

# Civil Liberties Need Humanities

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**O**N DISPLAY AT THE MUSEUM OF MODERN ART in New York is a sculpture, a bright red quilted egg-shaped suit, that the South African artist Ralph Borland entitled “Suited for Subversion.” The caption indicates that this is a suit to be worn by

street protesters for protection against police batons, [drawing] attention to the risks demonstrators face in order to defend their convictions. A wireless video camera mounted over the head acts as a witness, recording police action. A speaker in the center of the chest amplifies and projects the wearer’s heartbeat. In a group action, when many people are wearing these suits, the increasing heartbeats become audible as tension and excitement mount, like a natural soundtrack arousing the crowd. At the same time, the heartbeat exposes the vulnerability of the individual and the fragility of the human body exploited as a shield—almost as a weapon—against police munitions.<sup>1</sup>

<sup>1</sup> The image of the suit can be seen at [www.moma.org/visit/calendar/exhibitions/1228](http://www.moma.org/visit/calendar/exhibitions/1228).

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I was fascinated by the suit as I was reviewing the events that occurred since my arrival at the Canadian Civil Liberties Association (CCLA): the mass arrests at the G20 in Toronto, the enactment of Bill 78 in Québec, and the increased surveillance of environmental and Native groups. The imaginary suit seemed to capture dramatically the contradictory emotions around the right to peacefully protest: the fragility of dissent in any society, but its power as a collective action, the ways in which police actions are feared, but defiantly recorded, as protestors seek to gage indicators of society's reaction—approval, disapproval, tolerance, or repression. As I reflected on the piece, I longed for it to be on display in Canada, for a history of resistance art to be popularized, for knowledge about how public protests have mattered for human progress, for discussions about whether or not the lack of protests may be a precursor to decreased democratic engagement. In short, I longed for arts and humanities to support the mandate of CCLA on the issue of the right and value of peaceful protest.

This is the theme of this paper: there are always debates on the role, usefulness, and relevance of humanities, and I want to argue here that humanities are useful to a society based on the rule of law. Indeed, I, like many others, think that democracies, as opposed to theocracies or dictatorships, require a certain kind of scholarship and teaching devoted to critical self-reflection. History, philosophy, language studies, film studies, art studies, and cultural studies contribute to developing the human capacity to challenge, or empower, decision-makers engaged in the pursuit of the common good. I am arguing that humanities are essential to democracy as it is meant to be lived, that is, committed to the rule of law and to civil liberties. Democracies require the full and meaningful exercise of civil liberties, and this paper discusses how such an exercise of civil liberties requires humanities scholarship.

My text is in two parts. First, I argue that civil liberties are an essential element of democracies and require a healthy humanistic culture to survive because law is not enough. Second, I develop the role of humanities in framing interactions with the three audiences that are part of civil liberties discussions—the powerless, the powerful, and the indifferent—and in that context suggest some avenues for research that is sorely needed.

## **1 Civil Liberties Need More than Law**

Canada has signed multiple international agreements that impose commitments, from the Convention on the Rights of the Child<sup>2</sup> to the Conven-

<sup>2</sup> The *Convention on the Rights of the Child*, available at [www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm).

tion against Torture,<sup>3</sup> yet for over ten years the young Omar Khadr was incarcerated and tortured at Guantanamo, an adult prison, and successive Canadian governments did not do anything about it.<sup>4</sup> We have signed the Convention on the Elimination of Racial Discrimination<sup>5</sup> and have strong constitutional commitment to equality,<sup>6</sup> yet disabled persons have trouble finding employment, immigrants face precarious treatment, and Aboriginal people continue to be overly incarcerated. Canada has signed the International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup> that proclaims the right to be free from arbitrary detention<sup>8</sup> and the right to

3 The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), available at [www2.ohchr.org/english/law/cat.htm](http://www2.ohchr.org/english/law/cat.htm).

4 Article 37 of the *Convention on the Rights of the Child* provides the following :

States Parties shall ensure that:

(a) *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*[...]

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. *In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so* and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and *to a prompt decision on any such action.*

For an analysis of the various aspects of the Omar Khadr case, see Janice Williamson, ed., *Omar Khadr: Oh Canada* (Montreal: McGill-Queen's UP, 2012).

5 The *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), available at [www2.ohchr.org/english/law/cerd.htm](http://www2.ohchr.org/english/law/cerd.htm).

6 Section 15 of the Canadian Charter of Rights and Freedoms guarantees both formal and substantive equality (*Andrews c. Law Society of British Columbia*, [1989] 1 R.C.S. 143).

