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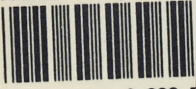
F. R. SCOTT

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FREEDOM OF SPEECH IN CANADA

F. R. SCOTT

The present economic crisis has brought sharply to the front in Canada the question of freedom of speech. The individual liberties of the Canadian citizen have suddenly been discovered to have very definite and unexpected limits. On all sides we have seen men and women thrown into gaol simply for making speeches; peaceful meetings broken up by the police; street parades prohibited or dispersed; demonstrators arrested and deported after secret trials before administrative tribunals. There has been a growing censorship, exercised through the post-office, over literature imported into Canada from abroad, and a direct suppression in certain instances of papers printed here. In the narrower field of academic freedom there have been disquieting rumors of repression, and though hitherto the record of our universities has been clear, the recent incident of Professor Gordon¹, and the frequent trouble over student publications, suggest that the problem exists there also. What is more, Canada, alone amongst British and indeed amongst parliamentary countries, has outlawed the Communist party, and has sent eight of its leaders to the penitentiary for five years merely because of their membership in it. Under these circumstances it is important to examine the nature of our right to free speech and the extent of the present restrictions upon it.

To understand why freedom of speech should again appear in jeopardy, when it has seemed securely planted in our tradition and our practice, it is essential that the question be considered in relation to the world economic crisis. It is not mere coincidence that makes economic insecurity and repression of opinion and speech occur together. The one is the cause of the other. The economic insecurity of today induces repression for two reasons. It puts fear into the hearts of govern-

¹ See Ernest Deane, "Trying to Teach Christian Ethics," *Canadian Forum*, June, 1933 (Vol. XIII, No. 153), p. 331.



ments, and fear drives out tolerance. It operates also to make people critical both of the economic system which brings them to their unhappy condition, and of the men who control it. This critical attitude is carried further in proportion as the crisis deepens. The longer the return of capitalist prosperity is delayed, the more do the sections of the community on which depression bears heaviest absorb ideas of radical reform. Thus it is today that plans for great changes in the economic system, and even plans for replacing it by what appears to many to be a more efficient and more just system, are everywhere being put forward. The air is full of talk of reconstruction, of socialism and of communism. Freedom of speech is being demanded, not simply, as in the past, to discuss variations of policy within an accepted framework of fundamental ideas, but to question the fundamental ideas themselves. What is the proper place and degree of private property in the modern industrial state? Should the capitalist system be scrapped entirely, or can it be repaired? Can desirable changes be made by the methods of normal political action, or will they involve violence? Is violence ever justifiable? These are the sorts of question that are being asked, and for which free speech is invoked. The sixteenth and seventeenth centuries fought the issue of religious freedom; the eighteenth and nineteenth the issue of political freedom. The battle is now being waged along the economic front. The control of the machinery of the state—and thus of repression—being largely in the hands of the owners of wealth, the struggle for freedom of speech becomes, in its broad development, a fight between social classes—between those who benefit from the system and those who do not.

Let us remind ourselves what our so-called British tradition of freedom of speech has meant in the past. At bottom it is an attitude of mind rather than a set of rules. Its simplest and best expression is probably to be found in Voltaire's statement: "I do not believe a word that you say, but I will defend with my life your right to say it." On analysis our belief in this liberty will be seen to rest on the following propositions:

1. That the search for truth is socially useful;
2. That a greater freedom of speech assists the discovery of truth, while a lesser freedom hampers it;

3. That the legal restrictions upon this freedom, if justifiable at all, should be as few as are consistent with the preservation of orderly social change.

Put in another way, freedom of speech is to be protected because if an idea is true, we should know it; if it is not true, public discussion will most quickly destroy it; if it is partly true and partly untrue, discussion alone will separate the truth from the error. Both sides of a question must be heard before it is possible to make a fair or reliable decision upon the point at issue.

Our tradition of liberty necessarily covers more than this belief in the value of free discussion. It includes also certain allied liberties, and for its effective enjoyment it requires the existence of certain recognized conditions. It is perhaps impossible to isolate the particular safeguards for freedom of speech from the complex of institutions and practices that make up a given social environment. Freedom has well been defined as a condition under which activity takes place, and consequently is affected by all the forces — religious, political, economic — that mould the habits of a people. One might say, for instance, that education is necessary to intellectual liberty, and hence to freedom of speech. An ignorant person may be at liberty to speak, but he will have little to say. So too the individual is not free whose education has firmly riveted on his mind a fixed pattern of ideas. The enquiry here leads us into the field of psychology and other subjects alien to this paper. Again, the problem of freedom of speech, as of freedom in general, is inseparably bound up with the wider question of the distribution of wealth and the nature of the social relationships between man and man. A concentration of wealth means a concentration of freedom in the same hands. The wealthy man who speaks his mind has nothing but the law to fear — if that; the employee will fear for his job as well. There is grave danger to freedom of speech in our modern industrial society if the contract of employment can be broken at the mere whim of the employer.

