



Threats to Civil Liberties and Free Speech

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The following talk was given at the Annual Vancouver Outlook Fundraising Supper on March 27, 2011.

It's fair to say that most citizens of Canada are dangerously unaware of how fragile their rights and freedoms and security are at this particular moment.

The past twelve months alone have been a very telling temperature-taking of Canadians' rights and freedoms. While many Canadians have cheered the democratic demonstrations that have rocked the Arab world, we ourselves here in Canada have just seen the largest mass arrests in our nation's history when over 1,000 peaceful demonstrators, journalists and bystanders were illegitimately arrested at the G-20 summit in Toronto.

The scope of the police-state tactics unleashed at this event included "secretly" implemented laws, mass arbitrary searches and surveillance, police brutality, massive denials to the right to counsel, targeting journalists for arrest, and the seizing of camera equipment and footage.

Not only did this "unthinkable" mass rights violation occur, but governments at all levels have refused to hold an inquiry or in any way meaningfully investigate the illegal actions of the police.

While we continue to push for accountability for the G-20 fiasco, we have also recently learned some chilling lessons from the democracy reform movements that we have been cheering in the Arab world.

One of the shockers, especially for Western youth, is the discovery that the internet is not an infallible tool for free speech and liberation. Although Facebook and Twitter have been frequently cited as playing a major role in current democratic movements, the fact is that "the people" do not control this technology. Because Egypt has a high concentration of internet service providers, it essentially only took the Egyptian government four phone calls (or maybe they "tweeted") to "turn off" the entire internet in order to disrupt the communications of demonstrators in that country.

But Egypt is hardly the only place that can

institute such nation-wide, near-instantaneous forms of blackout censorship. Many so-called "mature democracies" are preparing in advance to do essentially the same thing. France, for example, is developing internet censorship powers to be applied in wide-ranging circumstances. And Joe Lieberman introduced a bill into U.S. Congress last year to give the U.S. government even greater powers to cut off civilian access to the internet in the event of a "cyber-emergency."

As Canadian surveillance scholar David Murakami-Wood said on this subject: "This is not a drill, people, this is happening..."

Is it happening in Canada? Almost assuredly. Not, of course, that we are being told. The government of Canada has largely taken to refusing to tell citizens what it is doing in our name. So even though the executive branch of the federal government is negotiating some kind of "perimeter security" agreement with the U.S. that will involve the "harmonization" of Canadian and U.S. "security" regimes and even increasing data sharing and "joint programs," Canadian citizens and their elected representatives in Parliament have been completely shut out of the discussion and are being told next to nothing. One of the few things we know is that the secret agreement includes "cyber-emergencies." So if the U.S. is busily empowering itself to shut down the internet, assume they are or will soon be demanding that we do the same.

There is a very lengthy discussion that could be had about free speech concerns relating to cyberspace, but we should not lose track of how restrictions of liberties and speech are increasingly a major issue in "real" geographical space. The YouTube videos of police assaulting peaceful demonstrators in the so-called "free speech zones" of the Toronto G-20 are a particularly graphic example. And as an example of less publicly flagrant spatial tactics, we might consider the growing list of academics, activists and journalists who have been denied entry to our country.

continued on following page

Recently [feminist and environmental activist] Vandana Shiva was unable to personally accept the Peace Studies Award from the University of Calgary because Canada Border Services Agency wouldn't let her into the country. Canada is developing a growing reputation for its uncanny inability to figure out the essential difference between humanitarians and threats to national security.

On that subject, the Peretz Seniors group is the protagonist in a story I tell about how Canadians need to understand that what is happening right now is not New News—it's Old News.

The story is that the first talk I ever gave to the Peretz Seniors group was in response to an explicit request to come and talk about the Canadian "No-Fly List." I thought that was a curious request for a seniors group. But only a short way into the talk it was evident that this was not only the most attentive and engaged group I'd ever spoken to on the subject—it was the one that asked the most insightful questions.

Why? Because this is a group with enough lived historical memory to know what a black list is. This is a group—having lived through the McCarthy era—that does not need to be *told* that the theory of targeting "terrorists" or other official "enemies of the state" generally boils down in practice to targeting labour organizers, peace activists and civil rights advocates. In other words, this is not a group that needs to learn that surveillance is not safety.

Canadian surveillance scholar David Lyons explains that surveillance is about social sorting, and the reason we sort is to treat some people differently than others. In theory this might be a good thing, say, if we were "sorting" for particular needs and providing more or specialized resources for people with those needs.

In practice, this is not how surveillance works—hardly ever. In practice surveillance is about targeting alleged "risk." To take a recent example: the recently passed Bill C-42 allows Canadian airlines to legally send passenger information to be vetted by the United States—not just for flights that are landing in the U.S., but for flights *over* the United States, including Canadian flights to and from Europe, South America and the Caribbean. This means that the U.S., vetting names against their notorious no-fly list, will decide whether or not the person is allowed to board the flight. For some people this will mean

G-20 Summit in Toronto: largest mass arrests in our nation's history

not being able to fly to another country; for others it will mean not being able to fly home.

