

Edward Strahlendorf

Queen's University

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Compelled Speech and Belief: Law, History, and Mill's Harm Principle

Controversy surrounding gender theory and 'compelled speech' has swept across Canada due to the interpretation and implementation of Bill C-16.¹ The controversy has been due, in part, to legal misunderstanding, so I will preface my argument with an accurate account of the situation. In 2016, Bill C-16 added gender identity and expression to the list of prohibited grounds of discrimination in the *Canadian Human Rights Act* (CHRA), and as a basis for hate speech in the *Criminal Code of Canada*.² The CHRA affects federally regulated places such as airports. Gender expression and gender identity had already been added to the *Ontario Human Rights Code* in 2012.³ The *Ontario Human Rights Code* affects provincially regulated places, such as universities. Upon the introduction of Bill C-16, people became aware that the far-left administrative body, the Ontario Human Rights Commission (OHRC), had stated that discrimination against gender identity and expression includes failure to call people by their preferred name and pronouns.⁴ It was then that some Canadians who work in the public sector attacked Bill C-16, whether their workplaces were federally regulated or not.

The OHRC has not received support for their interpretation from more authoritative legal bodies. This is because their interpretation is unconstitutional, historically evil, and just plain

¹ Bill C-16: An Act to amend the *Canadian Human Rights Act* and the *Criminal Code*. 1st Reading, May 17, 2016, 42nd Parliament, 1st Session, 2016. Available: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-16/first-reading>

² Ibid.

³ "Gender Identity and Gender Expression." Ontario Human Rights Commission, www.ohrc.on.ca/en/code_grounds/gender_identity.

⁴ "Questions and Answers about Gender Identity and Pronouns." Ontario Human Rights Commission, www.ohrc.on.ca/en/questions-and-answers-about-gender-identity-and-pronouns.

wrong. But let us say that the OHRC is to be taken seriously, and that Canadians are required by law to use gender-neutral pronouns. Our constitutional rights to freedom of expression and belief would be at risk. Canadians should not be required by law to use gender-neutral pronouns. Attempts at compelling speech to achieve uniformity of belief are doomed to fail.

Calling others by gender-neutral pronouns such as ‘ze’ and ‘xe’ implies belief in those gender identities, and the gender theory that supports them. Therefore, if one is compelled to use those terms, they are being compelled to identify in public with a belief they may not hold.

The Law Society of Ontario has engaged in a similar act of coercion. In 2017, the Society sent a notice to all Ontario lawyers compelling them to submit a personal Statement of Principles that declares their support for, and promotion of equality, diversity, and inclusion in their workplace.⁵ A lawyer can comply with the legal requirement to not discriminate without being compelled to promote a complex set of ideas that they may not be fully in agreement with. Ontario is in danger if its Human Rights Commission, as well as the people in charge of all the province’s lawyers, are ignorant of the history of compelled speech.

Western civilization’s longest battle with compulsion of the individual’s speech was compelled religious worship. It is a dark chapter of our history. In his 1782, *Notes on the State of Virginia*, Thomas Jefferson said: “Millions of innocent men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advance one inch towards uniformity. What has been the effect of coercion? To make one half the world fools, and the other half hypocrites.”⁶ Like the historic Christian West’s belief that

⁵ Pardy, Bruce. “Law Society’s New Policy Compels Speech, Crossing Line That Must Not Be Crossed.” National Post, National Post, 3 Oct. 2017, nationalpost.com/opinion/bruce-pardy-law-societys-new-policy-compels-speech-crossing-line-that-must-not-be-crossed.

⁶ Jefferson, Thomas. *Notes on the State of Virginia* with an Appendix. Printed by H. Sprague, 1965.

their coercive actions were an attempt at saving non-believers, compelled gender-neutral pronoun usage is an attempt at harm prevention for the transgendered individual. It is unfortunate that both agendas, despite screaming virtuous intent, blatantly assault liberty.

