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The Crime and Punishment of Jean-Claude Parrot

Michael Mandel
Osgoode Hall Law School of York University

Harry J. Glasbeek
Osgoode Hall Law School of York University

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by Harry J. Glasbeek and Michael Mandel

The freedom to associate with whomever one chooses, and to say and think whatever one believes, are rights which Canadians assume they possess. The Canadian Bill of Rights specifically provides that these rights are fundamental to our society, and politicians never tire of telling us that we are among the freest of the world's nations. The recent *legal* repression of the Canadian Union of Postal Workers and the *legal* persecution of Jean-Claude Parrot for adhering to his belief were dramatic manifestations that we live a lie. As lawyers we feel it is our duty to show how the law has been used to attack a legitimate association, and to attempt to discredit an honourable man.

When the federal legislature passed the *Postal Services Continuation Act* on 17 October, 1978 which ordered the striking employees back to work, it acted within the scope of its legitimate power. Until that moment CUPW had also acted within the scope of its legitimate power. It had been given the power to strike should it fail to reach an agreement with the Post Office by the very same legislature which now ordered it not to strike.

In 1967, the federal legislature determined that federal public service employees should be given an opportunity to participate in collective bargaining in much the same way as citizens in the private sector do. This was a recognition that the right to bargain collectively about conditions of employment was highly valued in society. Employees bargaining as individuals do not have much clout. Inevitably they will seek to improve their economic position by forming trade unions. After long and often bitter struggles, Canadian legislatures set up sophisticated machinery to permit employees to withhold their labour by agreement, the only real economic lever employees have. Obviously, a collective decision was made that some economic disruption had to be tolerated because of the overriding need to provide citizens with a legal self-help remedy.

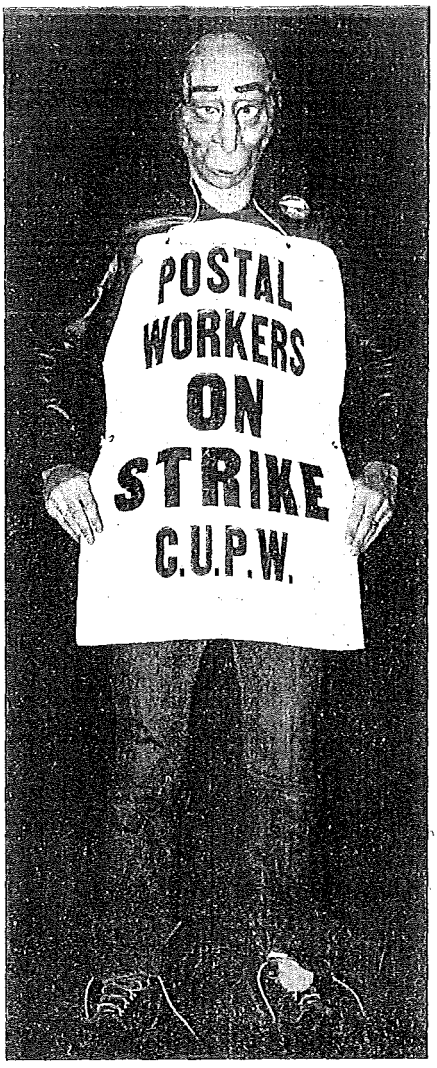
The federal legislature, no doubt recognizing the importance of this principle to all Canadian people, passed the *Public Service Staff Relations Act* which permits federal public servants to form trade unions which then have to choose whether they want to have their members' work conditions settled by (a) negotiations and, if this fails, by fiat of arbitrators, or (b) by bargaining in the same way as the private sector does, that is, by negotiations and, if this fails, by the use of the strike weapon. CUPW made a democratic decision to use the collective bargaining/strike route.

The bargaining which led up to the events of 1978 was long and protracted. When it became *lawfully* possible to do so, the union members met and by an overwhelming majority, in a freely-held vote, determined that, if no agreement was achieved by a specific date, they would exercise their lawfully obtained right to strike. The government responded by saying, *even before the due date*, that it would not tolerate any strike action and would pass legislation to prevent such action by CUPW members. We have now come to the first instance of the betrayal of the supposed freedoms of Canadian citizens. The legislature had granted the right to strike to people such as the members of CUPW. It now publicly indicated that it had only pretended to give that right. Can one imagine the outcry which would arise if the government passed legislation to the effect that all people who set up in business in the northern reaches of the country would, after 18 months of such enterprise, be entitled to 10 acres of land and, when entitled people claimed their land, the government of the day were to pass legislation making its initial promise null and void? This is exactly what happened in the Post Office dispute of 1978. The workers had organized themselves on the basis of well and properly established legislation. They had organized in one way rather than another, had elected a leadership of one kind rather than another to help them in their chosen method of bargaining, bargained for eighteen months on the basis that, if forced to, they could legitimately attempt to make their demand stick by withholding their labour, and were then told that none of this meant anything to the government of the day.