7 The *International Covenant on Civil and Political Rights* can be found at [www2.ohchr.org/english/law/ccpr.htm](http://www2.ohchr.org/english/law/ccpr.htm).

8 Section 9 of the Canadian Charter of rights and freedoms protects against arbitrary arrest. Article 9 of the ICCPR does the same : "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or

peaceful protest,<sup>9</sup> yet over eleven hundred people were arrested during the G20 protests in Toronto in 2010<sup>10</sup> with less than forty charges proceeding, and a recent Québec statute prohibits protest around universities.<sup>11</sup>

Why? Why is there such a gap between what law promises and what it delivers? No doubt, the law is useful: Omar Khadr's lawyers are currently pursuing a third challenge in Canadian courts and the declaration of rights violation ultimately given by the SCC may have influenced the terms of the plea bargain entered by Khadr. Human Rights Commissions hear routinely cases and make orders to provide a work environment free from discrimination. Many cases challenge the treatment of immigrants, and the courts have attempted to alleviate the overrepresentation of Aboriginal people in Canadian jails.<sup>12</sup> Nevertheless, the gap between the promises of law and the realities of life remains.

The failure of legal pronouncements to translate themselves into social transformations is much discussed in legal circles. We invest in better access to justice, better legal information programs, better laws, and better enforcements. All are very useful and necessary. But we know that, ultimately, rights are not enough and that the rule of law demands cultural and institutional commitments that transcend the letter of the law. To ensure that the presumption of innocence is preserved, police officers must worry that they might make a mistake. To fully protect freedom of speech, authorities must resist the temptation to arrest, sue, incarcerate, or target people who disagree with them. To have a meaningful right to equality, all institutions must care, recognize, and act against racism, homophobia,

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detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

9 Section 2c) of the Canadian Charter of rights and freedoms guarantees a fundamental freedom, the right to peaceful assemble. Article 21 of the ICCPR is to the same effect: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

10 For a fuller description of the events surrounding the policing of the G20, see [www.ccla.org](http://www.ccla.org) which incorporates all the independent evaluation reports that were issued following the events.

11 See Québec Bill n°78: *An Act to enable students to receive instruction from the postsecondary institutions they attend*. [www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-78-39-2.html](http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-78-39-2.html)

12 *R.v. Gladue*, [1999] 1 R.C.S. 688; *R.v. Ipeelee*, [2012] R.C.S. 13.

cultural bias, and sexism. To fully realize the promises of our Charter or of international commitments, we must have a culture that supports and identifies with its legal commitments.

A civil society that does not demand that commitment to justice and equality be honoured is a civil society that robs itself of talents, of opportunities, and of moral courage. Furthermore, a society that continues to tolerate gaps between what the law says and what it does undermines its capacity to observe and preserve the rule of law, hence undermining the legitimacy of many of its institutions.

It is in this context that humanities matter to civil liberties. Humanities allow for the translation of legal rules into social consciousness. The strategy is not simply to restate differently what the law says but to reflect, explain, deconstruct, and reconstruct the way in which injustice is lived and is justified, and often relived and again justified. Humanities research is often needed to buttress civil liberties claims in order to obtain a more rational and more just engagement of all social actors.

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## II Civil Liberties Need Humanities

The role of humanities for the maintenance of a civil liberties culture must reflect the segregation of the audiences that are engaged by civil liberties issues and discussions: the powerless, the powerful, and the indifferent.

### a. The Powerless

Discrimination and inequality go to the root of one's personality and relationships. Discrimination is internalized, and a person stops seeing herself as a rights holder and stops believing in the possibility of improvement. This is the greatest loss for a democracy: to return to a state of government by the few, not by law, apartheid, or the denial of the franchise but by the withdrawal from the franchise. When people are disengaged because they have stopped believing in the possibility of equality, when they stop seeing themselves as entitled to the rights of citizenry, we all lose.

