# Hate Expectations

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# Hate Expectations:

## A Narrative of the Conceptualisation of Criminal Hatred in Canada

By

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## Abstract

This thesis constructs a narrative that challenges our current understanding on hate crime, at least within a Canadian context. It questions the contention made by many authors that the idea of hate crime first appeared in the early 1980s. While this may be true with respect to terminology, the idea of criminal hatred - in terms of crimes based on bias - can be seen to date back to the 1960s and the debate on hate propaganda. Through repeated discussion of hate propaganda as a distinct concept in the House of Commons, and by claiming ownership of a number of diverse events in its name, the idea of criminal hatred gained an increasingly irreversible existence as something matter-of-fact. In 1970, legislation was enacted against hate propaganda. Criminal hatred had moved from being a peripheral assertion to a self-evident statement by building itself up through an increasingly powerful network of legislative allies. To investigate this transformation, this thesis employs an analysis based upon the actor-network theory. Actor-network theory is an approach that helps one understand how concepts come to be embraced through the mobilisation of allies. In essence, by following actors, it helps one comprehend the process of translation whereby certain assemblages 'sum up' heterogeneous coalitions of humans and non-humans to construct seemingly stable, rational, natural, and objective concepts. Actor-network theory helps one understand the movement and networks that needed to be in place for the 'new' object of hate propaganda to emerge. This network managed to forge a connection that linked the idea of 'hate' to criminality. However, it appears this conceptualisation of criminal hatred is somewhat different from the object predominantly spoken of today in terms of hate crime. The threat imagined during the conceptualisation of hate propaganda was that hate material was not just offensive, it was capable of *mounting an offensive.* Hate crime, on the other hand, has a victim-centred focus of criminal hatred that concerns itself with criminal acts performed not based upon *who the victim is but what the victim is.* Yet both objects share a focus on criminal hatred as a form of criminal activity spurred on by bias. Both are advocated for by special interest organisations that represent minority groups. Both attempt to extend, strengthen and make durable the network against discrimination. However, what is meant now when we speak of criminal hate, is not what was always meant.

## Acknowledgements

While I wish to stay clear of the sort of sentimental accounts that often dominate acknowledgement sections, there are a few people who warrant special recognition.

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## *Introduction*

One of the processes that, in time, will likely be looked at as a definitive issue faced during the 20th century is the problematisation of discrimination in its various facets. From the Suffrage movement, to Hitler and National Socialism, the Universal Declaration of Human Rights, Martin Luther King Jr., and the Civil Rights movement, the idea and practice of equality have taken dramatic turns over the past century. Not only in legislative but also in academic terms has this process occupied a pre-eminent role. Identity-based politics, social movements, and studies - from feminism to race theory - are emblematic of this gradual transformation. In this fight for equality, legislation has been seen as a crucial component.

One such issue that fits into this overarching process of 'legislating out' discrimination is the introduction of 'hate'-based legislation. When we speak of criminal justice and hate today, what is most often spoken of is hate crime. However, the legal precursor to hate crime, at least in Canada, appears to have been the laws against hate propaganda, first brought up in Parliament in 1964. How did 'hate' come to be conceptualised in relation to criminal law? What expectations were there for the legislation? How was it articulated when first brought up in the Canadian context?

Different forms of 'hate'-based legislation were introduced in a variety of Western nations beginning after World War II. The central argument of this thesis is that the creation of laws against "hate propaganda" can be seen as a crucial moment in the process of 'legislating out' discrimination. The debate over hate propaganda was a dramatic turn in an otherwise straightforward path of federal and provincial legislation that attempted to remove

discrimination from the Canadian landscape beginning in the mid-20th century. Legislation before hate propaganda had focussed on governmental discrimination in areas such as housing, labour, and immigration. However, hate propaganda legislation formalised the right of government to intervene actively *in the free expression of citizens* in an effort to curb what was seen as the most zealous forms of discrimination.

This thesis aims to look at the *process* whereby Canada's hate propaganda laws came to be formed. The primary focus is on the period from the mid-1960s to 1970, the year hate propaganda legislation was finally passed. It can be argued that this process stretches back *ad infinitum.* The *Universal Declaration of Human Rights*, World War II, the Suffrage Movement, even as far back as the French Revolution's hallmark slogan: liberté, egalité, fraternité – are these not logical precursors to a piece of legislation that attempts to make illegal the most 'scurrilous' forms of discrimination? Indeed, this argument can be made, and reference to some of these events does rear its head from time to time. However, a thesis needs some form of 'bracketing'. The primary empirical focus of this thesis is the decade during which preliminary debate formed and per-formed the conceptualisation of a 'new' object named hate propaganda. Similarly, while like debates went on in other nations, the focus here is on the introduction of Canadian legislation, eventually passed under the first Trudeau government.

To describe this process, I construct a narrative that attempts to articulate a coherent 'story' that 'makes sense' of the debates and ordering whereby Canada came to amend the *Criminal Code* to include "advocating genocide", "the wilful promotion of hatred" and "public incitement of hatred" as criminal acts. Ordering can be seen as a process whereby

heterogeneous actors, institutions, materials and knowledges are sorted and transformed to generate a seemingly stable and actionable object. However, in constructing this narrative, I wish to avoid putting forth the sort of explanatory account that implies causality and irreversibility. I am fond of the idea of ordering, not order. Action, not the act. Process, not result. I fall prey to a love of verbs and am wary of nouns that imply a status, an inevitability, an existence that ignores or represses the continual work and force that must be employed in a process to achieve a cluster, an object with the *appearance* of stability. As Alain Desrosières (1991: 200) states,

> clusters are justified if they render action possible, if they create *things* which can act and which can be acted upon (a prince, a nation, a social class, an animal species, a microbe, a physical particle, a sickness, an unemployment rate). In each case it is necessary to transcend the contingency of particular cases and circumstances and to make *things which hold together*, which display the qualities of generality and permanence.

In putting together this description I have decided to utilise two approaches: actor-network theory (ANT) and a narrative method. Actor-network theory helps one understand the process whereby concepts come to be embraced through the mobilisation of allies. In essence, by following actors, it helps one comprehend the process of translation whereby certain amalgamations of ordering come to privilege new concepts. As such, I feel it is a useful lens through which to investigate the conceptualisation of Canada's hate propaganda laws and the idea of criminal hatred. A narrative approach seems to dovetail with ANT, its focus being on constructing the types of descriptions that illustrate connections and transformations.

My treatment of hate propaganda as an object reflects that, as a 'new' concept, it comes to affect how we think and act on the world. Hate propaganda can be said to be

'new' to the extent that it transforms acts previously thought of as discriminatory or prejudicial and makes these acts not only objectionable, but criminal. While ANT can be seen as the analytic for how I intend to approach this description, the concept of narrativity provides guidelines for producing a compelling yet rigorous story.

However, there are potential problems with my selection of these theoretical and methodological tools. ANT has been utilised primarily in science and technology studies (STS). Its ability to 'explain' processes outside this realm has not been extensively tested. It seems that as a methodological tool, ANT is best suited for telling those stories where the human and non-human form hybrids. It is primarily useful for stories of heterogeneous ordering, those types of stories characteristic of the natural sciences and the laboratory. Thus, I have on my hands what appears to me as a primary object of investigation with an ancillary problematisation. First and most importantly, what is the story of hate propaganda? What is the process whereby Canada came to produce a seemingly stable object known as hate propaganda? Is this conceptualisation of criminal hatred different from what is spoken of in terms of hate crime today? The ancillary problem relates to my choice of the actor-network as my analytic. How well can I construct a story of hate propaganda using ANT as my lens? Is the theory of the actor-network, utilised primarily to date to illustrate the politics of science and technology, appropriate to study the realm of traditional politics?

I believe ANT can be usefully employed outside of the realm of science and tenchnology. I feel it is more than just an analytic that effectively politicises science. ANT offers a practical, pragmatic methodological approach to understand the 'small p' politics involved in the construction of knowledge. This is what I am interested in applying to the

political realm, not the insight that the process of concept formation is inherently political. This seems self-evident in Politics in a way it might not have been for the natural sciences. In going forth with this project, the words of two authors not necessarily part of the ANT 'school' but who pursue similar projects serve as reasonable guidelines and warnings over how to proceed. With respect to what questions to ask, I am highly grateful to the words of Alain Desrosières (1991: 201) who notes,

> The only way of understanding the recurrent opposition in politics, in history and in science between on the one hand contingency, singularity and circumstance and on the other hand generality, law, regularity and constancy is to ask: "for what purpose?" The question is not: "Are these objects *really* equivalent?" but: "Who decides to treat them as equivalent and to what end?"

The spirit of this quote inspires the title of my thesis: what were the expectations for criminal 'hate'? How were these expectations shaped in practice? In investigating this, I find Annemarie Mol's (1999: 86) articulation of ontological politics quite helpful. She explains,

> Ontological politics is a composite term. It talks of ontology—which in standard philosophical parlance defines what belongs to the real, the conditions of possibility we live with. If the term 'ontology' is combined with that of 'politics' then this suggests that the conditions of possibility are not given. That reality does not precede the mundane practices in which we interact with it, but is rather shaped within these practices. So the term politics works to underline this active mode, this process of shaping, and the fact that its character is both open and contested.

With these caveats in mind I move forth, always keeping in mind that I may encounter a problem if I attempt a wholesale adoption of the actor-network theory. The difference between politics and science is that politicians work out in the open whereas the scientist has a laboratory. The scientist gets multiple trials on a small scale while the politician's blunders are rarely hidden (Latour 1983: 165). Yet I think this project is worthwhile. First, because it outlines an interesting story; hopefully, a telling description of how the idea of 'hate' became associated with criminal law and how this has crept into public discourse. Talk of hate crime is common and has become entrenched in policing through

the creation of special units. To understand the current idea of hate crime; to gain insight into the debates on extending hate-based legislation to cover sexual orientation; or to comprehend the 'surges' of hate activity that occur in Canada after traumatic events like 9/11, it is helpful to understand what was meant by criminal hatred in the first place. Are these recent foci just part of an ongoing process to eliminate more overt forms of discrimination or has the object of criminal hatred, as conceptualised in Canada's hate propaganda legislation, come to take on a life above and beyond simple discrimination? I am also interested in this project from an academic standpoint because I get to be creative with ANT, testing its robustness outside its traditional realm of science and technology, its area of comfort.

In Chapter 1, I look at the current articulation, both in practice and in academic literature, of 'hate' as it relates to criminal law. It appears, when 'hate' is spoken of today, the focus is not on hate propaganda but on hate crimes. How is hate crime treated as an object? How is research being conducted on it and what is being said in its name? The purpose of performing such a literature review is to provide a springboard for the narrative of the Canada's hate propaganda laws. It is interesting to investigate how 'hate' is employed and conceptualised today to understand whether the object of criminal hate is the same in the present as when Canada implemented hate-based legislation in 1970. What we think it means today may not be what it always meant (Daston 1992). The importance of illustrating what is said now is to compare if, and how, the articulation of the object of 'hate' has shifted. How have we transformed the idea of criminal hatred?

To look at this transformation I need some form of analytical approach. Thus, in Chapter 2, I investigate the actor-network theory. To accomplish this I first discuss the more general concept of ordering before proceeding on to the original name given to ANT, the sociology of translation. From here I give a brief history of the rise and supposed 'fall' of ANT. I need to address the critiques put forth by three of its founders, highlighted in the book *Actor-Network Theory and After.* Generally speaking, the claim is that ANT has been co-opted by fixing it theoretically (Law 1999; Latour 1999; Callon 1999). I am not interested in trying to 'rescue' the actor-network from these critiques that have problematised it as a theory. I feel it is still a productive lens, which I view as a highly flexible analytic.

Chapter 3 provides a brief discussion of my methodology. It picks up where the previous chapter left off and explains the significance of narrativity to my analysis. I look briefly to the work of Margaret Somers to understand how narratives are constructed in the research process. I look at what she calls emplotment and how we come to test hypotheses from the story we construct, or more appropriately, re-construct. I also outline the highly pragmatic, and hopefully not too arcane, discussion of my empirical research and subsequent ordering. I revisit the primary texts I studied in first coming to grips with the debate on hate propaganda and the process whereby I came to 'make sense' of this world by unpacking its ordering.

Chapter 4 is primarily a legal history and can be considered almost background material. I investigate two significant elements of Canadian law: sedition and defamation. In the formation of hate propaganda legislation, both were frequently raised in Parliamentary debates as laws that might potentially control 'hate' and figure prominently in the process of

ordering that eventually led to the introduction of 'new' law. It is crucial to understand this genealogy if one wants to make sense of how it came to pass that hate propaganda was cordoned off, separated out and made distinct

Chapter 5 is the first of two closely related empirical chapters. I investigate some of the influential international networks that appear to lay the foundation for hate propaganda legislation. Various United Nations' declarations are closely aligned with the wording of Canada's hate propaganda laws. Earlier international legislation also appears significant. Additionally, I look to a selection of Canadian legislative history on discrimination that pre-dates the debate on hate propaganda. All these influences appear to have had some effect on hate-based legislation.

Chapter 6 looks to the case of hate propaganda itself. I construct a narrative that begins at the outset of the debate on "hate literature" in the House of Commons and follows through to the formation of "hate propaganda" legislation in 1970. I argue that what made hate propaganda distinct is twofold – its nature of being a group rather than individual offence and its ties to the idea of discrimination. This served to re-order the object, performing itself through a different network configuration than sedition and defamation. Primarily, this chapter will use the lens of the actor-network to outline the process of emergence and separation that resulted in a new form of legislation. The empirical data for this chapter primarily derives from two sources: the *Special Report on Hate Propaganda in Canada* (the Cohen Committee) and Hansard debates spanning 1963 to 1970.

The last section offers a set of concluding thoughts on the notion of criminal hatred. It also offers comments on the successes and failures of attempting to appropriate actor-network theory from its traditional sphere of science and technology studies to politics.

## Chapter 1.

## A Look at 'Hate'

> Over the last two decades, hate crime has been successfully promoted as a social problem in need of remedy. The history of hate crime as a social problem, complete with attendant victims, marks an important moment in the history of crime control efforts (i.e., criminalization), the allocation of civil rights, and the symbolic status of minorities in the United States. *Valerie Jenness and Kendal Broad, Hate Crimes: New Social Movements and the Politics of Violence*

> This book offers an extended argument against the formulation and enforcement of hate crime laws. These well-intentioned laws represent the importation of identity politics into criminal law by seeking to give special recognition to the victimization of members of historically discriminated against groups. But the fit is, at best, uneasy. *James Jacobs and Kimberly Potter, Hate Crimes: Criminal Law and Identity Politics*

> Crimes that are motivated by racial hatred have a special and compelling call on our conscience. *Frank Lawrence, Punishing Hate: Bias Crimes under American Law*

The Holocaust never happened. All Arabs are terrorists. Islam is an evil religion. Blacks possess an inferior intellect. Homosexuals are immoral people and should be eliminated. Doctors who perform abortions are killers and should be killed. All these statements are examples of opinions, beliefs, and assertions that could potentially fall under the province of hateful speech.

