

# CAN HATE LAWS

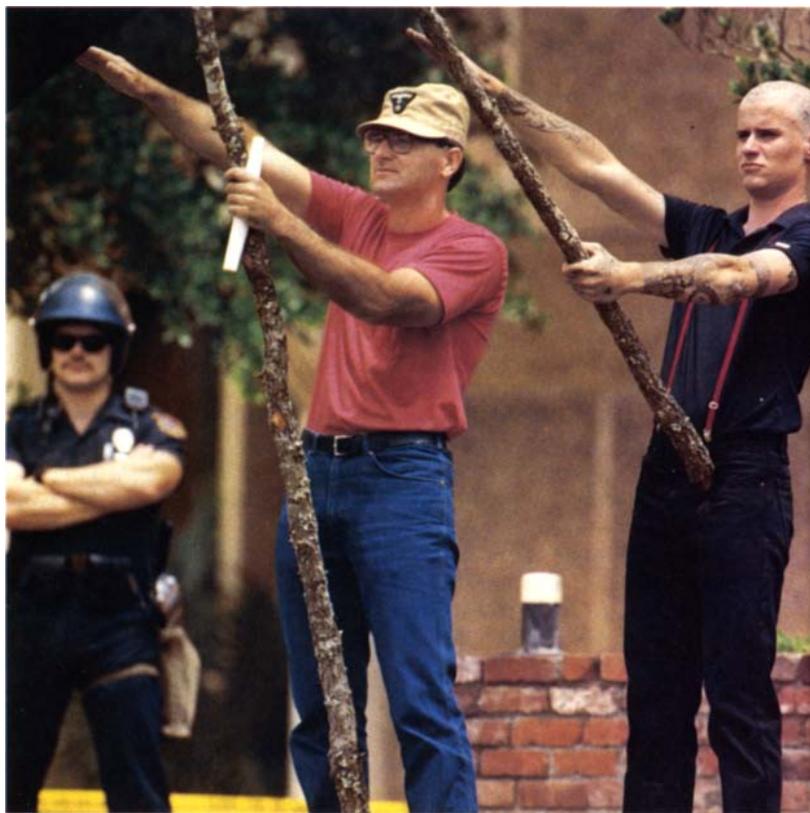
**STEFAN BRAUN**

**C**anada has criminalized hate propaganda and false news. Two recent cases may hold valuable lessons for the United States, where there have been recent calls to uphold criminal group libel laws that supposedly protect ethnic groups like Jews.

In the first of the Canadian cases, James Keegstra, a high-school teacher from a little town in Alberta, was convicted of violating the hate propaganda section of the criminal code by teaching that the Holocaust was a myth. In 1990, the Canadian Supreme Court upheld the Hate Propaganda Law but sent Keegstra back for retrial because of other errors committed at his first trial. His reconviction and original two-year sentence is currently under appeal.

More recently, Ernst Zundel, another hater, was prosecuted under the false news section of the criminal code for espousing similar views of the Holocaust. In 1992 the Supreme Court found the law unconstitutional, drawing a distinction between the broad language of the false news section and the narrower hate propaganda section.

On the courthouse steps, immediately following his victory, Zundel repeated the claims for which he had just been acquitted. For this, he is about to be recharged under the hate propaganda section used



## STOP HATE

to convict Keegstra. Trials, retrials, appeals and re-appeals continue.

These prosecutions may satisfy popular pressures, but they are proving to be self-defeating. They have certainly not put hatemongers out of business. Incidents of intolerance in Canada have risen with an alarming vengeance since these trials. Canada's failure in this regard, coming as it does from a

country noted for its multiculturalism and social tolerance, should serve as a warning to the growing number of Americans who have come to see censorship as an appropriate tool to control racist and sexist hatemongering.

Despite unrelenting enforcement of its hate propaganda laws, Canada's growing social disharmony lends support to those who



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nadians might be converted to think, speak and act wrongly, the government ensures that all Canadians are legally denied the responsibility to choose right over wrong, truth over falsehood. How can people be trusted to tell the difference between David Duke and George Bush if they cannot be trusted to tell the difference between Nazis and their victims? How can self-governing people, shielded from exposure even to clear falsehoods, learn to make responsible social and political choices for themselves? Social responsibility must be risked through free speech if it is to be learned.

As the Canadian experience reflects, falsehood is important to fully appreciate truth. With each passing generation, the lessons of the Holocaust grow more distant. Before the Zundels and the Keegstras came "out of the closet," growing numbers of Canadians began to speak of Jewish paranoia. Canadians knew about the Holocaust but they didn't really understand it. It was history, alien to Canada's record of relative social tolerance, with no relevance to the problems of the nineties. As it happened, the transparently venomous speech of Holocaust deniers like Zundel and Keegstra gave Canadian Holocaust education the urgency, intensity and credibility

There is another problem. As growing numbers of Canadians are now beginning to see, social censorship can subtly turn into political censorship. Already, Canadian feminists are utilizing the law to "cure" politically incorrect perceptions about women. Some Palestinians are claiming the same rights as Jews regarding Jewish presentation of "their" Palestinian history. Generals may soon do so about their wars, religious fundamentalists about the Bible, environmentalists about industry, gays about their lifestyles and the poor about the causes of their poverty.