Of course, it is recognized that a democratic legislature, like all other lawmakers, must be entitled to take the drastic action of reversing its earlier position (even if this means defeating the legitimate expectations and freedoms of citizens), if an emergency threatening life and limb or the very fabric of society warrants such a reversal. It is in this sense that the government sought to justify its invocation of the *War Measures Act* in 1970. But whatever doubts there now exist about the true state of events surrounding that freedom-overriding legislation none can exist about the circumstances which surrounded the proposed postal strike. Harmful to some people? Yes. Inconvenient to many? Yes. But a danger to life and limb or to the very fabric of society? No.

Remember that the government took its stand before there was, in fact, a strike and can therefore only have been acting on the presumption that a catastrophe was in the offing. Furthermore a strike could arguably be crippling to the community if it was a prolonged one and if it took place in a truly essential sector of the economy. But there was no evidence on which the government could have made a judgment that the expected strike was likely to be a long one and, when the strike began, the government did not wait to see whether or not it would be of a duration which would present a danger to Canada's well-being; it instantly introduced the back-to-work legislation. In any event, it is difficult to argue that uninterrupted postal services are as important to our society as the alleged imperilling of society and security which called for the *War Measures Act*.

To further emphasize the lack of consideration the government gave to the free exercise of citizens' rights in this episode, note that Deputy-Minister Corkery, a witness for the prosecution at the Parrot



trial, testified that throughout the lengthy negotiation period the chief Post Office negotiators were advising the government that, even if the CUPW's leadership called for a strike, there was little chance of membership support for such a course of action. It was on the basis of this miscalculation that the government took its intransigent stand during negotiations and permitted them to drag on. It was in effect saying: "We are not giving in to your demands because we think you are not serious enough about them to go to the limit of your resources. Therefore, we will wait until you settle for less." This is a perfectly valid attitude to maintain in the collective bargaining process by an employer acting in good faith. But, if a strike then ensues, the employer must accept the cost of his decision. The government obviously never accepted the obligation of doing that. As soon as it became apparent that the game was to be played to a logical conclusion which it did not like, it changed the game. The spirit behind its bargaining posture — whatever the letter of the law says — was clearly bad faith.

This, then, is the tale of the first aspect of the serious undermining of social understanding revealed by the Post Office affair. The government, so keen on telling us about our freedoms, used its awesome legal power to undermine rights and privileges without warning, without need, without consultation, without appropriate public debate. This alone makes the episode noteworthy: power had been abused, although the use of the power was — by the letter of the law — permissible.

The second aspect of the episode is even more revealing than the first. It concerns the precise nature of the *Postal Services Continuation Act* (Bill C-8), the back-to-work law. The statute ordered the CUPW members back to work on the terms existing at the time the strike was called (and which were acknowledged to be no longer acceptable to *both* parties), and appointed a mediator-conciliator to settle the dispute. As the effect of this statute was to revive the expired collective agreement, the union members were now on strike during a collective agreement. This automatically put them in breach of that agreement and, therefore, the appropriate labour relations board could have been asked to get them back to work. In the normal course of events that labour relations board would have been asked to do so. Further, if the employer had wished to punish recalcitrant employees, penalties are provided for this in the main governing statute, the *Public Service Staff Relations Act*. But so intent was the government on punishing this union and these workers, so venomous did it feel towards people whose legal conduct it had rendered illegal by autocratic use of its power, that in its back-to-work legislation it increased the penalties from the relatively small fixed amounts of $100 to $300, to potentially unlimited ones.