Without going too deeply into these aspects of the problem, however, it is possible to single out certain essential requisites for freedom of speech. Freedom of association is obviously one. My right to talk is valueless unless I can talk



to people. Speaking implies an audience. Any law, any practice, which strikes at the right to form clubs, societies and associations, or which prevents them from holding meetings, open-air or otherwise, is a direct infringement of the right to freedom of speech. The right of association includes the right to petition governing bodies of all sorts, and the right to hold parades under proper circumstances. Freedom of the press and a free circulation of books and periodicals are further essentials. Mr. Walter Lippman in his *Liberty and the News* goes so far as to argue that the critical interest in the modern state, where more people read newspapers than attend meetings, is the protection of what he calls "the stream of news." If that stream is restricted or colored, the liberty of opinion is correspondingly destroyed. The facts will not be available on which to form valid judgments. The same reasoning applies to the public utterances of public officials. If they adopt a policy either of secrecy about matters of public importance, or of deliberate misrepresentation of the facts, they deal a blow at freedom of speech.

Finally, it is a necessary part of our tradition in this regard that the machinery of justice should be operated so as to secure to the individual the full use of his freedom. No man should be hindered in his enjoyment of liberty save for an infringement of some legal restriction upon it. This involves first of all a right to fair trial in open court, before judges sufficiently independent from the executive branch of the government to be free to defend the accused against an arbitrary exercise of power on the part of the state.² It involves the right to trial by jury, to counsel, to call witnesses, to be presumed innocent until proven guilty, and generally to the full protection of what we describe as British justice. It means also that the accused has a right to decent treatment at the hands of the police, that he will be allowed to keep silence if he chooses, and hence will be free from third degree methods to compel confession. It means that in the courts, in the words of the Bill of Rights, "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments

² Montesquieu said: "There is no liberty if the power of judging be not separated from the legislative and executive powers."

inflicted." It means the citizen has a right to pursue his daily activities free from the interference of spies.

So much by way of reminder of the positive content of our right to freedom of speech. The normal legal restrictions upon it may be dealt with equally briefly. Under the Canadian — as under the British — system of government there are no permanent constitutional guarantees of personal liberty, such as occur in the American and other written constitutions. The law contains no declaration of rights; it merely lays down prohibitions. Everything may therefore be lawfully said which does not come within a prohibition. The types of speech which our traditional law has considered anti-social and hence punishable may be classified under three heads, according to the interest which the law protects in each case. These are (1) crimes against the state or public order, (2) crimes against morality, and (3) crimes against individuals. To which must be added the general rule that anyone becomes a party to a crime who counsels or procures another to commit a crime which is committed.

Of the crimes which may be committed by words against the state, the most important is sedition. Minor offences, like spreading false news and libelling foreign sovereigns, may be mentioned, though they are seldom enforced, and the crimes of unlawful assembly and riot may hamper freedom of speech by affecting the right of association. Seditious, however, remains the principal restriction. It is not defined by our criminal code, the content of the crime being built up out of decided cases. It thus possesses what is, for the police authorities, a most convenient elasticity, and the only useful description one can give of it is that it includes all words which a judge or jury, in a given case, consider likely to cause people to adopt unlawful means to secure social change or to disturb the tranquillity of the state. Our code narrows the area of sedition a little by saying that no one shall be deemed to have a seditious intention only because he intends in good faith to point out errors or defects in the Canadian constitution, or to excite His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the state. In England the penalizing of seditious speeches is rare, the law not being usually enforced save where there have been overt acts of a



criminal sort other than the mere uttering of words. In Canada the number of prosecutions for sedition has increased very greatly since the war; in Montreal alone during the past three years there have been at least ten cases, all connected with meetings that were admittedly peaceful.³

The offences against morality are indecent or obscene words or publications, and blasphemy. Our Criminal Code still contains the archaic rule that publishing instructions regarding contraceptives or cures for venereal disease is criminal unless the accused can show that the public good was served by his acts. On the other hand the Code is liberal enough to provide that blasphemy consists, not in the nature of the idea expressed, but in the manner of its expression. No one is guilty of a blasphemous libel for expressing in good faith and in decent language any opinion whatever upon any religious subject. Advocating atheism is thus no crime, if it be done in a temperate and considered manner. Defamatory libel is the only crime that can be committed against an individual by words. In general, truth and public interest are a good defence. A similar curb on freedom of speech, not part of the criminal law, is the civil action in damages to which everyone is liable who injures the reputation of another.