A Jewish school is firebombed in Montreal. Gravestones are toppled and swastikas painted on the synagogue in a Jewish cemetery in Toronto. An Arab boy is beaten and left unconscious by 12 teenagers in Ottawa. Female teachers at an Islamic school, wearing the hijab, are taunted by passing motorists in London. A black man is killed when three white men beat him, tie him to a truck, and proceed to drag him in Texas. A homosexual teenager

is pistol-whipped, tied to a fence, and left to die in Wyoming. All these acts are examples of attacks, harassment, and vandalism that are increasingly coming to be called hate crime.[1]

Under the broad umbrella of 'hate', a number of subjects are discussed in the academic, legal and political spheres. Hate crime, hate speech, hate propaganda, bias crime, discrimination and prejudice are common themes in the media and politics. In legal circles 'hate' enters into talk surrounding victimisation (see Lederer and Delgado 1995), the criminal justice system (see Jacobs and Potter 1998), criminal justice statistics (see Roberts 1995), and constitutional law (see Lawrence 1999). In academia, 'hate' is part of the discussion around identity politics, special interest groups and social movements (see Jenness and Broad 1997; Levin 2002), along with feminism (see MacKinnon 1995), violence against women (see Butler 1995), pornography (see Lederer 1995), and race relations (see Clark 1995; Hauptman 1995). Scientifically, 'hate' is studied in psychology where it is spoken of as an emotion, socio-psychological influence, and behavioural tendency (see Beck 1999). The list goes on. The purpose of this chapter will be to focus on the criminalisation of 'hate', specifically, the growing research agenda that deals with hate crime (Green et al. 2001).[2] Closely tied to hate

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[1] These are examples spoken in terms of "hate crime" from recent years. The first two acts occurred in 2004 and were the subject of much media attention (Galloway 2004). The second two examples come from a 2001 article detailing hate crime incidents in Canada, many against Arabs in the wake of 9/11 (Mock 2002). The last two examples are attacks that received widespread media coverage and condemnation in 1998 (Jenness and Grattet 2001).

[2] The article by Green et al. (2001), "Hate Crime: An Emergent Research Agenda," provides much of the basis for the third section of this chapter, which outlines some of the lines of inquiry into hate crime. Green et al. perform this analysis in far greater detail than I attempt. For a comprehensive account of the research being performed under the umbrella of hate crime, I direct the reader's attention to this article. My intention in this chapter is merely to give a sense of the current conceptualisation of the object of hate crime. I intend this to serve as a starting point for my later discussions on hate propaganda.

crime are the ideas of hate speech, hate propaganda, and bias crime. These will also be addressed.

This chapter starts by looking at the rise of hate crime as an academic area of study and grounds for political intervention. I then move on to look at a variety of studies that deal with hate crime as their primary focus. From here, I address some of the common areas of concern with hate crime legislation before moving on to discuss the idea of hate speech. Much of the discussion surrounding the idea of criminal hatred hinges on whether such statutes are unconstitutional.[3] Specifically, the debate raises the question: are hate speech and hate crime provisions fundamentally opposed to the precepts of freedom of thought and expression? While this is a considerable literature that warrants recognition, I am more interested in how 'hate' came to be constituted as a criminal object. In particular, I am concerned with the constitution of the object of hate propaganda that was codified in Canada in 1970. As such, in the last part of this chapter I look specifically to Canada with respect to the legal status and academic treatment surrounding criminal hatred.

Whereas other countries have distinct hate crime legislation, Canada's move towards policing hate crime seems, in part, tied to sections 318 through 320 of the *Criminal Code*, which cover hate propaganda. The only amendment to the *Code* that specifically responds to

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[3] One of the most common critiques of hate crime legislation is that it contravenes the precepts of freedom - specifically freedom of expression and freedom of thought. Much of the literature in this regard focuses upon the situation in the United States with respect to hate crime, hate speech, and the First Amendment. As such, the first half of this chapter has a distinctly U.S. flavour. While hate crime is a focus in other jurisdictions, such as Great Britain and Australia, to keep the focus of this chapter tight I have decided to discuss primarily hate crime as it pertains to the U.S. and Canadian political and academic realms. Suffice it to say, many of the arguments presented here, while differing on practical points, transcend legal and geographical borders in terms of theoretical, ideological, and policy concerns.

the notion of hate crime is section 718.2, which was enacted in 1996 with the passing of Bill C-41, a sentencing reform proposal (Janhevich 2001). This section of the *Code* makes crimes motivated by certain prejudices an aggravating factor when it comes to sentencing. However, the hate crime movement pre-dates Bill C-41 by approximately 15 years, coming to the fore in the early 1980s. For this reason, I think it is useful to look back to Canada's hate propaganda legislation, passed in 1970 by the Trudeau government. This appears to be the first instance when Canada associated the idea of 'hate', based on racial, ethnic or religious bias, with criminality.[4] It is interesting to investigate how 'hate' is employed and conceptualised today and whether the object of criminal hate is the same in the present as when Canada implemented hate-based legislation in 1970. What we think it means today may not be what it always meant (Daston 1992).

### 1.1 *The Rise of the Concept of Hate Crime*

Generally speaking, the agreement across many influential studies on hate crime is that "hate crime" was named and conceptualised as an actionable object in the United States in the early 1980s (Levin and McDevitt 1993; Jenness and Broad 1997; Jacobs and Potter 1998; Lawrence 1999; Jenness and Grattet 2001). Previous to this, the only statute that seemed to cover the idea of bias-crime existed in Connecticut, which had provisions against racially-motivated assaults. The closest provisions some other states had were statutes addressing traditional Ku Klux Klan assaults (Lawrence 1999). Many authors recognise it is misleading to declare that "hate crime" is a new phenomenon. However, it seems apparent

[4] The common law definition of defamation includes that which causes 'hatred, contempt, or ridicule.' However, this is a slightly different conceptualisation of 'hate' that predates the form of hate-based legislation I speak of here by a few centuries. The influence of criminal defamation to hate propaganda legislation is covered in greater detail in chapter 4.

that after being first coined as a political term in Washington, D.C. (Jacobs and Potter 1998), the idea of hate crime spread throughout North America due to many well-publicised incidents directed at Jews, Asians and Blacks. It was picked up in detail in Europe in the 1990s, following a wave of anti-foreigner violence that swept Northern Europe (Green et al 2001).

The argument has been made that hate crime legislation came to the forefront, at least in the United States, as a necessary response to a rising epidemic in the 1980s of hate-motivated violence directed at specific minority groups (Levin and McDevitt 1993). However, other authors question this, pointing to turn-of-the-century lynching of blacks and violence towards immigrants and gays as a time when the frequency and prevalence of discriminatory violence was much higher (Jacobs and Potter 1998). It has also been questioned to what extent the increasing legislation, media attention, statistical clarity, and law enforcement actions against hate crimes tend to construct a perception of increasing hate-motivated violence (Jenness and Broad 1997). Other authors (Lawrence 1999; Jenness and Grattet 2001), acknowledge the claims of lawmakers and special interest groups (that the frequency and violence of hate crimes is apparently increasing), as well as those who claim such figures may be skewed. Lawrence (1999: 28) notes an alternate way to look at this debate is not that we "over-count" hate crimes today but that we "under-counted" in the past. Alternatively, it has been posited that hate crimes are becoming more complex, and while still ever-present, are changing form and becoming more difficult to count and assess (Levin 2002). Whether there is more or less hate crime, and more or less violent tendencies, most authors agree that bias-led violence is a problem, though not all agree it should be criminalised.

Hate crime is continually re-conceptualised and re-defined in practice (Jenness and Grattet 2001). Special interest groups and social movements publicise hate crime and bring it into political discourse and everyday conversation. Politicians enact legislation that separates hate crime from its non-bias criminal equivalents. Judges continually redefine the legal interpretation of hate crime, helping clarify what counts as a hateful criminal act. At street level, the policy manuals of law enforcement agencies categorise the forms of hate crime and individual officers use discretion to 'flag' certain acts as hate-motivated.

Those authors who sympathise with the initiation and implementation of hate crime legislation often focus on the injustice of certain individuals being targets for violence simply based on identifiers such as race, ethnicity, religion or sexual orientation. This feeling is evidenced in such sentiments as the dedication in Jenness and Grattet's (2001) "*Making Hate a Crime*," which states: "In memory of James Byrd Jr. [killed by white supremacists when they tied him to a truck and dragged him], the young girls killed at Westside Middle School in Jonesboro, Arkansas [the boys who killed them explained they targeted them because they were girls], Matthew Shepard [a young gay man, pistol-whipped and tied to a fence, left to die], and the many others who were murdered in 1998 because of who they are and what they represent." It has been said that hate crimes are not perpetrated because of *who* the victim is but because of *what* the victim is (Lawrence 1999).

### 1.2 *Legislation on Hate Crime*

In the United States, two federal reforms have been passed by Congress in the name of hate: the *Hate Crimes Statistics Act* (1990) and the *Hate Crimes Sentencing Enhancement Act*

(1994) (Roberts 1995). Additionally, some authors (Jenness and Broad 1997; Jenness and Grattet 2001) feel the *Violence Against Women Act*, passed in 1994, is an additional piece of hate- or bias-motivated legislation. In Britain and Canada there have been no specific legislative acts that deal with the topic of "hate crime" as their primary focus (Janhevich 2001). However, in Britain, since 1986, the Home Office has collected statistics on criminal acts motivated by race. In Canada, similar work is underway to mandate collection of hate crime statistics (Janhevich 2002).

Politically, it has been argued that hate-based legislation can be seen as generally initiated by left-leaning parties, interest groups and politicians (Lederer and Delgado 1995). In Canada, the New Democratic Party (NDP) has been at the forefront of recent amendments to include protection on the basis of sexual orientation in the *Criminal Code* provision on hate propaganda. During the inception of Canada's hate propaganda laws, the majority of Private Members' Bills that called for protection of minority groups were pushed forth by NDP members such as Andrew Brewin or David Orlikow.[5] The eventual passage of hate propaganda legislation took place under the Trudeau government, which undertook a more progressive social agenda than many Liberal governments before it. In the United States, Democratic Senator Edward Kennedy has been one of the foremost proponents of extending hate crime legislation (Jenness and Grattet 2001). That being said, while such legislation is often thought of as left leaning, research in the United States has indicated no substantial difference between Democrat or Republican majority governments being in power when states pass hate crime laws. It is put forth that in the United States, hate crime

[5] The narrative of how Canada came to introduce legislation against hate propaganda is the focus of chapter 6.

legislation can not be deemed as affiliated with either Democrat or Republican ideology (Jenness and Grattet 2001). Its focus on victimisation and victims-rights may be partially responsible for it being a form of politically attractive legislation for parties of all political stripes.

The role of social movements and minority lobby groups has been critical in the fight to implement hate crimes legislation (Jacobs and Potter 1998; Levin 2002). Other groups which have received consideration, but are not yet generally included under hate crime legislation, include the mentally or physically disabled, union members, children, the elderly and police officers (Jenness and Broad 1997; Jenness and Grattet 2001). Beyond the heated debates on including sexual orientation in the list of protected groups, hate crime on the basis of gender seems to be the next probable area of widespread legislative expansion (Zia 1995).

### 1.3 *Research on Hate Crime*

Hate crime studies cross multiple levels and institutions. Some studies look at the process of problematisation, focussing on the lobbyists and social contexts that lead to the introduction or amendment of hate crime legislation (Levin and McDevitt 1993; Jenness and Broad 1997; Levin 2002); while others have victimisation as their focus (Kallen and Lam 1993; Matsuda 1995; Iganski 2001). Many trace hate crime's legal underpinnings (Elman 1993; Jacobs and Potter 1998; Lawrence 1999); while some look at its interpretation internationally and in the courts (Roth 1993; Henkin 1995). There are those who choose to focus primarily on hate speech (Bollinger 1995; Lasson 1995; Martin 1995). Certain authors favour empirical studies which detail statistical trends (Roberts 1995; Janhevich 2001). There

are also those who look at hate crime's relation to law enforcement (Jenness and Grattet 2001). Many of these studies cross institutional, jurisdictional, academic, and national boundaries. Just as there are a diverse number of foci in which to concentrate on hate crime, there is a comparable array of theoretical approaches and definitions. Perhaps, all that is safe to say is that, as an area of study, hate crime is increasingly gaining in academic, legal and political significance.

Although there are a diversity of research areas, Green et al (2001: 485-89) state that there are, at minimum, six general types of explanation for hate crime: (a) psychological; (b) social-psychological; (c) historical-cultural; (d) sociological; (e) economic; and (f) political.[6] Psychological explanations look to the cognitive basis that underlines the actions of perpetrators of hate crime. Such approaches explain hate crime as an extreme form of prejudice where stereotyping, spurred on by affective disorders, pushes individuals towards acts of overt discrimination. Social psychological accounts look to the circumstances leading to hate crimes being performed and focus on inter-group dynamics and subcultures as forces that catalyze attacks. Historical-cultural accounts look to explain hate crime through longstanding cultural traditions and patterns of behavior. Not only is the propensity to hate crime said to be historically and culturally determined, the debate over legislation is also shaped accordingly. Classic sociological accounts view hate crimes as responses to rapid social change or anomic reactions of individuals who feel their community and way of life are threatened. Economic accounts look to competition for

[6] As in all classification schemes, Green et al.'s treatment of the explanations of hate crime simplifies the terrain to highlight significant differences between various conceptions. How the problem of hate crime is conceptualised influences how researchers and policymakers generally interpret the causes of hate crime when they look for solutions.

scarce resources and economic downturn as crucial in the propagation of hate crimes. Political accounts seek to look at the political manifestation of grievances based on frustration, fear or disdain, focussing upon the political channels that allow both victims and perpetrators of hate to express themselves.

