

Letter to the *New York Review of Books*

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Mark Mercer
Department of Philosophy
Saint Mary's University
Halifax, NS B3H 3C3
(902) 420-5825
mark.mercers@smu.ca

The Background:

I've attached a letter I've sent to the editor of the *New York Review of Books*. It concerns a comment Jeremy Waldron, a philosopher of law and politics, made in the July 17, 2008, issue (Volume LV, Number 12). Waldron was responding to a letter regarding his article "Free Speech & the Menace of Hysteria," which had appeared in the May 29, 2008, issue (Volume LV, Number 9).

Back in 1991, I had participated in a seminar on political philosophy Waldron gave at Berkeley. It was a terrific seminar. We came to appreciate the depth and rigour of four very different traditions of political thought. I was astounded and greatly disappointed a couple years ago to read Waldron's article "Boutique Faith," in the *London Review of Books*, 20 July 2006, for in that article Waldron came out strongly in favour of laws against the expression of hate and for denying certain other civil liberties to hate mongers. From my brief time with him, I wouldn't have guessed Waldron was anything but a good liberal and a good democrat on freedom of expression and other civil liberties.

Waldron's main thought in his two articles is that racist and other vilifying speech can harm marginalized and powerless people. Waldron contends that censoring or suppressing such speech is an effective way of minimizing this harm. He adds that censoring or suppressing harmful speech need not chill or deform public discussions of controversial matters. All that's needed, he says, to reduce harm without chilling expression are good laws competently applied. In my letter, except for a quick remark, I don't address the question whether laws against hate mongering could be effective tools in the quest for a just and egalitarian society. I respond merely to Waldron's specific contention that the Canadian experience provides evidence that anti-hate laws need not chill or deform public discussion of controversial matters. For the life of me, I can't imagine how Waldron formed the bizarre idea that other than the scant few malicious haters among us, Canadians feel perfectly free to say exactly what's on their minds. I hope readers of the *New York Review of Books* will learn that Waldron is entirely 180 degrees wrong on that point.

To the editor:

Jeremy Waldron (*New York Review*, July 17) is wrong to think that “the experience of hate speech laws” in Canada “has not disclosed any disturbing pattern of censorship or any chilling effect beyond the specifically vicious and hateful phenomena that the laws are directed against.” In fact, our 29-year experience of such laws has been a disaster.

Section 13 of the Canadian Human Rights Act, the section under which the Canadian Human Rights Commission (CHRC) derives its mandate to censor, suppress, and punish peaceful expressions of opinion and emotion, makes it a discriminatory practice to communicate “any matter that is likely to expose a person or persons to hatred or contempt” in virtue of race, sex, religion, or other ground specified in the Act. Similar words can be found in at least three provincial acts governing provincial human rights agencies. In 1990, section 13 was found constitutional by our supreme court, though by a mere four-to-three margin.

In early days, the CHRC went after only the vile racist utterances Waldron thinks should be prohibited. About fifteen years ago, though, the CHRC began to widen its net, and the provincial commissions have followed its lead. Here are some examples of recent decisions by the CHRC and provincial commissions: Stephen Boissoin was fined and, incredibly, ordered never again to speak his actual opinions on homosexuality or policy matters having to do with homosexuals. *The Red Deer Advocate*, which published Boissoin’s letter to the editor, the object of the complaint against Boissoin, was also fined and ordered to apologize. The internet site *Peace, Earth and Justice News* agreed to delete from its website all articles on Israel and Palestine. Hugh Owens has been ordered not to distribute chapter and verse references to Bible passages denouncing homosexuality.

Complaints presently before Canadian human rights agencies include ones directed at *Maclean’s* magazine, *The Western Standard* magazine, twice-elected former Member of Parliament Jim Pankiw (because his 2002 campaign literature criticized special privileges for First Nation Canadians), and the Halifax *Chronicle Herald*, a daily newspaper. Nothing in any of these cases counts as other than good-faith comment on sensitive issues. Recently, a complaint against *Catholic Insight* magazine was dismissed by the CHRC, after costing the small magazine \$20,000 in legal fees.

Nowadays in Canada, anyone who speaks on such topics as Islam or Muslims, aboriginals, abortion, homosexuality or same-sex marriage, race, Israeli policies or practices toward the Palestinians, the nature of the sexes, or the place of women in society is at risk of being hauled before a commission. Our commissions have had a profoundly chilling effect on expression and discussion in Canada, extending from individual bloggers to newspapers and even to universities. The disdain our commissions have for expression has also been a great encouragement both to identity politics and to the cult of victimization, two of the worst toxins affecting contemporary social and political life in this country.

Of course, more than a few supporters of hate speech laws think the chilling effects are really the whole point of the thing. The actual hate mongers, we all agree, are few in number and entirely without influence. The real damage done to members of marginalized and vulnerable minorities, say hate speech law supporters, comes from negative characterizations in the respectable media, and, they note, hate laws do a good job of deterring newspapers from publishing such characterizations. This argument can

be found in a book by Richard Moon, the University of Windsor law professor the CHRC has asked to prepare a report on its practices.

Waldron might well respond that these abuses are the result of poorly written laws, unfair procedures, and the zeal of ideologues, and he would be at least a little right. But Waldron is naïve to think a system such as the one he describes in his letter isn't at great risk of quickly degenerating into the sort responsible for the censorship and chilly climate for expression that marks Canada today. After all, if you hire a censor, he's going to look for business, and anyone seeking to gain a bit of advantage will be tempted to bring him some.

Whatever social harms freedom of expression might cause, and whatever social harm it might cause that cannot be compensated for or repaired without censorship and punishment (I think we've just brought the harm down to nil), Canada today provides the world with an excellent example of the grave harm hate speech laws can do to a society.

All the best,

Mark Mercer

Department of Philosophy
Saint Mary's University
Halifax, NS B3H 3C3
(902) 420-5825