The rights and restrictions outlined above constitute the framework within which Canadians have been accustomed for generations past to carry on their public and private discussions. Whether or not this belief in freedom of speech is valid, whether the legal restrictions upon it are too narrow or too wide, is a question outside the scope of this paper. What is important, is the historic fact of the existence of the right to this degree of freedom. This is what is meant by our British tradition of free speech. We in Canada inherited that tradition and that law. What use have we made of it?

There are practically no reported cases of sedition or allied crimes to be found in the Canadian law reports prior to the war. This does not mean of course that there was no repression of freedom of speech in Canada. Few decided cases are reported, and many forms of repression involve no law-

³ For an example see my note in the *Canadian Bar Review*, Vol. IV, No. 10 (December, 1931), pp. 756ff.

suit. But it is reasonable to believe that few persons were interfered with, if only because there was no serious criticism being directed against established institutions by any organized body of opinion. When the war started, however, there was immediately trouble with the pro-German foreign element in the west. The treatment it received from the Canadian authorities was a foretaste of the latter's capacity for persecution. An Albertan judge remarked in 1916:

There have been more prosecutions for seditious words in Alberta in the past two years than in all the history of England for over 100 years, and England has had numerous and critical wars in that time.⁴

In this case a man was sentenced by a judge because while sitting in a drug store he expressed satisfaction at the sinking of the *Lusitania*. Another man was convicted of sedition by a jury in Saskatchewan because he wrote sarcastically of the people who were volunteering for active service, suggesting that they would die of fright if they saw a German soldier.⁵ The prosecution was dropped later in the first case, and a new trial ordered in the second, but the two stand as monuments to the potentialities of the law of sedition.

At the close of the war Canada found herself for the first time in her history face to face with a serious movement of anti-capitalist opinion. Many demobilized soldiers, trained to organization and conscious of their strength, were restive at the discovery that the fruits of their victory were to be long hours in factories for small pay. The Russian revolution had made communism a world force, frightening the supporters of the existing system and confusing the issue between intelligent reform and violent social change. It was the period that gave notoriety to those magic words which are still able to make many worthy Canadians stop thinking: Bolshevik, Communist, Red, Socialist, Pacifist, Anarchist, to which category the word "foreigner" seems to be a recent addition. It was the time of the One Big Union and the Winnipeg strike, when Mr. Woodsworth was arrested and detained in gaol for quoting the Prophet Isaiah,⁶ and to the south of us, a Vice-President

⁴ *Rex v. Trainor*, 33 Dominion Law Reports 658.

⁵ *Rex v. Giesinger*, 27 Canadian Criminal Cases 54.

⁶ A. V. Thomas, "Quoting Isaiah in Winnipeg," the *Nation* (New York), January 3, 1920 (Vol. cx), p. 850.



of the United States was discussing in the *Delineator* the pressing problem "Are the Reds Stalking our College Women?"⁷ It was a time which England passed through with no alteration of her law regarding freedom of speech, and which Canada met by adding Section 98 as a permanent part of our Criminal Code, and by making deportation easier under the Immigration Act.

The notorious Section 98 was prepared by a committee of the House of Commons appointed on May 1st, 1919, and the bill itself was rushed through Parliament between June 27th and July 5th, 1919 — immediately after the Winnipeg strike. Its inspiration was undoubtedly the American Espionage Act and the various state statutes against criminal anarchy and criminal syndicalism.⁸ Nothing like it can be found in British criminal law since the Napoleonic era. For the purposes of this discussion its provisions may be summarized as follows:

Subsection 1. Any association whose purpose is to bring about governmental, industrial or economic change within Canada by force or violence, or which teaches or defends such use of force or violence, is an unlawful association.

2. All property belonging or suspected to belong to an unlawful association, may be seized without warrant by any person authorized by the Commissioner of the Royal Canadian Mounted Police.

3. The following acts are crimes punishable by twenty years:

- (a) Acting as an officer of an unlawful association, and
- (b) Selling, writing or publishing anything as representative of it, or
- (c) Becoming and continuing to be a member of it, or
- (d) Wearing a badge or button indicating membership of or association with it, or
- (e) Contributing to or soliciting dues for it.

4. This provides that anyone who has attended a meeting of an unlawful association, or spoken publicly in advocacy of it, or distributed literature of it shall be presumed to be a member of it in the absence of proof to the contrary.

5. The owner of any hall, who knowingly permits therein any meeting of an unlawful association or subsidiary, or of any group of persons who teach or defend the use of force, shall be liable to five years or a fine of \$5000.

⁷ See J. H. Robinson, *The Mind in the Making* (New York: Harpers, 1921), p. 193.

⁸ Mr. Guthrie suggested its American origin, *House of Commons Debates* (Canada), Vol. II, 1919 (first session), p. 1956.

6 and 7 provide for search of premises and of persons and seizure of literature, by general warrant from any judge or magistrate.

