

Nothing Neutral About Gender Neutral

2018 Essay Contest – Compelled Speech and Gender-Neutral Pronouns
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Introduction

In June 2017, Bill C-16 was enacted, adding gender identity and gender expression as prohibited grounds for discrimination under the Human Rights Code and the Canadian Criminal Code. In addition, Bill C-16 insists that biological sex, gender identity, gender expression, and sexual orientation all vary independently of each other. Bill C-16 suggests that the pronoun one wishes to be addressed by is a part of his/her gender identity. Under the new law, refusing to address a person with the pronoun of his/her choosing will likely be considered discrimination.¹The law includes gender-neutral pronouns such as xe, zer, and they, with no limit or criteria as to what can constitute a pronoun. A person's gender identity is whatever that person subjectively feels, and the pronoun associated with that gender is also the choice of the individual.

Because this law instantiates a social constructionist view of sex and gender, there is no longer any objective criteria in determining what makes one male or female. Bill C-16 demands that people interacting with a trans person must address the trans person with the pronoun of that person's choice. Effectively, mandating the use of gender-neutral pronouns grants some members of society power and control over what other citizens must say. Forcing compliance with gender-neutral pronouns proscribes one's freedom of expression and should be considered

¹ Bruce Parly, "Meet the new 'human rights' — where you are forced by law to use 'reasonable' pronouns," *The National Post* (June 19, 2017) online: <https://nationalpost.com/opinion/bruce-parly-meet-the-new-human-rights-where-you-are-forced-by-law-to-use-reasonable-pronouns-like-ze-and-zer> .

duress. Compelling the use of gender-neutral pronouns violates the fundamental ideas of a free and democratic nation, and establishes a dangerous precedent in Canadian society.

The Public Reaction to Gender-Pronouns

Individuals who have protested or debated the validity of gender-neutral pronouns have been deemed by their opposition as deplorable. If one says that he/she is opposed to gender-neutral pronouns or even has a conflict with other contentious gender-related sociopolitical topics, it's likely someone somewhere will call that person a transphobe. Racist, misogynist, homophobe, transphobe, etc. are the new McCarthyisms of the 21st Century. These labels are used as a silencing and shaming tactic to stifle debate surrounding social issues.

Finding the proper verbiage to address social justice and gender issues is difficult, so many individuals opt not to partake in the debate directly to avoid being labelled a deplorable. Accordingly, some have deployed satire as a method of exposing the problematic nature of multiple genders with multiple individual pronouns. For example, a student at the University of Michigan when asked to fill out a form for his pronoun wrote down "His Majesty."² Because of the University's own tangled policy web, they were forced to call him as such lest they breach the code of conduct. Not to be outdone, a year after Bill C-16 was made law, an Ontarian brought a human rights complaint because his employer would not respect the pronoun, "The King."³ Moreover, satirized gender identity can be found in many YouTube comment sections pertaining to videos of gender identity or social justice. Comment sections are riddled with users

² Fox News, "University allows students to choose their own pronouns" (October 1, 2016), online: <<https://www.youtube.com/watch?v=Sw5bKqUGc3A>>.

³ SFS York, "BILL C-16 and COMPELLED SPEECH: One Year Later" (July 31, 2018), online: <<https://www.youtube.com/watch?v=2PPXwcYtHn0&t=1315s>> at 00h:21m:28s.

identifying as Apache helicopters or jars of mayonnaise.⁴ These satirists are exposing the problem caused when there is no longer objective criteria for gender identity.

From Offensive to Violence

For a long time, satire was the best method of handling rogue identity politics. This was true until Dr. Jordan B Peterson took a stand against gender-neutral pronouns and forever cemented his place as the vanguard against political correctness run amok.

Immediately after Dr. Peterson produced three YouTube videos explaining the problem with Bill C-16, he was deemed a transphobe and a racist by trans activists and their supporters. The University of Toronto, fearing liability, wrote him two letters to cease and desist from expressing his opposition to a proposed piece of legislation. On the public television show *The Agenda with Steve Paikin*, Professor of Trans Studies, Nicholas Matte, insisted Dr. Peterson was abusing students and that not referring to trans persons by their preferred pronoun was equal to violence.⁵ Later at McMaster University, unruly protestors tried to drown out Dr. Peterson's speech by chanting ad nauseum "transphobic piece of shit," and "no speech for hate speech" as they clashed cowbells in everyone's ears.⁶

Simply saying something is offensive is not justification for government mandated censorship. The right to free speech comes with the risk of offending others. Argument, satire, challenging accepted ideas, and criticism are all part of the Western ideal of seeking truth. The

⁴ Y.F., "I Sexually Identify as an Attack Helicopter," *knowyourmeme.com* (January 16, 2018).

⁵ The Agenda with Steve Paikin, "Genders, Rights and Freedom of Speech" (October 26, 2016), online: <https://www.youtube.com/watch?v=kasiov0ytEc&t=41s> at 00h:29m:10s.

