Towards a Rational Legal Philosophy of Individual Rights

by Denis Rancourt / November 15th, 2016

Summary: I briefly describe the anthropological origin and recent statutory embodiments of human rights of individuals. I show that the modern "democratic" state moderates the rights of individuals by both: (1) violating the said rights in order to maintain and enforce the societal dominance hierarchy, and (2) preventing disproportionate violations, to avoid inciting rebellion. The courts are charged with these tasks but must not appear to represent an oppressive state. The courts' practical solution has been to develop the legal artifice of "balancing conflicting rights", where the court presents itself as a neutral arbitrator providing "access to justice", rather than the enforcer that it is. I develop several examples involving the human rights of freedom of thought, expression, and movement, and the right to a fair trial. I show that the said legal artifice is best dismantled by a method of compartmentalization where a given act producing harm that is a crime (or offence or civil liability) is compartmentalized into its distinct elements that either constitute the crime or are human-rights freedoms that are not in play at trial or in sentencing.

Rights to limit freedom

In a simple small-scale pre-civilization society, one has the "rights" of what is culturally accepted. Transgressions beyond the accepted norms are punished or otherwise corrected. Thus, there are no "individual or human rights" in such circumstances.

While simple small-scale societies have tight internal cohesion, historically such pre-civilization societies were frequently subjected to violent inter-tribe warring, which was a source of massive physical insecurity for the individual, compared to relatively small risk of lethal harm in large post-civilization societies.[1] Large post-civilization societies have the advantage of dramatically reduced warring risk to the individual, and the disadvantage of institutionalized structures regimenting individual behaviour and associations.

The concept of an accepted or statutory right that is intrinsically held by the individual arose in large post-civilization societies that employ institutions to maintain hierarchical order and class structure. For example, citizens of national states are given statutory (by law) procedural protections against abuses of the societal dominance hierarchy. Likewise, individuals on a globalized Earth are given "human rights" by various international instruments, such as the *Universal Declaration of Human Rights, 1948*, or the *International Covenant on Civil and Political Rights* (ICCPR). Even warring itself is regulated to be less barbaric by such statutes as *The Geneva Conventions, 1948*, and their *Additional Protocols*.

In application, “individual rights” are institutional instruments used both to control individuals and to prevent systemic abuses against individuals, in order to stabilize and protect the class-hierarchical structures of post-civilization society, which are hugely beneficial to the human species.

As such, the said instruments must be designed and applied in a manner that is consistent with their actual function, in all the various circumstances where individual autonomy can threaten the established hierarchy and where systemic abuse can nurture revolt. This is the task of law makers (members of parliament) and tribunal and court decision makers (judges and arbitrators), following established recommended practice (referred to as “principles”).

Here, “bad laws”, for example, are laws that unnecessarily infringe on individual liberty, where the hierarchy is not at risk, or laws that create overwhelming resentment, or laws that limit the abilities of individuals to organize and adjust in ways that stabilize the hierarchy. “Good laws” maximize the stability of the hierarchy, by balancing allowed individual freedom against predatory class interests, while minimizing violence to individuals. A constant challenge is corruption: influence peddling to make socially pathological laws that advantage influential groups and dominant classes while weakening the societal hierarchy as a whole.

Since all of this “lawyering” needs to be invented in practice, there is the possibility that “principles” of application are not optimized or end up containing paradoxical contradictions. I argue that such is the case with individual rights that are considered “human rights”, and I offer a solution. I illustrate with the fundamental human rights of freedom of thought and freedom of expression.

Freedom of thought, belief, and opinion

Freedom of thought or freedom of belief is the right to have whatever thoughts or beliefs one has or wishes to have. Throughout much of post-civilization history, specified thoughts and beliefs have been considered sins or crimes, even if not manifestly expressed. Controllers sought out and punished or purged thoughts and beliefs that were judged to be threatening to the established order, to the overarching hierarchy.

In modern times in Western societies, “thought crimes” are largely frowned upon, and it is mostly recognized that thoughts can only be threatening if they are expressed or acted upon. This recognition is enshrined in the international law, where in the jurisprudence of the ICCPR it is unequivocally and expressly determined that freedom of thought or belief (opinion) is an absolute right of the individual, which cannot be violated by a state actor under any circumstances.[2] In particular, one cannot be forced to disclose one’s thoughts or beliefs. This relates to a criminally accused person having an absolute right not to testify or incriminate himself or herself.