What we've touched on so far includes our country's greatest massive violations of demonstrators' rights; how the internet is increasingly vulnerable to state censorship initiatives; and how speakers and writers and activists have been and are now regularly being denied access and mobili-



ty rights through border and traveler surveillance. All these items are very dangerous signs about what is happening in terms of civil liberties generally, and freedom of speech in particular.

And of course at this juncture we also need to contemplate the almost unthinkable—the question of whether we are going to see prohibitions on the *content* of speech be expanded.

There are, of course, some content limitations to speech in Canada. Civilly, the big one is defamation laws, and criminally, the big one is hate speech.

Many thoughtful commentators have been deeply concerned by the activities of the Canadian Parliamentary Coalition to Combat Antisemitism. The misleadingly named "Parliamentary Coalition" (which is an ad hoc coalition of parliamentarians, not a body of Parliament) has been seen to be advancing a position that conflates criticism of Israel with "anti-Semitism."

It is not very likely that attempts to see criticism of Israel prosecuted as hate speech under the Criminal Code or found discriminatory under human rights legislation will be successful. The 2009 Ahenakew decision, a rare criminal prosecution for willful promotion of hatred, and the recent BC Human Rights Tribunal "*Maclean's Magazine*" case (regarding Mark Steyn's articles) are encouraging in so far as they indicate that courts and tribunals are maintaining a fairly high bar on prosecutions.

This held in the *Maclean's* case even though the legal test for speech that exposes others to hatred or contempt sets a very low bar. The tribunal was very much influenced by the fact that

the articles at issue formed part of a larger political debate. Political speech is at the very heart of constitutionally protected speech, and while hate speech laws may unfortunately chill some political speech, the indications are that successful prosecutions will be very rare.

Given this, it is unlikely that a legislative prohibition on criticism of Israel could withstand the



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inevitable constitutional challenge. But of course, that does not mean that those who criticize Israel are free of harassment or are not undergoing a stark chill because of the political climate.

Israel’s oldest daily newspaper, *Ha’aretz*, reported this month (March 21) that Israel’s Military Intelligence has set up a group dedicated to collecting intelligence on non-Israeli leftist organizations that criticize Israel.

“The sources say MI’s research division created a department several months ago that is dedicated to monitoring left-wing groups and will work closely with government ministries.

“Military Intelligence officials said the initiative reflects an upsurge in worldwide efforts to delegitimize Israel and question its right to exist.

“The enemy changes, as does the nature of the struggle, and we have to boost activity in this sphere’, an MI official said.

“Work on this topic proceeds on the basis of a clear distinction between legitimate criticism of the State of Israel on the one hand, and efforts to harm it and undermine its right to exist on the other.

“The new MI unit will monitor Western groups involved in boycotting Israel, divesting from it or imposing sanctions on it. The unit will also collect information about groups that attempt to bring war crimes or other charges against high-ranking Israeli officials, and examine possible links between such organizations and terror groups.”

This article was recently discussed by a U.S. commentator who posed a series of questions that are equally relevant to Canadians, including:

is our government going to be sharing intelligence with Israel on such issues? And/or—given how much of an Israeli connection there already is in our so-called “national security” surveillance architecture, does the government even need to “share” such information?

As the commentator noted in the U.S. setting, the Israeli company the state of Pennsylvania

hired to assess potential threats to critical infrastructure ended up tracking primarily environmentalists and peace groups: “precisely the kind of group that might oppose Israel’s actions in Gaza.”

At a talk recently, someone asked me what my definition of justice is. My definitions are on a continuum. At the most poetic end, I agree with Cornel West that “justice

is what love looks like in public.” On a more prosaic register, the foundation for a vision of justice is the rule of law.

Unfortunately, the ascendancy of the national security state has seen a profound erosion of the rule of law, especially in the realm of “risk assessments” and “intelligence.” In other words, in the culture of the national security state that is increasingly being built up around us, the “law” per se is only a very small part of the equation. For example, in Bill C-42, the law per se is about a small amount of passenger data information disclosed to a foreign state, and everything that flows *from* that—the surveillance, the profiling, the denial of mobility and security rights—is part of an essentially law-free process: a secret “national security” black box with unknown and unknowable criteria. National security secrecy provides a vast terrain for harms to individuals that exist outside the ordinary mechanisms of law, in the shadows of “intelligence” and “national security privilege.”

The matter of conflating criticism of Israel with anti-Semitism is a very important free speech issue. But in essence the issue is much deeper, as we see from the comments from the Israeli Military Intelligence representative and from our own experience with the fast-encroaching national security state. The bigger issue is conflating political speech and humanitarian concerns with “security risk” and the implications of terrorist involvement.

In other words, the bigger issue is the repeal of the national security state and the reinstatement of a democracy governed by the rule of law. ♦