The workers' obligation arising out of Bill C-8 was merely to go back to work. The leadership of CUPW had been given an additional burden. On previous occasions, the government in back-to-work legislation (for example, the *Air Traffic Control Services Continuation Act of 1977*, ending a strike which was permitted to continue for a much longer time before being halted!) had included a provision that, once the back-to-work law came into force, the leadership of the union involved was to give notice to the rank and file that any declaration, authorization and direction to go on strike which had been issued prior to the back-to-work legislation had now become invalid. These sections had escaped notice because they were either obeyed or, if not so obeyed, were disregarded by the government. But not this time.

When the unprecedented action of legislating strikers back to work before there was any sign of economic or other crisis was taken, CUPW held meetings all over the country to denounce the legislation. Workers did not obey it. Picket lines, supported by many non-postal workers, were thrown up about Post Office work sites. The government, by its abuse of power, had sown the seeds of civil disobedience. In this context, the true purpose of the provision enforcing an obligation on the union leadership — which in previous statutes had escaped notice — was made manifest. The legislature had obviously understood that, if it gave power to strike, it was giving an important right to workers which ought not to be removed at will; and that, if it did decide to remove it, it might have to cope with understandably angry people. Therefore it would be advisable to have those whom the workers trusted do the dirty work for the government. That is, it would be more than useful if the workers' leaders would tell the workers to return to work, to explain to workers that their much-cherished right to withhold their labour ought not, this time, to be insisted on. It is because Jean-Claude Parrot refused to do this that he was convicted and sentenced to a term of imprisonment. It is because Jean-Claude Parrot refused to tell the workers to obey an oppressive law — fairly so characterized even if legally passed — that the government's abuse of power was revealed to the workers.

That the government, having with great bravado rushed the legislation through Parliament, sought to hide the fact that it was in truth oppressing workers can be gleaned from several facts. One was that the government spokespersons

kept on insisting that, in reality, few of the workers were supporting the leadership even though the strike votes held showed the opposite. Similarly, the government insisted that only intimidation kept workers from returning to work after the back-to-work legislation had been passed. Most importantly, when the government decided to do something, it attacked the legality of the picket lines. That is, it did not proceed to prosecute unwilling workers as it had, by its special drafting of Bill C-8, threatened it would do. It is our view that it avoided doing so because, by carrying out its threat, it would have made it clear to Canadians that there had been an overreaching and a wrongful use of legal power. Thus, the government sought injunctions in *provincial* courts to have the pickets removed from Post Office sites on the basis that they offended *provincial* law. The government's anger at having been forced into this position was shown when *subsequently* it charged Jean-Claude Parrot for not having done its work for it, namely, to get the angry workers back on the job. The nature of the offence with which he was charged (and how he was charged) provides even more evidence of the extent to which the so-called freedoms of the Canadian people can be overridden by a wilful government.

Jean-Claude Parrot was actually charged with the offence of not saying anything. The enormity of this cannot be exaggerated. He was charged with not telling CUPW members that the previously legal strike was now invalid. To comprehend this, consider the following. A government declares war. It passes an Act of Parliament, ordering all workers to participate in war production. A union leader, who is also a conscientious objector, is charged with not having told his union members to participate in the war effort, although he has done nothing to prevent the workers from doing so. If the government prosecuted this union leader on the basis of a provision in the Act which imposed such an obligation on union leaders, would we not recognize that such a prosecution of a conscientious objector offended one of the most basic aspects of our society, the right to hold any belief whatsoever, provided that one does not actively undermine the very essence of the State itself? The right to free speech is always seriously circumscribed, even in relatively democratic societies. The right to hold private views, however, should never be under restraint. To force a person to speak against his/her beliefs is monstrous. In the midst of a war, the Supreme Court of the United States held that persons could not be forced to salute the flag and recite the Pledge of Allegiance if that offended their conscience. Yet that is precisely the kind of thing the government sought to make Jean-Claude Parrot do. He believed his union members ought to be allowed to strike. He possibly hoped that they would disobey the legislature. He probably believed he would be betraying the trust they had placed in him if *he* told them that they should regard all that had been done, and done legally, as invalid. For his refusal to act against his conscience, the government brought criminal charges against Jean-Claude Parrot. How would this government have reacted to St. Thomas More?