The explicit wording of the international law is[3]:

> Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. **This is a right to which the Covenant permits no exception or restriction.** Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the

> opinions they may hold, constitutes a violation of article 19, paragraph 1. (reference numbers removed, emphasis added)

Many state constitutions contain equivalent statements or implied rule, and all signatory states are required to make their laws consistent with this right.

Needed consistency in implementing absolute right of free thought

In practice, however, even this expressly absolute right is at odds with the criminal-law practice of inferring "motive" as a factor determining sentencing. In this way, wilful murder judged to have been premeditated is punished more severely than wilful murder decided in immediate circumstances, which in turn is punished more severely than murder judged to have been unintended. Likewise, crimes judged to have been politically motivated ("terrorism") are judged far more severely than the same crimes that are "merely criminal".

Thus, there is an apparent contradiction between the right to freedom of thought and the practice of states to infer thoughts from evidence in determining sentencing. There is the added and significant problem that in-court arguments about (and evidence used to support) inferred negative thoughts create a trial environment that is prejudicial against the accused regarding guilt of the physical crime itself. The legal culture of the adversarial system does nothing to solve this fundamental problem, which is compounded by media reporting.

A solution is to dissociate the physical crime (e.g. damage to property, bodily harm) from the thoughts or motives of the accused, and not to allow thoughts and motives to be relevant in the courtroom. This would remove the state from the business of inferring thoughts and would improve the system's ability to find the knowable truth. It would make the system stick to physical reality, with fewer unforeseen negative societal consequences, and less potential to "run out of control" as practice evolves and societal misdirections are experienced. It would also procedurally prevent indulging the media in its pathological practice of seeking mob reactions based on emotional imagery.

Thus, we see that the expressly absolute right of freedom of thought and belief (opinion) (not to be confused with the right of freedom of expression) is preserved by not allowing a thought component in any crime or offence that is punishable by the state, or in any civil case for damages.

The solution was achieved by admitting that the impugned event (e.g. murder) has separate components or elements that can be compartmentalized, and that the state can solely be concerned with one of the compartments. Here: the physical action(s) that led to the death of a person, in one compartment; and the thoughts, beliefs, or motives in the mind of the accused who is alleged to have made the said action(s), in a separate and distinct conceptual compartment. The state's response is concerned solely with reparation, prevention, and deterrence regarding the physical action(s). Any punishment component intended to change the mind of the accused person, and having no demonstrated preventative or deterrence value, has no place in the legal system of a state that admits an absolute right of freedom of thought and belief.

More examples below illustrate how the convoluted legal landscape of allegedly "competing rights" can be made rational by applying conceptual compartmentalization in the analysis of any action or event that both attracts an accepted fundamental right and is the cause of harm constituting a crime, offence, or civil liability.

Applications of compartmentalization

Consider the canonical example that one cannot scream "fire" in a crowded cinema. The right of freedom of expression is implicated, as is the predictable harm or high risk of harm caused by the expression, in circumstances where the expression will likely produce a stampede response. The classic treatment of this example is for the

decision maker to expound that "One person's freedom ends where another person's freedom begins", a phrase which captures the jurisprudence of "conflicting rights".

Although "jurisprudence" makes the idea sound scholarly, actually the said idea has its origins with nineteenth century US prohibition activists. In particular, an 1887 newspaper in Atlanta quoted from a speech in favour of prohibition laws as[4]:

> The only leading argument urged by the anti-prohibitionists in this campaign for keeping open the bar-rooms, is personal liberty. A great man has said, "your personal liberty to swing your arm ends where my nose begins". A man's personal liberty to drink whisky and support barrooms ends where the rights of the family and the community begin.

The problem can be resolved without reference to "competing rights", as follows. Screaming "fire" in a crowded cinema has two separate compartments: One is the expression, including the choice of words and the full quality of how the words are delivered (loudness, tone, emotional expression, gestures, etc.), while the other is the offence of choosing to make that expression in physical circumstances where there is a high, predictable, and imminent risk of serious physical harm or death.