8. The publishing and selling of literature in which is taught or defended the use of force to effect governmental change, etc., and the actual teaching or defending the use of such force, is punishable by twenty years.

9. Mailing such literature is a crime punishable by twenty years.

10. Importing such literature into Canada is a similar crime.

11. This makes it the duty of every Dominion civil servant to seize suspected literature and send it to the Commissioner of the Royal Canadian Mounted Police.

At the same time as this bill was passed the penalty for sedition was increased from two to twenty years, and the liberal section, narrowing the definition of seditious intention, was removed from the Code. Both these latter changes have since been repealed, but the bill to repeal Section 98 itself, though successful in five separate occasions in the Commons, was thrown out every time by the Senate — once by a majority of three votes.⁹

The particularly serious way in which Section 98 restricts freedom of speech in Canada are, firstly, the severity of the penalties. The penalty for sedition today, is two years; for unlawful assembly one year; for riot, two years. But the penalty under Section 98 is twenty years. The difference is absurd in view of the similarity of the offences. The equivalent American statutes range from one to ten years;¹⁰ even the emergency Public Safety Act of the Irish Free State in 1927 had a maximum penalty of five years and its penalty for distributing literature was six months. Secondly, subsection 4 of the section violates our traditional rule that the burden of proof of guilt rests on the Crown. Here a man who has merely attended a meeting, even unknowingly, must prove that he is not a member of an unlawful association — an almost impossible task, since no member of the association would dare to give evidence. Thirdly, the right of association of even lawfully disposed persons is seriously threatened by the severe penalties against owners of halls under subsection 5, for who is to say what is a “subsidiary” of an unlawful association?

⁹ In the session of 1929.

¹⁰ Z. Chafee, *Freedom of Speech* (New York: Harcourt, Brace & Co., 1920), p. 190.



Are we to take the totally unwarranted pronouncement of the Dominion Department of Labor, which has compiled in a document called *Labour Organization in Canada*¹¹ a list of subsidiaries of the Communist party? such an example of arbitrary blacklisting is typical of the corrupting influence which this type of legislation has upon official minds. Not a vestige of proof is adduced for the inclusion of any of the named societies. Fourthly, the section creates entirely new crimes connected with the publishing, selling, distribution and importation of any literature which advocates or defends the use of force. A bookseller can be punished for selling a book the contents of which were unknown to him! A strict enforcement of the law would make the sale or importation of most of the classics of political science unlawful, since there is a large body of reputable opinion in favor of the view that revolution is morally justifiable under certain circumstances. Fifthly, the forbidding of "industrial" change by threats of force comes perilously near to destroying the right to strike. Finally, under subsection 2 the police have power to invade premises and seize property without warrant and on mere suspicion, so that in Canada no man's home can be called his castle.

It was in virtue of Section 98 that the Communist party of Canada was declared an unlawful association by the Ontario courts in 1931.¹² What is most striking about the trial is the fact that the eight accused were in effect sentenced solely on account of their opinions, since there was no reliable evidence adduced to show that they or the party to which they belonged had actually occasioned any acts of violence in Canada. The use of force in which they and the party believed was to occur at some future date. It is also to be noted that they were found equally guilty of the crime of seditious conspiracy, which shows that our normal criminal law on these matters is quite adequate to look after the Communist party even without Section 98, if we wish to proceed against it. Just why it should be necessary to outlaw Communists in Canada when it is unnecessary

¹¹ Department of Labour, *Labour Organizations in Canada* (Ottawa: King's Printer, 1932).

¹² For a review of the trial see my article "The Trial of the Toronto Communists," *Queen's Quarterly*, Vol. xxxix, No. 3 (August, 1932), pp. 512ff.

in all civilized countries that have not turned fascist, we have never been told. Nor are we informed why the policy of persecution will have any other than the normal result of spreading the very doctrines it is designed to suppress.

Certain aspects of Section 98 are a sufficiently severe break with our traditional freedom, but the deportation provisions of the Immigration Act,¹³ because they lead to exile after secret trials, and because they bear mostly hardly upon the friendless foreign element in Canada, are even more pernicious. Under this act, whenever any person other than a Canadian citizen advocates in Canada the overthrow by force or violence of any British government, or of constituted law and authority, or shall by word or act create or attempt to create riot or public disorder in Canada, he is to be classed as an undesirable immigrant, regardless of the length of time he has been in the country, and a written complaint of this fact must be sent to the Minister of Immigration.¹⁴ Similar complaint can be made whenever any person other than a Canadian citizen or a person having Canadian domicile becomes a public charge.¹⁵ At once the machinery of deportation may be set in motion.