It is important to slow the flow of argument a little to make a particularly important point. When the initial use of labour power is illegal and it has been engendered or supported by the union's leaders, it makes sense to hold those leaders personally responsible to redress the situation. This is so because it will be the union as such rather than the workers who, as a matter of law, will be in breach of the existing collective agreement. But, where the breach of the agreement is caused by another party (this time the government) it becomes startling to hold the union leadership responsible to undo the mess created by that other party. If Jean-Claude Parrot had urged CUPW members not to obey the back-to-work law, and if the government had prosecuted him for such conduct we would have considered it malicious but we could not have made a real argument that the government was doing something which was legally and morally unacceptable. *But the government did not do this.* Maybe it had no evidence that Jean-Claude Parrot had so acted, or maybe it simply was not interested in having him punished for such conduct because the penalties under the back-to-work legislation for encouraging workers to stay out of work were merely monetary ones. It is this aspect of the government's legislation which draws attention to the offensive nature of the legislation and to the viciousness of its action under that legislation: to positively encourage a continuation of what was once a valid strike was made a lesser offence than to obey one's conscience and to refuse to positively help the government carry out its oppressive orders.

Jean-Claude Parrot, then, was charged with defying a law which asked him to speak against his conscience. He was not charged, as the press has misleadingly suggested to the public, with defying the law by encouraging CUPW to refuse to obey Bill C-8.

Thus we have before us the second demonstration of the fragility of our civil liberties in the hands of a government which knows how to use the letter of the law, and which does not care about the spirit which is meant to give life to that letter. Because distortion is required to abuse legal power in this way, the government's actions also had the effect of forcing the courts and the judicial process into unacceptable positions.

As we have seen, Bill C-8 provided for stiffer penalties for workers than the *Public Service Staff Relations Act* did, but even so these penalties were only monetary fines. The section which provided that union leaders were obliged to tell their membership to disregard previous authorization to strike had no sanction attached to it. The government nonetheless was able to lay a charge against Jean-Claude Parrot. It did this under section 115 of the *Criminal Code* which provides that anyone who has contravened a law of the Parliament of Canada which does not provide for a penalty for such a breach, will be guilty of an offence and liable to a jail term of up to two years. Bill C-8 was allegedly breached, and the relevant section of Bill C-8 did not provide a penalty. Three points can be made to show how a strict, literal interpretation of the law can — and in this case did — make a mockery of the justice system which we are taught to believe protects individuals from others and, in particular, from the State.

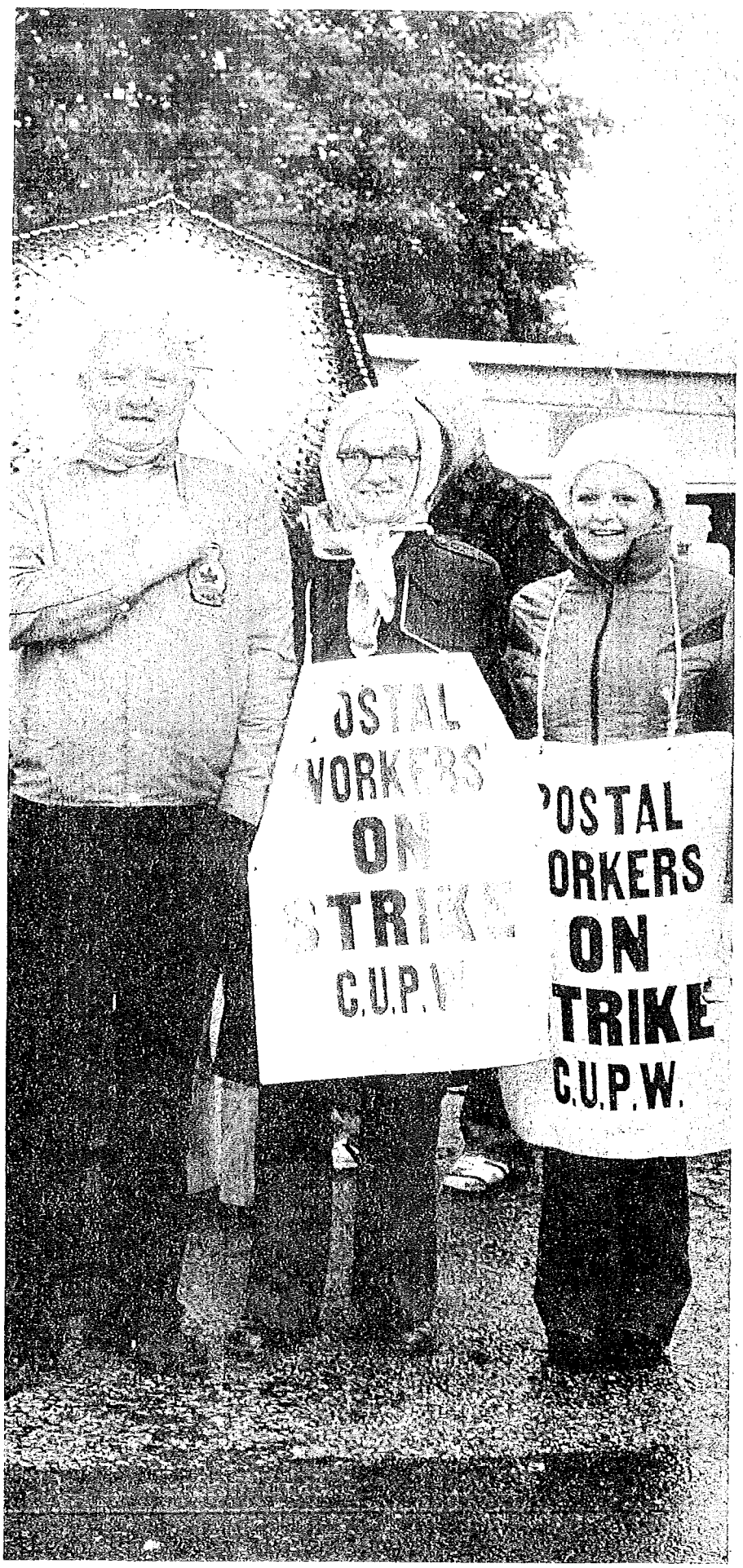
When Jean-Claude Parrot was asked to come to court to face the charge, he was granted bail, but only on fulfilling a condition. This condition, set by the presiding judge, was that he had to make a public statement that all previous declarations, authorizations and directions to go on strike were now invalid. That is, the State, through its independent judicial arm (no doubt acting with propriety and in good faith) forced, under the threat of imprisonment, a man to speak against his conscience. Note again how vicious this was: at that point there was not a person in the land, let alone a striking CUPW member, who did not know that the strike had been made illegal. Jean-Claude Parrot had to be humiliated to hide the government's excesses!

