REJECTING HATE: RESPONSIBILITY FOR EQUALITY IN A FREE SOCIETY

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ABSTRACT

Civil libertarians always resist calls to ban speech: they argue that society should not prohibit hateful speech but challenge it, it should not seek to use criminal law to silence hate mongers but rather confront them. Because civil libertarians generally object to the use of law to silence speech, no matter how despicable and objectionable it is, they have additional responsibilities to denounce hateful speech. In my view, civil libertarians must work to build the necessary legal infrastructure to protect and help victims of discrimination and to ensure continued vigilance mechanisms to condemn and react powerfully against the experience of discrimination.

INTRODUCTION

The right to equality is a paramount and fundamental right within Canadian society. It is enshrined in the *Canadian Charter of Rights and Freedoms*, as well as the various provincial and federal human rights acts. The Canadian government, civil society, and individual Canadians, should be extremely concerned about allegations of rising prejudice against any identifiable group.

Discrimination is lived in a myriad of forms, and there can be no single solution to combating its diverse manifestations. Individuals may be denied employment, lodging or services, passed over for promotion, unfairly charged with crimes, unfairly sued, overcharged for services, treated poorly by insurance agents, restaurant owners or EBay vendors, defamed, become the victims of property crime or violently attacked. We know that racialized women who work in the sex trade are more subject to violence and mistreatment, that Aboriginal women 'disappear' without our system noticing, and that synagogues are defaced.

Discrimination is also profoundly internalized. It may prevent individuals from complaining, responding, arguing, expressing themselves, suing, running for elections or generally participating fully in their society. While unequal treatment does not always stem from conscious prejudice nor is consciously recognized, its impact is nevertheless felt acutely.

Because discrimination has such a powerful and pervasive effect, an effective response requires that all aspects of the legal system function fairly and adequately. Employment policies must be fair, consumer protection must be effective, policing must be measured, courts must be unbiased, and compensation systems must be available to provide a remedy. Indeed, strong democratic institutions – legal, cultural and social – are essential to ensure that even the invisible forms of discrimination are confronted and remedied.

Canada and the different provinces have developed a number of tools to monitor and eradicate prejudice, but without any doubt these tools could be made more effective. Just as any public policy requires employing strategies that cross both the public and private spheres, so too does the eradication of discriminatory attitudes. Access to justice continues to be a significant problem for those who face discrimination. Support for dispute resolution mechanisms, legal aid, programs and organizations that facilitate access to courts, and for court challenges themselves should form part of an effective response to discrimination. Denunciation of systemic patterns and of individual discriminatory patterns is essential and if the legal system is unwelcoming and inaccessible, a primary place for such denunciation is lost.

Human rights commissions and tribunals are also essential tools of anti-discrimination work. Recently, a

number of individuals have been highly vocal in their criticisms of these bodies, leading to various calls for their abolition. Civil libertarians must be stalwart defenders of the anti-discrimination provisions of human rights laws and urge a continuing support for human rights commissions. The work of human rights commissions and tribunals across the country in educating the public and in investigating and responding to allegations of discrimination in the private sector are required to eradicate discrimination in general. Moreover, the policy work and wider investigations performed by the commissions continues to serve as an invaluable monitoring tool. The compilation of data and investigations performed by human rights commissions are necessary instruments in the effort to continually monitor and respond to discrimination. As with many, if not all, facets of the legal system, there is no doubt that improvements may be made to improve the human rights system's efficiency. This does not mean, however, that the appropriate response is to excise the system entirely. Indeed, the promotion of a robust and effective human rights culture may require the input of additional funding and the evolution of creative new ways for human rights commissions to play their role.

Indeed in times of war, be it the war on crime, the war on terror, the war on drugs, we ought to re-invest in the rule of law and anti-discrimination tools because we know that any war produces collateral damages on the perceived, created and imagined enemy. The War on Terror and the creation of the Enemy combatant category have meant an increase in islamophobia and anti-immigration discourse, and discriminatory attitudes toward people of the muslim faith. The War on drugs has meant an increase in jail time for larger and larger numbers of people. Wars are often carried at the expense of the lower classes and the poor. In order to sustain the "war effort", there is often the temptation to demonize the enemy and to encourage discrimination and unfairness. Just as the Second World War had a profound effect on Japanese Canadians, and the Cold War caused injustice to many socialist and communist sympathizers, so do the more recent "wars" have translated into discrimination. Anti-Semitism emerges in new forms as debates and discussions continue on the Middle East crisis. When does the criticism of the State of Israel become so vehement and relentless that it leads to discriminatory attitudes toward people of the Jewish faith?

