

Transgender Justice and Bill C-16: The Unfounded Fear of Pronoun Prison

by R Poirier

Jordan Peterson

Dr. Jordan Peterson is a Canadian professor of psychology who works at the University of Toronto. He is the author of both “*Maps of Meaning: The Architecture of Belief*” and “*12 Rules for Life: An Antidote to Chaos*.” While *Maps of Meaning* attempts to describe how religion, ideology, morality, lifestyle, and personal fulfillment are all interconnected, *12 Rules for Life* is a self-help book that attempts to impart the reader with practical and ethical wisdom about how to live their best life. Peterson is perhaps best known, however, for his 2016 YouTube video entitled “[Professor against Political Correctness, Part 1](#).” [1] In this video, Peterson raised his concerns about [Bill C-16: An Act to amend the Canadian Human Rights Act and the Criminal Code](#). [2] At the time of the video, Peterson worried that Bill C-16 was an unnecessary restriction on freedom of expression that would bring Canada marginally closer to totalitarianism. A major component of his criticism was that Bill C-16 was overbroad and could result in people being criminally charged with hate speech for so much as misgendering someone or merely criticizing the legislation itself.

Peterson’s devoted base of supporters shows that he certainly has charisma of some form or another. Indeed, he appears to be a very skilled and convincing orator. Peterson is also an educated man and holds a Ph.D. in clinical psychology from McGill University. If someone were to read his books or listen to his podcast, “[The Jordan B. Peterson Podcast](#)”, with an open mind, it is quite likely that they would find his opinions on psychology, morality and Christianity to be very insightful. [3] But like all human beings, Peterson is not one dimensional. It is entirely possible to agree with Peterson in some areas and strongly disagree with him in others. As such, while his thoughts on psychology and religion may indeed be quite thorough and legitimate, his thoughts on the law may not be.

Bill C-16

So, what was the substance of Bill C-16 and what did it accomplish? First, Bill C-16 added “gender identity or expression” to the list of prohibited grounds of discrimination in [Section 3\(1\) of the Canadian Human Rights Act](#). Second, Bill C-16 added “gender identity or expression” to the protected identifiable groups listed under the hate propaganda provisions in [Section 318\(4\) of the Criminal Code](#). Lastly, Bill C-16 also modified [Section 718.2\(a\)\(i\) of the Criminal Code](#) to classify a criminal offence motivated by bias based on “gender identity or expression” as an aggravating factor to be taken into consideration during criminal sentencing.

Brenda Cossman, a professor of law at the University of Toronto, described the effects of Bill C-16 in her article entitled “[Gender Identity, Gender Pronouns, and Freedom of Expression: Bill C-16 and the Traction of Specious Legal Claims](#).” [4] In it, Cossman makes several important points about the scope of Bill C-16. Importantly, she points out that the [Canadian Human Rights Act](#) only applies to government entities and businesses within federal jurisdiction, such as banks and airlines. [5] This

means that provincial entities, such as universities and most private businesses, are not affected by any changes to the *Canadian Human Rights Act*. Furthermore, most provinces and territories had already included “gender identity” and “gender expression” in their own respective human rights legislation long before Bill C-16 was proposed. Manitoba, for example, has protected “gender identity” under its own provincial [Human Rights Code](#) since 2012. Between 2012 and 2016, however, nobody in Manitoba appeared concerned that protecting “gender identity” would have adverse consequences. Ultimately, the scope of Bill C-16’s changes to the *Canadian Human Rights Act* were actually quite limited in effect. The simple reality is that “gender identity” and “gender expression” are far more commonly protected through provincial human rights legislation that predates Bill C-16.

With respect to the changes to the *Criminal Code*, Bill C-16 also had a very limited effect. This is because the hate propaganda provisions laid out in Sections 318 and 319 of the *Criminal Code* only apply in very limited circumstances. Such circumstances consist of speech that advocates for the killing of an identifiable group, speech that advocates treatment calculated to physically destroy an identifiable group, hateful speech against an identifiable group made in a public place that is likely to lead to a breach of the peace, or speech that wilfully promotes extreme levels of hatred against an identifiable group. Cossman correctly explains that all these categories of hate propaganda have very high legal thresholds which in almost all cases require a type of speech that advocates violence. [6] Furthermore, the hate propaganda provisions in the *Criminal Code* have existed for quite some time. Regardless of one’s opinion on the merit of those provisions, if they are to exist, should “gender identity and expression” not be protected alongside other identifiable groups?

Between 2007 and 2009, Egale conducted a survey of Canadian high school students and found that because of their gender expression, 74% of transgender students had been verbally harassed and 37% had been physically harassed or assaulted. [7] Furthermore, a survey conducted by TransPulse between 2009 and 2010 found that 26% of transgender persons in Ontario over 16 years of age had been subjected to physical violence because of their gender identity. [8] Although data collection and categorization issues with Statistics Canada limits the information available on transgender-based violence in Canada, evidence from the United Kingdom suggests that the occurrence of transgender hate crimes in that country increased by as much as 81% between 2016-2017 and 2018-2019. [9] Similarly, the Federal Bureau of Investigation reported that violent hate crimes against transgender persons in the United States increased by 41% between 2017 and 2018. [10] Given this information, there is no doubt that people are routinely discriminated against, often violently, because of their gender identity and expression. Therefore, at minimum, we clearly ought to offer transgender people the same protections that we offer other vulnerable groups.