Many Canadians who strongly support government compulsion of speech and belief are likely to be the same people who fear impending fascism in America. This is appallingly ironic. Compelled speech and belief were cornerstones of 20th century totalitarianism. Both the Nazis and the Soviet Union compelled speech and belief with dire consequences for anyone who resisted. In 1932, Pavlik Morozov became a hero of the Soviet Union for reporting his father's anti-communist activities to the government, resulting in his father being sent to a labour camp.⁷ In 2019, Pavlik Morozov will trend on Twitter for reporting his father's skepticism of gender theory to social media, resulting in his father being fired.

John Stuart Mill's harm principle is: "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."⁸ Power can be legitimately exercised over Canadians by prohibiting action that would harm transgendered people. The loss of liberty in this case would be marginal, because the number of individuals who would act to harm transgendered people is small. Additionally, there is no social utility in harming transgendered people, and without prohibition of action, the harm to transgendered people is severe. Therefore, prohibiting action that would harm transgendered individuals greatly outweighs any loss of liberty.

⁷ Schenemann, Serge. "SOVIET 'HERO' INFORMER, 13, LEAVES A BITTER LEGACY." The New York Times, The New York Times, 16 Sept. 1982, www.nytimes.com/1982/09/16/world/soviet-hero-informer-13-leaves-a-bitter-legacy.html.

⁸ Mill, John Stuart. *On Liberty*. Penguin Books, 2010.

But when power is exercised not to prohibit action, but to compel action, every citizen is affected. It is no longer a weighing of transgendered individuals versus citizens who plan to harm them, it is the weighing of transgendered individuals versus every citizen who communicates with them. Therefore, the harm to transgendered individuals when they are misidentified is far less than the harm to Canadians when they no longer have freedom of expression and freedom of belief. This reasoning holds whether one plays a ‘numbers game’ (the number of Canadian transgendered people against the number of Canadians), or a ‘harm game’ (the harm of being misidentified against the harm of disregarding the constitution).

A popular argument for the compelled use of gender-neutral pronouns is that intentionally calling someone by pronouns they do not identify with is hate speech, and hate speech is illegal in Canada. Intentionally misidentifying someone’s gender does not come close to meeting the Canadian criteria for hate speech. Sections 318 and 319 of the *Criminal Code of Canada* include gender identity and expression as a basis for hate speech, but they have nothing to do with names or pronouns.⁹ The section’s criteria for what qualifies as hate speech is severe. Subsection 318 (1), the first criterion for hate speech, is concerned with advocacy of genocide against an identifiable group.¹⁰ Subsection 319 (1), the second criterion for hate speech, is concerned with communication of statements against an identifiable group in public places that are likely to lead to a breach of the peace.¹¹ The last criterion is Subsection 319 (2), promotion of hatred, where precedent pertains to very explicit propagation and hatred.¹² Calling someone by

⁹ *Criminal Code of Canada*, Part VII – Offences Against the Person and Reputation, Sections 318 and 319 – Hate Propaganda. Available at: <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-72.html#h-93>

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

the wrong pronouns does not advocate genocide, nor does it incite a breaching of the peace, nor does it promote hatred according to the standards set by precedent.

Provincial administrative bodies and powerful institutions may have sided with coercion of speech and belief, but highest-level precedent is against them. The Supreme Court of Canada has stated that forcing an individual to express beliefs they do not hold is totalitarian and alien to Canada's values.¹³ Freedom of speech and freedom of belief are fundamental elements of Western democracies. They emerged from over two thousand years of philosophy. Smaller fish may willfully blind themselves to this and chase after megalomaniacal, totalitarian policies disguised as humane virtue, but we are confident that the Supreme Court of Canada will not.

The manner of address between individuals should remain as a subject for individuals to negotiate, free from government compulsion. Assuming every detail of transgenderism were to be accepted and respected, and our clear path forward as a country is to create uniformity of belief in this regard; government coercion is not the right footwear for the path. Do not repeat history's mistakes. Even if a person chooses to believe what the majority considers to be wrong, that person should be free to do so openly. This creates an opportunity for debate, and therefore an opportunity for people (the individual or the majority) to change their minds. Suppression of belief will only create group-based anger and hatred: the last thing the West needs more of right now.

¹³ Supreme Court of Canada Judgement – Slight Communications Inc. v. Davidson [1989]. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/450/index.do?site_preference=normal.