

**The Open Society: Why the Online News Act Violates Canadian Freedom of
Expression**

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I. Introduction

“Common sense told us that when you put a big tax on something, the people will produce less of it.”¹

-Ronald Reagan

Frequently, Parliament has limited press freedom to preserve the distinctiveness of Canada’s media ecosystem from Americanization. The 1965 tax on magazines advertising abroad attempted to strengthen the Canadian press against foreign competitors, although reduced freedom of expression ultimately failed to benefit local outlets and drew widespread backlash.² More recently, the Online News Act (Bill C-18) created a tax on links by forcing news aggregators such as Instagram or Google to pay Canadian outlets whose news they host.³ Parliament was willing to legislate Bill C-18 despite Meta (owners of Facebook) and Google barring Canadian news entirely.⁴ Meanwhile, 217 Canadian outlets with a business model of

¹ “Farewell Address to the Nation.” Ronald Reagan Presidential Library and Museum, www.reaganlibrary.gov/archives/speech/farewell-address-nation.

² Edwin R. Black, “Canadian Public Policy and the Mass Media.” *The Canadian Journal of Economics / Revue Canadienne d’Economie* 1, no. 2 (1968): 375-376. <https://doi.org/10.2307/133505>.

³ “Government Bill (House of Commons) C-18 (44-1) - Royal Assent - Online News Act - Parliament of Canada.” Parliament of Canada, www.parl.ca/DocumentViewer/en/44-1/bill/C-18/royal-assent.

⁴ John Paul Tasker, “Google to Remove News Links in Canada in Response to Online News Law .” *CBC News*, CBC/Radio Canada, 29 June 2023, www.cbc.ca/news/politics/google-canada-online-news-1.6892879#:~:text=Politics-,Google%20to%20remove%20news%20links%20in%20Canada%20in%20response%20to,media%20outlets%20comes%20into%20force.

cyber-sharing lost devastating revenue and will likely produce less news⁵ though some surviving outlets may monopolize the Canadian newspace by acquiring government sponsorship.⁶ As things stand, the press seems increasingly consolidated as a “national good” rather than a free entity.⁷

This stands in stark contrast to Karl Popper’s open society, where individuals enjoy free disseminated information; governments and the “alterability of basic social institutions”⁸ depend upon criticism; and societal changes are ‘piecemeal’ to better uphold institutions like democracy⁹ because social scientists cannot fully predict how human behaviour transmutes or reacts to institutional change.¹⁰

Parliament’s prioritizing of Canadian cultural distinctiveness, with the media behemoth on its southern border, seems understandable. However, Canadians ought also to protect their distinctive tolerance for freedom of expression. This essay, drawing on Popper and related theorists, argues Bill C-18 unreasonably limits online freedom of expression because the tax on links likely transitions Canada into a closed society where media becomes a

⁵ Peter Menzies, “Canada’s Online-Media Legislation Hits the Buffers: Peter Menzies in the National Review.” *Macdonald-Laurier Institute*, 9 Aug. 2023, <https://macdonaldlaurier.ca/canadas-online-media-legislation-hits-the-buffers-peter-menzies-in-the-national-review/>.

⁶ Sue Gardner, “Sue Gardner: Bill C-18 Is Bad for Journalism and Bad for Canada.” *Max Bell School of Public Policy*, 30 Mar. 2023, www.mcgill.ca/maxbellschool/max-policy/c-18.

⁷ Black, “Canadian Public Policy,” 369.

⁸ John N. Gray, “The Liberalism of Karl Popper.” *Government and Opposition* 11, no. 3 (1976): 355. <http://www.jstor.org/stable/44482132>.

⁹ Michael Lessnoff, “The Political Philosophy of Karl Popper.” *British Journal of Political Science* 10, no. 1 (1980): 111. <http://www.jstor.org/stable/193450>.

¹⁰ Lessnoff, “Political Philosophy of Popper,” 112.

government-distributed resource rather than a form of freedom of expression inalienably ascribed by Charter rights.¹¹ We explore how the tax on links reduces freedom of expression by decreasing both press impartiality and accessibility of news, ultimately characterizing Canada as a closed nation where expression is tightly circumscribed.

I. Popper and the Democratic Purpose of Media

In Popper's open society, the institution of the press extends freedom of expression because the information provided by outlets shapes political discourses, eventually shaping the opinions one may express.¹² Popper says room to criticize policies must always exist for meaningful social progress, so governments must protect oppositional institutions for diverse and broad-based critiques to occur.¹³ Otherwise, Popper argues unchecked governments may coerce potentially opposing institutions like the press into "reluctant compliance"¹⁴ with state initiatives because any widespread social engineering designed to create long-term change must suppress discourse for maximum effectiveness.¹⁵ Popper says suppressing discourse increases the effectiveness of social engineering because individuals behind a particular policy are protected from criticism and are therefore freer to advance policy in any way seen fit. Consider also empirical research which suggests reduced freedom of expression correlates with increased

¹¹ Government of Canada, Department of Justice. "Section 2(b) – Freedom of Expression." *Charterpedia*, 29 June 2023, www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art2b.html#:~:text=Everyone%20has%20the%20following%20fundamental.and%20other%20media%20of%20communication.

