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Book Review: The Report of the Special Committee on Hate Propaganda in Canada

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THE REPORT OF THE SPECIAL COMMITTEE ON HATE PROPAGANDA IN CANADA. Queen's Printer and Controller of Stationery, Ottawa: 1966. pp. 327 ($2.50).

In January 1965, after a good deal of public controversy, the Minister of Justice appointed a special committee to study and report upon the problems related to the dissemination of varities of "hate propaganda". Professor Maxwell Cohen, dean of the faculty of law, McGill University, became the chairman of the committee, members of which were Dr. J. A. Corry, Principal of Queen's University; L'Abbé Gerard Dion of Laval University; Mr. Saul Hayes, Q.C., of the Canadian Jewish Congress; Professor Mark R. MacGuigan of the University of Toronto; Mr. Shane McKay, Editor of the Winnipeg Free Press; and Professor Pierre-Elliott Trudeau of the University of Montreal.

Ten months later they submitted the Report which is here under review, and early in 1966 the Report was printed and made public. There can be little question that the 327-page document represents a milestone among the inquiries into a complex legal problem, which has been under consideration in many countries, and especially in the United Kingdom. The Report's breadth of approach, its scholarly apparatus and its amassment of relevant documentary material will render it a classic reference work—and this regardless of the kind of law that will or will not be based on its recommendations. For here perhaps more than elsewhere, the law meets not merely altered economic, political and social conditions, but it confronts that subtle and yet decisive element in the regulations of social relationship, the psychology of interpersonal behaviour and its effect on the common weal.

"Hate" says the report, "is as old as man and doubtless as durable. This report explores what it is that a community can do to lessen some of man's intolerance and to proscribe its gross exploitation."

The authors of the Report freely acknowledge that not every use of human communication could or should be controlled by law. Yet every society must from time to time draw certain lines where "the intolerable and the impermissible coincide" and, in the opinion of the public as well as the government, the time to do so had come. The committee tackled the difficult job of defining such limits in an area both sensitive and resistent to ordinary definitions: the power of human speech. In doing so the committee has produced a substantial and, what is unusual under such circumstances, a readable document.

I

Before proceeding to an evaluation of its contents it might be well to survey briefly the areas covered by the report. The document starts with a brief analysis of the scope of the freedom of speech,

then turns to an examination of hate propaganda in Canada, past and present, and surveys the recent increase in hate materials in various provinces. In a brief but worthwhile chapter the document deals with socio-psychological effects of hate propaganda and the role of law and education as controls. Then in its most important section the Commission turns to a discussion of the ability or inability of our present laws to deal with the present exacerbated conditions of inter-group tension, and it concludes with a series of recommendations. Principally they are the following:

The advocacy or promotion of genocide should be an indictable offence and liable to imprisonment for five years.

Incitement to hatred or contempt against identifiable groups, where such incitement is likely to lead to a breach of peace, should be either an indictable offence (liable to imprisonment for two years) or in some cases an offence punishable by summary conviction.

Those who wilfully communicate statements which promote hatred or contempt against any identifiable groups, are liable in a like manner.

No offence will have occurred if proof can be brought that the statements communicated were not only true but that they were relevant to a subject of public interest and that the discussion was in fact for the public benefit, and that the one who makes the communication had reasonable grounds to believe it to be true. The recommendations make it clear that in such a case the burden of proof lies on the accused.

What is an identifiable group? Says the report in its list of definitions: "Any section of the public distinguished by religion, colour, race, language, ethnic or national origin."

The Report then turns to six appendices of which the first three are the most important: a discussion of seditious libel and related offenses in England, the United States, and Canada; a survey dealing with socio-psychological analyses of hate propaganda (including a highly relevant examination of the effects of hate propaganda upon members of the target group); and a survey of hate propaganda in Canada. There is also a discussion of private members' bills introduced at previous times, and a survey of hate legislation in other countries, including the United Nations. It was unfortunate that the British Race-Relations Bill was presented too late; its inclusion in the Cohen report would have made a valuable contribution.

The Report has of course become more than an exercise in legal scholarship and philosophy, since Bill S-49, which on November 7th, 1966, was introduced into the Senate of Canada by the Honourable

Senator Connolly, P.C., was based upon the Committee's recommendations. This Bill, representing the intent of the Canadian government, in substance reproduces the recommendations of the Cohen report, albeit with a few changes, one of which we shall have occasion to comment upon. All discussions of the Cohen report must therefore be coloured by the introduction of Bill S-49. However, this is as the framers of the report would no doubt wish it, since it was their hope that suitable legislation might ensue from their recommendations.

II

While on the whole the report has received widespread praise, it has been attacked, predictably, on the issue of free speech. Usually the argument has been phrased in philosophic language when it should have been couched in practical terms. The cry is raised that the committee's report endangers the exercise of free speech, when it is precisely with this issue that the Report deals very carefully and when it is precisely in order to guard free speech that the Report was framed in its present form. "Freedom of expression is a main cornerstone of our way of life," says the Committee and it adds that in any discussion of placing limits upon this freedom "the case for restraint must be shown to be very strong indeed."

Freedom of speech never was unlimited, is not unlimited now, nor will it ever be. There is indeed very little support for individual freedom as an absolute right, to be protected at all times, at all costs, and under all circumstances. The most that can be said is that there is a strong presumption in favour of freedom of expression, stronger than in any other of the important civil liberties; to say therefore (as it has been said) that the Committee rode roughshod over precious Canadian liberties is an argument which cannot be taken seriously.