Deportation from Canada is ordered by a board of inquiry. This consists of any three officers nominated by the Minister of Immigration, sitting at any port of entry. No qualifications, legal or otherwise, are required to be an officer, and no tenure of appointment is guaranteed. The hearing of all cases brought before the board "shall be separate and apart from the public," but in the presence of the immigrant "whenever practicable."¹⁶ The immigrant may be represented by counsel, but none of the accepted rules of evidence apply to the conduct of the case, the board being entitled to base its finding upon any evidence considered credible or trustworthy by it.¹⁷ From a decision of the board, which goes by a majority vote, an appeal lies to the minister who appointed it. At present he is, incidentally, also

¹³ *Revised Statutes of Canada, 1927*, chap 93, as amended by 18-19 Geo. V., chap. 29.

¹⁴ *Ibid.*, sec. 41.

¹⁵ *Ibid.*, sec. 40.

¹⁶ *Ibid.*, sec. 15.

¹⁷ *Ibid.*, sec. 16.



Minister of Mines and Minister of Labour, so that the time at his disposal for hearing these appeals may readily be imagined. If the minister dismisses the appeal, the person shall be deported forthwith. If he is the head of a family, the dependent members may be deported also.

The bare recital of these provisions, astonishing though they are, gives little idea of what they mean in practice. For the purpose of turning back undesirable immigrants at the moment they are seeking to enter Canada, a board of inquiry may be both useful and necessary. For the totally different purpose of administering justice to foreigners who have committed certain crimes — for that is what these boards are doing — they are a travesty of everything we profess to believe is proper in the enforcement of criminal law. The accused does not stand a dog's chance. He is tried secretly. He may be whisked away from Winnipeg to be tried in Halifax, as happened in the case of Dan Holmes and others. He is not stated to have the right to call witnesses in his own behalf — and the right would be ineffective where long distances intervene between his home and the port of entry. He has no right to refuse to give evidence, but may be questioned. His judges are probably petty officials untrained in the interpretation of statutes and the weighing of evidence, and liable to direct pressure from above. His appeal may be even less a trial than the enquiry: the Minister is not obliged to hear counsel for the defence. And the penalty is the "cruel and unusual punishment" of exile, as likely as not to a country where further penalties will await the radical deportee.¹⁸

The use to which these powers may be put for the purpose of suppressing undesired opinion may easily be imagined. Many startling instances of deportation of alleged Communists and "reds" have been reported in the press. It is not known how many others there may be. Total deportations for 1931-32 were 7,034. In the years 1929-32 deportations as "public charges" alone numbered 8,858. How easy to pick out ring-leaders among the unemployed! Even naturalized aliens cannot feel safe, for under the Naturalization Act the Governor

¹⁸ Some of the Poles detained for deportation at Halifax were even refused permission to pay their own way to the Soviet Union. See the *Citizen* (Ottawa), January 16th and 17th, 1933.

in Council may at any time revoke a certificate granted to a person who has "shown himself by act or speech to be disaffected or disloyal to His Majesty," or wherever he is satisfied that the continuance of the certificate is not "conducive to the public good."¹⁹ In 1931-32, 239 certificates were revoked or annulled, as against an average of 27 or 28 for the three preceding years. No reasons are given. Naturalization thus gives no security in regard to freedom of speech; even sedition seems an exact term beside the words "disloyalty" and "disaffection," and as for the clause protecting the "public good," what is this but straight permission to cancel certificates at will? Moreover, being of British origin with Canadian domicile, as so many of our immigrants are, though it makes a person a Canadian citizen, does not free him from danger, since Canadian domicile is lost under the Immigration Act "by any person belonging to the prohibited or undesirable classes,"²⁰ and the advocacy of force to overthrow the government of Canada, and other prohibited opinions, brings one within these classes.²¹ Thus the only people who appear free from the danger of deportation are the British subjects born in Canada. As there were 2,307,525 immigrants in Canada according to the census of 1931, this means that some 23 per cent of the population of this country is liable to be exiled for the expression of certain types of opinion, without any protection from the ordinary law courts or any proper trial. It would be hard to find a parallel degree of bureaucratic control in any country on the face of the globe.

Star-chamber justice and Section 98 strike directly at free speech in Canada. But there are other methods of repression, less direct but equally effective, and very widely used. About these it is not easy to find reliable information, and my authority for the most of what follows is admittedly the newspapers. There are no official reports of the number of hall-owners threatened by police with cancellation of licenses if certain meetings are permitted. Yet this is a common practice in Canada today. The most flagrant instances have occurred in

¹⁹ *Revised Statutes of Canada, 1927*, chap. 138, sec. 9.

²⁰ *Ibid.*, sec. 2 (e) ii.

²¹ *Ibid.*, sec. 3 (n and o).