The said offence is the crime of having significantly risked or actually caused harm or death. By this compartmentalization, the right of freedom of expression is not in play, is not in conflict with the rights of others not to be assaulted (safety), and need not itself be limited (such as forbidding the word "fire" to be uttered in a cinema or elsewhere, or gagging the convicted person from ever again using the word "fire"). The state will charge the accused with the harm that he or she caused, irrespective of the method chosen to produce the harm. Murder by gun or knife or poison or booby trap or by predictable consequence of any action, is always murder with the same consequence. The violated right to life in committing murder has nothing whatsoever to do with one's "right" to carry a gun, own a knife, buy rat poison, test booby traps, or scream words.

Similarly, the flailing fist crime can be compartmentalized into the freedom of moving one's body, as distinct from the offence of striking another person. Intent and carelessness can both produce the same bloody nose, and freedom of body movement is not in play in either. There is no rational advantage to posit that the right of body movement "conflicts" with the right not to be assaulted (safety). The right of body movement is not itself infringed by the state addressing the alleged assault, and is not relevant to the legal analysis of the crime.

The right of freedom of expression gives rise to several more examples of such posited false "conflicts":

(1) An employer fires an employee and then makes false negative statements about the employee to other employers. The employer's freedom of expression is not in play in making the false negative statements. The post-firing offence is the predictable material harm (economic and personal hardship) done to the former employee, in the circumstances of the employer's power and influence. The concept of freedom of expression need never enter the legal analysis, and should not be entertained by the court. Likewise, there should be no protection of "privilege" for the employer. The offense either occurred or it did not, and discovery of the facts should not be impeded by any legalistic shroud of secrecy.

(2) An army general orders a platoon to decimate an entire village of civilians. The general's human right to freedom of expression is not in play. The crime is the war crime that is a predictable consequence of the general's order.

(3) A publisher prints or posts pornography, such as images of full nudity and explicit sexual acts with humans or other animals or whatever. Free expression is free expression. A rational addressable offence must be based on predictable, real and demonstrated harm to a specific individual (victim). Broad and non-specific community norms or morals cannot legitimately be used to silence explicit sexual expression, or else a new class of victimless and bloodless offence has been created, which makes the human right of the individual to freedom of expression meaningless. But allowing such an offence, using founded or unfounded arguments about harm to children from exposure and so forth, simply defines the said new offence as the relevant compartment for legal examination. As such, within that questionable exercise, freedom of expression is not in play and there is no benefit to posit "conflicting rights".[5]

(4) A pamphleteer publishes material that is said to attack an identifiable or self-identified group (gay bashing, Holocaust denial, etc.). Again the rational and compartmentalized legal analysis must be focussed on defining the new victimless and bloodless offence in which the undemonstrated direct or indirect "harm" is broadly distributed to a group. The indirect route typically involves the impugned expression "causing" the said group to be "subjected to hate" from unspecified individuals in the broad society. Once this creative and non-trivial legal task is achieved, the right of freedom of expression is not in play. The only legal decision is whether the said new offence, as defined by statute or common law, is proven to have been committed by the accused, actual and demonstrated harm or not. Lip service about freedom of expression or "conflicting rights" is of no legal consequence whatsoever.

(5) Likewise, the question with child pornography is not one of freedom of expression. Rather, it is a question of criminal harm to a child, and support for an industry of criminal harm to children. Regarding possession, there should be a significant and meaningful connection between "support for the industry" and the actual harm to the child victim for sentencing to be justified. This opens the door to the crime of consumer "support for the industry" for any industry that is demonstrated to cause significant harm to actual persons. There is no lack of such industry, both legal and illegal. Nonetheless, once any such "crime" is defined, no fundamental human right is in play. However, "consumer freedom" certainly acquires a new meaning.

