

Keeping criticism honest and civil

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“Freedom of expression is all well and good. Yet surely people should have legal protection against defamation.”

I'm not sure I agree. We should enjoy legal protection against something only when no other sort of protection will do the job, and perhaps the social protections against defamation we currently enjoy are good enough.

But let's leave the matter of the ultimate adequacy of non-legal protections aside. I want rather to urge two things: first, that laws against defamation should apply only when nothing other than law will do; and, second, that there's a lot in place in our society besides laws that can either keep us safe from defamation in the first place or right our ships should we ever be defamed.

The question what laws should we have against defamation is always worth asking, but it's especially pertinent now, given two cases presently before the courts. I'm referring to the suits against Ezra Levant, the writer and television show host, and Denis Rancourt, the activist and researcher who used to teach physics at the University of Ottawa.

The suit against Mr Levant was brought by Khurram Awan, who participated in unsuccessful human rights complaints against *Maclean's* magazine, in 2008. Mr Awan claims that Mr Levant defamed him in blog posts by, for instance, repeatedly calling him a liar and a member of an anti-Semitic organization. Mr Awan also claims that because of Mr Levant's actions he has lost friends and reputation.

The suit against Dr Rancourt was brought by Joanne St. Lewis, a law professor at the University of Ottawa. Ms St. Lewis claims that in 2011, Dr Rancourt defamed her in a blog post by calling her a house negro for advising U of O president Alan Rock that a report alleging systemic racial discrimination at the university was faulty.

If defamation is any business of the law, the bar for a successful suit should be very high. Otherwise, public discussion will suffer, as people will hide their thoughts or express them only privately or anonymously. When people become afraid to remark openly on the bad behaviour of the powerful for fear of being sued, bad behaviour will flourish.

Of course, even if the bar is high, people might still file suits just to vex or weary those who have criticised them. It's not enough to protect public discussion, then, that the bar for defamation be high. There need to be safeguards in place to prevent people from using the legal process itself as punishment.

But false accusation is also harmful. It's harmful to the person who loses wages or reputation because of it. And it is harmful to all of us generally, as qualified people will shun public roles should they think others can get away with vilifying them.

So we need mechanisms by which to keep comment and criticism honest and civil, mechanisms that don't at the same time inhibit them, as threats of a lawsuit do.

I think that the mechanism by which to keep comment and criticism honest and civil is comment and criticism itself. When someone speaks a falsehood about one, speak the truth back. Expose the other's shoddy evidence or reasoning. When insulted, note that an insult isn't evidence or argument against one, or even a criticism.

If it is false that you acted as a house negro, explain to the world that you didn't. If you are upset by a phrase or a tone, criticise publicly the use of that phrase or tone. If you didn't lie, expose the lie that you did. This all can be done easily and effectively without employing a single lawyer.

There are at least two worries about the strength of this mechanism. One is that people are credulous and won't respond to the truth, especially if they like the falsehood or it gets repeated. The other is that not many people have access to a medium through which to tell their side of the story.

Sadly, people are indeed credulous and biased. But let's not exaggerate the extent to which they are. Given a well-publicised discussion, most people will conform their opinions to their evidence. (Is this true? That many people trust horoscopes or buy naturopathic remedies suggests it isn't.)

Moreover, let's not rest content in the thought that we cannot make our situation less hospitable to credulity and bias. One element in our culture that tends to increase our credulity and bias is the willingness of authorities to settle matters for us. We're not going to think for ourselves, or even bother to discover how, if we don't need to. If this is right, the institution of defamation law is itself part of the problem.

That people lack fora in which to respond to falsehoods and insults is also a problem we should neither exaggerate nor rest content with. We can call on governments to make public spaces available to people, in parks, community centres, or the streets. We can demand public billboards, or just take to posting on telephone poles. The internet, certainly, is a great resource to those who lack access to newspapers and television. We accept that it's good at transmitting calumny; we should be aware of its potential to set things straight.

A final thought: If we, as the ordinary people we are, are inevitably credulous and biased, and given to believe what we want to believe or what is most effectively purveyed to us despite the evidence, then the courts themselves are not going to be much use against actual defamation, either. We might, that is, accept their decisions (or we might not), but we could have no reason to insist that the inevitably biased or impressionable judges we've charged to do our work for us will reliably render correct decisions. After all, they're just people, too.