

**The Anachronism of Policies and Laws for Hate  
Speech in Modern Canada: The Current Negative Cultural Impact of  
Legal Punishment upon Extreme Verbal Behaviour**

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There is copious evidence that creative solutions to complex problems, such as those that will dominate Canadian Culture in the 21st century, require a political and social environment that encourages freedom of expression through verbal behaviours. Verbal behaviours are defined as linguistic statements presented in vocal, written, or visual forms that convey essential ideas, beliefs or opinions.

An environment which encourages the freedom of verbal behaviour as a right with no impedance for that expression also facilitates novel solutions to the same problems when people display apparently contradictory verbal behaviours. In the history of science and civilization most of the most novel, unexpected, and resourceful solutions to contemporary problems emerged indirectly from the pursuit of other issues.

Punishment is defined as a behavioural operation whereby a response is followed by an

aversive stimulus such as pain, removal of degrees of freedom, or restraint of potential. Although punishment decreases but does not necessarily eliminate the behaviour preceding the punishment and as such is often considered discretely effective, the application has subtle and pervasive negative impacts on all other behaviours related by association or intrinsically to the behaviour that was punished. The response generalization of this inhibitory effect can adversely affect myriad of behaviours that appear unrelated to those being punished.

Very complex behaviours are more affected by punishment than are simple behaviours. Human language and verbal behaviour are among the most complex of endeavours and are consequently maximally affected, often in subtle but significant ways, by the results of punishment. This is due to three factors. The first is anxiety which is the anticipation of a negative stimulus. Any behavioural operation that results in anxiety also produces suppression, disruption or confusion of ongoing behaviour and a loss of the ability to complete fine discriminations.

The loss of the ability to discriminate between subtle differences in thought, language, or perception leads to stereotypy of responses and over inclusion of unrelated stimuli, ideas, or concepts as if they were identities. Heterogeneity of differences is reduced to the homogeneity of the same. Increased anxiety widens the stimulus generalization gradient so extensively that the person can no longer engage the fine discrimination that is required for judicious decisions for complex problems. Instead, the mentality of all-or-none, results.

The second factor that propagates the cognitive disability of anxiety is the exceptional capacity for the human being to observe others and the consequences of rewards and punishments upon others' behaviours. Within an environment where punishment is anticipated, the punishment of one person's behaviour results in a generalization to the observer about that behaviour as well as an expansion to all behaviours, that were not punished, that might have been punished. Consequently verbal behaviours and thoughts that may have been propitious for the solution of the problem are permanently prevented for being displayed or experienced.

The third factor that stultifies creativity and cognitive adaptability in human interaction

involves implicit chains. Implicit chains are the cumulative connections of successive conditionings of aversive experiences that occur over time. The consequence of these chains is that behaviours that were never directly paired with the punished event become contaminated by its affect. For example if pain is paired with the word "bad", and "bad" is then paired with the word "sex" and still later "sex" is paired with the word "man", then the neutral word "man" can evoke a negative anticipation or affect even though it was never directly paired or temporally associated with the painful stimulus.

Implicit chains form the basis of inferences by which people can extrapolate the consequences of associations. These extrapolations can occur without awareness and can affect the direction of the expression of verbal behaviour and thinking. Implicit chains and extrapolations with negative outcomes can result in the suppression of entire classes of related behaviours. For example the concept that racial differences should not be examined, although it may appear positively to prevent prejudice, also eliminates the exploration of why people with different genetic diseases or proclivities are at risk. This barrier consequently prevents the full examination of how these differences might be treated for the benefit of not only these individuals but for all individuals by the principles of application derived from those data.

On the bases of these principles, that can be supported by contemporary results in the cognitive neurosciences, maximum freedom of verbal expression without the implication or innuendo of punishment or prosecution is essential for the development of the maximum potential of each individual within the society and as a result the society, which is a synergistic matrix of these individuals, as whole. Verbal behaviours involve minimal energy, do not produce damage to tissue, are not life-threatening, and only become determinants of behaviour if group consensus allows the verbal behaviours to affect directly the exchange of rewards and punishments between the individuals within the group.

When a cultural environment is permeated by the anticipation of punishment for specific behaviours, the general effect is the suppression of all spontaneous, original, and more specifically oppositional verbal behaviours. The argument that prolific hate statements within Nazi Germany

were the reason that millions of individuals were deprived of civil liberties and their lives by their fellow countrymen is false. Instead, long before these atrocities emerged, the punishment of free expression in the name of facilitating a unified concept of a better Germany, suppressed the different often extreme opinions that within the constraints of a civil society would have prevented the homogenization of millions of people into apprehensive, stereotyped respondents.