Toronto, where, for instance, the Fellowship of Reconciliation in 1931 found its meetings blocked in this way,²² and where a meeting arranged by a Co-operative Commonwealth Federation Club in March, 1933, was similarly prevented. In Montreal, May 27th, 1932, an Anti-War meeting, called by the Young People's Socialist League and staged on the same night as the fashionable military tournament, was interfered with by the police and had to be postponed. The whole question of open-air meetings and parades is treated by most Canadian municipalities with the utmost disregard of lawful claims to freedom of speech. It has become a settled policy, in Montreal, for instance, that no soap-box oratory will be permitted anywhere. It is no question of traffic regulations, or of enforcing the law against sedition or unlawful assembly. The man or woman who dares to step forward is arrested or driven away before a word is said — on what legal ground it is impossible to see.²³ The use of violence in dispersing crowds — and this touches upon freedom of speech — is of common occurrence.²⁴ On one occasion the Montreal police, after an attempted demonstration, mounted guard over the bread lines and drove away everyone whom they considered to be a Communist.²⁵

This increasing authority on the part of the police, often unwarranted by law, is a marked feature of the present depression, and is increasingly threatening our personal liberties. Evidences of it are visible on all sides. The Commissioner of the Royal Canadian Mounted Police under Section 98 of the Criminal Code, censors radical literature for us. Municipal police are given or assume the right to prohibit meetings and parades in advance. May Day is treated in most parts of the country by the police as though everyone who celebrated the occasion was a public enemy, though the holiday is simply intended as a symbol of international working-class solidarity

²² See J. F. White, "Police Dictatorship," *Canadian Forum*, February, 1931 (Vol. XI, No. 125), p. 167.

²³ E. A. Forsey, "Montreal is a Quiet City," *Canadian Forum*, June, 1931 (Vol. XI, No. 129), p. 327.

²⁴ E.g. behavior of police at the Zynchuck funeral, Montreal, March 11, 1933.

²⁵ *The Gazette* (Montreal), February 26, 1931.

and there is no reason in law or common sense why parades should not be permitted and protected. Third-degree methods, from which our police have hitherto been fairly free, are already beginning frequently to be charged; and now that they have publicly received the blessing of the Attorney-General for Quebec for the stated reason that they produce "confessions," they may be expected to develop.²⁶ With their adoption the traditional right to silence of the accused disappears, and public respect for "law and order" is further destroyed. Equally deplorable is the growing use of spies, of which Sergeant Leopold is the prize example. He has been going the rounds of the boards of inquiry under the Immigration Act, lecturing the officials on the nature of Communism. He is a fit successor to the Corporal Zaneth of the same trade, who gave evidence during the trial of Russel after the Winnipeg strike, and who defended the practice of spying by declaring, "Yes, I think Canada needs liars."²⁷ Our once glorious Mounted Police are now associated with this dirty game. "The freedom of a country," wrote Erskine May, "may be measured by its immunity from this baleful agency."

Moreover, there is a growing tendency on the part of the police to excuse all arbitrary behavior by calling the persecuted persons Communists or Socialists (the two categories, distinct in law, being deliberately or ignorantly confused.) When Constable Zappa of the Montreal Police Force was asked by a press reporter why he shot the unemployed Pole, Zynchuck, in the back during an eviction in Montreal, he replied with a shrug of the shoulders, "He's a Communist."²⁸ The fundamental rule that no one is a criminal until a court of law has found him so, seems incapable of appreciation by the police mind. Even if we have outlawed the Communist party, the alleged Communist is no criminal until the case is proved against him; he attends meetings, makes speeches, marches in parades, an

²⁶ An address by the Attorney-General for Quebec before Police and Fire Chiefs Association, the *Gazette* (Montreal), May 9th, 1933. The rack and thumbscrew also produced confessions from the innocent as well as the guilty.

²⁷ J. A. Stevenson "A Set-Back to Reaction in Canada," the *Nation* (New York), March 6, 1920 (Vol. cx), p. 292.

²⁸ The *Star* (Montreal), March 7th, 1933.



innocent man. The police, if they have evidence, may arrest him and bring him in before a court, just as in the case of other law-breakers, but that is all they may lawfully do. Everything else is persecution.

Another favorite form of police repression is the enforcement of laws only against individuals whom they dislike. A group of unemployed in March, 1932, set out in a truck from Montreal for Quebec to present petitions to the provincial government. This was a valid exercise of a constitutional right. They were arrested for speeding and having dirty license plates.²⁹ Two members of the Young People's Socialist League of Montreal were arrested for placing posters calling an anti-war meeting on telegraph poles belonging to the Montreal Light Heat and Power Company.³⁰ The proceedings were legal under a city by-law, but similar cases of placarding, notably at election time, pass unnoticed. There is another Montreal by-law prohibiting the distribution of circulars or papers in the streets and public places of the city;³¹ it is enforced principally against persons handing out radical notices.