Therefore, the first audience of civil liberties advocates is the vulnerable, the undesirable, the people who, because of a lack of representation and isolation, do not want to fight. The message must be one of empowerment and empowerment to be heard. The role of the humanities is to help the disenfranchised to recognize the wrongs, to give them hope, courage, imagination, and knowledge. We read to learn about role models that stimulate our courage to act. We read to acquire the words to say and describe the suffering. We must invent phrases and metaphors that can sustain the fight and seek to call to action other people. We write to

imagine how injustice can be willed away. Literature is a great vehicle for conveying the pain and sorrows of internalized power structures. In *La Sagouine*, Antonine Maillet has her protagonist, an Acadian cleaning woman, explain that she has to confess to the Catholic priest not only her own sins but also those of her husband and children. The play reminds me of the ways in which religious studies help us to explore critically how people of faith may rationalize their position of weakness and find good in it, how religion can make suffering palatable and hence often unchallengeable. Many Catholic women were told to offer their suffering to God as a way to ensure their access to heaven. Many accepted the suffering as essential to their lives and were unable to seek or to ask for changes. Similarly, feminist studies recognize the social structuring that perpetuates the burdens of women, their sense of responsibility for everything, and their sense of guilt. It is impossible to speak about equality for all until one canvasses the depth of internalized oppression, and the critical traditions of humanities disciplines often serve that end extremely effectively.

There are many areas where a humanities approach could be helpful to transform the ways in which powerlessness affects civil liberties issues. For example, many who are victims of police violence hesitate to lay a complaint. There are many legal reasons for this: the system is cumbersome and provides little incentive for the victims to complain, and the victims themselves may have other significant problems to solve on their own (many may have criminal charges outstanding, for example). We may need more history and analysis about the power of laying a complaint against authority and of challenging police abuse of power. Is there a value in laying a complaint even when the chances of success are slim? What would humanities scholarship tell us about such gestures? One might well begin to answer that question with Michel Foucault's exploration of "fearless speech."

Stories may likewise help diffuse the silence surrounding prisoners' rights as an issue. We know that segregation is used often to deal with mental issues, and that Ashley Smith killed herself after guards were possibly told not to respond to her "fake" cries for help. The prison is a site of much suffering and of many power struggles. It should be a site of research for humanities as well: for students of ethics, therapeutic creativity, history, and the imaginative renderings of justice and resistance.

Finally, more and more speech is silenced through the threat of defamation or violation of trademarks (when humorists, political commentators, or artists use a commercial image to express themselves rather than as commissioned product placement). Trademarks and commercial images

are used in our speech and become vehicles for impromptu and considered expression; common knowledge is vitally important for the future of freedom of speech. As trademark owners attempt to get us to wear or use their trademarks for free publicity, can they complain when we wear or use the trademarks to criticize them or in contexts that no longer fit the required corporate image? This area demands much analysis and thinking.

The study of humanities helps with the difficult task of finding the words to describe injustice and the images and stories that illustrate convincingly what it means. It can create occasions for the powerless to rally around a particular plight and to get a sense of the possibilities of improvement. Humanities are also helpful in reaching out to the powerful.

## **b. The Powerful**

The protection of civil liberties must also engage the powerful: human rights advocates seek to create the “right” reflexes within the powerful—that is, the people who hold power. Civil liberties advocates want decision-makers to resist temptations to abuse their power, to accept and welcome responsibility and external examination because all power is accountable. The larger the power, the more accountable it should be. Police are accountable, CSIS is accountable, bank managers are accountable, seniors’ homes operators are accountable, teachers, employers, and managers are accountable. Teaching about accountability means convincing the power-holder that there is no point in attempting to avoid accountability: accountability and oversight should be welcomed, embraced, or cherished. This is a message that needs to be repeated, sometimes several times, to everyone who holds power. To demand accountability is not to undermine the work performed or the services rendered but to strengthen them. We learn from history the risks of failing to demand accountability. Stories, films, and songs, reflections and analysis of the ways in which unaccountable power undermines even the holders of power are essential to sustain a political or legal claim for civilian oversight of policing or for warrants.

There is no greater humorous summary of tunnel vision or profiling in policing than the statement by Louis Renault, the prefect of police, in *Casablanca*, “Round up the usual suspects” uttered as a way to cover Rick Blaine (Humphrey Bogart)’s guilt.

Humanities do not speak to the powerful only from a moral stance or through the fear of falling from grace. We need movies on how police officers are affected when they are asked to act in a way that they abhor. We need analysis of the toll that unconstitutional or illegal behaviour takes on the people who engage in it. We need in-depth reviews of the fight to

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bring past dictators to justice, or the truth and reconciliation projects, of the idea of amnesty for past abuses, or of the hypocrisy of imposing severe penalties on some (who have been defeated) and not on others who were on the victorious side. The complexities of the battle between impunity and accountability need to be explored through humanities scholarship.

Humanities scholarship can also help NGOs marshal arguments from history or philosophy to teach decision-makers about the responsibility to govern well, not govern easily but govern well. In a way, there is a real need for accessible knowledge to be harnessed to make the right type of argument at the right time. The questions abound in the current context: Why do we value privacy? What does it mean? Is there a social cost when privacy is lost? Is it a matter of personal choice or a societal one?