Arguments that "hate statements" automatically lead to hate behaviours are based upon correlations, not causations. Hate behaviours, which would presumably involve physical confrontations or unlawful actions such as assault or homicide, are reinforced by the group. Neurocognitive studies have clearly shown that hate behaviours are usually driven by social factors that are irrelevant to the statements with which they are correlated. These factors include peer dynamics which tend to encourage cohesion through homogeneity of thought and conduct. The most powerful determinant of hate behaviours is an intrinsic property of groups.

As indicated by Konrad Lorenz a biological property of groups is to marginalize anyone external to the group as the focus of aggression. Those excluded from the group can be subsequently subjugated or eliminated as less than human. This response occurs, regardless of the verbal behaviour or hate statements displayed by the group, frequently in every social species even though they do not exhibit verbal behaviour. The contention that words defined as "hate propaganda can operate to convince listeners, even if subtly, that members of certain racial or religious group are inferior" and "the result may be an increase in acts of discrimination, including the denial of equal rights" ignores the intrinsic property of groups. The contention is analogous to attributing the cause of a smashed wine glass struck by a large, falling horseshoe magnet to magnetism rather than to mass.

The policies upon which contemporary laws for hate propaganda and hate speech have been based in Canada appear to be primarily derived from the Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada. This document was published in 1966 by the authority of The Honourable Lucien Cardin, Minister of Justice and Attorney-General of Canada.

The document was written within the zeitgeist of a post World War II environment, the Cold War, and at least one likely global thermonuclear confrontation. The context of the document was to favour legislative action against hate propaganda from the perspective of improving the social climate rather than as a final solution (page 32).

Today's environment is dominated by the Internet, the multiple variants of cell phone media, and the requirement for the average person to be more evaluative with respect to what is read and what is said within chat rooms, bulletin boards, and other electronic forms of information exchange. The world of Google and of search engines has shaped a generation with premature sagacity for challenge and resistance to gullibility that did not exist in the population of the 1950s and 1960s. Those individuals would have constituted the focus of concern at the time the document was published.

Although the document was primarily a legal text, it contained a review of social psychological analysis of hate propaganda by Dr. Harry Kaufmann, an Associate Professor of Psychology at the University of Toronto. The mass of this literature was not empirical but based upon theories that are now almost forty or more years old. There were almost no experimental data, not surprisingly because social psychology was in its infancy and neurocognitive psychology with the powerful tools of brain imaging, did not exist.

The theme of the review was that in a complex society extremist will be present and that people are susceptible to persuasion of many kinds. One of Dr. Kaufmann's (p.230) suggestions was that "restraint upon possible communicators, not necessarily through fear of apprehension of punishment, but rather through the establishment of a social climate perceived by them as being uncondusive to their message" was one solution to responding to hate propaganda. This seminal and perspicacious suggestion appears to have been ignored.

If in a civilized society the goal is to maximize personal potential and individual development within a social context, there must be by definition extremists. They are simply the individuals within the 1% of the population at the far ends of the normal distribution curve. Their

presence is as natural as any other process that is dependent upon individual diversity.

Attempting to inhibit or remove the extreme 1% of the population simply redefines the extremes with the remaining individuals that compose a society. Ultimately if these extreme layers of individuals and their behaviours are suppressed or punished as unlawful, behaviours that in themselves were considered "normal" become more and more aberrant and extreme. Their shift towards social unacceptability then becomes arbitrary and contrived. The logical endpoint is that all verbal behaviour must become homogeneous or it is aberrant and hence punishable.

Shifts in the absolute significance of a stimulus do not change the intensity of the response. During World War II there was a generation of women who exhibited physiological apprehension about the fates of their husbands and fiancés. When they returned and these women had children, the same intensity of apprehension was evoked about their children. Now their children have left home and the same intensity of concern is directed towards their pets.

A more legal example of how shifts in reference can result in trivial issues eliciting legal consequences is the current harassment laws which are based upon reports and perceptions. These two criteria are highly unreliable and situation-dependent rather than absolute or empirical in nature. As a result normal human behaviours such as staring or even following have become punishable by judicial regulation.

From a neurobehavioral perspective, the optimal response to extreme views, now labelled as "hate literature" or "hate language" would be to require by law the ideas to be supported by data and reasoning within formal public forums of debate and discourse. The legalities would require the audience or protagonists and antagonists to listen and contemplate rather than engage in the spontaneous gratuitous expressions such as the unfortunate tradition of Parliament.

