



**IN DEFENSE OF
HATE PROPAGANDA
(SORT OF)**

PIERRE LEMIEUX



Over the last couple of decades, laws against hate literature have been adopted in most democratic countries. Consider the case of Canada. Introduced in 1979, section 319(2) of the Criminal Code states that “every one who, by communicating statements, other than in a private conversation, willfully promotes hatred against any identifiable group is guilty” of a felony and liable to imprisonment for two years. An “identifiable group” is defined as “any section of the public distinguished by colour, race, religion or ethnic origin”. A judge can issue a warrant for the seizure of hate propaganda material, the owner of which is then summoned before the court to “show cause why the matter seized should not be forfeited by Her Majesty” (s. 320).

Such laws were ostentatiously directed against deniers of the Holocaust, some of whom have been convicted and jailed in Canada. In France, a Paris court ordered the publisher of Hitler’s translated *Mein Kampf* to preface the book by a “Notice to readers” that runs through eight pages. I personally happen to believe that the Holocaust occurred, not because I did any extensive research on this, but for one main reason: while anybody holding the contrary view was free to express it until some years ago, the thesis did not seem to hold ground in the marketplace of ideas. I do reserve my future right to read what I want, though, and I fear that hate laws are dangerously symptomatic of the mentality of our times.

THE WESTERN TRADITION

The right to defend unpopular, offensive, and even false opinions has been very much part of the Western tradition — a tradition that tended towards increasing liberty until the trend was reversed in this century. Of course, the Nazi barbarians themselves were not exactly great defenders of freedom of speech: for instance, article 23 of the 1920 program of the Nazi party called for a “legal assault against conscious political lies”.¹ The censors always produce seemingly virtuous reasons for limiting freedom of expression. Only the contents of the reasons change, in order to fit the superstitions of the times.

The standard arguments for free speech are well known, or are they? We cannot know the truth value of an hypothesis if its opponents are forbidden to challenge it, or if its proponents are

not allowed to defend it. Most of an individual’s beliefs, including his scientific beliefs, are justified by his perception that they have emerged unscathed from the free confrontation of ideas and the unrestrained search for facts. And we would be hard pressed to find a single idea now generally accepted that was not offensive for the majority at some time in history. Before Copernicus and Galileo Galilei, all scientific evidence (including the beautiful Ptolemaic cosmology) was to the effect that the sun revolved around the earth. In the 16th and 17th centuries, learned judges believed that witchcraft was dangerous to society.

In *On Liberty*, John Stuart Mill wrote:

Strange it is that men should admit to the validity of the arguments for free discussion, but object to their being ‘pushed to an extreme’; not seeing that unless the reasons are good for an extreme case, they are not good for any case. Strange that they should imagine that they are not assuming infallibility when they acknowledge that there should be free discussion on all subjects which can possibly be doubtful, but think that some particular principle or doctrine should be forbidden to be questioned because it is so certain, that is, because they are certain that it is certain. To call any proposition certain, while there is any one who would deny its certainty if permitted, is to assume that we ourselves, and those who agree with us, are the judges of certainty, and judges without hearing the other side.²

Around the Great Hall of Hart House at the University of Toronto, are inscribed the famous words of John Milton:



... when a City shall be as it were besieged and blocked about, her navigable river infested, inroads and incursions round, defiance and battle oft rumoured to be marching up even to her walls and suburb trenches, that then the people, or the greater part, more than at other times, wholly taken up with the study of highest and most important matters to be reformed, should be disputing, reasoning, reading, inventing, discoursing, even to a rarity and admiration, things not before discoursed or written of ...³

EXTENSIBLE TYRANNY

One can imagine, or actually observe, a host of cases where expressions of opinion are, or can be considered as, hate propaganda. Libraries and bookstores are full of aesthetic statements by famous authors that run afoul of hate laws, from Kipling’s contempt for the natives, to Baudelaire’s poems describing the Belgians as “animals”, “mollusks”, “civilized monkeys”, and a generally disgusting group of people.⁴ Libraries and bookstores are also filled with political writings attacking “identifiable groups”, especially religious groups. Would Nietzsche, Marx, or the Surrealists pass the test of hate literature? What about Franz Fanon, a Marxist prophet of decolonization, who preached violence against the “race” of the colonizers in North Africa?⁵ What about the black radicals who now argue for reverse apartheid against the Whites, or the feminists who teach hatred of the male?

