

Civil liberties and democracy in Canada

The Cranky Professor

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Politicians this election have said nothing about civil liberties. Nor have they addressed the topic of the future of democracy in Canada.

The no-fly list imposed by the Conservative government is an assault on our freedom of movement. The security cameras that track us as we go about our daily business are an assault on our privacy. Racial, ethnic, and religious profiling by police and security agencies are assaults on our freedoms of association, dress, and religion. The now well-established practice of forcing protesters behind security cordons far out of anyone's earshot is an assault on our freedom of expression and our freedom to press for political change.

We've lately witnessed a series of assaults on freedom of expression by Canada's various human rights commissions and panels and tribunals. The main culprit here is section 13 (1) of the Canadian Human Rights Act, which says that it is "a discriminatory practice" to communicate "any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination."

Deleting this section from the Act would go a long way toward restoring to Canadians freedom of expression. Sadly, M-446, a private member's motion to delete 13 (1), did not get picked up by any political party and neither the parties nor the news media or the voters have made it an issue this election.

Those who oppose freedom of expression say that certain sorts of expression are harmful and, thus, that it is proper that a government agency monitors what we say and that we be subject to punishment should we cross a line. But for this argument to succeed, the harm must be substantial, the means must be effective in removing the harm, and the means must not be more harmful than the original offence. So is the restriction on expression we find in section 13 justified by these criteria?

It depends on one's conception of harm and the standards by which one compares harms. That's why the search for common ground between those who value freedom of expression and those who don't always fails. And that brings us to the issue of the future of democracy in Canada.

Democracy in Canada, and in many other countries as well, is under threat from authoritarianism. A system of government is authoritarian to the extent that power resides in institutions insulated from elected representatives. Now some powerful bodies

need insulation from everyday interest-based politics—the courts, for instance, or agencies that monitor food safety. But even in these cases democracy is threatened when the government gives the authority a vague or broad mandate, fails to review regularly the authority’s performance, and looks the other way when the authority oversteps its mandate.

Politicians in democracies, though, have strong motives to shift their work to authorities and then not to mind when the authority expands its mandate and creates new powers for itself. Politicians want to be re-elected; taking a stand on a controversial matter might cost votes; and so it’s best to allow the courts or an agency to make the decision. Now it’s wonderful that abortion is unrestricted in Canada and that people can marry within their own sex—but the decisions that brought us these wonderful things ought to have been made by parliament, not by courts.

The trouble with authoritarianism, at least for those troubled by it, resides in its usurpation of our prerogative to choose for ourselves. Democratically enacted restrictions are still restrictions, of course, but at least we were able to participate in the decision making by which they came about. We might find ourselves disadvantaged by democratically enacted legislation, but we can accept it as imposed on us fairly, and we can continue, with some hope of success, to agitate against it. Democracy treats us as adults, as people attempting to construct for themselves in a social context their own lives in light of their own conception of their good. Authoritarianism treats us as children, needing protection from forces we cannot handle, and as requiring firm guidance to come to appreciate what is truly good.

Human rights commissions are agents of authoritarianism, especially when they police the peaceful expression of opinion and emotion. They embody a particular view of how people ought to get along and how they ought to live with each other. From that view follows the idea that most harms are public matters rather than matters for people to work through privately. And so they are blind to the harms inherent in their authoritarianism and the collectivist ethos they cherish and would impose on us.

Now whether Canadians could live well through this ethos is a serious question, as is the question whether we would want to, even at its best. These are political questions, of course, to be pursued by democratically elected representatives. They are also controversial. A candidate for parliament would risk votes were she publicly to take a stand on them.

We now have an answer why no politicians this election have raised the issue either of section 13 or of the Canadian Human Rights Commission. We still, though, lack an answer to the question why neither the news media nor the voters have raised them.