More generally, in terms of the debate surrounding hate crimes, Lawrence (1999: 161) puts it clearly when he states, "Obviously, the entire thrust of the preceding chapters argues that bias crime laws are justifiable and constitutional. But to a large extent, I have assumed the need to punish hate as my starting point." He goes on to note that "The implicit premise of the task has been to provide justifications for the punishment of racially-motivated violence in criminal law doctrine, and to square this punishment with free expression doctrine." This is really at the heart of most studies and papers on hate crimes. To put it at its most crude level, hate crime studies generally come in two forms. Either the author makes the argument, some more overtly than others, that for one justification or another, laws proscribing hate crime are a *good* thing; or, the author makes the alternate argument, generally citing perceived restrictions on freedom of thought or expression, and asserts that hate crime laws are a *bad* thing

The thrust of those who argue in favour of legislation is that hate- or bias-crimes have a greater resulting harm than their non-bias criminal equivalents on three levels (Lawrence 1999). First, the nature of the injury that is sustained by the immediate victim of the crime is said to exceed that of a normal crime due to increased mental and emotional trauma because of additional feelings of victimisation (see Lederer and Delgado 1995; also Beck 1999). Second, the community associated with the victim is harmed through its

association as a target for potentially violent bias (Kallen and Lam 1993; Clark 1995; Iganski 2001). Third, society as a whole is more greatly harmed through the crime in terms of propagating further discriminatory divides (see Levin 2002).

### 1.4 *Problematising Hate Crime: Freedom of Expression and Other Concerns*

Two predominant concerns are generally raised against the research of pro-hate crime authors. Against those who assert hate crime is a plausible threat, critiques primarily come in the form of definitional problems and concerns over freedom of expression. There is a variety of different interpretations as to what constitutes a hate crime. What is generally agreed upon is that some element of discrimination is involved. As such, some refer to hate crimes in more general terms, calling them "bias crimes." "A bias crime is a crime committed as an act of prejudice" (Lawrence 1999: 9). Bias crimes differ from two broad categories of crime: first, are those crimes where the victim is chosen without regard to any personal characteristics (i.e. muggings, robberies, etc.); second, are those where the personal characteristics drives the crime (i.e. most murders and so-called crimes of passion). Bias crimes are not committed because of *who* the victim is but because of *what* the victim is. Lawrence (1999) tries to distinguish between the two because, he asserts, not all crimes motivated by hatred are necessarily bias crimes.

#### 1.4.1 *Challenging the Constitutionality of 'Hate'*

What comprises a hate crime is a contentious area. An oft-cited court decision to define what constitutes a hate crime (Jacobs and Potter 1998; Freedman and Freedman 1985;

Jenness and Broad 1997) is *Wisconsin v. Mitchell*,[7] as upheld by the United States Supreme Court. In part it noted,

> If a person ... intentionally selects the person against whom the crime ... is committed or selects the property which is damaged or otherwise affected by the crime ... because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, the penalties for the underlying crime are increased.

This is one of many examples of constitutional debate surrounding hate-based legislation, both in Canada and the United States. Of the three successful prosecutions under Canada's hate propaganda laws, all three have been appealed on the basis of being unconstitutional (Rosen 2000). In the United States, between 1984 and 1999, the constitutionality of hate crime statutes was considered 38 times by U.S. appellate courts (Phillips and Grattet 2000). Most often, the challenges were launched under the First and Fourteenth Amendments of the *Constitution*, which, respectively, protect free expression and guarantee equal protection under the law (Bollinger 1995). However, Phillips and Grattet (2000) go on to note that since 1997, for the most part, the constitutionality of hate crime has increasingly become less of an issue in U.S. courts and is settling into judicial discourse.

The same cannot be said for hate speech. While hate crimes legislation seems to be increasingly commonplace at the U.S. state and federal level, laws against hate propaganda or hate speech have largely been deemed unconstitutional (Bollinger 1995; Lederer and Delgado 1995). The legal thrust of the U.S. debate seems to be divided into two camps. The first camp, traditionally comprised of civil liberties advocates, claims that laws against hate speech violate the *Constitution* with respect to free expression. The other camp, dominated by civil rights advocates, defends hate speech laws by equating them to

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[7] 1993, 508 U.S. 47

discrimination, pointing to the Fourteenth Amendment which guarantees equal protection under the law (Lederer and Delgado 1995; Delgado 1995). However, Bollinger (1995) and others argue a re-conceptualisation of First Amendment jurisprudence opens avenues amenable to both sides for discussion of hate speech and group libel laws. Similarly, Lasson (1995: 287) critiques the Amendment, noting "History should have taught us, by now, the pith of extremism rests in fervently held beliefs, political thought, and the terrorist's notion of "truth"–none of which, in this case, the First Amendment was ever intended to protect." There have also been arguments that focus on victimisation as the justification for changing the law. Matsuda (1995: 87) notes that laws and legal interpretation should be re-centred on the victim's experience and asserts that "a hate group presence, protected by legal concepts of freedom of expression, means that racism is entrenched and institutionalized in our society." However, the flip side of the coin, asserting a more absolutist interpretation of the First Amendment, still has many strong legal scholars among its proponents (see Friedman 1995).

### 1.4.2 *Problematising the Idea of Hate Crime*

In one of the more notable books problematising the conceptualisation, inception and application of hate crime legislation, Jacobs and Potter (1998) focus on a number of areas. They study the lack of standardisation across U.S. federal and state legislation. They question whether there really is a hate crime epidemic. They look to the laws as symbolic devices, lacking in practicality, advanced by lobby groups and popularised by politicians. They question the legal, philosophical and social science rationales for the legislation and query the problems with application of the laws at various stages of the criminal justice system. Additionally, they challenge the constitutionality of the laws and illustrate concern

over the long-term social consequences of further defining rather than dispelling racial and ethnic difference. However, the critique they levy which stands out as most significant for this thesis, is their look at the problem of the conceptualisation of hate crime as an object.

The problem with conceptualising hate crime is that it is difficult to determine what is meant by prejudice; what prejudices should be included as aggravating factors under the hate crime umbrella; which crimes should be included as possible crimes that may have a 'hate' component; and how we make the causal link between the prejudice and the crime (Jacobs and Potter 1998: 11-28). There is a problem in that hate crimes legislation can be seen to homogenise various groups along racial lines. Hispanics, Asians and Africans are not unified groups, as some classification schemes would suggest, but rather are fractured populations with divergent histories, animosities and prejudices. Within these larger groups there are many examples of historical divergences: you need look no further than the conflicts between Sunni and Shiite Muslims, Tutsis and Hutus, Serbs and Bosnians, Tibetans and Chinese or Pakistanis and Indians.

Policy implications of hate crime research, such as the homogenisation of various groups, appear highly contingent upon the jurisdiction under investigation. In Canada, where there is no legislative mandate on the collection of hate crimes statistics, much of the focus seems to be on standardising definitions and making collection of hate crimes statistics a priority (Roberts 1995; Janhevich 2001; 2002). Additionally, the inclusion and protection of historically unrecognised groups under hate propaganda provisions, for instance hate activities based on sexual orientation, is also a focus (Major 1996). In the United States, where collection of hate crimes statistics was mandated at a federal level with the *Hate Crimes*

*Statistics Act* in 1990, much of the focus can be seen on policy recommendations that either recommend curbing the criminalisation of 'hate' (Jacobs and Potter 1998); strengthening and continuing on with criminal provisions (Lawrence 1999; Levin 2002); or maintaining hate crime legislation as part of a 'discrimination reducing' strategy that includes rigorous programs of tolerance-based education (Jenness and Grattet 2001).

There have also been questions about the internationalisation of hate crime law, often relating to the idea of group defamation. Traditionally, international law and international conventions sought to protect the rights of individuals, generally from the abuse of the state. In recent years, the focus has shifted somewhat, towards states ensuring the protection of its citizens from threats within the country (Henkin 1995). Hate crimes, under international law, have increasingly come to recognise the need for governments to protect hostility between citizens and identifiable groups. This idea seems applicable to the Canadian landscape, where despite the absence of a specific hate crime law, the idea of criminal 'hate' - referring to a criminal act carried out against an identifiable group based upon race, ethnicity or religion - has existed since hate propaganda legislation was passed in 1970.

### 1.5 *Hate Crime and Hate Propaganda in Canada*

Beginning in the late 1980s, various police forces around Canada began to introduce specific policies and tactical units to deal with the emergence of hate crime, generally defined as "A criminal offence motivated by hate, prejudice or bias based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor" (Janhevich 2002). Efforts at standardizing the definition used by

police forces and enacting uniform statistical reporting have been a focus of the Solicitor General, Department of Justice and Statistics Canada over the last 5 years (Janhevich 2001). However, the criminal offence of "hate crime" has not expressly been written into Canadian law. The closest Canada has come to codifying hate crime is through enacting a *Criminal Code* amendment to sentencing, with the passing of Bill C-41 in 1996 (Janhevich 2002). The law introduced section 718.2 to the *Code*, which states,

> A court that imposes a sentence shall also take into consideration the following principles:
>
> (*a*) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor (Justice 2004a).

Despite the lack of legislation beyond this sentencing amendment, hate crime can be considered to be gaining prominence as a legislative and public concern. Evidence of this can be seen in the growing number of tactical policing units that focus on hate crime (Janhevich 2001). Additionally, Canadian Heritage and other federal departments such as Justice are placing a growing emphasis on "taking action against hate." The implementation of this strategy is witnessed in programs such as the annual "Racism. Stop It!" educational campaign; making hate crimes a significant focus of the $32 million per year Federal Crime Prevention Initiative; and holding criminal justice forums in tandem with the provinces to deal "effectively with hate crime through the justice system" (Heritage 2003). However, this modern focus on hate crimes, which serves to connect criminality with a specific conceptualisation of hatred - discrimination, harassment, or violence perpetrated on the basis of some identifiable group characteristic - predates Bill C-41 and these government initiatives by two to three decades. In 1970, the Trudeau government passed Bill C-3, An

Act to Amend the *Criminal Code* with respect to Hate Propaganda, focussing on zealous forms of discriminatory writing that: a) advocated genocide; b) led to the public incitement of hatred; or c) could be seen as wilfully promoting hatred (Justice 2004a).[8]

Research into hate propaganda legislation in Canada generally takes one of three forms: a focus on the law and its relation to freedom of expression; the extension of the legislation to cover other identifiable groups; and the effect of hate propaganda on victims and their communities. Extending the hate propaganda laws to include sexual orientation has been a subject in the House throughout the 1990s. Bill C-250, an Act to Amend the *Criminal Code*, which expanded the definition of identifiable groups covered by hate propaganda laws to include sexual orientation, was passed in the House on February 2, 2004 (Parliament 2004). It is currently undergoing debate in the Senate. The movement to expand the definition has also been the focus of academic work (Major 1996). The effect of hate propaganda on target communities has been the primary focus of special interest groups such as B'Nai B'rith and the Council on American Islamic Relations Canada. Kallen and Lam's (1993) article detailing the impact on the Canadian Jewish community of the Zundel and Keegstra 'hate' trials[9] argues the effects of hate propaganda are felt by community members. With respect to hate propaganda and freedom of expression, the subject has been the focus of legal scholars (Elman 1993; Martin 1995; Mahoney 1995) as well as a few graduate level students who have taken up the debate. There are three Master's level theses

[8] The specifics of hate propaganda legislation, and the process whereby hate propaganda came to be conceptualised, is the focus of chapters 5 and 6.

[9] These will be discussed shortly.

written in this vein on the subject of Canada's hate propaganda laws. Students in Departments of Law have undertaken two of the three.[10]

In "*Combatting Hate?: A Socio-Legal Discussion on the Criminalization of Hate in Canada*," Senaka Suriya (1998: 7) examines, "whether the criminalization of hate effectively combats hate in Canada." She concludes that, "implemented as part of a comprehensive response in combating hate, the criminalization of hate can be useful" (Suriya 1998: 81). In a comprehensive legal study on the application of hate propaganda legislation, "*Hate Propaganda and Freedom of Expression in a Multicultural Society*," Michael Somers (1993) argues that such legislation, though used infrequently, is a reasonable limit on freedom of expression in Canada. In somewhat less detail, Jason Delby's (1992) thesis, "*Hate Propaganda and the Law*," takes the opposite stance, problematising hate propaganda in terms of freedom of expression.

However, the efficacy and the application of Canada's hate propaganda laws are questionable.[11] Since the inception of Bill C-3 in 1970, which amended Canada's *Criminal Code* to proscribe: "advocating genocide," the "public incitement of hatred," and the "wilful promotion of hatred," there have been only three successful convictions out of five prosecutions (Suriya 1998: 51). One unsuccessful prosecution has been taken under section 318, "advocating genocide", none under section 319 (1), the "public incitement of hatred"

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[10] The third thesis by Delby (1992), described below, came out of the department of philosophy at the University of New Brunswick. One component of their philosophy department is a focus on the philosophy of law. The style and presentation of this thesis very much follows a legal format.

[11] For a comprehensive argument over the need and application of these laws in Canada, please see (Somers1993).

and four under section 319 (2), the "wilful promotion of hatred". The first successful prosecution was in 1984, in *R. v. Keegstra.*[12] James Keegstra, an Alberta high school teacher was dismissed and charged after teaching students in his history class that the Holocaust was a deception in a world plot perpetrated by the Jews (Martin 1995). The second successful prosecution occurred in 1985, in *R. v. Andrews.*[13] Donald Andrews and Robert Smith, both members of the Nationalist Party of Canada, distributed a bi-monthly publication, the *Nationalist Reporter*, which contained statements such as the "race-mixed planet are only working against God's and nature's original will", and articles detailing the "Holocaust Hoax" (Suriya 1998: 57). The last successful case is *R. v. Safadi.*[14] In 1994, Michel Safadi sent letters, appearing to originate from a Jewish source, to various religious groups and government agencies in Prince Edward Island. The letters preached attacks against Christianity and Jesus Christ and government institutions that supported Christian ideals (Suriya 1998: 59). Hate propaganda is thus an infrequently utilised *Criminal Code* provision.[15] Hate crime seems, within a Canadian context, to be overtaking hate propaganda in terms of an object of study with respect to criminal hatred.

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[12] *R. v. Keegstra*, ([1990] 3 S.C.R. 697-869 (S.C.C.)), was upheld by Canada's Supreme Court in 1990.

[13] *R. v. Andrews* ([1990] 61 C.C.C. (3d) 490-505 (S.C.C.)), was upheld by the Supreme Court of Canada in 1990.

[14] *R. v. Safadi* ([1994] 121 Nfld. & P.E.I.R. and 377 A.P.R. 260-262 (P.E.I. S.C. App. Div.)), was upheld by the Appeal Division of the P.E. I. Supreme Court in 1994.

[15] A case commonly associated with Canada's hate propaganda laws is *R v. Zundel* ([1992] 2 S.C.R. 731) (Rosen 2000).[15] However, this is a misunderstanding. Ernst Zundel, who distributed a pamphlet entitled "*Did Six Million Really Die?*", was not charged under the hate propaganda sections of the *Code.* Instead, he was prosecuted under section 181, "spreading false news". In overturning his conviction in 1992, the Supreme Court of Canada struck down section 181 of the *Criminal Code* as unconstitutional. The ruling stated, in part, "Section 181 of the Criminal Code infringes section 2(b) of the *Charter of Rights and Freedoms* which guarantees the right to freedom of expression - as long as the expression is not violent" (Justice 2000).