"Competing rights" judicial whitewash

My point about compartmentalization is not peripheral. Pronouncements of the highest courts addressing human rights are consistently replete with the fallacy of "conflicting rights". For example[6]:

> *Resolving Competing Charter Rights*
>
> 33 The proper approach to the problem created by a conflict in the protected rights of individuals was outlined by the Chief Justice in *Dagenais, supra*. After stressing that *Charter* rights are of equal value, he continued as follows, at p. 877: When the protected rights of two individuals come into conflict, as can occur in the case of publication bans, *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.
>
> 34 I have gone to some length to stress that *Charter* rights are not absolute in the sense that they cannot be applied to their full extent regardless of the context. Application of *Charter* values must take into account other interests and in particular other *Charter* values which may conflict with their unrestricted and literal enforcement. This approach to *Charter* values is especially apt in this case in that the conflicting rights are protected under the same section of the *Charter*.

> 35 Applying the foregoing to the question posed at the commencement of this analysis, the appropriate choice of the three solutions is readily apparent. The first option would allow the right to silence to trump the right to full answer and defence. This would apply one right fully in complete disregard of another equal right. Similarly, the second option would allow the right to full answer and defence to trump the right to silence. This again is counter to the approach which was approved in *Dagenais, supra*, in that it applies one right in absolute terms to the detriment of another equal right. The third solution which strikes a balance between the two is the correct approach. It remains to determine how the two rights can be reconciled in order to give the fullest respect possible to the *Charter* values which underpin these rights.

Actually, the latter case is a straightforward one where the state upheld an infringement of a criminally accused person's human right to pre-trial silence. The "balancing of rights" approach used was merely a pretext to condone the state's violation of allowing pre-trial silence to serve as evidence of guilt or credibility. The dissenting opinion of Justice McLachlin did not engage in the dubious "balancing" (see para. 43 of the ruling).

On the other hand, when the court saw its "right to administer justice" (framed as the right of litigants to access justice) challenged by citizens' "right to protest" against the government's court itself, in the form of a picket line, then the machination of "balancing rights" somewhat melted away, and the same court upheld an injunction by expounding[7]:

> 71 … The *Charter* surely does not self-destruct in a dynamic of conflicting rights. The remarks of Salmon L.J. in *Morris v. Crown Office, supra*, at pp. 1086-87, although not made with reference to an entrenched constitutional right, are still apposite. The appellants had been found in contempt for having disrupted a trial to which they were not parties by staging a protest, shouting slogans and scattering pamphlets: … **Every member of the public has an inalienable right that our courts shall be left free to administer justice without obstruction or interference from whatever quarter it may come.** Take away that right and freedom of speech together with all the other freedoms would wither and die, for in the long run it is the courts of justice which are the last bastion of individual liberty. The appellants, rightly or wrongly, think that they have a grievance. They are undoubtedly entitled to protest about it, but certainly not in the fashion they have chosen. In an attempt, and a fairly successful attempt, to gain publicity for their cause, they have chosen to disrupt the business of the courts and have scornfully trampled on the rights which everyone has in the due administration of justice; and for this they have been very properly punished, so that it may be made plain to all that such conduct will not be tolerated--even by students. (Emphasis in the original.)

Thus, here the court abandoned "conflicting rights" and "discovered" one of those rare legal gems, an example of an "absolute right", which need not be balanced by some intricate accommodation. The particular effectively absolute right is not a human right. Rather it is a "right" for the state to operate absolutely without protest or disruption. The tangential true human right is the individual's right to a fair trial, which is the foundation of the open court principle that is directly in issue when the court, by whatever procedure, interferes with public participation in its process…

The judicial ballad of "rights" is thus truly intricate: in the practice implicating human rights of the individual, it is largely sophistry, intended to smooth over the state's violations by appealing to a false compromise alleged to be justified. Typically, the said "balance" opposes a true human right of an individual to an alleged "right" of the state

to violate the human right of the individual, while casting the state's "right" as directly arising from or derived from different human or accepted rights of other individuals.

In Canada, an established rights-delimiting exercise is the so-called *Dagenais/Mentuck* test for court-ordered publication bans, which is said to balance the conflicting rights of media publication (partly derived from the human right of freedom of expression, because without access to information expression is limited) and a fair and public trial, although the latter consideration is actually more about disruption of the state's trial and the little-understood and unpredictable phenomenon of public-information influence on the jury. The test states[8]:

> A publication ban should only be ordered when: (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

Here, we see the compartmentalization that I am proposing: in fact, if branch-(a) is satisfied, then the decision has entirely been made and branch-(b) is irrelevant. The court already considers the "proper administration of justice" to be an effectively absolute "right" of the state. The word "necessary" is a directive to judges not to overdo it. Once the judge has made the determination of what is necessary, then no other consideration of "rights" is relevant, whether they are true human rights or not.

