

The fundamental incoherence of addressing hate through censorship

Ottawa *Citizen*, under the headline “Why censorship is impossible in a democracy,”
Monday 15 June 2009

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

In a democracy marked by the rule of law, evidence against a person in a court or facing a board or tribunal must be available for public inspection. Within that fact lies the fundamental incoherence of censorship in a democracy marked by the rule of law.

Consider: The evidence before the censor includes the words or images themselves that are at issue. But as that evidence must be available to the public, those words or images can be reproduced by whoever wishes to reproduce them. (Indeed, news organizations are obliged by their mission to reproduce them.) And so the words or images stay in bounds, even should the censor rule them out of bounds.

This fundamental incoherence has entirely escaped the Canadian Human Rights Commission (CHRC). In its new report to Parliament, “Freedom of Expression and Freedom from Hate in the Internet Age,” released on 11 June, the CHRC seeks to justify both its mandate to investigate complaints of hate speech and the power of the Canadian Human Rights Tribunal (CHRT) to censor peaceful expression of thought and emotion. Nowhere in the report does it address the necessarily self-defeating nature of censoring something that will remain in full public view.

The report explains that Canada needs to have an agency to police expression, the CHRC, and one to remove from public view ardent and extreme expressions of hatred, the CHRT, because words and images can cause harm. Of course they can, though, unlike sticks and stones, they needn’t.

But the CHRT is to order down only ardent and extreme expressions of hatred, for to meddle with anything less would certainly be to infringe upon freedom of expression. Yet ardent and extreme expressions of hatred for groups are the least harmful of all. Sociologists and psychologists tell us that when minorities or the vulnerable are harmed by words and images, it’s the everyday ones that are at fault, the commonplaces uttered without malice. So the justification according to which censorship is needed in our fight for equality and social justice doesn’t work at all if restricted to extreme expression. If not so restricted, it puts an awful lot of expression at risk.

Again, to investigate and adjudicate a complaint of hate speech, the speech must be available to the public. If it was harmful in the first instance, it must again be harmful when repeated, and the harm must mount as it is disseminated further. If the ardent and extreme expression of hatred in fact did, or could, cause harm, the worst thing to do would be to go after it in public, as a government agency must.

This point is independent of whether one thinks freedom of expression is of value only as an instrument, as the CHRC report asserts, or is something to love for its own sake. Even if freedom of expression is merely a tool for uncovering and communicating truths, censorship, even well-meaning and well-regulated censorship, cannot in its nature serve to promote equality and justice.