The trial itself continued this process. A presiding judge has power to control the courtroom so that the decorum lends itself to sober and wise public decision-making, but was it necessary to insist, as Chief Justice Evans did, that Jean-Claude Parrot remove a button from his lapel which said: "The struggle continues"? Was it likely that the button would lead to unruly behaviour, or was there in fact a fear that jurors might be led to think that there was more involved than a technical breach of the law? To support this supposition note that, when addressing the jury, the trial judge thought it necessary to remind it that Jean-Claude Parrot was on trial, not the government, and that if the jurors felt that the government had misbehaved, they could vote against it at the next election. All technically correct, but again revealing that the law had been used by the government in the most cynical of ways and that a citizen of Canada was to pay for this sin.

The third point to be made about the distorting of the judicial process arising from the initial misuse of legislative power by the government, relates to the fact that Jean-Claude Parrot was charged under section 115 of the *Criminal Code*. This again describes the very political and self-indulgent attitude parliamentarians of Canada have towards the legal system. We citizens assume the legal system is there to protect our rights. To the parliamentarians it is merely a political tool to achieve their ends, even if this means overriding the very rights claimed to be protected.

Recently section 115 of the *Criminal Code* was used in another context. When the premises of the Agence Presse Libre de Quebec were broken into by the RCMP, the RCMP also took some documents away. That is, they were potentially criminally responsible for breaking and entering and theft. A very senior member of the RCMP (and two other local police officers) involved in these events were permitted to plead guilty in May, 1977 to a charge under section 115 brought by the then Liberal government of Quebec. Instead of charging them with the very serious offences of breaking and entering and stealing (maximum fourteen years imprisonment) they were actually charged with not obtaining a warrant! The section of the *Criminal Code* which provides that a warrant must be obtained to enter citizens' premises has no penalty attached, and thus a section 115 offence has been committed because there had been a contravention of a law of Canada. After a few laudatory remarks from the presiding judge who had made this finding, the RCMP officer was given an absolute discharge. That is, no criminal conviction was registered at all! If he had been charged with breaking and entering and theft, no matter how light the penalty imposed would have been, an absolute discharge could not — *as a matter of law* — have been given. The different uses to which section 115 of the *Criminal Code* was put in these two cases is dramatically revealing. To underscore this, note that Jean-Claude Parrot, when charged under section 115, was sentenced to three months' imprisonment plus eighteen months' probation, plus a talking-to by the presiding judge about the evil nature of his behaviour. The lady holding the scales of justice is, indeed, blind.

