

## Remarks for the CCEPA discussion on Canadian human rights commissions and freedom of expression

Sobey Theatre, Saint Mary's University, 30 October 2008

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

Etienne (my eight year-old son) and I were reading about the French Revolution. We came to the Terror. "But, but, but..." Etienne stammered, scared and confused, "it was the Committee for *Public Safety!*"

Human rights commissions.

Pearl could be entirely correct that human rights commissions in Canada are properly-constituted government agencies working within their mandates to address the real harms caused by people speaking their prejudices, and yet the whole thing would still be rotten. We in Canada simply ought not be subject to government review and evaluation for what we've expressed. Human rights commissions in Canada are in the business of censoring, suppressing, and punishing the expression of opinion and emotion. But no Canadian should be prevented from or punished for expressing her opinion or her feelings, no matter how false or hurtful the opinion or how vile the feelings.

In fact, of course, Pearl is far from correct that human rights commissions in Canada are properly constituted agencies working within their mandates and doing good work in the struggle to create a more equitable and just society. Consider the recent involvement of the NSHRC in the flag flap in Truro. Only by reading the word "service" in an absurdly wide sense could it suppose it proper to interfere in the controversy concerning the town council's refusal to fly a gay pride flag. And as far as I can tell, the NSHRC is one of the better behaved commissions in the country.

But that's not my concern. I wish I hadn't brought it up—I've only encouraged Krista and Pearl to waste your time on irrelevant matters. What I want to do is to remind us all why no government agency ought to have the power to restrict, censor, suppress, or punish expression. And then I want to explain why the actions and ideologies Pearl and Krista defend are vile.

Wide freedom of expression is a wonderful thing for many reasons. It enables people to be candid with each other. It supports research and the dissemination of knowledge and opinion. It lets people get things off their chests. Without it, entertainment is less entertaining. This is all great. But there are three central reasons why we ought to enjoy wide freedom of expression.

The first is that life isn't worth living if one cannot make one's interior known to others. Having opinions and feelings is part of what living well is all about, and because we are social animals it matters to us that at least some others see what we are all about. Now someone says something mean or hurtful, and we respond "it's terrible that he thinks that and said that!" Then we hear that a government agency is contemplating shutting him up. "That's terrible!" we again respond. If you don't immediately feel that what the government agency is contemplating is also

terrible, then you don't really understand a central part of what living is all about.

The second reason we ought to enjoy wide freedom of expression derives from the principle that government or other authority is legitimate only through the consent of the governed. We cannot consent to be governed when we have not had a fair chance to influence law and government policy. We have not had that fair chance when we cannot speak our mind or our heart except under threat of punishment. By prosecuting expression, governments compromise their legitimacy.

The third has to do with respect for others. At a minimum, we treat others well when we treat them with respect. At a minimum—let's also treat others with care, concern, kindness, and even generosity. But at a minimum let's treat them with respect. Treating a person with respect requires applying no pressure to their psyches save the pressures of evidence, argument, and example. To require that another adopt a point of view or speak against his own point of view is to treat that person with contempt.

Now one might here say, "Fine, but everything has its limits. There are other concerns we need to address. We also want that people are free to live their lives without being subject to abuse or vilification or hatred." And so, the argument runs, we have to balance our concern that people be able to say what they like with other people's interests in living well. Thus, we should be able to complain to authority when we've been subjected to hatred and we should be compensated if, objectively, we have been subjected to hatred.

That's an interesting argument. It's a better argument than you will hear from Krista or Pearl, who defend section 13 and its "likely to exposed a person" wording, which covers cases in which no one actually is exposed to hatred, let alone actually harmed by hatred. But if you accept the claim that we ought to be as widely free to express ourselves as we possibly could be, then you will want to say that any government restrictions or punishments have to meet these three criteria: 1) the harm they prevent or remedy has to be real and substantial; 2) the restrictions or punishments have to be effective in preventing or remedying the harm, at least as effective as other possible measures; 3) the restrictions or punishments must not create as much harm as they prevent or remedy. Let's look, then, to see whether the powers human rights commissions have to restrict, suppress, and punish expression meet these three criteria for legitimacy.