The subsequent social ridicule for an argument that fails this test would no longer reward rather than directly punish the protagonists. This subtle difference between non-reward versus punishment is critical to maintain creativity and free thought. Absence of reward results in decline of the occurrence of only the response not rewarded. Punishment of the same response results in the

decline of an entire domain of responses and all of the creativity with which they might be associated.

At present the environment of apprehension regarding free speech, even within universities, has resulted in an unhealthy homogeneity of verbal behaviour and thinking at the cost of individual differences and creative approaches to complex problems. The anxiety has reduced sharp cognitive discrimination of subtle differences and has promoted exclusion of any behaviour that is not first rewarded by regulatory bodies as unethical simply because the behaviour has not been discretely rewarded. Terms such as "unethical behaviour" are displayed such frequency they have become meaningless and function as projective tests for idiosyncratic preferences or personal prejudices against the person who is labelled.

In many respects the term "unethical" has replaced the term "communist" as the label to marginalize socially a person engaging in behaviours that the observer simply does not like. As a result important issues such as racial differences, the implication of the distribution of intelligence, the intrinsic limitations and strengths of men and women, the level of determinism by brain activity upon choice, and the implication of the future of cultural law based upon the questionable validity of free will within a society who has decoded the human genome, are not discussed.

The final and certainly the most tendentious argument for the austere legislation for prohibition of words arbitrarily designated as "hate speech" or "hate propaganda" is that "hate propaganda presents a serious threat to society. The pretension is that words defined as "hate speech" produce insidious detriments. They are presumed to "undermine the dignity and self-worth of the target group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality".

However freedom of speech, insured for everyone, presented in open forums that demand accountability by data if accusatory and by the scientific method if philosophical, minimizes disharmonious interactions. The repeated presentations of even the most aversive verbal stimuli

within an open public domain attenuate their emotional impact and facilitate the audience's attention to the content of the argument and the validity of the bases from which the argument was derived. Open-mindedness is encouraged by environments that allow the frequent and unfettered display of verbal behaviour so that counterarguments can be also openly presented rather than remain as unchallenged prejudices that accumulate within the covert cognitions of the experiencers.

The assertion by the Cohen Committee that "individuals subjected to racial or religious hatred may suffer substantial psychological stress, the damaging consequences including a loss of self-esteem, feelings of anger, and outrage" is confounded by archaic concepts of psychological processes. There is no direct experimental evidence that listening to verbal behaviour that directly or indirectly identifies the experiencer diminishes to any significant extent the self-esteem of a person. The effect sizes of the differences between "verbal settings" are too small to be considered singularly causative. The term self-esteem is a hypothetical construct that, like phlogiston was to alchemy, has limited validity only within a specific model of human behaviour. Unfortunately the construct of "self esteem" has now been reified.

The concordant concept, "psychological distress" is so vague that it is meaningless. Any word from any person can produce in another person an elevation of arousal and the release of intrinsic chemical reactions that can be considered distressful. However desensitization of the impact of words by equipping the person with the opportunity to express opinion freely and by accessing strategies that allows the person to individually accommodate the "distress" has been repeatedly shown to facilitate adaptation. From an operational perspective, it is not the "painful reaction from hatred..that..undoubtedly detracts from an individual's ability to make himself or herself the life he or she is able or wishes to have". Instead such diminishment is due to the absence of the capability to respond freely and the limited opportunities that interfere with the full development of the person's potential.

The statement that subjugation to language designated as racial or religious hatred produces feelings of anger and outrage ignores the necessary involvement of two critical controlling variables.

First, frustrative aggression occurs when there is no opportunity to express the behaviours freely without the anticipation of punishment or negative consequence. Secondly, any behaviour including beliefs, that has been continuously rewarded by group consensus, is followed by "outrage" and emotive behaviour if the behaviour is suddenly no longer rewarded, such as by an alternative explanation to the belief. The latter is a normal consequence of adjusting to a multicultural environment and allows, when freedom of speech and debate are encouraged through multiple forums, an integration of differing perspectives.

The incarceration of individuals such as Tomasz Winnicki for nine months for refusing to cease his "vile and unrelenting message of hatred" was an extreme form of punishment that is likely to minimally affect the behaviour of Mr. Winnicki but maximally and adversely inhibit the degrees of freedom and verbal versatility of the culture as a whole. There is no causal evidence that hate words lead to aggressive acts if the words and beliefs are uncoupled from the behaviours.