Therefore, we see that in all the situations of "conflicting rights" reviewed above, in which the court contemplates limiting a true human right of the individual (thought, expression, freedom, life), the lip service about "balancing rights" is really just a cover for the state's decision to limit the said human right of the individual, either minimally or disproportionately. The jurisprudence about "balancing rights" is simply a guide for the trial judge, warning her that she is in circumstances where she is enforcing infringement of a human right, and therefore must be careful only to apply the court's discretion to the degree "necessary" or accepted by current societal "norms".

Defamation law Neanderthal nonsense

Another class of cases where the artifice of "conflicting rights" in free expression occurs is in the vast area of defamation law. Here the courts contemplate "balancing" to true human right of freedom of expression of the individual with a "right" of a plaintiff to "protect his or her reputation". This is problematic because "reputation" is opinions that non-specific persons at large (non-parties to the litigation) have about the plaintiff, and the psychology of opinion formation is unknown, complex, and highly variable.

Defamation law, unlike the tort of injurious falsehood, does not require actual harm to be proven. Damages from harm to reputation are presumed if the words, judged sufficiently offensive, were published. Millions of dollars can be awarded without any evidence for actual or special damage being presented. There is no cap on the so-called general damages that can be awarded. Malice, also, is presumed, in that intent to harm is irrelevant; as is falsity because the defendant has the onus to prove truth, or another common-law defence. Such is the common law tort of defamation.

Defamation law is the ultimate instrument of the rich and powerful to silence critics, and it has no logical justification, outside of injurious falsehood tort requirements, beyond the plaintiff not liking what has been expressed by the defendant. A full state-condoned and state-administered litigation can be brought to bear on the defendant, without the plaintiff having any onus to argue actual damage, intent to harm, or falsity, while the entire

litigation evolves in the nebulous realm of "reputation" that is unquantifiable and need not be quantified. There is not even a legal requirement that the "reputation" be demonstrated to have decreased as a causal consequence of the defendant's expression complained of, and the plaintiff has discretion to exclusively target any person(s) in the publication chain (author, editor, publisher, re-seller, broadcaster, etc., or anyone who repeats the words complained of). Any incident of repetition or republication, by anyone, of exactly the same words complained of, which could have been originally published decades ago, is a new legal defamation event liable under law.

This is the beast that the courts find can reasonably be opposed to the human right of freedom of expression, in a "balancing" exercise between "conflicting rights". It is no wonder that the common law of defamation in Canada is demonstrably noncompliant with international law, and with Canada's obligations pursuant to the ICCPR.[9]

With defamation law, my compartmentalization approach is applied straightforwardly. Once the offence of defamation is defined by the common law, no matter how contrived and problematic, the only question becomes "Has the offence been committed?". If yes, and the defendant has not proven a defence specified by the common law, then the defendant is liable. The human right of freedom of expression is simply not visited and is irrelevant. Lip service may have been paid to the said human right in elaborating the limited and specified allowed defences, and that is it.

So, if one is prepared to define a civil offense such as defamation, and to only adjust allowed defences, then one accepts that one can be punished, and repeatedly punished, for words, by those with the means to make lawsuits, while not being barred by physical force from exercising one's right to freedom of expression[10]:

> 2 But freedom of expression is not absolute. One limitation on free expression is the law of defamation, which protects a person's reputation from unjustified assault. **The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other's reputation.** However, if the defences available to a publisher are too narrowly defined, the result may be "libel chill", undermining freedom of expression and of the press.

> 3 Two conflicting values are at stake — on the one hand freedom of expression and on the other the protection of reputation. While freedom of expression is a fundamental freedom protected by s. 2(b) of the *Charter*, courts have long recognized that protection of reputation is also worthy of legal recognition. The challenge of courts has been to strike an appropriate balance between them in articulating the common law of defamation. In this case, we are asked to consider, once again, whether this balance requires further adjustment. (Emphasis added.)