Most of the legal cases and much of the literature reviewed above seem to look at the idea of criminal hate with respect to freedom of expression and victimisation. The majority of this literature looks at hate crime. However, while most prominent authors on hate crime assert it was conceptualised and came to the fore in the 1980s, it appears legislation dealing with a similar linking of 'hate' and criminality was in place in Canada in 1970. The focus of this thesis is to look back at the development of the idea of criminal hatred. Specifically, I investigate the debates on hate propaganda and narrate the process through which it was conceptualised as an object. To explore this conceptualisation of criminal hate in the Canadian context, I have chosen to employ the idea of the sociology of translation, or actor-network theory, which considers how concepts are problematised, given form, and acted upon through the formation of a strong alliances. These alliances can be seen to create an actor-network that holds an object together, clarifying its conceptualisation and making it an essential and taken-for-granted statement of fact. Hence, the actor-network appears to be a useful lens for re-thinking how we came to speak of criminal hatred in the Canadian context.

## Chapter 2.

### *Ordering, Translation and ANT.*

> There are many voices in the Laboratory, and there are many voices in social theory. And I, the author, do not always want to act like God and seek to reconcile them. Indeed, I *cannot* do this. And neither do I want to pretend that I am reporting about nature, or speaking from a position of great superiority. So my position is this: I spent time in the Laboratory. I have experience of the Laboratory. I have some stories to tell about the character of that experience. But the stories that I tell are not naïve. And the way in which I try to tell them is guided by at least three concerns: first, an interest in the work of *ordering*; second, and to a lesser extent, a concern with the work of *distributing*; and, third, a concern with the *materials and representations* of those processes of ordering. *John Law, Organising Modernity*

In classical sociology, indeed in everyday language, we talk of the social, of society. Indeed, trying to grapple with this monster, the social order, has been one of the foremost meta-narratives of sociology since its inception. However I, like Law, am uncomfortable trying to articulate some approximation of some element of the social order. What is far more appealing is to speak of ordering rather than order. I prefer to look at the *process* whereby certain objects come to emerge, appear stable, and be acted upon. In this chapter I wish to develop an analytic for narrating the process whereby hate propaganda legislation emerged.

In this vein, the first element of this chapter looks to a very basic shift: the move from order to ordering. What at first sounds dramatically simple, I argue, is indeed a fundamental shift for approaching a social issue, for 'doing' a sociology. It is concerned with action over result, verbs over nouns, narrative description over causal explanation. What is lost in terms of explanatory purchase is more than compensated for by a process-oriented approach that illustrates points of fracture and resistance. It describes how, where, and when things *might have been different.* The second part of this chapter moves to a more specific

process of ordering, that of translation. Translation looks at how objects undergo transformation in the interests of forming and creating an apparently stable assemblage that can be acted upon. This represents the earlier types of ANT-like studies, so-called sociologies of translation. The third part of this chapter looks at a more formalised, regimented approach[16] to investigating social issues: actor-network theory. Actor-network theory brought a common syntax and general approach to studying sociologies of translation and, indeed, is a far better known form of sociological theory than mere ordering or translation. I try to articulate some of the vocabulary and types of study most commonly associated with ANT. I also attend to the contention by Bruno Latour, Michel Callon and John Law in the book *Actor-Network Theory and After* that the actor-network lost much of its flexibility as it came to be 'pinned down' and 'centred' in the interests of comprehending it as a theoretical position. From here I look at why I think ANT still offers significant promise. I do not believe it is necessary to expand on its concepts but to roll it back, re-emphasising its earlier foundations as an analytics to investigate processes of ordering.

## 2.1 *Act 1 - Ordering*

> Perhaps there is order*ing*, but there is certainly no order. This is because, as Zygmunt Bauman implies, orders are never complete. Instead they are more or less precarious and partial accomplishments that may be overturned. They are, in short, better seen as verbs rather than nouns (Law 1994: 1-2).

The ordering of elements is a very general concept that attempts to look at the various ways we go about organising the world to gain purchase on concepts. While this may seem like almost a banal point I contend this is not the case. Making a move from

[16] These seem odd terms for me to use, actor-network theory prizing above all else its status as a flexible approach.

'order' to 'ordering' is a substantial epistemological shift in approaching the social sciences. The point of this entire theoretical section is to discuss ordering. Rather than looking at results or a finding (i.e. a social order), ordering is process-oriented.

The idea of ordering subscribes to a notion that the social world is not neat and organised, easy to understand and manipulate. In John Law's (1994: 5) book, *Organising Modernity*, he notes this at the outset saying,

> Indeed, this book is all about complexity, mess, or as I would prefer to say, heterogeneity. Pools of order are illusory, but even such illusions are the exception. They do not last for long. They are pretty limited. And they are the product, the outcome, or the effect, of a lot of work - work that may occasionally be more or less successfully hidden behind an appearance of ordered simplicity. So the book is about ordering rather than order. And it's about heterogeneity rather than purity.

What one can take from this is twofold. First, things are more manageable when we bracket them. Without brackets one is almost stuck in a state of inertia. But we need not speak of order. This is the second point. Rather than advocating for an abject sense of powerlessness, talk of ordering advocates that sense is made by following a process of indeterminancies. By looking at process we see how certain projects of ordering fail when they don't succeed in "ordering a larger sector of the social world in terms of its simplifications" (Callon and Law 1982: 620). Just as unsuccessful projects can be investigated this way, successful projects can be approached in the same manner. This gives us a sense of intellectual caution, "the sense that all knowledges are shaped, contingent, and in some other world could be otherwise" (Law 1991: 6). It allows sociologists to practice active scepticism, to question taken-for-granted assemblages as 'natural', allowing us to cling to the belief that such self-evident truths could be otherwise. It shows us the points of resistance where things *might not have been so.*

This approach leads us to the types of sociologies which, in the words of John Law (1994: 9), have "done better". His reasoning is that ordering illustrates certain projects are incomplete not because "they haven't quite finished the business of sorting out the order of things, but rather because they know that it is necessarily that way: they will always be incomplete." These are modest sociologies, they don't make grand sweeping declarations about the current order of things and the way things 'should' be. Rather, they are aware of their scope and offer descriptions rather than definitive statements within this sphere. Such theories concern themselves with the way that "provisional order is proposed, and sometimes achieved" (Callon and Law 1982: 622). So we start to make a fundamental shift, from ordering to the appearance of provisional order. In other words, orderings spread and are never complete. They continue on, indefinitely, potentially infinitely. Certain amalgamations of orderings are eventually cast aside, some are re-ordered, and others, those orderings that are the strongest, continue on, appearing taken-for-granted.

What is important to note is that orderings are never static, "For orderings spread, or (sometimes) seek to spread, across time and space" (Law 1994: 24). However, these are relatively modest claims and, by itself, a theory of ordering is not very helpful. How is it that orderings form? How is it that as sociologists we should attempt to 'unpack' these orderings to make sense of them? When do we stop un-ordering and leave certain portions of an ordering untouched? A good starting point is to recognise the assertion by Law (1994: 24-25) that "left to their own devices human actions and words do not spread very far at all. For me the conclusion is inescapable. Other materials, such as texts and technologies, surely form a crucial part of any ordering. So ordering has to do with both humans and non-humans. They go together." One approach that tries to make sense of the heterogeneous

ordering of materials and humans, knowledges and machines is the sociology of translation. How do we take such seemingly disparate elements and, in the words of Alain Desrosières, make something which "holds together"? More often than not, it comes down to a process of translation, taking diverse objects and translating them into a set of seemingly like and comparable objects. Eventually, ideas, items and individuals that seem unique can be spoken of in the same breath, under an umbrella that links them together.

## 2.2 *Act 2 - Translation*

> The paragraph acts, then, as a kind of 'funnel of interests'. At the start it is wide—designed to 'catch' a broad range of general interests. It then proceeds to concentrate and specify these by means of a series of transformations, or 'translations', in which different claims, substances or processes are equated with one another: where, in other words, what it is in fact unlike is treated as if it were identical. (Callon and Law 1982: 619).
>
> He who is able to translate others' interests into his own language carries the day (Latour 1983: 144).

Translation has been called a triangular process, involving "a translator, something that is translated, and a medium in which that translation is inscribed" (Callon 1991: 143). The 'trick' of a successful translation is that the medium in which it is inscribed comes to be taken as almost self-evident 'fact'. These mediums can be seen as intermediaries which circulate and define the relationship between actors, "black-boxing" the complexity of interaction and knowledge to reduce a process to input and output (Callon 1991; Latour and Woolgar 1986). In essence, what one witnesses is an erasure of modalities. The translation comes to be able to act on its own, speaking in the name of the elements that have been translated. For instance, the mortality rate, equated to the average life expectancy in a nation, is seen as a health statistic, indicative of the general 'healthiness' of a population. The techniques of counting that go into forming this statistic, the definitions which exclude

certain types of 'death' from being factored into the equation, even how 'healthy' one is at the end of one's life are excluded from the discussion of life expectancy. However, the United Nations uses this measure as a significant element in its calculation to determine the 'quality of life' index that rates countries on a number of measures. If, under a specific government's watch, the life expectancy dropped from 79 to 70 years of age, there would most certainly be questions. It is an almost indisputable measure, considered universal and comparable across all nations. But the amount of work that goes into creating and maintaining this highly successful translation is not merely ignored, for the most part it is considered not to exist. The most successful translation tends to shed its history. It becomes a self-evident measure on which everyone agrees (Callon 1991: 145).[17]

This all sounds quite intriguing and is certainly a somewhat different way to approach studying the creation of apparently new and stable knowledges. Rather than looking to context one looks to the series of translations that go into creating assemblages. But how, exactly, does one go about performing such a study? Two early studies in the sociology of translation which can be seen as emblematic of this type of work are Michel Callon's study of the scallops of St. Brieuc Bay and Bruno Latour's look at pasteurisation in France.

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[17] The process of translation discussed here shares obvious affinities with the idea of classification, as discussed by Bowker and Star (1999). However, in the interests of keeping a consistent vocabulary I will speak throughout this thesis in the terms put forth by Callon - translations that lead to classifications.

2.2.1 *An Example of the Sociology of Translation - Callon and the Scallops*

Callon's study investigated the formation of a network enabling the implementation and support of a Japanese scallop-farming technique in St. Brieuc Bay in France. Over a ten-year period, three French researchers convinced fisherman to support a Japanese farming technique to replenish a slumping scallop population. They also convinced French scientists of the validity of employing the technique in a French setting. Callon traced the process whereby the researchers mobilised fisherman, scientists, and scallops into supporting the project. According to Callon, forming a network is a process of problematisation, interessement, enrolment, and mobilisation (Callon 1986: 221). These phases can be encompassed under a more general process which Callon called translation.

Callon's methodological guidelines to unpack the relationships and stages formulating this project were relatively straightforward. First, he advocated for a sort of agnosticism; no point of view was to be privileged and no interpretation was censored (Callon 1986: 199). All actors were given an equal opportunity to speak. Second, vocabulary was held constant. Employing two forms of language, a scientific one to discuss the technical and a down-to-earth one to discuss the social was considered problematic. Callon called this the principle of generalised symmetry (Callon 1986: 200). To further assist dismantling the natural/social distinction, Callon imposed a third principle, that of "free association." Observations were not assigned, *a priori*, as 'typically' belonging to either the natural, technical or social realm. "Instead of imposing a pre-established grid ... the observer follows the actors in order to identify the manner in which these define and associate the different elements by which they build and explain their world, whether it be

social or natural" (Callon 1986: 201). The distinction between social and natural, agency and structure, was purposely and actively blurred.

Callon's first methodological step was to trace the process of identification and interdefinition of actors. "This double movement, which renders [actor(s)] indispensable in the network, is what we call problematization" (Callon 1986: 204). To accomplish this, the three researchers proposing the project placed themselves in an obligatory point of passage. An obligatory point of passage can be defined as a node in a network of relationships that serves to direct the flow of interests. It diverts actors from going straight to their goals by making certain stages necessary steps for the successful resolution of the problem. In agreeing to deviate through an obligatory point of passage to look for solutions, actors sacrifice some of their autonomy and acquiesce, for a time, to the project (Latour 1983). By clearly defining obligatory passage points the researchers set out the "movements and detours that must be accepted as well as the alliances that must be forced" (Callon 1986: 205). All communication passed through these would-be scallop saviours of St. Brieuc Bay. The project was strengthened as actors became fettered to this alliance created by the researchers. In this way, no group or actor could attain its goals without another party to the project.

The next step Callon noted was a process he called interessement. Interessement, a French-term used by Callon, means 'a device which serves to intersect or interpose'. To be interested in a project is to be in between or interposed (Callon 1986: 208). Often the method utilised to interest other actors is to build interessement devices between entities which serve to shape knowledge or guide debate. During this stage the non-human is

essential (Callon 1986: 208). In the case of the scallops, the animals were physically removed from all actors which might wish to harm them. A caged towline acted as an interessement device, separating scallop from predator, current, and fisherman (Callon 1986: 209). The scallops were not the only actors ensnared in this fashion. The scientists and fishermen were also wooed. Diagrams, figures, charts and tables were other key non-humans, what Latour (1986) calls immutable mobiles, which helped tie actors to the project. Immutable mobiles express inscriptions; they are measures, materials and representations, which are generally agreed upon, often universalised, and are used to make knowledge mobile and comparable.[18] They are looked at frequently, thought their complexity is well hidden, these materials closest to eyes and hands (Latour 1986). Effective interessement devices serve to support hypotheses – not necessarily to search for 'truth' or 'fact'. If successful, the interessement stage generally confirms the validity of the problematisation (Callon 1986: 209).

The next stage Callon studied was enrolment. Enrolment involves employing interessement devices to define the relations of intertwined roles, encouraging actors to accept the definition and expectations of their roles as defined. "To describe enrolment is thus to describe the group of multilateral negotiations, trials of strength and tricks that accompany the interessements and enable them to succeed" (Callon 1986: 211). However, enrolment is an uphill battle, it is precarious and relationships need constant maintenance for networks to be maintained (Law 1997). Interessement can be seen as cornering those entities which need to be enrolled. As alliances are formed through enrolment, the various

[18] The idea of the interessement device is like the immutable mobile, only more general. An immutable mobile is always an interessement device. For instance, tables of mortality rates and scientific measures such as the 'volt' are both. However, the reversal of this relationship is not always the same. An entry fee, for instance, that offers cheaper prices based upon the length of subscription, acts as an interessement device but is not an immutable mobile.

interessement devices serve to deflect and interrupt potential discontinuities and competing associations that would interrupt the formation of a strong coalition (Callon 1986: 211).

