid in fourth grade but keep her around till high school. There's a useful tip if you're planning a hiking holiday in the Alps this fall. Or is this another of those dispensations that is not of universal application?

Western governments have gone far too far down this path already. "The lofty idea of 'the war on racism' is gradually turning into a hideously false ideology," the French philosopher Alain Finkielkraut said in 2005. "And this anti-racism will be for the 21st century what Communism was for the 20th century: a source of violence." Just so. Let us accept for the sake of argument that racism is bad, that homophobia is bad, that Islamophobia is bad, that offensive utterances are bad, that mean-spirited thoughts are bad. So what?

As bad as they are, the government's criminalizing all of them and setting up an enforcement regime in the interests of micro-regulating us into compliance is a thousand times worse. If that's the alternative, give me "Kung Fu Fighting" sung by Mohammed's nine-year-old bride while putting down two lesbian hecklers sending back the Cat of the Day in a Chinese restaurant.

As John Milton wrote in his *Areopagitica* of 1644, "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."

Or as an ordinary Canadian citizen said to me, after I testified in defense of free speech to the Ontario parliament at Queen's Park, "Give me the right to free speech, and I will use it to claim all my other rights."

Conversely, if you let them take your right to free speech, how are you going to stop them from taking all the others?