The main reason why such literature is not seized in Canada appears to be the absence, in these cases, of political constituencies capable of manipulating the government, and of bullying the media and the courts. Indeed, the double standard is scandalous. On the one hand, the state persecutes misguided individuals who offend politically correct articles of faith. On the other hand, the same state not only tolerates (as it should) writings that have led to more deaths (like Marxism), or are potentially more prone to lead to “a breach of peace” (like religious fundamentalism), than any others we can think of, but it has often encouraged politically correct totalitarian philosophies through cultural subsidies and the universities it finances.

If history is any guide, it would be naïve to assume that hate legislation will only be enforced against unpopular lunatics. A recent Supreme Court dissenting opinion against a hate propaganda conviction noted that although “although [section 319(2)]


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FOR LIFE, LIBERTY AND PROPERTY

is relatively recent, [it] has provoked many questionable actions on the part of the authorities.” Canadians have been hearing more and more calls to use hate laws in linguistic or ethnic politics — for instance, against Mordecai Richler’s anti-Quebecer statements. The range of political opinions that can be construed as inciting hatred against a group identifiable in terms of color, race, religion or ethnicity, is extensible. We can easily foresee that, like so many other decrees of the Prince (e.g., RICO in the U.S., or customs regulations in Canada), this one will soon be extended to cover “crimes” its original designers never dreamt of.

How can this possibly happen in a country, like Canada, with a “Charter of rights and freedoms”? One answer is that “parchment barriers” are incapable of stopping the tyrants once public opinion does not believe in individual liberty. In the Canadian case, the answer is probably simpler, for the so-called Canadian charter was adopted in 1981 and was not really meant to be a barrier. Start with section 2, which guarantees “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.” Then move back to section 1: “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in its subject only to such reasonable limits prescribed by laws as can be demonstrably justified in a free and democratic society.”

The Supreme Court of Canada agrees that hate laws constitute an infringement of free speech, but argues that they are justifiable in a free and democratic society. The failure to realize that censorship of what the state, the majority or the courts deem to be hate literature is incompatible with a free society comes from the error of equating “democratic” and “free”, i.e., from what Montesquieu called the confusion between the liberty of the people and the power of the people. One can find examples of probably every conceivable infringement of individual liberty in some democratic society, past or present. We could get a real Tocquevillian, if not Orwellian, society by combining the less liberal laws of, say, Canada, England, France, the United States, Sweden, and Switzerland. A democratic society where the law forbids the expression of certain opinions cannot be considered free.

THE INFANTILE CITIZEN

Hate laws, we are told, are meant to protect social peace. But isn’t it historically demonstrated that freedom of speech, freedom of religion, and individual liberty in general, are the most efficient social mechanism ever discovered to promote tolerance and peace? Censorship on the other hand is one of the surest ways to victimization, political confrontation, intolerance, and violence. It is certainly better that one expresses his resentment, and even his hate, by uttering words, than by resorting to violence. In the debilitating mentality of our *fin de siècle*, wrath should be absent of expression, violent words should be outlawed, and only the state has a right to be violent. While the ideal seems to be a Swedish-like society where everybody is nice and talks quiet, the reality will be a society of infantilized citizens hiding the anger that they cannot express, breaking their toys and resorting to violence when the cup overflows.

Another argument for hate laws is that naïve citizens may fall prey to false information or propaganda, and that the government must protect them against their own irrationality. This is a very disturbing argument, which reminds us of what Tocqueville saw in the future for democratic societies: the government, he said, will minutely regulate social life “till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd.”⁶ Hate laws are but one illustration of this drift towards considering citizens as infants and wards of the state.