The next trick, which gets to the heart of all sociologies of translation, is making the project mobile. "To mobilise, as the word indicates, is to render entities mobile which were not so beforehand" (Callon 1986: 214). The mobilisation of allies involves the designation of spokespeople, speaking on behalf of the populations they claim to represent. It is the displacement and reassembling of actors at a different place and a different time, that allows spokespeople to speak on behalf of a project. It is crucial to note that spokespeople need not be actual people. Statistics, inscriptions, measures, indicators and curves can all act as spokespeople that represent greater populations. The question is whether the masses follow their representatives. In the case of the scallop fishery, "Three men have become influential and are listened to because they have become the 'head' of several populations. They have mixed together learned experts, unpolished fishermen, and savoury crustaceans" (Callon 1986: 214-16).

Should these steps be effectively completed, what results can be deemed a 'successful' translation - various relationships have come to be defined and constrained and populations represented in the name of a project. The margins of manoeuvre have been limited. However, the process of translation must be constantly negotiated to ensure its durability and strength. A translation stays strong unless dissidence in the form of betrayals and controversies occurs (Callon 1986: 219). The opportunities for dissidence are many, as clusters are inherently fragile, being constructed entities. When the specific speaks for the general (the union rep., the focus group, the biological sample) and speaks in its name, it

must first silence those in whose name it speaks (Callon 1986: 216). As long as the project satisfies the actors enrolled, the chance of dissidence is diminished. For instance, in Callon's study, the fisherman fished the scallop stock before the researchers deemed it ready for harvest. "As the aphorism says, taduttore-traditore, from translation to treason there is only a short step. . . . New displacements take the place of the previous ones but these divert the actors from the obligatory passage points that had been imposed upon them. New spokesmen are heard that deny the representativity of the previous ones" (Callon 1986: 224).

Dissidence is not only a human act. It is potentially more difficult to silence contentious non-humans. The non-human does not possess an articulate language, thus interessement devices and immutable mobiles must be invented to speak on its behalf (Callon 1986: 216). But if the non-human does not respond as predicted, or the non-human does not respect the invented language, translations potentially break down.[19]

### 2.2.2 *Latour and Pasteurisation in France*

What is critical in this convergence is to understand the process that displaces knowledge and re-assembles it as 'new'. This element of translation is highlighted well by Bruno Latour in his description of Louis Pasteur's 'defeat' of anthrax in the late 1800s. In describing how Pasteur performed not only a 'normal' but a remarkable translation, from

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[19] This question, whether the non-human is an actor or merely an intermediary is an interesting one. Potentially it can be both. This speaks to one of the most harsh critiques levelled at actor-network theory, by endowing the non-human with 'actor' status, the actor or 'agent' can disappear, replaced instead by a set of relatively useless 'actants'. Some studies that utilise ANT try to address this dilemma. As John Law (1994: 35) notes, "Can you say of something that it *acts*, or does it just relay messages and act as an *intermediary*? Can you characterise the orderings that lie 'inside' it? Can it say of itself that it acts? Or that it more or less embodies certain orderings inside? Or (a crucial question) that it is reflexive or self-reflexive?" For this thesis I content myself with noting the potential of the non-human to act and do my best to stay consistent in my treatment.

mere study to scientific 'breakthrough', Latour notes the key to his success was breaking down the inside/outside dichotomy of the laboratory and public interest in phases. The first "move" in the Pasteurisation of France, involved "capturing others interests". Move two was to move "the leverage point from a weak to a strong position". To do this, Pasteur removed anthrax from the farm to his laboratory. The third "move" was "moving the world with the lever" (Latour 1983: 144-53). Pasteur took the conditions from his lab and replicated them on farms to 'cure' the country of anthrax. The similarities to Callon's process of study are evident, though Latour focuses more on the mobility of knowledge. For instance, Latour (1983: 146) notes Pasteur reformulates farmers' interests, "in a new way: if you wish to solve *your* anthrax problem you have to pass through *my* laboratory first. Like all translations there is a real displacement through the various *versions.* To go straight at anthrax, you should make a detour through Pasteur's lab. The anthrax disease *is* now at the École Normale Superieure." It is not necessary for the translation to be completely 'true' or literal to what it is trying to represent. As Latour (1983: 147) notes, Pasteur "takes only one element with him, the micro-organism, and not the whole farm, the smell, the cows, the willows along the pond or the farmer's pretty daughter. With the microbe, however, he also draws along with him the now interested agricultural societies." The translation undertaken by Pasteur takes man from a point of weakness (susceptible to the random diseases of anthrax capable of decimating a farm) to strength (the 'superior' man able to dominate and manipulate the bacillus in the lab) through *translation and displacement.*

### 2.2.3 *Speaking in Stages: Potential Problems with Sociologies of Translation*

A possible drawback with these analytics is that by outlining various elements in the process of translation, it can be interpreted that change is brought about in stages. Callon

talks in "steps". Latour speaks of "moves". In this type of analytics, for a project to be 'successful' it appears different stages must be accomplished. The effect of this can be to take the circulating and indeterminate nature of translations and look at projects in a linear fashion. However, I think this need not be the case. Outlining a project in terms of different stages makes comprehension easier. "Translation is a process before it is a result. That is why we have spoken of moments which in reality are never as distinct as they are in this paper" (Callon 1986: 224). It is about manageability. It is not, I contend, designed to make one think that once certain 'stages' are passed they are no longer active spheres. These earlier attempts at performing a sociology of translation, I think, can be forgiven for employing a somewhat procedural approach. In revisiting the sociology of translation half a decade after he wrote about scallops, Callon (1991: 145) noted,

> A successful process of translation thus *generates* a shared space, equivalence and commensurability. It *aligns*. But an unsuccessful translation means that the players are no longer able to communicate. Through a process of *disalignment* they reconfigure themselves in separate spaces with no common measure.

What translation attempts to shed light on is the process that leads to alliances of 'knowing'. Specifically, it looks at how "At the end of the process, if it is successful, only voices speaking in unison will be heard .... Translation is the mechanism by which the social and natural worlds progressively take form"(Callon 1986: 223-24).

How we come to think the world appears as the result of various translations. And the sociology of translation was itself not immune to such a transformation. As the sociology of translation was further utilised, it began to take on new labels and terms. The process of translation came to be envisioned as creating a network. The process of determining a translation was said to be best achieved by following actors to see how they went about creating knowledge. These actors, both human and non-, were said to move

within and simultaneously define their network. The sociology of translation was translated: to actor-network theory.

### 2.3 *Act 3 - Actor-Networks*

> Actor-network theory is a ruthless application of *semiotics*. It tells that entities take their form and acquire their attributes as a result of their relation with other entities. In this scheme of things entities have no inherent qualities: essentialist divisions are thrown on the bonfire of the dualisms (Law 1999: 3).
>
> ANT is not a theory of the social, any more than it is a theory of the subject, or a theory of God, or a theory of nature. It is a theory of the space or fluids circulating in a non-modern situation (Latour 1999: 22).

If one were to sit down and list the number of taken-for-granted concepts, objects, and technologies that enable the smooth operation of everyday life, the catalogue would be immense. Gravity, force, weight, and structural design are essential concepts in the construction of buildings. Agreement on the basic functioning of the nervous, respiratory, and gastrointestinal systems allows modern medicine to be practised. Even murky concepts like 'free', 'reasonable', and 'equal' need firm bases of concurrence for the legal system to function. But these seemingly natural concepts are not 'out there' innately waiting to be discovered and exploited. New forms of knowledge, discoveries, and inventions are not adopted wholesale at their imminent moment of conception. Instead, 'Great' discoveries witness growing shifts as old theories are discarded and new theories gain momentum through collective action (Ward 1996). History is littered with examples. For instance, it was generally perceived and accepted that the earth was flat before it was discerned as round; Galileo was jailed for questioning Copernicus' geocentric theory; and many mental illnesses were identified as the mark of the devil before they were designated as biological conditions.

Actor-network theory looks at the process and mechanisms whereby coalitions of humans and non-humans come together to construct seemingly stable, rational, natural, and objective concepts (Law 1992). These apparently irreversible concepts can be seen as effects from the work that goes into making what Alain Desrosières (1991: 200) calls the "things which hold together, which display the qualities of generality and permanence." Rather than trying to unmask the potentially mystical 'social forces' many other theories denote as the catalysts of change, actor-network theory tries to show the flow of events through which concepts develop and are embraced. The tracing of concept formation through a network determines where resistance is met and how resistance is overcome (Law 1992).

This section offers a brief description of actor-network theory and is broken down into the following parts: Rise of ANT; The Height of ANT; The Fall of ANT?; and Going Forth with ANT. In essence, the aim of the chapter is to describe a specific form of ordering, that of actor-network theory, that provides an insight into the process of translation. It is important to recognise at the outset that actor-network theory has been critiqued, not only by 'outsiders' but also by many of its 'founders'. However, I feel that ANT is still a useful analytics, highly flexible and process-oriented.

### 2.3.1 *Rise of ANT*

Actor-network's roots are in science and technology studies, arising in the early 1980s. Bruno Latour and Michel Callon can be considered early initiators of the approach with John Law as a notable British disciple (Actor-Network Resource 2004). The primary concern in advancing the method was not to propose a new sociological theory. On the contrary, ANT sprang from Callon and Latour's perception of a need to escape the

traditional structure/agency dichotomy. Macro and micro level analysis, constantly the focus of social science, were perceived as two "equally powerful *dissatisfactions*" (Latour 1999: 16). Instead of picking a side or trying to bridge the divide, the authors advanced a method to illustrate the ongoing process whereby, "advocates of a fragile concept are able to recruit and mobilise enough allies to forge a network of truth so strong and encompassing that the concept becomes a self-evident matter of fact" (Ward 1996: 3). In essence, the method was employed to show how, within science and technology, perspective, assertion, and opinion become fact.

The method attempted to go beyond the process employed by many 'social construction of X' theories that end up deconstructing 'reality' to show its contingent nature (Hacking 1999). Instead, it aimed to uncover and exhibit linkages, both human and non-human, that form constructs. It looked to escape the somewhat mystical notion of social forces, instead grounding itself in something more tangible – relationships, linkages, and translations (Law 1992). The focus was on uncovering and elucidating the human and non-human materials, concepts, 'truths', and problematisations that go into producing social change or stability.

The first step in the process was to learn to define and follow the actors as they came to move in and *simultaneously* construct their network of relationships. The notion of a disparate inside and outside was purposefully blurred.

> The words in a text refer to other texts, and rework and extend the networks to be found in these. So whereas, traditionally, we have assumed that texts are closed - we have distinguished between their context and their content - now we are saying that texts have neither an inside nor an outside. Rather they are objects that define the skills, actions and relations of heterogeneous entities. Thus, like other texts, *the scientific article is a network whose description it creates* (Callon 1991: 136)

The corollary to breaking down the inside/outside dichotomy was to highlight another unspoken divide: human/inhuman. Studying social relations without placing equal emphasis on the non-human was deemed impossible (Latour 1988). Non-human came to supplant the notion of inhuman. In what has been called the 'revolutionary' turn of ANT (Law 1992; 1997), the notion of actors was expanded to include the non-human. The authors determined that ordering one over the other was problematic as it was the alignment of both that stabilised concepts.

If one was to try to make sense of these heterogeneous relations, attention needed to be given to *movement.* That is, how did these human and non-human assemblages come simultaneously to define and move through the networks they created? What 'pushed' and 'pulled' them towards creating a stable assemblage? While interests were still considered important (Callon and Law 1982), the authors tended towards making a more subtle distinction, instead speaking of problematisations and aligning of paths towards a common 'goal'. For instance, Latour (1983: 150) attributes much of the success of Pasteur to groups accepting they must "pass through Pasteur's hands in order to solve their problems", while noting this was only to the extent that they went "through him to their own ends." Thus it was not some inherent brilliance or genius that led to the notoriety of Pasteur. Rather, it was his expertise in fusing interests through his process in the lab and making his expertise mobile.

To explain these processes, a very basic methodological precept came to be adhered to: follow the actors (Law 1992; 1997, Latour 1983; 1999). By following the actors one could find out where resistance was met. Unpacking the increasing strength of a concept

came from focussing on displacements – determining how a concept gained *strength, durability* and *mobility* through a series of successive translations rather than its inherent 'truth'. "In this succession of displacements, no one can say *where the laboratory is* and *where the society is.* Indeed the question 'where?' is an irrelevant one when you deal with *displacements*" (Latour 1983: 154). As such, its initial contribution to social science was primarily a significant methodological shift. Rather than focusing on social states, contexts or orders, actor-network theory advocated and employed a dynamic methodology that followed actors, allowing them to participate in their own world-making capabilities. In essence, as a method, it advocated going beyond the traditional divides to look at movement.

### 2.3.2 *The Height of ANT*

What appears of paramount importance in actor-network theory is actively to avoid, or at the very least be conscious of, the 'natural' distinctions generally made in sociology. And while in no way a silver bullet, the approach deemed most suited to do this is to follow the approach articulated and advocated by Latour: follow the actors. As actors move they define not only themselves but also the network within which they operate. It is a symbiotic relationship. "In many ways the method is a good one. It is a way of generating surprises, of making oneself aware of the mysterious. This is because it tends to break down 'natural' categories - I mean some of those distinctions and distributions 'natural' to the sociologist" (Law 1991: 11). Why is it that these categories are considered so problematic? In what way are they limiting? The response, by Latour, Callon and Law, is that traditional divides privilege certain realms while ignoring others (Latour 1983; 1999; Callon 1986; 1999; Law 1992; 1997). By following the actors, "the approach is indifferently available to the great and

the small, because it is precisely about how it is that the small become big (or vice versa), and why it is that some succeed while others fail" (Callon and Law 1982: 621).