Before Bill C-16 was implemented, Peterson and his supporters worried that protecting people who are vulnerable on account of their gender identity and expression would unnecessarily restrict freedom of expression. Peterson even went so far as to say that using the wrong pronoun to refer to a transgender person could result in criminal hate speech charges. Notably, neither Peterson nor his supporters have been subjected to any such charges since Bill C-16 was assented in June of 2017. In fact, unlike his thoughts about psychology, Peterson’s understanding of Bill C-16 was always both flawed and frivolous. Cossman thoroughly debunked Peterson’s pseudo-legal claims on multiple occasions, and University of Ottawa law professor Dr. Kyle Kirkup even stated that “I

don't think any legal expert would say using an inappropriate pronoun, while not something that respects the human rights of trans people, would ever result in a criminal conviction." [11] This remains true today. But although Peterson's comments about Bill C-16 were certainly irresponsible, perhaps he can be forgiven for being incorrect about a topic outside of the scope of his expertise.

Pronoun Politeness

In 2020, some individuals still refuse to respect the choices regarding personal pronouns made by other people. While intentionally misgendering people is certainly not a criminal offence in Canada, nor should it be, it does portray a stubborn refusal to extend a common courtesy to fellow human beings. Transgender YouTuber Natalie Wynn, better known as [ContraPoints](#), has recently achieved internet fame through her creation of flashy, humorous and intelligent videos that are designed to deradicalize alt-right men. [12] In her video entitled "[Pronouns](#)", she argues that people ought to refer to transgender women with female pronouns. [13] She asserts that the use of pronouns is not a matter of natural biology but is instead a matter concerning the proper use of words. She then satirically summarizes her objective by saying that female pronouns ought to be used for transgender women so that they "can achieve the same level of sadness and dysfunction as everyone else." In other words, ContraPoints is merely seeking equal treatment for transgender individuals. She just wants herself and others like her to be granted the same common courtesies that we extend to other members of society.

To convince others to respect an individual's choice of pronouns, ContraPoints relies on an analogy between transgender women and adoptive parents. For example, it would be highly unorthodox for a person to approach an adoptive parent insisting that their adopted child is not actually their child and that the adoptive parent is not actually a parent. Such a person would obviously be behaving in a rude and insensitive manner, but that person would also be factually incorrect in most contexts. Legally, socially, and functionally, an adoptive parent is just as legitimate of a parent as a biological parent. As such, referring to adoptive parents as parents is clearly not dishonest. Although there are some contexts where it is appropriate to distinguish between adoptive parents and biological parents, such as when one is assessing hereditary health risks, in most contexts it is unnecessary to make such a distinction. Likewise, there are some contexts where it is appropriate to distinguish between transgender and cisgender women, such as the provision of reproductive healthcare, but in most contexts such a distinction is entirely unnecessary. Furthermore, referring to someone by their choice of pronouns is generally more practical because that person's external gender identity will often reflect their personal choice of pronouns – although this is admittedly not always true. Therefore, respecting an individual's choice of pronouns is not only polite, but in most situations, it is both contextually accurate and socially practical. But even where it is not necessarily socially practical, it is still polite, and should that not be enough in a civilized society? Should acknowledging another person's sincerely held identity not simply be a common courtesy that we extend to one another?

Although respecting the gender identity of others is becoming increasingly commonplace, there are unfortunately still people who refuse to acknowledge the identity of transgender individuals. Of course, people who accidentally misgender somebody are not necessarily being rude

or impolite. Such people ought to be corrected quickly and courteously. Only those people who intentionally misgender a person should be considered uncivil. In cases of particularly egregious misconduct, such intentional behaviour can even constitute harassment. It is very important that any such misconduct be frowned upon. Given the unusually high rates of suicide among the transgender population, any intentional behaviour that further marginalizes transgender persons must be discouraged. [14] Although the criminal law ought to refrain from compelling proper pronoun usage, private civilized society ought to demand it.

The Challenges Ahead

Fortunately, it does appear that respecting a person's choice of pronouns is generally considered a common courtesy in Canada. Yet it must be remembered that transgender and gender nonconforming persons still regularly face discrimination and remain vulnerable as a group. The myriad of problems they face include high suicide rates, being targeted by violence and harassment because of their gender identity and being discriminated against in matters of employment. Such problems will need to be addressed by civilized countries over the next decade. Thankfully, Canada has made some progress in addressing these problems by listing "gender identity or expression" as a protected identifiable group under the *Criminal Code* and by enacting federal and provincial human rights legislation that prevents discrimination on such grounds. But the extent that these legislative changes may deter society from mistreating transgender and gender nonconforming persons is difficult to gauge. Systemic flaws with Statistics Canada's data collection and categorization methods still make it unnecessarily difficult to assess how transgender and gender nonconforming Canadians currently fare in matters of safety and employment. [15] Hopefully, such flaws will be corrected soon.