No change of attitude on the part of the police, however, is likely to occur when so little respect or consideration for freedom of speech is shown by certain of our public men. They do not seem to realize that toleration means allowing the expression of unpleasant as well as pleasant ideas. Lip-service to our traditions is paid from time to time, but qualified in such a way as to show a total ignorance of what that freedom means. The following statement, which comes from the highest quarter, is typical:

This is a land of freedom, where men may think what they will and say what they will, so long as they do not attack the foundations upon which our civilization has been built. But as we have freedom, so we have justice, and it is not right nor just that now or at any other time we should permit such action by words or deeds as may tend to unsettle confidence in the institutions under which we live.³²

Note the limitations: "attacking the foundations of our civilization" and "tending to unsettle confidence in our insti-

²⁹ *The Gazette* (Montreal), February 19, 1932.

³⁰ This case is known to me personally.

³¹ No. 270.

³² *House of Commons Debates* (Canada), 1931, Vol. iv, p. 4278.

tutions." Neither of these can be classified under any known legal restrictions upon freedom of speech. Institutions and foundations may be attacked freely so long as lawful methods of abolition or reform are urged. Mr. Justice Humphreys stated the law clearly, during his summing up at the recent trial in England of four Communists charged with conspiracy to seduce soldiers from their duty, when he said:

A person in this country has liberty to say that its constitution or its religion should be changed, that there ought to be no religion at all, that there ought to be no king, that we ought to have a republic, or any other form of government. What persons cannot do is to advise that changes should be made by force or terrorism.³³

This failure to distinguish between the content of the idea and the manner of giving effect to it leads to the frequent but erroneous confusion between Communism and Socialism. The Socialist aims to secure political power by lawful means; the Communist expects to use violence. The two parties on this point are poles apart. It would be quite lawful to preach every communist doctrine so long as the element of violence were omitted, and socialism has never come near the edge of the law. References to the "iron heel of ruthlessness" and similar talk,³⁴ create the impression that the radical is without rights — and the Constable Zappas shoot the more readily. A similar confusion is created in regard to the foreigners in our midst — "the people with unpronounceable names": it is somehow considered a special offence for them to express disapproval of the labor conditions under which they work, or the institutions under which they are compelled to live. In the eye of the law the freedom of speech of foreigners, at any rate in so far as the Criminal Code is concerned, is identical with that of native-born Canadians. If we do not practice tolerance towards foreigners, we are not likely to practice it amongst ourselves. Freedom of speech cannot survive in a country where people's minds are filled by public men with these fixed ideas and prejudices about racial or political groups. What type of justice can be expected from a Recorder in Montreal who greets a new batch of prisoners with the words: "Some

³³ Cited in the *Citizen* (Ottawa), May 20th, 1933.

³⁴ See speeches before the Ontario Conservative Association, November 9, 1932, reported in the daily press.



more Communists? I believe that if they would get stiffer sentences, it would put a stop to these smart reds."³⁵

The repression of opinion manifests itself in many other ways today. The withholding of information upon matters of public importance is one. The Beauharnois investigation is suddenly stopped; the Montreal Harbor Bridge enquiry is withheld. The government consistently refuses to publish full information regarding income tax statistics in Canada, such as have been available in the United States. When enquiries are compelled in regard to penitentiaries and coal monopolies, they are held in private. Public opinion, in the expressive phrase of Mr. Lippman, is thus "blockaded." In parliament itself the freedom of speech of members is seriously curtailed. Government business takes more and more time. The speaker of the Commons, with all his control over debate, is invariably a party nominee; in England his post is by tradition permanent. Mr. Woodsworth in the session of 1932, was for a time denied even first reading of his bill to repeal Section 98.³⁶ During the past year discussion of an important matter of foreign policy — the Sino-Japanese situation — was choked off on the novel plea that matters under consideration by the League of Nations should not be debated in Parliament as they were *sub judice*,³⁷ a rule which if adopted generally might prevent the Canadian people from giving any authoritative voice to its opinions on pressing international affairs.

The most potent influence upon the popular mind, the press, is obviously not free in Canada from those practices which, by controlling the news, control our liberty of thought. Exceptions of course there are, but Canadian newspapers for the most part are owned by interests and make their profits from advertisers who are for economic reasons opposed to freedom of speech for radicals. The result is seen in their failure to report certain types of meeting, their totally inadequate reporting of speeches containing an unpopular point of view, and in other ways. Publicity can so easily be manipulated in favor of one side. This winter at the time of the

³⁵ *The Gazette* (Montreal), March 19th, 1931.

³⁶ *House of Commons Debates* (Canada), 1932, Vol. I, p. 380.

³⁷ *Ibid.*, (unrevised edition), November 21, 1932, pp. 1464-9.