Once proud individuals now spend a significant amount of their time filling in government forms and reports, and requesting various authorizations and licenses. Hunting permits, driver’s licenses, building permits, work permits, not to mention gun

licences, are getting more difficult and more costly to get. Identity documents, completely foreign to the Canadian tradition, have entered through the back door, from the plastic social insurance card to the actual trend towards ID photographs on health insurance cards and driver’s licenses. The safety net has mutated into a gladiator’s net.

In its infinite wisdom, the government tells citizens what they should eat, drink or smoke. Government propaganda teaches them how to talk and think politically correct. No wonder that citizens sheepishly turn to government whenever they have a problem. As Tocqueville had already foreseen in vivid terms, the situation is paradoxical: the government legislates back to childhood the very citizens who elect them. How do citizens who are too incompetent to run their own personal lives or read dangerous literature, suddenly become enlightened enough, once every four years, to elect their masters? And how do the infant-citizens who get political or bureaucratic jobs suddenly become rational and caring creatures? The more the state infantilizes the citizens, the more infantile they will appear to be. This vicious circle has to be broken before we find that Tocqueville’s predictions were totally right.

Giving public policy goals — like anti-racism — precedence over individual rights amount to admit that individuals have no rights but the ones that are congruent with the government’s, or the majority’s, agenda. As the famous French legal theorist Georges Ripert said, we should never prefer unjust laws to disorder, because injustice is a disorder in itself.⁷ But even if we agreed with the paramount importance of the government’s agenda, it is an illusion to believe that social order can be achieved by restricting fundamental individual liberties. Such restrictions will only produce more infantilization of citizens, more senseless frustrations, and ultimately more violent conflicts. Individual liberty is more important than social peace if only because negating the former is the best way to social strife. Like all the regulations that infantilize citizens, hate laws are much more dangerous for individual dignity and social order than any questionable use of freedom of speech.

Many so-called hate propagandists are stupid or dangerous people, with whose political ideas I would not want to associate. But then, so what? Assume for a moment that they could prove that Jews or blacks or brown-eyed whites have inherited a couple of crooked genes. (Worst-case scenario: the crooked genes are transmitted by lesbian mothers.) For libertarians, such a statistical discovery would not change an iota to individual rights. No question, though, that it would raise insurmountable problems for collectivists who define individuals in terms of the groups they belong to, and who yearn for an equal playing field for groups. They are the ones who would wonder whether the crooked-gene elements should be issued driver’s or gun licences, and whether it’s worth spending public moneys on their health care. The collectivists’ whole conception of the universe would crumble with the justification for what they call individual rights. On our side, we would continue to treat individuals as formally equal.

NOTES

1. Maurice Torrelli and Renie Baudouin, *Les droits de l’homme et les libertés publiques par les textes* (Montréal: Presses de l’Université du Québec, 1972), p. 63. My translation from the French version.
2. John Stuart Mill, *On Liberty* [1854] (P. F. Collier & Sons, 1909).
3. John Milton, *A Speech for the Liberty of Unlicensed Printing, to the Parliament of England* [1644].
4. Charles Baudelaire, *Les Fleurs du Mal* [1857] (Paris: Gallimard, 1961).
5. Franz Fanon, *Les damnés de la terre* (Paris: Maspero, 1961).
6. Alexis de Tocqueville, *De la démocratie en Amérique*, Book I [1835] (Paris: Laffont, 1986), Chapter 7.
7. “Malgré le mot célèbre du philosophe on ne saurait préférer une injustice à un désordre, car l’injustice est aussi un désordre, désordre intellectuel et moral, souvent pire que l’autre.” Georges Ripert, *Le Déclin du Droit. Études sur la législation contemporaine* (Paris: Librairie Générale de Droit et de Jurisprudence, 1949), p. VI.