Throughout this discussion we have assumed that everything done by the government and the courts was technically correct. But, in as much as this assumption is correct, it is only so because in this country we are, despite everything we say to the contrary, so contemptuous of fundamental rights that we have made a mockery of our Bill of Rights. We have done so deliberately, interpreting it as if it had no value, thereby reaching the legal position that the government can force



people to speak against their will without offending what, to a trusting citizen, must seem to be ringing and unambiguous statutory provisions which are often praised by our politicians when they compare our society favourably with nasty authoritarian regimes. The Bill of Rights provides:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

. . .

(b) the right of the individual to equality before the law and protection of the law;
(c) freedom of religion;
(d) freedom of speech;
(e) freedom of assembly and association; and
(f) freedom of the press.

Also Canada has ratified the International Covenant on Civil and Political Rights which came into force on 23 March 1976, together with its Optional Protocol. The Covenant undertakes to protect people by law against cruel, inhuman or degrading treatment. It recognizes freedom of thought, conscience and religion, freedom of opinion and expression; the right of peaceful assembly and of emigration; and freedom of association. Thus:

Article 18
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
Article 19
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

It is hard to see how our freedom-loving courts and legislatures could permit principles of this kind to be interpreted so narrowly as to uphold, as a valid exercise of power, legislation which forces people to speak against their conscience. Whatever lawyers may feel about such technical interpretation, should Canadians not be told that neither their Bill of Rights, nor the cherished values which legislatures say they respect, can in any way bind those legislatures? Can this kind of reading be defended on the basis that it is necessary to leave full power with a legislature which, if it exceeds its powers, can be held accountable by the voters? Certainly, the United States has not accepted this. There it has been authoritatively held that, only where a "clear and present danger" to the survival of the nation is to be avoided, may fundamental freedoms be abrogated. Thus, the United States Supreme Court has stated:

A system which secures the right to proselytize religious, political, and ideological issues must also guarantee the concomitant right to decline to foster such concepts. The right to speak and the right to refrain from speaking are complementary components of the broader concepts of "individual freedom of mind."
(Wooley *v.* Maynard 97 *S.Ct.* 1428 (1977)

And also:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not occur to us.
(Mr. Justice Jackson in West Virginia State Board of Education et al *v.* Barnette et. al. *319 U.S. 624 (1942).*

Thus, in the United States it seems that a replica of the Canadian Bill C-8 would have been held invalid in as much as it forced someone to speak and adhere to a view imposed by the State. In Canada, a land where similar values are supposedly aspired to with at least as much vehemence and vigour, Bill C-8 was not only accepted as valid but its legitimacy was not even seriously questioned.

The CUPW and Jean-Claude Parrot affair is probably not the most important event in our history. But it is instructive. It tells us that, to protect our freedoms, we are required to put our faith solely in the electoral process. Anything that is correctly implemented (in the sense of meeting our governing procedures) by our legislatures is likely to be treated as a legitimate exercise of power. The potential for abuse, as in the Jean-Claude Parrot case, is obvious. It is easy for politicians to justify the use of State force in such a society against the members of that society. At this time in Canadian history this is a frightening thought. The use of the law, as approved of in the Jean-Claude Parrot case, was not merely an injustice to one group and one person. It was a warning to all of us who believed that we had certain inviolate freedoms. □

Harry Glasbeek and Michael Mandel teach at Osgoode Hall Law School, York University.

LOOKING BACKWARDS

Norman Nathan

i can only marvel at the author;
no two in the audience receive
identical programs, they sit
at different angles from the stage;
there's no agreement when to applaud
and during intermissions they talk
as if none were seeing the same play;
even the stage seems unreal
with all heroes in the orchestra
surrounded by villains,
each alone knowing his part
which others misinterpret

how the participants can sleep,
eat, put on a play together
without murdering in the first scene
is a mystery, as life cries out
at the quick climax of being born
followed only by a long falling
action toward death

it's worth a thought
that (just as eyes see upside down)
deity views our doings in reverse
with graves foreshadowing there will be unbirth
when two share the same blood and breath and food
in the warmth of the womb
or join like sperm and egg
for united good