As a method, the actor-network aims for maximum flexibility. It is about uncovering or making sense of processes of ordering. The idea of 'following the actor' is not meant as a hard and fast rule but more as a slogan or guideline meant to remind the researcher to resist actively imposing pre-imposed value judgements and orders. It is not immediately obvious how following the actors is a strategy that leads less to making pre-imposed value judgements than any other method. I am not convinced that employing this methodology offers some kind of added protection against falling into this trap. I tend to adopt the position of Law (1999: 11), that the slogan is useful only "to the extent that it reminds us that we tend to reify, naturalise, or simply ignore, what may by important distributions. ... Though in reality, of course, we cannot take it literally" (Law 1999: 11).[20] Instead, the slogan reminds the researcher to trace a series of events through a decentred network if they wish to understand the process by which 'truth' is formed. This idea of the network is both topological and spatial. "In a network, elements retain their spatial integrity *by virtue of their position in a set of links or relation*" (Law 1999: 6). However, relations and links within a network are not to be confused with the 'social'. In other words, rather than describe how processes lead to the construction of *X*, the actor-network methodology attempts to show how *X* comes to be performed. Perhaps this appears as only a semantic distinction but I believe the difference, while subtle, is important. While both are active assertions, the

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[20] A danger exists, and a caveat must be added to this notion of following the actor. The researcher, by following actors, can fall prey to a type of heroism, the creation of 'great men'. The aim is not to "establish a general set of rhetorical rules for the construction of imputed interests," (Callon and Law 1982: 621) but rather to determine how it is that certain projects come to succeed.

notion of the actor-network is that people come to perform and create their own reality rather than having their reality created for them.

The position of many ANT authors is that people know how they act and why they do so – it is social scientists, not the actors, who lack the knowledge of what people do and why they do it (Latour 1999: 19).

> Far from being a theory of the social or even worse an explanation of what makes society exert pressure on actors, [ANT] always was, and this from its very inception, a very crude method to learn from the actors without imposing on them an *a priori* definition of their world-building capacities (Latour 1999: 20).

The earliest critics observed that such a method had a potential problem with its portrayal of the actor. "It becomes *difficult to sustain any kind of critical distance from them.* We take on their categories. We see the world through their eyes. We take on the point of view of those whom we are studying" (Law 1991: 11). But accepting the categories of the actors themselves helps shed light on precisely how durability is achieved. Within a network, materials and entities perform themselves into relatively stable and fixed relationships. Performativity sometimes leads to durability and fixity (Law 1999: 4). Superimposing the discourse of the researcher over the discourse of the subject is overly explanatory, all of which indicates that the description constructed by the researcher, the story being told, is unable to compete on its own merits (Latour 2003).

Rather, ANT offers a coherent terminology and analytic guideline to narrate this process. Problematisation, obligatory points of passage, points of resistance, interessement devices (or inscriptions, or immutable mobiles), enrolment, mobilisation (or displacement),

and treason (or dissidence) are crude yet fluid[21] methodological terms employed in early ANT studies.

> Nothing becomes real to the point of not needing a network in which to upkeep its existence. No gender pool is well adapted enough to the point that it needs not reproduce. The only possible thing to do is to diminish the margin of negotiation or to transform the most faithful allies in black boxes. ... Domination is never a capital that can be stored in a bank. It has to be deployed, black-box, repaired, maintained (Latour 1991: 118).

What one has then is a method that attempts to understand movement, to comprehend process. It asserts that concepts are not innate and could have been other than they are (the precept of reversibility) but it stops short of implying that concepts are 'created' by social forces and disingenuous actors. Its focus, instead, is on understanding the process of concept formation through alignment and displacement. It is actively sceptical, in that it refuses to be amazed by the 'discovery' of superior forms of knowledge, instead searching to understand the process whereby such knowledge comes about. "Scientific facts are like trains, they do not work off their rails. You can extend the rails and connect them but you cannot drive a locomotive through a field. ... That the same thing can be repeated does not strike me as miraculous" (Latour 1983: 155).

These types of studies shed light on the processes behind the appearance of supposedly new forms of knowledge. Such research did away with the notion that the conception of a good idea was enough to determine its 'greatness'. Instead, ANT studies politicised science, in the 'small p' sense of the word. However, between the first actor-network studies in the early 1980s and the publication of *Actor Network Theory and After* in

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[21] I say fluid to the extent that what appear to me as the most effective ANT studies offer up a limited set of terms to describe a circulating process. I believe this is necessary to gain some purchase. However, these terms are fairly pliable and can extend to a variety of elements in the process. ANT avoids the trap of methodological jargon which fixes a dynamic process and seeks to investigate processes by compartmentalising space and time.

1999, something was perceived to besmirch the idea of the actor-network. In a fairly remarkable move, the three names most commonly associated with actor-network theory, Latour, Callon and Law, dismissed ANT in varying degrees. Their feeling appeared to be that ANT had lost its flexibility as it came to be pinned down as a 'theory'. "In ANT the T is too much (*'de trop'*). It is a gift from our colleagues. ... I fear our colleagues and their fascination for theory" (Callon 1999: 194).[22] In essence, their contention appears to be that a transition occurred, involving a shift from advancing a method to study concept formation to a theory of concept formation.

### 2.3.3 *The Fall of ANT?*

According to Law (1999: 2), the naming of actor-network theory, even shortening it to ANT, suggested that the core or centre of the theory had stabilised and been defined, making the theory definite and transportable, defining common points of passage or intellectual space. Much of this 'fixity' perceived by Law has been attributed to the fact of the naming of the actor-network. The act of its naming and acceptance into academic parlance gave it a coherent existence it otherwise would not have possessed (Hacking 1986) - separating it out from other post-structuralist theories[23]. However, this notoriety was not welcomed and embraced by Latour, Callon, and Law, who found this 'theorising' problematic. In a very un-ANT like fashion, some broad, all-encompassing charges were

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[22] These colleagues are for the most part nameless and faceless. In *Actor-Network Theory and After*, no author is overtly mentioned as co-opting the theory. Neither are specific actor-network studies highlighted as performing the approach incorrectly.

[23] For instance, actor-network theorists attempted to distinguish their position from the post-modern or deconstructionist accounts of Jacques Derrida (1976) or more recently of Judith Butler (1993), which assert the textual nature of representation. Instead, it the position generally asserted was that individuals 'perform' their own 'reality'.

levelled, which, in essence, stated ANT was simplified, pinned down and made unproductive by naming and fixing it theoretically (Law 1999). "I will start by saying that there are four things that do not work with actor-network theory; the word actor, the word network, the word theory and the hyphen! Four nails in the coffin" (Latour 1999: 15).

I will start off by saying this turn in the brief history of actor-network theory is unproblematic to me. I still find it to be an appealing analytic that focuses on process, is verb-centred, and asserts that concepts and knowledges arise and are maintained through alliances. I have no urge to engage in a sort of adventure to 'rescue' ANT. Some of the critiques about the theorising of ANT are interesting and need to be addressed. However, I will not try to save the actor-network from the supposed 'trappings' of theory.[24] Can it still be employed? I believe so, for the many reasons I have previously discussed. However, I need to attend to the critiques of Latour, Callon and Law as they are an important element in the history of the actor-network.

Fixing actor-network by adding the 'theory' makes it appear to Law (1999: 3) as a territory of fixed attributes, a single location of concept formation, rather than fluid. For Latour (1999: 22), ANT was a theory only to the extent of being a "theory of the space or fluids circulating in a non-modern situation." It was not intended to be a theory of agency, or the social, or science or nature. Instead, the point was to accent the theoretical difficulty that, "the moment one accepts that both social and natural sciences are equally uncertain, ambiguous, and disputable, it is no longer possible to have them playing different roles in the

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[24] There are other issues that could be raised here such as questions of ownership when founders of an approach become dissatisfied with it.

analysis" (Callon 1986: 199). This was intended as a methodological or analytic caution not an overarching theory. However, I do not see how calling it a theory does away with this caution unless the idea of method, analysis and theory are employed in very narrow ways. Method does not always equate to a process (flexibility and openness) while theory equals something stable (finality and closure). It is easy to point to many theories and methods where this certainly is not the case. The realisation merely serves to illustrate that methodologically it is no longer viable to disentangle human and non-humans. It is important to illustrate how both undergo a process of framing in line with the nature of the problematisation (Callon 1999). Framing is not considered a one-off process but something that must be constantly maintained whether one looks at this methodologically or theoretically.

When actor-network is spoken of in terms of theory, the focus can be seen as investigating the creation of irreversibility. The actor-network was theorised as an approach running contrary to scientific realism, which, in essence, states that concepts are discovered through painstaking effort and rigorous observation rather than created (Ward 1996). Instead, ANT was seen to take the stance that all actions and attributes ascribed to the nature of humans are generated within a network. Concepts are embodied, internalised. They come to be embraced not only externally but internally. "Hence the term, actor-network – an actor is also, always, a network" (Law 1992: 4). It became a scientifically-based theory of the means by which concepts are created, mobilised and embraced. The theory helped to distinguish why some concepts become more encompassing than others and how certain claims are rendered asymmetrical from others (Ward 1996: 6). If one were to

summarise, the theory became somewhat of a mantra[25]: *All* statements start as fragile assertions and *only* build themselves up as 'truth' by a process of problematisation, enrolment (creating alliances), and enlisting of non-human materials (interessement devices and immutable mobiles) which combine to form a powerful network.

As Latour notes, this theoretical turn can somewhat be attributed to a poor choice of naming. The desire to do away with many of the traditional social science divides was undermined by the coupling of the terms actor and network, which is often mistaken to be an 'update' of the traditional agency/structure divide. This misunderstanding should come as no surprise, as it is acknowledged that it is "much too similar to the traditional divides of social theory" (Latour 1999: 16). However, I do not believe I would go as far as Law (1999: 10) who states that attempts "to convert actor-network theory into a fixed point, a specific series of claims, of rules, a creed, or a territory with fixed attributes also strain to turn it into a single location." I think ANT's flexibility is easily 'salvaged'.

One region of contention over the simplifying of ANT is the assertion that it fell prey to the development of a common-sense view of 'networks'. With respect to the word network, originally it was intended to mean a "series of transformations—translations, transductions—which could not be captured by any of the traditional terms of social theory." However, thanks to the Internet revolution the popular usage "now means transport without deformation, an instantaneous, unmediated access to every piece of information" (Latour 1999: 15-16). As such, Latour advocates that the term shouldn't be used anymore in exploring transformations. What he deems, 'double click information',

[25] I do not consider this mantra as problematic as others.

"has killed the last bit of the critical cutting edge of the notion of network" (ibid.). I do not share Latour's concern and feel the metaphor of a network is still quite helpful. According to Law (1999: 8) there is a common misinterpretation of the role of the network, there being "*no assumption that an assemblage of relations would occupy a homogeneous, comfortable and singularly tellable space.*" There appears to be a tension here between Latour and Law in their vision of the possibility of re-establishing the fluidity and distortion of networks. As long as the metaphor of networks does not impute an idea of causality or explanatory divisions in the given order of things (Law 1999: 3) I am content. I think networks are still capable of explanation in the sense of, "Explanation, as the name indicates, is to deploy, to explicate. There is no need to go searching for mysterious or global causes outside networks. If something is missing it is because the description is not complete. Period" (Latour 1991: 130).

Perhaps the problem with ANT is that, using Callon's analogy of goals or Latour's offhand instructions to 'follow the actor', it seems to assume one set of interested actors who are 'catalysts' to a project. These 'initiators' achieve a set of ends by cleverly mobilising allies and tying them to a project through the definition of obligatory passage points and the employment of interessement devices. Success is only achieved when actors manage to align views. The actor-network becomes, by this measure, another theory to explain existent social dominations. It is hegemony, in updated form, for science. It succumbs to a process of punctualisation, where processes and entire networks come to be subsumed into nodes or single points in another network (Callon 1991: 153).

According to Latour (1999:19), transforming the social from a territory to a circulation, from a noun to a verb, from a province of reality to a network of alliances, is the greatest contribution of ANT. I see no reason why this contribution has been rendered moot by the popularisation of the theory. A network is a process, the result an achievement. By looking at the points of indeterminacy in a process one can witness the sites where the performance of power and knowledge can best be witnessed.[26] The effect is to analyse how, what and where the boundaries of discussion are shaped, the limits of investigation. Perhaps speaking of actor-networks in terms of theory sacrifices much of the flexibility of the approach. However, it is hard not to question whether investigating the creation of alliances that help the process of concept formation is a theoretical stance - that 'truth' is contingent upon alignment. Thus one hangs in the balance, is actor-network better equipped to act as a theory or method? I think trying to maintain such a divide is tenuous. I think it is a potentially effective analytic no matter whether we think of it as the sociology of translation, actor-network theory or ANT. One can investigate stories of unity following an actor-network method. However, if one can find common threads in the *processes* described by actor-network, it can be extrapolated as theory. I believe there is much flexibility in the approach and it remains a valid lens to employ. While this moment in the history of ANT is certainly important I respectfully disagree with Latour on his contention that there are 'four nails in the coffin.' ANT does not need to be brought back from the dead, rescued from the

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[26] From this perspective, Law and Latour have advocated looking at cases of imperfect translation, so-called betrayals in the process, rather than to instil and amend a set of consistent principles of ANT. This can be seen as the 'way forward'. In doing this, ANT attempts to cross the traditional divides of the social sciences. "Is it our fault if networks are *simultaneously real, like nature, narrated, like discourse, and collective, like society?*" (Latour 1993: 6) According to Law (1999: 6), to study noise, those elements that fit poorly into a single narrative, is the best fit for actor-network theory. While I find this contention interesting, I remain unconvinced of the idea of a best fit.

theory dragon. The fact of my using it, employing it in my own world-building capabilities, indicates to me that it is still alive.

2.3.4 *Going Forth with ANT*

As it currently stands, ANT is relatively economical in the claims it can make. Can it result in an interesting story? Certainly. But is it able to account for the rationality underlying projects other than attributing it to basic self-interest? Arguably not. In this way ANT is almost a utopian liberal model: actors follow their self-interest and accomplish this interest through the forging of alliances. A common critique is that the 'actor' in the actor-network can almost disappear (Callon 1999: 182). The experience of the actor and the rationality that shapes this experience is forgotten. To put it crudely, actors appear endowed with almost limitless possibilities at the onset and acquiesce to demands because they serve their own interests. ANT explicitly contends, that the powerful, intrinsically, are no different than the wretched. It purposefully starts with a clean slate (Law 1992: 1).

At times this can appear as a sort of cheap liberalism – manipulation, distortion, and enticement are difficult to articulate and can disappear from the story being told. So although in practice there appear to be differences in power, these differences are seen to arise only through the chain of events by which the actors generate themselves in the network (Law 1992: 7). Power is thus no different than any other *effect* of the translation that occurs. "Translation is the mechanism by which the social and natural worlds progressively take form. The result is a situation in which certain entities control others" (Callon 1986: 224). Actor-network theory, in the spirit of many post-structuralist positions, is hesitant to speak of power in terms of a commodity which some parties possess over others. The

notion of domination, which can be defined as a gross imbalance of power, is also absent from discussions. Domination reflects stability and actor-network theory concentrates on the periods of uncertainty where domination is not yet exercised (Latour 1983). In order to explain the growth of certain claims as 'truth', the resolution of controversy through seemingly unanimous agreement, ANT actively abstains from discussing these situations in terms of a balance of power causing certain views to be privileged (Callon 1986: 222). This is not to say there are no divisions or hierarchies of power. Rather these instances of power imbalance are "understood as *effects or outcomes.* They are not given in the order of things" (Law 1999: 3).

