

The Stupidity of Hate Laws

Certain aspects of the government's new "hate law" (Bill C-41) will surely serve future historians as a tombstone of sorts, marking a sharp loss of freedom and moral confusion in Canada.

Those old enough may remember large photos in Life Magazine showing hordes of uniformed Chinese of the 1960s waving Mao's "Red Book." Brainwashed youths demanded correctness in all things, and "political re-education" of all those who had a bias or prejudice of any kind against officially promulgated views.

Secure in our superior Western freedoms, we scorned those lemming-like hordes, their minds squeezed by the steel trap of official correctness. We were horrified when students who advocated free thinking and free speech were sent before tribunals and forced to recant, or go to prison.

We are not this bad. Yet. But through a kind of gradualism, we are catching up. Most universities in Canada now have a correctness committee, and judges and tribunals here often assign "re-education" as a punishment to those foolish enough to speak their minds. Judges themselves are subjected to it by our egalitarian commissars.

Yet free societies until very recently have been distinguished from unfree ones by their reluctance to criminalize thinking. They preferred to let society punish or reward thinking and feeling through various forms of moral sanction or stigma. The formal law would almost without exception punish only actions. Hence: "sticks and stones will break my bones, but words can never hurt me."

Even today, charges of libel and slander in free nations cannot be easily enforced, regardless of bias, prejudice, or hatred - if what was said is true. In short, thinking, speaking, or writing, regardless of how odious to anyone else, has always been acceptable as long as it was not intended to incite violence or damage a reputation through falsehoods. It's O.K. to damage with truth.

But this new law specifically directs judges to find that if a crime was "motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim..." then this "shall be deemed to be aggravating circumstances." The sentence must increase.

What interests here, is that the Bill directs a judge to find that "bias" or "prejudice" or "hate" is always aggravating, even if a judge may feel the opposite - that a bias, say, was warranted.

Never mind the fact that, astonishingly, the Bill makes no attempt to define any of these terms. It does not even allude to the difficulties that will swarm the courts of Canada over such seemingly simple words. Never mind, either, that this behaviour-based thing called "sexual orientation" cannot be defined scientifically or legally, and is repudiated by thousands of able psychiatrists. It is a political term of the times being used with

great effect to secure special legal, social, economic, and now punishment rights, for what is probably Canada's most educated, and economically advantaged group.

What perceptive thinkers and writers ought to be screaming about, rather, is the obviously discriminatory, muzzling nature of this law, and most of all, and quite paradoxically, how the law will produce unintended consequences by favouring random violence.

Imagine, for example, two men who happen upon a crowd of journalists demonstrating in favour of free speech (don't hold your breath). Both men decide to slug two journalists in the chops. They are rightly arrested for common assault. But the judge discovers that one of them dislikes journalists because they are mostly white males. The other just enjoyed slugging someone. No motive. Bill C-41 requires the judge to give a harsher sentence to the guy with the motive, than to the one without. Random violence is better than violence with a motive.

Or imagine a religious husband who hates adultery, discovers his wife has committed this reviled act, and punches her. He will receive a harsher sentence for his action than if he just arrived home one day, and punched her for fun.

Or what if we place a person on the shore, faced with the dilemma of jumping in to save one of two drowning people when there is no time to save both. In a flash, he will express a natural bias to save his own wife or child over another's, someone of his nation, or colour, over a stranger, even someone of his religion or language over an atheist or alien speaker. Such natural biases or prejudices, so expressive of bonding and community when he is good, will now be invoked for punishment if he is bad.

Parliament has blinded itself to the fact that all moral communities rely on bias and prejudice - in the healthy sense of pre-judging behaviour - in order to remain communities. In fact, Canada's entire criminal Code is grounded on bias and prejudice against thousands of behaviours that people and juries are expected to abhor.

From the stipulated grounds of this Bill will ensue an almighty confusion, simply because human communities are centrifugal around commonly held beliefs and facts of life. Justice says that violence is violence, and a crime is a crime, but this discriminatory law does violence to that principle.