Actually, the above (emphasized) statement of the Supreme Court of Canada is misleading because, in practice, following findings of liability for defamation judges routinely make permanent injunctions (permanent gag orders) against repetition, and against even unknown future expression, and violations of these injunctions have been punished by jail sentences (See Footnote No. 9).

State obligation to abolish defamation law

In contrast, given state obligations pursuant to the ICCPR, any reputational-harm limitations to freedom of expression must be codified in law, and follow "strict tests of necessity and proportionality" (See Footnote No. 9). Relevant questions become: When is it necessary to protect an individual from actual damages caused by loss of

"reputation"? (An employer-employee example is given above.) Is it ever necessary to protect a person from unspecified opinions at large, which do not demonstrably cause actual and quantifiable damages? Is it in the public interest to pursue such legal exercises?

I think we must recognize that the human right of freedom of expression is meaningless in a s tate that allows the common-law tort of defamation. The tort of injurious falsehood, by comparison, is workable, and logically accommodates compartmentalization, where the plaintiff has the onus to prove malice (intent to harm with expression known to be false), falsity, and actual or special damages, in order to establish the offence. However, the tort of defamation is a legal obscenity that thrives in the swamp of unspecified negative opinions about the plaintiff, presumed to be held by unspecified persons at large, who are non-parties to the litigation. The said unknown opinions are the "harm to the reputation", and they are presumed to have been "caused" by the impugned expression of the targeted defendant. Thus, the layers are distant, unknown, and impossible to causally connect.

Defamation law is a sham that should be abolished. It is inherited from less-democratic times in the history of civilization, and it supports a wasteful legal industry that is harmful to society.

Conclusion

There are no rights that legitimately conflict with and must be balanced against fundamental human rights. There is only a state that wishes to indulge itself or privileged sectors of society with limiting the human rights of individuals. The courts have the double practical task of preventing the state's disproportionate or intolerable violations of human rights, while also enforcing the thus measured violations of human rights. Rather than being transparent about the true nature of this task that is meant to stabilize and enforce the societal dominance hierarchy, the courts have developed the device of "balancing" rights alleged to be held by different members in society, thereby creating the illusion that the court is a mere arbitrator giving "access to justice", rather than an enforcer.

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1. Keith Windschuttle, "Enduring myth of 'noble savage' vs. a species at continuous war?", *The Washington Times*, 2003-08-16, in reviewing: Lawrence Keely, "*War Before Civilization*", 1996, Oxford University Press. [↩]
2. *International Covenant on Civil and Political Rights*, Article 19, paragraph 1; and General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, paragraphs 5, 9, and 10. [↩]
3. General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, paragraph 9 [↩]
4. Quote Investigator, "Your Liberty To Swing Your Fist Ends Just Where My Nose Begins", 2011-10-15, accessed on 2016-11-12 [↩]
5. For overviews of the contorted jurisprudence in the area of sexual freedom and obscenity see: Edward de Grazia, "*Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius*", 1992, Constable, London, ISBN 0 09 470950 5; Alan N. Young, "*Justice Defiled: Perverts, Potheads, Serial Killers & Lawyers*", 2003, Key Porter Books, ISBN 1 55263 225 3. [↩]
6. *R. v. Crawford*, [1995] 1 SCR 858, 1995 CanLII 138 (SCC), paragraphs 33 to 35. (SCC, Supreme Court of Canada). [↩]
7. *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 SCR 214, 1988 CanLII 3 (SCC), at paragraph 71 [↩]
8. *R. v. Mentuck*, [2001] 3 SCR 442, 2001 SCC 76 (CanLII), at paragraph 32 [↩]
9. Denis G. Rancourt, "Canadian defamation law is noncompliant with international law", report for the Ontario Civil Liberties Association, 2016-02-01. [↩]
10. *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61 (CanLII), paragraphs 2 and 3 [↩]

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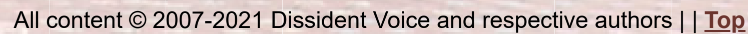

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