⁶ Eggplantfool, "Jordan Peterson at McMaster University (FULL EVENT)" (March 18, 2017), online: <https://www.youtube.com/watch?v=3dSjbBmHOOE&t=2562s>.

ideal of seeking truth is seldom constrained by an effort to protect people from offense. So, it was shocking when Cathy Newman in an interview with Dr. Peterson asked, “Why should your right to freedom of speech trump a trans persons’ right not be offended?”⁷ The question posed by Newman highlighted the difficulty many trans activists were having when trying to introduce gender-neutral pronoun usage into everyday life. Offense is not enough to limit people’s ability to speak freely or warrant government intervention.

Given that being offensive is not enough to override freedom of speech, the issue of misgendering then needed to be recharacterized in stronger and more severe terms. Only with a new characterization could usurping freedom of speech through legislation be justified. Therefore, trans activists, like Professor Matte and the McMaster protesters, equated misgendering with the most extreme forms of violence. Trans activists have framed the discussion surrounding Bill C-16 and gender identity in the language of hate speech and racial violence. They view not trying to use a gender-neutral pronoun as equivalent to the lynching of black men or firebombing a synagogue. Through this equivalency, trans activists feel entitled and justified to drown out what they view as hate speech with barrages of chants and cowbells. And if hate speech is not enough justification, then viewing misgendering as violence certainly would be enough of a reason to curb the behaviours of their opponents. The supporters of Bill C-16 are using this extreme characterization as a means of obtaining state interventions to squash the perceived threat of violence. The trans activists, in their ruthless attempts to control the situation, have coerced the government to overstep its boundaries and threaten the foundational principle of democratic countries: freedom of speech.

⁷ Channel 4 News, “Jordan Peterson debate on the gender pay gap, campus protests and postmodernism” (January 16, 2018), online: <https://www.youtube.com/watch?v=aMcjxSThD54&t=1334s>. at 00h:22m:00s.

In the context of Bill C-16 the narrative has successfully been adopted by the legislature that misgendering is as serious of an issue as physical violence that is need of extreme protections under the Human Rights Act and Canadian Criminal Code. This view may be radical, but those pushing the agenda legitimately see it as an attempt to prevent a violent criminal act.

The Heavy Price for the Wrong Words

Not using a gender-neutral pronoun under Bill C-16 can lead to imprisonment directly under hate speech crimes and indirectly through Human Rights Tribunals. The hate speech provisions of the Criminal Code carry high thresholds for conviction. The numerous requirements and defences afforded in the Criminal Code mean that it is less likely that someone will be jailed for misgendering under hate speech provisions.

The more likely path to prison for Canadians not wishing to use gender-neutral pronouns will be through the Human Rights Tribunals. Under the Human Rights Code, not referring to someone with the pronoun of their choice will likely constitute discrimination.⁸ The misgendered individual can file a human rights complaint even if the accused did not mean any harm. Under the Human Rights Code, it is sufficient to be liable if the speech was perceived as harmful, and trans activists have routinely claimed that misgendering a person is equivalent to violence and abuse.⁹ If one is found liable for discrimination the Tribunal can order a monetary

⁸ *Supra* note 1.

⁹ Andrew Pozzobon, "Increasing Damage Awards in Human Rights Cases" BLG Publications (December 1, 2016), online: http://blg.com/en/News-And-Publications/Publication_4750

or non-monetary penalty or both as punishment.¹⁰ A person who does not comply with the Tribunal order can be placed in prison for contempt of a Tribunal order.¹¹

Even if this path or process to incarceration seems complicated and lengthy, and the likelihood of imprisonment is low, people are jailed for breaching Tribunal orders.¹² None the less, the potential for jail in any domain casts a shadow on social behaviours. The threat of prison, regardless of its probability, is enough to put a chill on citizens exercising the essential right of freedom of speech.

Freedom of Speech in Canada

Unlike the American Constitution, The Charter establishes that not every right and freedom enjoyed by Canadians is absolute.¹³ The context surrounding the creation of the Canadian Charter of Rights and Freedoms greatly differs from the circumstances surrounding the creation of the American Constitution. No great war or revolution occurred in Canada and there was no immediate threat of oppression as there was in 1776 in the United States. America was founded on the freedom of the individual, while Canada focuses on a balance between group rights and individual rights. Canada's Charter enshrines the idea of multiculturalism as a principle of Canadian democracy. Therefore, on occasion the rights of some groups may interfere with the individual rights of others. Section 1 of the Charter allows the government to

¹⁰ Jared Brown, "Bill C-16 – What's the Big Deal?" A Brown Litigation Blog (December 24, 2016), online: <https://litigationguy.wordpress.com/2016/12/24/bill-c-16-whats-the-big-deal/>

¹¹ MOrlarty, "Jordan Peterson and Jared Brown testimony on Bill C-16" (May 17, 2017), online: <https://www.youtube.com/watch?v=rRn9Wejn9Po&t=691s> at 00h:13m:46s.

¹² *Supra* note 10.