Why and when do we prohibit actions that mostly harm the user and no one else? Should addiction be considered a disease or a moral flaw? Medicine and health sciences may provide some answers, but additional reflections are needed. The more difficult issues of the right to die with dignity beg for interdisciplinary analysis made accessible to the public. We also should worry about how the social media impact our concepts of freedom of the press. Is the citizen journalist free from any constraint? What is fame or reputation in these contexts? Finally, governance concepts need to be further explored. What is the meaning of confidentiality, of trust? How does trust influence human relationships? Should we care that the police are impersonating spiritual advisors to obtain confessions from killers? Should we care that politically active groups are subject to surveillance? What if they are engaging into discussions about staging violent protests?

The process of convincing power-holders to engage with civil liberties requirements demands that their concerns be addressed and that they are empowered to think through the possible conflicts and contradictions to reconcile multiple interests. Humanities scholarship is crucial in this context. Imaginative, philosophical, and historical traditions can be appealed to and reinterpreted by scholars in ways that return the gaze of the dominant and are only too eager to challenge and educate those who exercise significant power over their fellow citizens or those of other countries.

### c. The Indifferent

The final audience for civil libertarian advocates to reach is the population of the indifferent. Great injustices come from indifference. Many argue that a humanist education can allow people to experience empathy and to be able to project themselves outside of their own interests into someone else's situation. This project is crucial to the maintenance of a

democratic society: it is not possible to respect human rights without a measure of compassion being extended to other people. To the extent that literature, history, art history, and film studies teach us about compassion and empathy, they are instruments of a democratic culture.

At times, the message about empathy sounds hollow, possibly because of caring fatigue, the feeling of being overwhelmed by demands for emotional engagement without any ability to respond effectively. We need to re-energize the concept of bearing witness, the idea that even if nothing changes, documenting someone else's injustice is a worthwhile endeavour. It is a good practice for a citizen to recognize when civil liberties have been violated. Indeed, with the enormous capacity for social media to share the observations of conscious civil society, the opportunity to improve compliance with constitutional norms through public exposure is increased.

Finally, when all else fails, when empathy or the ability to engage as a witness are not there, the indifferent may be motivated with the message that it could be they themselves who face injustice. The ability to instill a sense of frailty about human capacity is one that can be treasured. Being somewhat afraid that one could be the subject of brutality, of discrimination, or of bad treatment is necessary to ensure commitment to institutional capacity to monitor unconstitutional behaviour.

In that context, most civil libertarians refer often to the very sad statement attributed to Pastor Martin Niemöller about the inactivity of German civil society following the Nazi rise to power:

First they came for the communists, and I did not speak out—because I was not a communist; then they came for the socialists, and I did not speak out—because I was not a socialist; then they came for the trade unionists, and I did not speak out—because I was not a trade unionist; then they came for the Jews, and I did not speak out—because I was not a Jew; then they came for me—and there was no one left to speak out for me.

The message for the indifferent is that freedoms are precious and fragile. The indifference to civil liberties is its greatest threat. We aim to build a vibrant and strong culture of human rights and civil liberties, where the promises of law are realized, are lived and not only written. Humanities studies reinforce the culture of explanation, of taking responsibility, of reaching principled outcomes that are owned by the participants. A human rights and civil liberties culture does not come only from interventions in front of tribunals and judicial dicta. It is built on just and fair human interactions and intensive and disciplined self-reflections.

In conclusion, this paper has explored ways in which humanities scholarship is useful to civil liberties and to a democratic culture. The range of disciplines that come within the humanities category all sustain the ability of human rights advocates to work to reduce the gap between legal commitments and reality.

It may also be worth reflecting that the relationship of help between civil liberties, democracies, and humanities is a reciprocal one. Not only does humanities scholarship enhance the rule of law, but humanities also need civil liberties to thrive and to fulfil their role as nourishment for a democratic culture. Civil liberties need humanities because there is little that legal advocates or social movers can do without a sense of themselves. Humanities give them the words, the images, the arguments, but may also provide the courage and the stamina to continue. There may continue to be a gap between reality and the promises of law, between the actions of decision-makers and the legal powers that they are granted, but it is the responsibility of everyone in a society based on the rule of law to strive to acknowledge, recognize, and analyze this gap and work to reduce it. Arbitrariness and lawlessness do not help humanities either.

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