1) Some people in Canada face discrimination or harassment in virtue of their race or sexual orientation, or other characteristic. A piece of hate speech might well have been a factor in the background of one or another case of improper discrimination. It might well have been a factor in a case of harassment or, even, violence. Discrimination, harassment, and violence are serious matters. Of course, it's the discrimination, harassment, or violence that concerns us, but that concern can lead us back to speech.

2) There is no empirical evidence that government suppression of expression reduces the instances of racist or whatever speech, or racist behaviour, or that it brings marginalized people into the mainstream or alleviates any suffering. At least, I'm aware of no evidence, and I've been looking. Perhaps ironically, though, what the human rights agencies in this country do is to give platforms to the people they persecute. They cause free speakers to circulate widely the offending words. If hate speech has bad social consequences, then making it widely available by prosecuting it is just what one ought not do. In any event, the marginalized and impoverished in this country would benefit from jobs, housing, good policing, education or training, and all the rest, none of which comes their way as a result of commissions investigating internet sites, news magazines, or letters to the editor. Trying to shut people up must surely be the least effective way of addressing

the real problems human rights commissions mean to address.

3) Officially, the restrictions or punishments are meant to apply only to the real haters among us, and neither to those who merely dislike people of some group or other nor to people with views or proposals that we find offensive or distasteful. Now it's stupid and wasteful to go after the real haters this way, but it also can't help but threaten to catch a whole lot else. This is the reality in Canada these days—we live in a chilly climate for expression, and government strictures on hate speech are at least partly to blame.

Note also that for some time now, the social politics of interests and issues has been giving way to the politics of identity and the cult of the victim. The censorship, suppression, and punishment that Pearl and Krista endorse is both a symptom of identity politics and the cult of the victim and a perpetuating cause of them.

I can't imagine any system of censorship or suppression that would meet this third criterion for legitimacy, at least not in a country like Canada. Clearly the system actually in place doesn't meet it, no more than it meets the second criterion.

\*\*\*

Let me tell you what I'd like to see. Remember, of the hundred thousand ways people have to be rotten to each other, expressing their opinions and, even, their hate is the least harmful—unless we make it harmful. It's within our power to find in expressions their meanings. Meanings are things we can examine and think about. We can react to words on the basis of our evaluations of them. True or false? Well evidenced or poorly evidenced? Useful or useless? We don't have to absorb expression as though it were a knife in the back or a kick in the kidneys. In a better world than this one, emotionally resilient people would react appropriately to what they hear on the basis of their evaluations of what they hear. Now this world is certainly not that better world, and it never will be; but this world can be brought at least a little closer to that world. Bringing it closer to that world is primarily a job for universities, a job at which, sadly, we're failing, but it's also a job for the press and other media. Pearl and Krista are placing roadblocks on our way to that world. No, actually they are intentionally pushing us in the other direction. They want that we react to expression immediately, unthinkingly. They want that words be harmful in just the way sticks and stones are.

What I want is a world in which two men are free to kiss publicly on the street, and a third man is free publicly to revile them for it, and a fourth man is free to ask publicly whether the closet is, on the whole, a beneficial social institution, and a fifth and a sixth man are free publicly to present evidence one way and the other, and the third man is free to consider the discussion between the fifth and sixth man, or not, as he wishes, and he's just as free to change his mind on the basis of the evidence as he is publicly to revile homosexuality all the more intensely.

Let's get back to creating an open and democratic society. Doing so will not compromise our endeavour to create a more just and egalitarian and caring society. On the contrary. Pearl and Krista, for their part, are working hard—and succeeding beyond their dreams—to create a closed society in which we walk and talk fearful of violating an imposed conformity of sentiment, in which it pays to be weak emotionally (and even to feign being weak emotionally), in which it is to one's advantage to stand ready to be offended. Let's not let them create such a society. First order of business: we must do what we can to remove from the Canadian Human Rights Act section 13 and to remove from other acts and policies all of its kin.