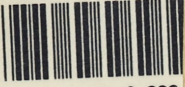
formation of the Co-operative Commonwealth Federation Clubs in Montreal *La Presse* and *La Patrie* refused to carry a paid advertisement asking all people interested in the movement to send their names to a given address. Consistent misrepresentation of an opinion is another way of attempting to suppress it, and this is all too common a habit in certain editorial offices. The attack sometimes comes from other parts of the newspaper world. The weekly paper *Change*, first published in February, 1933, and mildly radical in its opinions, was put out of business because the distributing agencies in Toronto refused to handle it.

There is an interesting fight for freedom of speech in progress at the present moment in Montreal. The Université Ouvrière, a French-Canadian workmen's college where anti-clerical and radical economic views are taught, has been for many years a thorn in the flesh of the provincial authorities. Its headquarters were raided by a band of students from the University of Montreal in 1930, and some of its property damaged. It has now been deprived of its charter by the repeal of the Mechanics' Institute and Library Associations Act at the last session of the Quebec Legislature, compelling all associations formed under the Act to seek new charters under the Quebec Companies Act. According to the Hon. C. J. Arcand, Minister of Labour at Quebec, the University was expounding doctrines "harmful to the public weal."³⁸ Its newspaper, *Spartacus*, was seized and stopped by the police. No court action has yet established that any of its teaching was illegal, though its daring leader, Albert St. Martin, is now undergoing trial on a charge of blasphemous libel. Undaunted by the attack, the University has reformed as a business firm carrying on the business of education.³⁹ It remains to be seen how long this device will avail to preserve it. Some 70 years ago a much more respectable French-Canadian society, L'Institut Canadien, fought for smaller rights, and lost.

One last form of repression, and one of the most powerful, must be mentioned. It does not lend itself to easy measurement, and may perhaps best be described in plain English by

³⁸ *The Gazette* (Montreal), April 10, 1933.

³⁹ *Ibid.*, May 8, 1933.



saying that there is a widespread feeling in Canada today that if a man wants to hold his job he had better not talk too much. This feeling undoubtedly exists amongst all classes of employee, both salaried and wage-earning. Its existence is a fine commentary upon the nature of our social life, implying as it does that the person who works for a living is owned body and soul by the employers, and that these are unscrupulous enough to penalise a man for his opinions. It largely explains our public apathy in the face of manifold provocations. How often we hear it said of someone that he is in favor of this or that reform, but of course he "cannot say anything." He cannot say anything, the other man cannot say anything — no one can say anything, except the Communist, and he is promptly deported. So the leading British Dominion drifts along in this year of grace 1933, frightened out of its all too diminutive wits. Our captains of industry are firm believers in individual initiative and private enterprise, but they are the first to deny the application of their pet principles in the field of freedom of speech. In fairness to them, however, it must be admitted that this sense of fear may equally be due to a lack of courage on the part of the employee.

"The time, it is to be hoped, has gone by" wrote John Stuart Mill, "when any defence would be necessary of the principle of freedom of speech." His hope was vain. The time for defending freedom never goes by. Freedom is a habit that must be kept alive by use. In times like the present, when mankind is hesitating before a bewildering choice of remedies for its afflictions, freedom of discussion is more necessary than ever. There are two ways of attempting to solve our present economic problems. One is to use the sword; this is the Communist and Fascist technique. The other is to think through the difficulties, to decide a policy, and to legislate it into existence. This is what we like to think is the Canadian technique. It cannot work without the utmost freedom of speech and discussion.

The achievement of a full degree of personal liberty must await the conquest of the economic system by the democratic principle. But much could be done immediately to widen the area of freedom of speech in Canada, and liberal minds of all parties should unite in this endeavor. In particular the repeal

of Section 98, the confining of the immigration boards to their proper functions, a restriction of police control over owners of halls, a reasonable granting of permission for parades, and the setting aside in every city and town of specified localities for outdoor meetings under police supervision, are essential steps toward regaining our traditional freedom. Law and order would be more secure in this atmosphere of tolerance, because tolerance induces a respect for authority. The well-tried rules of our normal criminal law⁴⁰ would still be available to put down violence and to preserve the public peace.

⁴⁰ E.g. treason, sedition, unlawful assembly, riot, etc.

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Freedom of speech in



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of Section 2, the finding of the majority points to their
proper function, a restriction of public control over ownership
of a newspaper's printing of permitted for public and the
writing only in every city and town of specified population
fourteen meetings under public supervision, and essential steps
towards reaching our traditional freedom of law and order
would be more secure in the absence of tolerance for
statements which a newspaper publishes. The withdrawal
of our constitutional law would still be available to put
into effect and to require the public to be held in
the power to control the press in all cases.

The power to control the press in all cases
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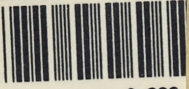
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