

Why universities should cherish the civil liberties

Prince Arthur Herald, 25 October 2016

<http://princearthurherald.com/en/campus-news/universities-cherish-civil-liberties-232>

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Some people want others to refer to them using non-gendered or atypically gendered pronouns. Some hold that neither “he” nor “she” accurately applies to them. Others prefer that our common language didn't irrelevantly indicate one's sex.

Favourite non-gendered alternatives are “they” and “ze,” while “he,” “she,” and “vhe” allows for a third sex or gender.

University of Toronto psychology professor Jordan Peterson has stated publicly that he will not honour student requests to use non-standard pronouns.

One line of argument behind Peterson's refusal is his view that there are just two human sexes, not three or four or a continuum, and that no one is both male and female. To refer to someone as “vhe,” then, is to imply something about them that one might believe to be false.

The University of Toronto has directed Peterson to accede to students' requests to use their preferred pronoun. In a letter dated October 18th, Dr David Cameron, the dean of the Faculty of Arts and Science, and Dr Sioban Nelson, the Vice-Provost, Faculty and Academic Life, tell Peterson that “the refusal by a teacher or colleague to use the personal pronoun that is an expression of the person's gender identity can constitute discrimination.”

Refusing requests by transgendered people is, they add, “contrary to the rights of those persons to equal treatment without discrimination.”

I want to make three points about Cameron and Nelson's position.

1) It is far from settled whether current or pending human rights legislation implies that failing to honour people's pronoun preferences constitutes wrongful discrimination or harassment.

2) By insisting that such behaviour is wrongfully discriminatory or harassing, Cameron and Nelson are helping to create conditions under which people believe human rights law is settled, and that will in turn help to settle the law in the direction of restricting expression.

3) Construing such behaviour as wrongfully discriminatory or harassing makes for an impoverished academic environment and, indeed, an oppressive social environment.

About the first point, while it is true in Canada that civil liberties, such as freedom of expression, freedom of manners, freedom of association, and freedom of assembly, are not strongly protected and are often infringed by human rights legislation, they still have some weight in law and policy. The Supreme Court of Canada considers restrictions on the peaceful expression of opinion and emotion acceptable only if the social goods of restriction are both important and not available in other ways. Given that test, it is unlikely that a law that

requires people to use certain pronouns rather than others would pass constitutional appeal, especially since it would force some people to express ideas they sincerely believe to be false.

Perhaps I'm wrong about that, and Canada is a civil libertarian's nightmare. Nonetheless, because, technically, the question is open, Cameron and Nelson are speaking prematurely. Their interpretation of the law has not been tested in any court at all, let alone upheld on appeal.

About the second point, the language in human rights legislation that would restrict civil liberties is so broad, amorphous, and lacking in clear standards of application, that what the legislation actually prohibits is currently up for grabs and won't be settled until a large body of precedent emerges.

In such an unsettled situation, when voices of authority speak in favour of restrictions on civil liberties, the idea of restriction gains legitimacy, for it comes to seem reasonable. For my part, I would want university administrators to say directly and firmly that non-abusively using one's own preferred pronouns cannot possibly constitute a human rights violation. That would tend to promote respect for civil liberties, instead of disdain. As things stand today, in issuing their directives to Peterson, Cameron and Nelson are working to create a reality in which politely refusing a request is in law a real human rights abuse.

About the third point, while it might legitimately be up to businesses or other organizations to regulate employees' speech, at a university any such regulations would undercut the academic mission. Universities should be places of intellectual community. Members of such communities need to be open, candid, and honest. Restricting what they can say or forcing them to say what they don't want to say will make them insincere with each other. All aspects of intellectual community require sincerity—most certainly teaching does. A disingenuous teacher cannot inspire their students to be passionate about truth.

Drs Cameron and Nelson would have Dr Peterson be disingenuous with his students.

If I had my way, every university in Canada would commit itself to supporting, both morally and with money, any member of its community who through exercising a civil liberty becomes the subject of a human rights complaint. Sadly, I won't have my way. At the very least, though, universities should not themselves infringe on people's civil liberties, and they should not be encouraging repressive legislation in the name of human rights.

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