¹³ Department of Justice, "Learn about the Charter" (April 23, 2018), online: <http://www.justice.gc.ca/eng/csjsjc/rfc-dlc/ccrf-ccdl/learn-apprend.html>

limit rights and freedoms in its efforts to ensure the principle of a free and democratic society, even when those efforts are misguided.

Compelling pronoun use in the United States would be unconstitutional because of the American's strict limits on authoritarian intervention by the government on its citizen's freedoms of speech. However, in Canada, the gender-neutral pronoun requirements can be a justifiable interference because of Section 1. The conflict regarding pronouns is another example of where the rights of individuals are pitted against the rights of others. But when the cost of a group accommodation is extremely onerous, the Courts cannot justify the law under Section 1. Although people like Professor Matte would like this issue to be framed around trans people's dignity and safety, the issue is, in essence, the compulsion of speech to accommodate a minority group, where the government has granted that group powers to control the speech of others. When a person requests to be identified by way of certain pronoun, that person is asking for accommodation. When a government enforces that request with heavy consequences for disobedience, then it is a compulsion. In such a situation, the individual right should override the group right because it is a dangerous precedent that some groups of a society through no objective measure can have enforceable power over other individuals.

In a free and democratic society, a government cannot control what its citizens must say. There is a distinction between an utterances a government can forbid versus a rule that enforces what one must utter. In *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038, Supreme Court Justice Beetz advocates that any legislative act that requires another person to utter or write words that he/she does not believe or wishes to say is totalitarian, even if it is to repress the

most serious crimes.¹⁴ A free society can never allow their government to force its citizens to say anything, regardless of whether it's a pronoun or phrase. Compelled speech cannot be justified regardless of its intent or reasoning.

Any control of speech needs to be critically assessed because free speech lies at the barrier between oppression and freedom. The American Founding Fathers understood that governments can turn tyrannical quickly. Once a society allows its government to control speech, then soon after that government or its successor will try to control more aspects of citizens' thoughts and behaviours. Thus, citizens must be diligent to limit government powers.

Charter Analysis of Mandatory Gender-Neutral Pronouns

Under section 1 of the *Charter*, a law is unconstitutional if it is not anything but minimally impairing. As previously mentioned, the imposition caused by forcing citizens to use gender-neutral pronouns is enormous. Firstly, this requirement demands every person to forgo their abilities to independently evaluate their own choice of words. Adding gender pronouns as an integral part of gender identity, and the mandating of the pronoun usage of citizens, covers a huge linguistic radius. Gendered language and pronouns are used throughout daily life. Controlling pronoun use profoundly affects everyone. Secondly, the confusion gender-neutral pronouns generates through grammar and spoken English is considerable. Understanding the different conjugations for a pronoun set is not apparent. Additionally, if "they" is to be a singular pronoun, then it muddles the distinction between singular and plural in the third person. Thirdly, it creates a significant burden whereby citizens need to be self-conscious every time they speak,

¹⁴ *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038.

or face legal consequences. It is impossible for a nation to consider itself free when its citizens are unable to address each other in everyday parlance without the fear of government sanctions. Compelling citizens to use gender-neutral pronouns greatly impairs the lives of all Canadians and can therefore not be justified under the *Charter of Rights and Freedoms*.

A constitutionally valid law must show on a balance of probabilities that the laws' positive effects will outweigh any negative effects. If the goal of Bill C-16 is to help better integrate transgender people into society, then it is possible that Bill C-16 will further alienate transgendered individuals. A Canadian survey found that 76% of respondents believed that political correctness has gone too far.¹⁵ An American survey found that 80% of people found political correctness to be an issue for American society.¹⁶ As one survey participant explained, "Do you say Jew? Or Jewish? Is it a black guy? African-American? ... You are on your toes because you never know what to say."¹⁷ Gender-neutral pronouns manifest the same confusion. Coupled with the heavy penalties and the grammatical and linguistic confusion, gender-neutral pronouns becomes an issue most would not want to engage with. In this climate, the safest and smartest thing is to avoid people who require politically correct accommodations. Bill C-16 thus further distances transgender people from the remainder of society.

Conclusion

The efforts to accommodate the trans community in Canada is likely doing more harm than good to our society. Gender-neutral pronouns are based on no objective criteria. However,

¹⁵ Editorial, "The threat of political correctness, real and imagined," *The Globe and Mail* (May 17, 2018).

¹⁶ Yascha Mounk, "Americans Strongly Dislike PC culture," *The Atlantic* (October 10, 2018), online: <https://www.theatlantic.com/ideas/archive/2018/10/large-majorities-dislike-political-correctness/572581/>

¹⁷ *Ibid.*

the government has granted some individuals power to control other's language based on subjective criteria. By equating speech with violence, the trans activists have successfully lured the government into taking oppressive actions against Canadians. Freedom of speech is the fundamental cornerstone of free and democratic societies. Forcing citizens to utter words that are against their beliefs or choice is totalitarian. Therefore, Canadians should not be required by law to use gender-neutral pronouns.