Although the welfare of transgender persons in Canada can certainly be improved, at the very least we appear to be approaching this issue with civility, humanity, and empathy. Unfortunately, not every country is doing the same. Just south of the Canadian border, the United States federal government appears to be disinterested in ensuring the equal treatment of transgender persons. Recently, the country has gone so far as to prohibit people who are openly transgender from serving in the military. [16] Similarly, the country's federal government even argued before the Supreme Court of the United States that private employers should be allowed to terminate transgender employees on account of their expressed gender identity. [17] Such policies suggest that there is still much work to be done in advancing transgender justice. To achieve transgender equality on a truly meaningful scale, these types of openly biased policies will need to be addressed and annihilated. One can only hope that over time transgender persons will universally benefit from the equal treatment that they deserve.

[1] Jordan B Peterson, "Part 1: Fear and the Law" (27 September 2016), online (video): *YouTube* <www.youtube.com/watch?v=fvPgjg201w0> [<https://perma.cc/C3C7-CECP>].

[2] **Bill C-16**, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, 1st Sess, 42nd Parl, 2017 (assented to 19 June 2017), SC 2017, c 13.

[3] **Jordan B Peterson**, “The Jordan B Peterson Podcast” (last visited 16 February 2020), online: *Jordan B Peterson* < www.jordanbpeterson.com/podcast/ > [<https://perma.cc/46FC-TAJY>].

[4] Brenda Cossman, “Gender Identity, Gender Pronouns, and Freedom of Expression: Bill C-16 and the Traction of Specious Legal Claims” (2018) 68:1 UTLJ 37.

[5] *Ibid* at 38.

[6] *Ibid* at 47-49.

[7] Egale, “Final Report on the First National Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools” (May 2011), online: *Egale* <https://egale.ca/awareness/every-class/?utm_source=halifaxtoday.ca&utm_campaign=halifaxtoday.ca&utm_medium=referral> [<https://perma.cc/38UM-PZZK>].

[8] TransPulse, “Experiences of Transphobia among Trans Ontarians” (7 March 2013), online: *TransPulse* <http://transpulseproject.ca/wp-content/uploads/2013/03/Transphobia-E-Bulletin-6-vFinal-English.pdf?utm_source=halifaxtoday.ca&utm_campaign=halifaxtoday.ca&utm_medium=referral> [<https://perma.cc/E74H-583S>].

[9] “Transgender hate crimes recorded by police go up 81%”, *BBC News* (27 June 2019), online: <<https://www.bbc.com/news/uk-48756370>> [<https://perma.cc/R2CH-8V5F>].

[10] Sam Levin, “Violent hate crimes in US reach highest levels in 16 years, FBI reports”, *The Guardian* (12 November 2019), online: <<https://www.theguardian.com/society/2019/nov/12/hate-crimes-2018-latinos-transgender-fbi>> [<https://perma.cc/29LB-63VX>].

[11] Jessica Murphy, “Toronto professor Jordan Peterson takes on gender-neutral pronouns”, *BBC News* (4 November 2016), online: <https://www.bbc.com/news/world-us-canada-37875695> [<https://perma.cc/B2B6-NA8T>].

[12] VICE News, “ContraPoints Is De-Radicalizing Young, Right-Wing Men” (14 March 2019), online (video): *YouTube* <<https://www.youtube.com/watch?v=2Nrz4-FZx6k>> [<https://perma.cc/H3CX-SUUM>].

[13] ContraPoints, “Pronouns” (2 November 2018), online (video): *YouTube* <<https://www.youtube.com/watch?v=9bbINLWtMKI>> [<https://perma.cc/X73S-JMC5>].

[14] Lisa Rapaport, “Trans teens much more likely to attempt suicide”, *Reuters* (12 September 2018) online: <<https://www.reuters.com/article/us-health-transgender-teen-suicide/trans-teens-much-more-likely-to-attempt-suicide-idUSKCN1LS39K>> [<https://perma.cc/4JTL-UWX4>].

[15] Melanie Green, “Critical data is still missing on transgender and non-binary Canadians: StatsCan”, *The Toronto Star* (31 May 2018), online:

<<https://www.thestar.com/vancouver/2018/05/31/no-national-data-for-trans-people-advocates.html>> [<https://perma.cc/8RK7-CZJ2>].

[16] Dana Delgado, “I Served 30 Years in the Military. Trump’s Transgender Ban Calls Me Unfit”, *TIME* (9 November 2019), online: <<https://time.com/5721582/transgender-military-veterans-day/>> [<https://perma.cc/UQG4-VJ9L>].

[17] Nina Totenberg, “Showdown Over LGBTQ Employment Rights Hits Supreme Court”, *NPR* (8 October 2019), online: <<https://www.npr.org/2019/10/08/766386729/showdown-over-lgbtq-employment-rights-hits-supreme-court>> [<https://perma.cc/Q8DG-HBMN>].