ANT starts from a position that all elements in a network, both human and non-, are materially heterogeneous, that is to say they are accorded the same status. All are able to act upon one another equally (Law 1997). Understanding what sociologists generally call power relationships means describing the way in which actors are defined, associated and simultaneously obliged to remain faithful to their alliances (Callon 1986: 224). This is not to say that ANT imagines that power does not have an effect. Instead the purpose is to shy away from stating the significance of power prior to action. In this way ANT is more a *summing up* of interactions (Latour 1999: 17). Power is the effect of this summing up, an influence in a specifically framed locus. However, it is important not to confuse this with a pluralistic view that claims there are many equal centres of power. Instead, it asserts that power relations are never complete because they are relational. Power is an effect, but a constantly negotiated effect. "For actor-network theory is all about power – power as a (concealed or misrepresented) effect, rather than power as a set of causes." (Law 1992: 5) Thus translation *leads* to power. Translation is a process of finding durable materials,

mobility of communication through immutable mobiles, enrolling actors and negotiating alliances all in the name of consensus. Power is an effect at various points in the network, not only with respect to humans but non-humans and concepts. The formation of obligatory points of passage in networks creates common nodes, which, once passed, have as an effect some element of power (Ward 1996: 7). However, the principle of reversibility prevents one from declaring that the exercise of such power is necessarily causal.

Actor-network thus appears more cautious than other approaches in the claims it makes about power. This is not to say that it doesn't share certain affinities with other approaches that make power a focus, for instance those analytics influenced by Foucault (Law 1992: 5). It is important to remember that ANT does not presuppose that interaction is free from power. Latour (1999: 15) is clearly against notions of a network that discounts the influence of distortion. However, often in ANT studies, power appears only as effect, the result of passing a certain obligatory node or point of passage in the actor-network. Non-material resources like knowledge or prestige are ignored at the onset and only brought back in as a later effect. From a Foucauldian sense, this view of power can be seen as extremely limiting. "Power apart from social formations, intersubjective dependencies, political controls and ethical practice is a miserable abstraction" (Allen 1991: 424). Rather than being at odds many elements of governmentality and ANT are similar.[27] Power is not localised but is exercised through web-like relations (Foucault 1980: 98). Perhaps a reassessment of the treatment of 'power' is not wholly incompatible with the basic precepts of the actor-network.

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[27] It is possible to view an actor-network as comparable to a discursive field.

To date, attempts to employ ANT outside the realm of science and technology studies have been limited. Perhaps this results from shying away from discussions of rationality and power. Without a clearer notion of power it is difficult to discuss 'capital P', Politics. As actor-network theory can be interpreted as a method originally advocated to politicise the supposedly 'pure' realm of science it appears that remedying this deficiency might allow it to 'stretch its wings'. One of the current problems with the approach is that it privileges science as the primary catalyst of social change. According to Latour (1983: 168), "In our modern societies most of the really fresh power comes from sciences - no matter which - and not from the classical political process." Eager to break down the traditional dichotomies of agency/structure, inside/outside, micro/macro, human/non-human, and so forth, Latour can be criticised for reformulating a political/science divide, perhaps inadvertently, by privileging a specific source of power and knowledge.

To this end, I would like to expand the language of the actor-network to speak of pre-existent orderings and re-orderings as a sort of substitute to address issues typically handled by speaking of 'power'. By paying greater attention to pre-existent orderings, actor-network theory could expand its focus to address some of the 'social' relationships and institutions traditionally described in terms of domination or hegemony. Through highlighting significant orderings, actor-network theory could broaden its gaze to focus on the limiting ability of strong pre-established networks of ordering. This turn could be beneficial yet it maintains the appealing methodological approach that focuses on process and movement, best highlighted by Latour's slogan: 'follow the actor'.

In bringing forth more explicit notions of power and politics, ANT might better extend itself to look at situations outside of its traditional realm. "It would be worrying if ANT had nothing to say about the market when it was all along designed specifically to describe and analyse those imbroglios in which humans and non-humans alike are involved" (Callon 1999: 182). Indeed, Callon's implementation of the concepts of the actor-network to look at the market (Callon 1998; 1999) and highly compelling studies which employ ANT to look at self-esteem (Ward 1996) indicates to me that ANT is capable of expansion.

These conceptual shifts speak to the notion of the actor-network as described on John Law's web page, the *actor-network resource*: "Actor Network: Not a Unity, Not an Orthodoxy." In what could almost be considered an updated mantra, Law asserts that while,

> it is possible to identify certain preoccupations and concerns common to these texts, there is no orthodoxy, no one 'right way' of developing the approach. It also means that actor-network is not a single orthodoxy, a fully consistent body of writing with its holy scriptures. Indeed, the most creative texts are often those that change and rework its preoccupations and its tools - or which combine them in one way or another with those of other approaches with which it is in dialogue (Actor Network Resource 2004).

I am enticed by an approach seemingly so open to adaptation. It seems to be a glaring irony that in one sense the actor-network is branded an approach open to adaptation with no one 'right way' of developing it *yet* it seems like the founders are very much of the opinion that it has developed poorly, taken on bad baggage, and limited itself in numerous ways (Latour 1999). It is one thing to advocate flexibility, but is this consistent with many of the contentions in *Actor-Network Theory and After*? There seems to be an inconsistency.

What I take from the areas of concern highlighted in *Actor-Network Theory and After* is Latour's lamentations on the transformation of the term network.

> S[tudent] — Then, I can study them with Actor-Network-Theory!
> P[rofessor] — Again, maybe yes, but maybe not. It depends entirely on what you yourself allow your actors, or rather your actants to do. Being connected, being interconnected, being heterogeneous, is not enough. It all depends on the sort of action that is flowing from one to the other, hence the words 'net' and 'work'. Really, we should say 'worknet' instead of 'network'. It's the work, and the movement, and the flow, and the changes that should be stressed. But now we are stuck with 'network' and everyone thinks we mean the World Wide Web or something like that. (Latour 2003)

Others have amended the idea of the network, trying to separate it from its more recent connotations. Callon (1991: 153) speaks of techno-economic networks (TEN's) which he asserts are not like technical networks (a series of non-humans that occasionally link humans as in telecommunications) nor sociological networks (networks privileging human interaction in the absence of material intervention), but act as composites. Law and Annemarie Mol have experimented with the idea of fluidity and fluid networks (Mol and Law 1994; De Laet and Mol 2000). In my case, I wish to amend this 'double click' sense of network to speak of ordering - a network being no more than an illusory period or sphere of stability in an ongoing and indeterminate process of ordering.

One of the best ways to gain purchase on this apparent stability is to concentrate on the intermediaries that pass between actors, helping to define them (Callon 1991: 134). Any attempt to unearth 'the social' is best read of the inscriptions which mark these intermediaries (Callon 1991: 140). I will look to intermediaries for 'nodes' and their inscriptions for 'instructions' to begin the process of defining and following the movement of actors as they simultaneously negotiate and create a 'network'. In what I believe is sound advice, Foucault (1977a: 147-48) notes that,

> The search for descent is not the erecting of foundations: on the contrary, it disturbs what was previously considered immobile; it fragments what was thought unified; it shows the heterogeneity of what was imagined consistent with itself ... As it is wrong to search for descent in an uninterrupted continuity, we should avoid thinking of emergence as the final term of an historical development ... These developments may appear as a culmination, but they are merely the current episodes in a series of subjugations.

I believe Latour is wrong when he asserts there are 'four nails in the coffin' of the *theory* of the actor-network. It is not dead. I feel it is an open, flexible approach that can be developed in a number of ways to do a number of things. It does not need rescuing, it is not dying, it is not in peril. I am simply interested in employing it because it offers an interesting vocabulary to work on hate propaganda. It can still be performed as a highly fluid *analytic* to investigate the process of ordering. In the words of Latour (1999: 24) from the same article,

> You cannot do to ideas what auto manufacturers do with badly conceived cars: you cannot recall them all by sending advertisements to the owners, retrofitting them with improved engines or parts, and sending the back again, all for free...The only solution is to do what Victor Frankenstein did *not* do, that is, not to abandon the creature to its fate but continue all the way in developing its strange potential.

## Chapter 3.

### *Telling Stories and Forming Brackets.*

Some moral stances are so entrenched it seems almost ridiculous to talk of an alternate or minority position. When do voices of dissent come to be recognised and challenge the moral position? The purpose of this thesis is to investigate the emergence of hate propaganda legislation - a moral subject to be sure.[28] Just how 'moralised' were the debates surrounding hate propaganda? What elements of the debate went unchallenged and what positions were contentious? How was the object framed to reach consensus? How should I go about investigating this process? Where should I bracket my gaze? How can I best tell this story? This chapter will illustrate the approach I employed in interrogating these questions.

This chapter starts with a brief look at narrative approaches to research. I outline some basic terms and what I feel are the benefits of a narrative analysis and query how well it 'jibes' with ANT. At the outset, I feel I should be clear about my contentions. I think ANT and narrativity are compatible because the approach of ANT, as argued in the previous section, is to look at processes. Narrativity looks at how researchers narrate a description. It

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[28] The theoretical concept of a moral panic is mentioned briefly here as it appears to be a reasonable alternate approach that could be employed to investigate the process of the conceptualisation of hate propaganda. The two hallmark texts in moral panic literature are Stanley Cohen's *Folk Devils and Moral Panics* and Stuart Hall's *Policing the Crisis.* The notion of moral panic is that an event or series of events has a dramatic onset that prompts recognition of previously unconsidered social phenomena as a threat to everyday life (Cohen 1980, Hall 1978). I personally feel the moral panic approach can easily slip into a form of staunch constructionism and substitutive claimsmaking – odd bedfellows to be sure. Typically, one will identify the 'panic' and illustrate how it comes to be constructed and how this paints an erroneous or excessive image of the actual level of the threat. Then, frequently, alternate perspectives on what *causes* the problem are offered, after the current *explanation* is sufficiently debunked. While it is not necessary to follow this script, I feel that moral panic theory often imbues intent into actors, and favours causality over description, something I would prefer to avoid.

investigates how, during the process of investigation, we come to weigh various options, formulate and re-formulate various plot/hypotheses, and how we perform analysis by constructing narratives to 'make sense' of our object of investigation. The heart of both this approach and actor-networks is how we comprehend and narrate a potentially complex process. This could be contrasted to traditional 'histories' that attempt to search for causal explanations rather than process effects. By focussing on description I hope to avoid the methodological pitfall of appearing staunchly constructivist or inflexibly realist in my approach. Again, the words of Alain Desrosières (1991: 195) seem telling. "Others seek to study simultaneously and *in the same way* both the scientific and the social practices leading to *things that hold together*, to *facts*. These facts have at the same time *been constructed* (the constructivist viewpoint) and yet once constructed have sufficient *existence* that none can deny them (the realist viewpoint)." Investigating the social sciences in such a manner attempts to bridge the poles of realism and constructivism, avoiding the dichotomy of "positivist scientism" and "denunciary relativism".

Research method aside, I will then delve into the practical elements of how I went about 'doing' my case study. What decisions had to be made, where did I draw my brackets (and of equal importance, why), and how did I go about trying to accumulate and then translate my 'data'. This is where ANT comes in. I'm engaged in a sociology of translation, taking government documents, criminal legislation and legal precedents in an attempt to translate this into a thesis, keeping in mind established 'academic formats' and adhering to academic 'standards of acceptability'. In discussing ordering I'm engaged in ordering myself.

3.1 *Narrativity and its 'Fit' with ANT*

Actor-network theory looks at the *work* that goes into making *things which hold together.* Strong coalitions of humans and materials can be seen to construct concepts through collective action (Law 1992; Ward 1996). The more that many groups embrace a concept, the more powerful it becomes. "Which labels stick depends less on their intrinsic merits than on the network of interested parties that wish to attach these labels" (Hacking 1999: 152). A fragile supposition becomes an unmistakable reality through a process of aligning allies and establishing itself as an irreplaceable concept. So how does this align with narrativity? The purpose of a narrative approach is to "recognize, reconsider, and challenge the particular encoded narrative" currently employed in investigating a social phenomena (Somers 1997: 75). According to Margaret Somers (1994: 607), the process of a narrative approach is to *re-tell stories* while considering the alternative stories and struggles that become historically dismissed or forgotten in conceptualising issues. The approach avoids, "categorical rigidities by emphasizing the embeddedness of identity [and objects] in overlapping networks of relations that shift over time and space."

A narrative approach tries to overcome problems associated with the powerful epistemological constraints from embedded metanarratives (Somers 1997). In this respect, as a methodological approach it is quite malleable, congruent with analytics such as Ian Hacking's dynamic nominalism (Hacking 1986; 1999), Foucauldian histories (see for example Foucault 1977a; 1977b; Dean 1994), and, I argue, the actor-network. In the case of hate propaganda, a powerful metanarrative to be aware of is the talk of social construction. Following this metanarrative, one could generate a project reading something like: hate propaganda is commonly viewed as real, *but it's not,* it's actually about Y, and viewing it as X

is a bad thing. By being conscious of metanarratives, one can avoid the trap of re-telling a different version of the same story (Somers 1997). Any attempt to elude the trap of redundancy is vastly improved if one is aware of the typical causal explanations offered to explain the phenomena. Rather than focussing on causality, it is preferable to concentrate on a narrative of *how* something comes about rather than *why* it comes about. For instance, in a similar study to the one I undertake, Ian Hacking (1999) creates narratives surrounding child abuse and madness – when people begin speaking of them, how they are spoken of, what groups identify them as a problem, and more importantly, how madness and child abuse are defined and how this changes over time. Similarly, Steven Ward (1996) constructs a narrative examining self-esteem based upon actor-network theory as an intellectual framework. These studies employ a form of analytic narrative. They weigh various texts, meetings, conferences, scientific 'discoveries', and institutional practices to decide which elements are significant in the initiation, appearance and evolution of a concept. The form in which this is presented is a narrative that describes how certain significant bits and pieces come together to form a coherent assemblage. The authors focus their analysis by re-telling an older story which may now be "black boxed". Such studies help us to understand how a concept came to be taken-for-granted, employed in practice, and spoken of as an evident statement of fact.

A narrative process investigates various relationships, embedded in time and space, which come together to form current notions. It demands that,

> we discern the meaning of any single event only in temporal and spatial relationship to other events. Indeed, the chief characteristic of narrative is that it renders understanding only by *connecting* (however unstably) *parts* to a constructed *configuration* or a *social network* of relationships (however incoherent or unrealizable) composed of symbolic, institutional, and material practices (Somers 1994: 616).