What can be taken seriously, however, is the question whether the restraints suggested by the Committee are, or are not, already covered by present laws. The Committee thinks they are not, and it proceeded to prove its point and does so cogently.

III

The reason for a gap between existing laws and present public needs is not hard to find, for the political and social circumstances which governed our past legal practices have been profoundly altered since 1933. The widespread introduction of laws forbidding discrimination in employment practices and the limitation of "freedoms" with regard to the incitement to group hatred which have been imposed in a score of states around the world is vivid testimony to this change in human society. Canada's creation of the Committee and the subsequent introduction of Bill S-49 are merely the belated recognition of an existing sociological and psychological condition. Here as elsewhere, changed conditions necessitate a change of law.

Yesterday freedom of speech was deemed to be one of the primary safeguards of the individual vis-a-vis the incursions of a

restrictive and potentially repressive government. In the tradition of Rousseau, Montesquieu and Paine it was a primary function of the law to protect the individual citizen from authority. But during the past generation we have experienced a profound alteration in our social structure. The "individual citizen" still exists in theory and in law. But because of the vast growth of urban centres with their concomitant anonymity and debasement of individual significance, men have found it increasingly difficult to identify themselves either as individuals or as members of a total society and have looked for intermediary groups from which they could derive their identity. In a sense we have returned to the kind of stratification operative in medieval days, when guilds, for instance, far more than modern unions, were that medium through which the individual both made his livelihood and gained his sense of public identity. Under vastly changed circumstances this is the kind of internal social regrouping which we experience today. Consequently, what happens to the group with which a person identifies himself most intimately is of more than passing significance to him. If the group is threatened, his very identity stands in doubt; if the group is secure, his personal freedom is more secure.

This new stratification ante-dated the Nazi deviation of 1933-45, but it was dramatized in those years as never before, and the attending tragedy left its marks upon the post-Nazi generation to which we still belong. The introduction of group libel laws and hate propaganda regulations in so many countries during the last ten years shows vividly the increasing appreciation of the changing relationships between individuals, groups, and total society or government. It is against this background that the issue of free speech must be understood. To use 18th and 19th century terms in reference, will simply not do.

IV

Every one is aware that the special experience of the Jew gave rise to the Report and to Bill S-49. Jews are of course not the only ones who have been persecuted or severely discriminated against or against whom genocide has been practised. Armenians and Gypsies are cases in point, but it is the persistence of violent anti-Semitism with its spectre of neo-Nazism which has made the matter urgent upon so many nations and now also upon Canada.

The bitter and bloody realities of anti-Semitism are general knowledge, and to reduce their effects was evidently an important objective for the Committee. Its recommendations included, as we noted above, the word *religion* in its definition of distinguishing aspects by which a group could be identified (others being colour, race, language, ethnic, or national origin). Bill S-49 omits the mention of language and religion. About the former there may be some question in view of current intra-Canadian controversy. But the omission of religion as a mark of group identification strikes me as an overprotective caution. The Cohen report was clear and unambiguous

in this respect. By implication it stated that amongst many groups, and at present chiefly amongst them, the Jews had to be protected, so that they might enjoy the full security and freedom of Canadian citizenship. The government, by omitting the word religion, weakens the intent of the report and appears to hide from public view what need not and should not be hidden. The Jews *are* concerned—even if they are not mentioned in the Report—why then raise any doubts about it? It seems to me that in this respect the report is superior to Bill S-49.

There have been questions concerning the so-called escape clauses. I see no basic fault in them because ultimately they provide that needed protection which no one would eschew. It must also be clear that the operation of these clauses is limited. For if a Court would ever hold that group libel is "in the public interest" or "for the public benefit"—then Canada's cultural setting would have changed to such a degree that the present foundations for a hate law would have crumbled and consequently the law would be inoperative in any case. This consideration applies also to the question whether in the process of proving his allegations as "true" the accused could use the court-room procedure as a sounding-board for hatred. I think it is essential that we trust the Court to provide proper safeguards in this regard, and past procedure gives us no reason to doubt that this will be done. Also, the application of the British Law in so far as we have had occasion to observe it, should lay such fears to rest.

At this late date, one need hardly expend ink and effort to argue the educative effect of legislation. Long ago, Dr. G. W. Allport stated that the establishment of law creates a public conscience, a standard for expected behaviour that helps to check overt prejudice. At the other end of the scale the law aids the member of the minority group who receives a much needed assurance that the liberties under which he now lives are sufficiently secure against all incursions, and that whatever else may happen, genocide will never again be a problem for him and his group.

For when all is said and done, genocide is unlike any other offence. Its magnitude exceeds description and analysis, as the Nuremberg trials and the judgment of Eichmann have amply demonstrated. The United Nations has seen fit to deal especially with genocide, and so now will Canada. The report deserves our cordial endorsement when it stresses the general desirablity of preventative and punitive measures, and when it aims to create a social climate that is uncongenial to hate propaganda.

The Report of the Special Committee on Hate Propaganda in Canada—the title might well have added a reference to genocide also —will be a landmark in Canadian law and, it is hoped, will provide an incentive for other nations to deal with this urgent subject.

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