¹² Lessnoff, "Political Philosophy of Popper," 117.

¹³ Lessnoff, "Political Philosophy of Popper," 104.

¹⁴ Gray, "Liberalism of Karl Popper," 349.

¹⁵ Gray, "Liberalism of Karl Popper," 349.

judicial support of government policies.¹⁶ Taken together, Popper's theory and existing data imply a state with unchecked leaders and feeble oppositional institutions, both of which likely undermine public faith in a particular social-engineering policy and political institutions as a whole.

Popper's analysis of how restriction of discourse may undermine collective support for policy aligns with his broader view of democratic institutions: He argues the press is a traditional institution which ought to be respected and left alone because the length of its existence showcases quality and importance. If a falsifiable entity survives continuous challenges to remain unretired in the modern age, it has "proved its worth"¹⁷ and its benefits outweigh the speculative ones potentially provided by social engineering. Human behaviour, for Popper, frequently transmutes contemporary aspirations to social engineering in unpredictable directions. One of these is the creation of a new ruling class, based on whichever group is in power at the "moment of victory"¹⁸ of a social engineering initiative that gains power from suppressing criticism. Another, as mentioned earlier, is reducing public trust in institutions.

The last is that attacking institutions also reduces societal freedom. Both Popper and Arendt see freedom of expression in a political context as a pluralized freedom, existing as an innate potential within all individuals.¹⁹ Under an open society's flexible humanist values,

¹⁶ Yves de Montigny, "The Difficult Relationship between Freedom of Expression and Its Reasonable Limits." *Law and Contemporary Problems* 55, no. 1 (1992): 51. <https://doi.org/10.2307/1191756>.

¹⁷ Maxwell, Nicholas. "Karl Raimund Popper." In *Karl Popper, Science and Enlightenment*, 14. UCL Press, 2017. <https://doi.org/10.2307/j.ctt1vxm8p6.6>.

¹⁸ Gray, "Liberalism of Karl Popper," 349.

¹⁹ Ursula Niklas, "Utopia and Modern Times: Thomas More, Hannah Arendt, and Suppression of the Political." *History of Philosophy Quarterly* 18, no. 2 (2001): 210. <http://www.jstor.org/stable/27744883>; Lessnoff, "Political Philosophy of Popper," 117.

freedom of expression is a right citizens hold by existing, thus translating into widespread freedom for all. We incorporate Popper’s criteria in arguing why Bill C-18 unreasonably violates online freedom of expression.

II. Why The Online News Act Endangers Freedom of Expression

Bill C-18 threatens the open society first by threatening to make news organizations dependent on government subsidies, likely causing political and subjective harm. The bill initially endangered Canadian news revenue since news outlets prized internet links²⁰ and had them constitute up to 50% of revenue for small publishers like Village Media.²¹ Though Parliament will fund struggling outlets with tax revenue, dependency reduces²² the ability of the press as a “social institution” to criticize policies,²³ limit “the power of rulers,”²⁴ or uplift whistleblowers insofar as journalism becomes government-funded. The two outcomes for a government-dependent press are, often, either increased public distrust in the media or further state intervention. Consider the recent scrutiny over the BBC’s impartiality from the British government, where only 54% of Britons believed its TV news offering was impartial,²⁵ alongside

²⁰ Sue Gardner, “Bill C-18 Bad for Journalism.”

²¹ Senate of Canada. “Standing Senate Committee on Transport and Communications (44th Parliament, 1st Session).” *SenCanada*, <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/57EV-56243-E>.

²² Kris Sims, “Journalists Should Not Be Paid by the Government.” *Canadian Taxpayers Federation*, 7 July 2023, www.taxpayer.com/newsroom/journalists-should-not-be-paid-by-the-government.

²³ Gray, “Liberalism of Karl Popper,” 348.

²⁴ Lessnoff, “Political Philosophy of Popper,” 118.

²⁵ “Examples of a Biased BBC: Is the BBC Biased?” *Politics.Co.Uk*, www.politics.co.uk/reference/bbc-bias/.

the Trudeau government arguing for CBC's impartiality despite funding over \$1.2 billion per year.²⁶

Here we address Mill's counterargument on government obligations to limit freedom of expression if one party deprives another of their freedom.²⁷ In our case, government intrusion on freedom of expression may be justified to free struggling Canadian outlets from a perceived "financial catastrophe"²⁸ caused by larger news aggregators. But even if Parliament succeeds in radically increasing the domestic readership of Canadian outlets, Parliament cannot account for drastic changes in future journalism, such as "reluctant compliance"²⁹ with praising government initiatives, news aggregating companies taking business elsewhere, or small Canadian outlets losing outreach on Meta.³⁰ As thousands of Canadians struggled to obtain news of wildfires in the summer of 2023, in the wake of Bill C-18, we are reminded of Popper's warnings regarding the unpredictable consequences of altering institutions like the press whose endurance merits gentle preservation, given their long-term resistance to being falsified by time.