Civil libertarians generally object to the inclusion of 'hate speech' prohibitions in human rights acts or other statutes, but they should firmly support a pro-active educational mandate of the human rights commissions to respond to prejudiced discourses. Individual Canadians and Canadian civil society should be empowered to openly and robustly criticize speech they see as discriminatory. Fostering a culture of human rights, and a culture of counter-speech, requires education, sensitization, and increased awareness. Human rights commissions are essential educators in this regard, and should be encouraged to employ their educational mandate in diverse and creative manners. They should take ads in papers, support debates, and develop resilience training and active public engagement by ostracized groups. Much more creativity is needed to engage more forcefully with a mandate to denounce discrimination, but stopping short of banning speech.

Another indispensable tool in the fight to monitor and respond to discrimination is the compilation of statistics on discrimination. Since 1999, Statistics Canada has been gathering information on hate crimes through the General Social Survey, and has published several reports on the subject. The data is collected both through self-reported information from a survey of the general public, and through police-reported information. The compilation of accurate, objective data on hate crimes and discrimination in Canada is essential to developing a thorough understanding of the issue. We also need to know more about hate mongers, about why they hate and how they move from feelings to action.

In this vein, it should be noted that in 2001-2002, a pilot survey of twelve major police forces in Canada counted incidents of hate crimes (Jewish targets constituted 25% of all reported hate crimes).[1] In 2006, a Canada-wide survey of police forces reported again the prevalence of hate crimes.[2] It was repeated in 2007.[3] Although police-reported data does not always provide a full picture of hate crimes, and non-criminal acts of discrimination are not captured, such data is nevertheless crucial as a partial aid in the analysis of societal trends.

While such reporting was useful, it could be that in light of the recent changes announced to Statistics Canada practices, more empirical work will need to be done through other channels. The current statistics on hate crimes do not capture acts of discrimination or expressions that are taken to be hateful or prejudiced. Statistics Canada's 2002 Ethnic Diversity Study, which surveyed community members on their perceptions of general societal prejudice towards them, has not been repeated.[4] Recent efforts of the human rights commission to expand data collection on discrimination and prejudice should be encouraged to provide a basis for more sophisticated analysis and research on the subject. Ongoing, detailed and timely statistical reporting is essential to developing a fuller understanding not only of discrimination, but also trends with regard to the full range of hate crimes and intolerance within Canada. We also need more research on both the offenders and the victims. We must investigate whether models of denunciation developed in the context of other pervasive forms of abuse, such as sexual and domestic

violence and psychological exploitation may be applicable or distinguishable from the experience of discrimination. Are resilience training modeled on the ones developed for gays and lesbians students a necessary aspect of a proactive anti-Semitic package? Are tools of coalition building that have been part of the women's rights movement useful examples to develop more broadly in the context of response to hateful speech? Are the social media sufficiently used to engage in antiracism and anti-hate advocacy? What are the new avenues for effective advocacy to sustain resistance to hatred?

Being pro-free speech does not mean being pro-hate, it must be mean being an active anti-racism advocate. One can refuse to ban speech but must then decide to challenge it and to undermine it. The best way to firmly protect a society against discrimination and anti-Semitism is to invest firmly in its democratic and human rights reflexes. It could very well be that the responsibility for freedom exacts a more active anti-discrimination commitment. There are added responsibilities that come with wishing to live in a free society: one must work for both equality and liberty.

NOTES

[1] Mia Dauvergne, Katie Scrim and Shannon Brennan, "Hate Crime in Canada, 2006", Canadian Centre for Justice Statistics, Statistics Canada – Catalogue no. 85F0033M – No. 17 (June 2008, Ministry of Industry) at pg. 9.

[2] *Ibid*. at pg. 9.

[3] Phil Walsh and Mia Dauvergne, "Police-reported hate crime in Canada, 2007", Juristat, Statistics Canada – Catalogue no. 85-002-X, Vol. 29, no. 2, (May 2009, Minister of Industry) at pg. 15.

[4] See "Ethnic Diversity Study", Statistics Canada, online: http://www12.statcan.ca/english/census06/reference/consultation/92-135/ethnicdiversity.cfm.