Ironically, the more "successful" censorship is in driving the unacceptable from the domain of public discourse, the less apparent becomes the need for persuasion. Why should political rivals continue to struggle to "convince" if they can effectively silence? Censorship is intellectually easy, politically seductive. Persuasion is intellectually hard to do.

For these reasons, the pressure of censorship in Canada has been driving out the politics of persuasion. Legally dictated "official" truth is replacing enlightened understanding. Education teeters on the precipice of unquestionable indoctrination. Subtly, the notion of change through critical understanding and persuasion, the *justice* of one's cause, is beginning to take a back seat to political victory through legal censorship.

Canadians are also learning that "effective" censorship ultimately threatens all opinion. While it has become obvious that transparent racists like Zundel and Keegstra rejuvenate truth and social vigilance, there is also a growing realization that intolerance masked by coded words, sophisticated themes and "scholarship" can acquire an aura of respectability. In order to get at these views, the net of censorship must make distinctions between

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# SPEECH?

maintain that in the long run it is speech, not censorship's silence, that promotes social tolerance and political responsibility.

On matters connected with race and, increasingly, sex, all Canadians now *must*, by law, speak and therefore think correctly. By zealously employing the criminal law to censor social and historical falsehoods for fear that otherwise Ca-

nadians might be converted to think, speak and act wrongly, the government ensures that all Canadians are legally denied the responsibility to choose right over wrong, truth over falsehood. How can people be trusted to tell the difference between David Duke and George Bush if they cannot be trusted to tell the difference between Nazis and their victims? How can self-governing people, shielded from exposure even to clear falsehoods, learn to make responsible social and political choices for themselves? Social responsibility must be risked through free speech if it is to be learned.

it was beginning to lose. Social truth must be regularly challenged, its message kept alive by social falsehood, if social truth is to remain politically current and relevant and society socially vigilant. The vigorous clash and interplay of historical fact with Holocaust deniers' historical fiction rejuvenates the message of truth. Silence, not falsehood, allows the message to die.

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## Hate Laws

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right and wrong, where such distinctions are most blurred. Pressures to criminally prosecute as a "hate propagandist" the internationally recognized Canadian psychology professor, Philip Rushton, for his recent study on differences between races, shows that in Canada, even scholarship by recognized professors may no longer be safe from the censor's knife.

Another troubling effect of our censorship laws is that it affects moderates more than extremists. It illustrates that in political systems that regularly change governments and social agendas, today's protected may become tomorrow's suspected. It is the moderates who exercise self-censorship. It is they who want to avoid overstepping the bounds of accepted social opinion, fear political harassment, criminal prosecution or financially ruinous litigation for speaking wrongly. Determined fanatics and extremists are far less likely to be intimidated by laws against speech. They welcome the notoriety of a trial and "martyrdom."

Moderate Canadians, on the other hand, have become increasingly careful in what they say publicly, not because they are "convinced" by censorship but because they are afraid to speak as they think.

With a phenomenon so difficult to measure as social intolerance, a very real problem is that the true extent of the danger may be masked by strong laws against intolerant speech, only to unexpectedly raise its ugly head in time of crisis on an unsuspecting and inexperienced public lulled into a false sense of complacency. The shocking rise of racist incidents in Canada in the last five years is testimony to this. Social harmony, to be politically secure or safe in a system where the people govern themselves, needs genuine, not legally enforced, belief.

Imposed harmony menaces in still other ways. It promotes resorting to clandestine violence—synagogue and cemetery desecration, arson, assaults and bombings. Such incidents were once thought by Canadians to be typical of a violent America, but alien to Canada's famed tradition of multicultural harmony. No longer.

Freedom to speak delegitimizes the use of force. When we have the right

to speak, to convince and, thereby, to offend, we have a lesser claim on the need to resort to force to make our point. It is not that there won't be violence if there is a right to speak. There will always be racist and sexist violence. But censorship only increases this violence. In Canada, hurtful acts are progressively taking the place of impermissible hurtful speech—from repeated nighttime synagogue desecrations in Toronto and Montreal (in January 1993, seven synagogues were hit in 24 hours in Montreal) to the shocking massacre of 14 women engineering students at the Ecole Polytechnique de Montreal in December 1989. To the fearful, this is proof of the need for greater speech repression and justification for even greater censorship. To the feared, further speech repression is justification for greater violence. Speech repression and hurtful acts feed on each other. In short, it may be preferable to be verbally insulted to one's face today than to be physically stabbed in the back tomorrow.

Stringent anti-racist and anti-sexist censorship laws in Canada are failing miserably in promoting a more genuinely tolerant, more enlightened society. Subtly, slowly, almost imperceptibly, the progressive "cure" in Canada is becoming the dreaded disease. We have succeeded in substituting public pretensions and opportunistic posturing for true tolerance. We have also increased the level of clandestine violent acts and unwittingly legitimized the seeds of political thought repression—the germ of a more insidious kind of social intolerance to come. America would do well to avoid making the same mistakes. ❧

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