²⁶ Jesse Kline, "CBC Offended to Learn It Is Funded by the Government." *National Post*, 17 Apr. 2023, <https://nationalpost.com/opinion/cbc-offended-to-learn-it-is-funded-by-the-government>.

²⁷ "1.11: John Stuart Mill - Excerpts from on Liberty, 1859." *Social Sci LibreTexts*, Libretexts, 2 Oct. 2022, https://socialsci.libretexts.org/Courses/Western_Washington_University/Introduction_to_Political_Theory_I/01%3A_Readings/1.11%3A_John_Stuart_Mill_Excerpts_from_On_Liberty_1859#:~:text=The%20only%20freedom%20which%20deserves.bodily%2C%20or%20mental%20and%20spiritual.

²⁸ Sue Gardner, "Bill C-18 Bad for Journalism."

²⁹ Gray, "Liberalism of Karl Popper," 349.

³⁰ Walid Tamtam, "Bill C-18: Social Media No Longer a Home for News in Canada." *Learn Liberty*, 3 Aug. 2023, www.learnliberty.org/blog/how-bill-c-18-will-affect-news-in-canada/.

The Online News Act also closes society by reducing the accessibility of news. While some Canadians can afford a paper Globe and Mail subscription, millions of others rely on free news from platforms like Google and Instagram. Thus, Bill C-18 contradicts Popper's belief in pluralized freedom, or freedom of expression for all, since media access grows limited, shifting from an innate right to a right dependent on income. As media becomes a closed institution better accessed by certain classes, Popper's theory of a new elite created as a consequence of widespread social engineering—in this case, those able to access the press—gains further relevance. Overall, reduced accessibility to critical institutions closes Canadian society by making it easier for elites to exclusively access, and potentially further influence media.³¹

Here we address Evola and Barrès's counterargument on preserving state distinctiveness; in our case, the idea that Canadian media should be protected, even if news grows more expensive, to preserve a national identity against Americanization.³² However, even if Canada is in danger of Americanization, relying on Parliament incurs potential media bias. A likely-suppressed voice, for instance, is those who value nationality less than a booming media ecosystem. Today's newspapers are concerned with high, profitable circulation and positivity of reception; thus, whether a major Canadian news outlet is owned by a Canadian or an American does not impact the news itself insofar as generating content against domestic preference

³¹ Walter D. Young, "The Voices of Democracy: Politics and Communication in Canada." *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 14, no. 4 (1981): 699. <http://www.jstor.org/stable/3229772>.

³² Young, "The Voices of Democracy," 687.

endangers profit.³³ Mass media also exists to cater to social demands of understanding our involvement in the modern experience,³⁴ so if Canadians demand American-centered content, the press must oblige as per the natural development of an open society. Therefore, Parliament cannot justify a “virtual sealing of the border”³⁵ out of fear of American tech giants.

IV. Conclusion

“Censorship reflects a society’s lack of confidence in itself.”

-Potter Stewart³⁶

The Online News Act threatens Canada as an open society permitting criticism³⁷ and violates freedom of expression past reasonable grounds. Part of Canadian pride relies on long-standing respect for freedom and tolerance, and to narrow our society is explicitly un-Canadian.

Canadian institutions have not been altogether deaf to the concerns raised in this essay and by theorists of liberal democracy. The Charter of Rights and Freedoms lists freedom of the press as a crucial portion of freedom of expression in Subsection 2(b),³⁸ while the Supreme Court

³³ Black, “Canadian Public Policy.” 377.

³⁴ Thelma McCormack, “Social Theory and the Mass Media.” *The Canadian Journal of Economics and Political Science / Revue Canadienne d’Economie et de Science Politique* 27, no. 4 (1961): 488. <https://doi.org/10.2307/139434>.

³⁵ Black, “Canadian Public Policy.” 379.

³⁶ “Ginzburg v. United States, 383 U.S. 463 (1966).” *Justia U.S. Supreme Court Center*, <https://supreme.justia.com/cases/federal/us/383/463/>.

³⁷ Gray, “Liberalism of Karl Popper,” 355.

³⁸ Government of Canada, Department of Justice. “Section 2(b).”

of Canada recognized in a 2011 case, *Crookes v. Newton*, that the “Internet cannot, in short, provide access to information without hyperlinks... Subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression.”³⁹ The Court claimed taxing media companies for cyber sharing is akin to fitting “a square archaic peg into the hexagonal hole of modernity.”⁴⁰

Bill C-18 has not yet undergone judicial review, although based on precedent we should expect a Popperian pushback reclaiming Canadian freedoms.

³⁹ “*Crookes v. Newton*, 2011 SCC 47, [2011] 3 S.C.R. 269.” *Supreme Court of Canada*, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do>.

⁴⁰ “*Crookes v. Newton*.”

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