Events become episodes. The effect of this exploration is to locate concepts in a social narrative and network (Somers 1997). Somers calls this representation of significant networks causal emplotment, the epistemological element of narrativity. By 'emplotting' instances we come to see the significance of seemingly independent events rather than this being given by categorical fiat or chronological order (Somers 1994). In essence, like any good story, the process of emplotment allows us to construct a plot that reflects a hypothesised ordering. How one perceives the process of ordering is not in the given order of things but is rather a narrative construction that gives a description force by outlining relational setting. Emplotment allows us to see how and where events intersect with a hypothesised plot, allowing "us to construct a *significant* network or configuration of relationships" (Somers 1994: 617).

This use of narrativity assists in circumventing the critique noted earlier of attempting to pin-down 'social forces'. Rather than speaking of social forces, the idea of narrativity speaks in terms of "relational setting ... a pattern of relationships among institutions, public narratives and social practices" (Somers 1997: 89). In essence, the narrative approach focuses upon the overlaps and regions of indeterminacy that are overcome in the constitution of an object. It shows how certain themes come to be sustained in a story; how differences are aligned and plots are maintained. Like determining the set of alliances that lead to stability in an actor network, narrativity comes to outline those sets of relations that are "constituted and held in place: a set of relations that distinguishes between this and that (distribution), and then goes on to regulate the relations between this and that" (Law 1991: 18). How we come to experience the world is constructed through narratives (Somers 1994).

The idea of narrativity dovetails with the idea of the actor-network to illustrate how to organise a description effectively. It eschews the idea of 'pre-framing' a problem, instead expanding from the inside to articulate a set of relationships that, ideally, form a comprehensive description. Frames are effective to the extent that they "direct the gaze better" but should never act as a substitute for the picture itself (Latour 2003). The idea is that narratives are best thought of as a description of relationships, not an explanation of context and causes.[29] As Latour (2003) quite derisively states of explanations,

> You can keep them if this amuses you, but don't believe they explain anything - they are mere ornaments. At best they apply equally to all your actors, which means they are absolutely superfetatory since they are unable to introduce a difference among them. At worst, they drown all the interesting actors in a diluvium of bad ones. As a rule, context stinks. It's simply a way of stopping the description when you are tired or too lazy to go on.

Constructing telling narratives is thus a process of constant translation, the continual testing of plot hypotheses against the state of one's description. It is a "reflexive process of uncertain and provisional imputation. It points to the ordering process in which we waver to and fro between traces and imputations. It speaks of the process which generates a sense of pattern, and with that, as series of 'decisions' about what will count as warrantable simplifications and translations - what, in other words, will count as 'data' " (Law 1994: 50). In ideal form, narratives detail and set about ordering data in an intelligible fashion that does away with the crutch of sociological abstractions that try to give context to a poorly mediated description of relationships.

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[29] A related concern is the critique levied at such approaches that the researcher refuses to propose alternative solutions. The spirit of many of the authors employing this approach is not to illustrate better alternatives but to offer a story on some specific social phenomena; illustrating the points of resistance and negotiation. For the time being I share a similar sentiment and seek only to investigate the process of ordering that led to hate propaganda legislation, not to offer preferential alternatives.

While the strengths of the narrative methodology are apparent, like all other approaches it has weaknesses. First, the selection of relationships one chooses to highlight in constructing the story can always be criticised. Why didn't one look at X? Y was crucial to the formation but ignored. Z would problematise your account so you didn't discuss it. However, this problem is common to all issues of focus. Where one chooses to bracket one's research is always an issue due to innumerable constraints – money, time, patience, foresight, interest, etc. So how does one know when the description is complete? The best advice, it seems to me, is to stay consistent with one's method and give up any ideals of achieving perfect 'completeness'. "Writing texts has everything to do with method. You write a text of so many words, in so many months, for so much grant money, based on so many interviews, so many hours of observation, so many documents. That's all. You do nothing more" (Latour 2003). When one feels a description is complete is an arbitrary distinction. In the case of a narrative approach to 'doing' a sociology, one is especially susceptible to this critique as the spirit of narrativity is storytelling to 'make sense' of some social phenomenon. The number of chapters is potentially infinite. Narrative accounts are only one possible version of the story. However, while this is important to recognise, I stop short of asserting a radical relativist position that contends all stories are of equal value, and as such, indiscernible. Some studies are better researched. Some narratives draw more plausible links. Some forms of presentation are more conscious of alternative and subjugated viewpoints and assertions than others. In summary, although we should be careful in making realist claims that our narrative represents the Truth, we should be equally conscious that some narratives seem to do a better job of 'making sense'.

3.2 *Forming my Brackets*

I first came to this project for two simple reasons. First, having studied journalism I have a natural (or perhaps it is constructed) curiosity and scepticism of laws that act either as blatant censorship or are censorship-like. Often, it appears such laws are couched in terms of public 'interest' or 'safety'. Hate propaganda legislation was one such device which I thought might be interesting in these regards. At the time, I was unaware that it was the precursor to 'hate' crime, the modern hot topic with which it is closely associated. A quick search for the exact phrase: "hate propaganda", in the social science subject area of the Cambridge Scientific Abstracts generated only 10 results.[30] Of these only six articles could be considered directly related to the Canadian context.[31] The project had a potential of novelty. Second, upon a cursory look at the legislation I discovered something quite remarkable - despite having laws that proscribe hate propaganda, and specialised crime units that investigate possible instances of 'hate' - a definition of "hate", even a general one, does not appear in the *Criminal Code.* How is it that Canada came to legislate against hate, define certain acts and objects as hate propaganda or hate crime, without ever bothering to define it?

I decided the best way to begin investigating this question was to look back at the earliest debates in Canadian Parliament over the concept of hate propaganda. This seemed as good as any basic point of reference to start my research. The problematic element of an actor-network approach is determining how to apply it in some form of coherent

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[30] The only constraint I put on the search results was that "hate propaganda" had to be the exact phrase. All seven of the available indexes were searched from their earliest entries, which stretches back to 1963.

[31] I have checked this since I first looked and the situation remains unchanged as of April 1, 2004.

methodology. At first one needs to pick a starting point. After this, as ANT attempts to look not only at the significant actors but also the material substances that go about creating 'facts', one must draw some boundaries of study, which can be extremely tricky. Somewhat hopefully, I understood that my brackets would become apparent as I went through the debates. It was my belief that time and spatial constraints would also assist in this process. For instance, I wished to complete the thesis within two semesters so I needed to consider project length. Looking to other recent theses I determined the norms of master's theses to be a page range of 90 to 120 pages. Anything below this would be short. This was enough to go on for a start.

My first point of reference was to look at the period when the word or idea of "hate" first appeared to be discussed in the House. To this regard, I had to rely on the first categorising system that effectively shaped my world (Bowker and Star 1999). Hansard debates span some 9000 to 18000 pages per legislative session. I had to delegate this task of searching to my first non-human (Latour 1988), putting my faith in the Hansard index for each session to find out when we started to speak of hate. The first time "hate" appears, in the Parliamentary index, for the Second session of the Twenty-sixth Parliament, it is subsumed under another category: "racial and other forms of discrimination." It remained subsumed under this label for two Parliamentary sessions, appearing as a distinct entity only after the release of the Cohen Committee Report in 1966 (Hansard 2nd, 26th; Hansard 3rd, 26th).[32] The significance of the process of ordering and the performance of the index (and its

[32] I should clarify here that the Hansard indexes do not follow a yearly pattern but are based on Parliamentary sessions, which can vary in length and span multiple years. For instance, there is an index for 1960/61 and 1962 but also 1962/63. As such, I have referenced them by Parliamentary session (i.e. the Second session of the Twenty-eighth Parliament is referenced: (Hansard 2nd, 28th).)

shifts) will be discussed in chapters 5 and 6. Here it is sufficient to describe briefly how the ordering appears in the index. For instance, when I looked under "hate" in the 1964/65 index, it instructed me to "see racial and other forms of discrimination." Under this classification, the typical form of the index would be something like:

1) Racial and Other Forms of Discrimination
(a) Canadian Intelligence Service and Christian Action Movement, investigating 2876, 5743-4, 6419-20
(b) Canadian Jewish Congress presentation 873
(c) Dealing with under Criminal Code 130-3, 404-5, 732, 3976-7, 5540, 5978-9, 7822-3, 8023, 9159-60, 9278
(d) "Hate" literature circulation 732-3, 818-9, 2927, 3116
Consultations within and outside department 3977
Ontario Court case 5339, 5744-5, 8023
Private Members' Bill on order paper 733
Submissions to Justice Department 12471
Toronto 687, 1158-9, 3971, 3977
Social Credit Candidate 4182
(e) Political Activity, employer pressure against 1388-9
(f) Religious Freedom in Canada 9605, 9622
(g) Removing 403-5
United Nations resolution, legislation to implement 1808
(h) Special Committee Study 7823, 11716-7

See also: 2) Genocide Bill 5356-60, 5658-62, 5977-85, 9400...

This style of presentation is standardised across the Hansard index. As one can see, the index performs itself into listing primary and cross-referenced topical lists. For instance, the index for the Second session of the Twenty-sixth Parliament, listed above, continues on to include a section of cross-referenced material, listed under the "see also" moniker. In the case of this index, this was a far more comprehensive list in terms of the amount of material to cover and included: "Genocide Bill; Immigration; Immigration Bill (C-69); International Labour Organisation; Post Office Bill; Post Office Department; Soviet Union; Commonwealth Conferences - Prime Ministers; Universities; and United Nations." All told this represented some 130 additional pages of Hansard debate in addition to that listed under

racial and other forms of discrimination (Hansard 2nd, 26th). I copied these indexes from 1950 ("Racial Discrimination") to the most recent index in the National Library, 2001/02 ("Hate Crimes" and "Hate Propaganda"). My reading was informed and directed by these lists. Every page of Hansard debate on, or relating to, the subject of 'hate', from the 1963 index to the 1979 index, was read. Other years were read but without the same regimented approach.

As the research progressed, I began to sketch out a rough idea of when the debate was initiated, when were its 'peaks', its 'troughs' and how long it would take to study. It appeared that the first 'spike' in debate spanned 1964 and 1965 when the idea of hate was first brought to the floor of the House. The second 'spike' occurred in 1969 and 1970, when Bill C-3 was passed to amend the *Code* and institute sections governing "hate propaganda". All told, there were over 1500 pages of debate for this time frame (Hansard 1st, 26th - Hansard 2nd, 28th). While substantial debate also struck up again in the late-1980s and 1990s over amending the *Code* to include "sexual orientation" as a protected "identifiable group", I had a suspicion that articulating the ordering of the 1960 debates would be a significant undertaking and would 'fill up' the requirements of a master's thesis.

As I read the debates, certain issues came to light as related, in varying degrees, to the discussion on hate propaganda. Significant among these were: the Holocaust, the Civil Rights movement, sedition, defamation, the United Nations and UN conventions, international legislation, free speech, the Bill of Rights, morality, religion and distribution through the post. Following the actor-network advice to 'follow the actor', I attempted to read background information on all these *actants* along with concentrating on the most obvious human actors I followed in constructing my narrative: members of Parliament. I

approached my study in this way with the understanding that not all actors or actants would appear in my account of the ordering of hate propaganda, or that they would only appear to a limited extent. I clung to the hope that my brackets could remain fluid enough that actants appearing crucial to the process of legislation could be brought forth if they extended beyond or overflowed my temporal or spatial framing (Callon 1999). The problem with employing ANT is that one can drown in descriptions if some brackets are not chosen, some frame used with which to view them. However, this runs precisely contrary to Latour's (2003) assertion that the actor-network should not act as an outline nor rigidly delineate boundaries. He dismisses such talk as, "My Kingdom for a frame!" and notes, "ANT is pretty useless for that. Its main tenet is that actors themselves make everything, including their own frames, their own theories, their own contexts, their own metaphysics, even their own ontologies ... So the direction to follow would be more descriptions, I am afraid." While I acknowledge Latour's sentiment, that the researcher should avoid putting forth explanations as a substitute for comprehensive descriptions and should equally avoid superimposing categories, I think brackets are always drawn in research. Frames are formed; lenses chosen; decisions made. With this in mind, in order to proceed I needed some boundaries and imposed limits to respect the following four foci: 1) the *initiation* of the concept of hate propaganda and the *passage* of legislation directly relating to it; 2) in Canada; 3) primarily looking at Parliamentary debates (otherwise referred to as Hansard); which 4) span the years 1963 to 1970.

### 3.3 *Empirical Sources*

My empirical sources are primarily these House debates on hate-related topics - from racial and other forms of discrimination, to hate literature, hate propaganda and hate crime.

These brackets mean that, to some extent, I privilege Parliamentary debate over briefs to committee, newspaper articles, reports of NGOs and other similar bureaucratic texts. However, Hansard debates reflect, to a degree, the background materials.[33] Although politicians often present their ideas as independent and original thought, there exists in the background a series of strong networks that influence the formation and presentation of policy initiatives.

As stated previously, I compiled lists on the topics of racial discrimination, hate literature, hate propaganda and hate crime for the Parliamentary sessions spanning 1950 to 2001/02. Every page was read from 1963 to 1979. A fair amount was also read on discrimination leading up to the debate on hate propaganda. While I can not claim to have read this exhaustively, I think it would be fair to say I read approximately three-quarters of this material from 1952/53 to 1962/63. This was done to get a sense of the debates on discrimination which increasingly appeared to be a precursor and might even be said to be prescient of, the hate propaganda debate. Material from the 1980s and 90s was read sparsely. Having been alive during these years, I am more familiar with the current debates. Additionally, I gradually came to the realisation that the focus of the thesis would be the initial phase of the debate.

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[33] By relying so heavily on Hansard, it can be asserted that I miss or negate the work that goes on in the background. This is a valid critique to the extent that what is presented in Parliament is only a 'summing up' of backstage action. This action, for the most part, is often invisible to the general public. However, I do not assert that these backstage moments are irrelevant. Rather, by acting as a narrator I try to make sense of the formation of a coherent and actionable object known as hate propaganda. The materials I present reflect what I have deemed important after weighing, selecting and re-ordering the various Parliamentary debates. However, I do not claim the narrative I present is a definitive account. My intention is to offer an illustrative description that tries to narrate the development, largely through Parliament, of the conceptualisation of criminal hatred in Canada.

The other important source material to note is the Cohen Committee Report on Hate Propaganda. The actual report is just under 80 pages. However, the document is some 350 pages in length with appendices. The first appendix is an academic article by Mark MacGuigan (a Committee member) that traces the laws of sedition and outlines other laws that might be used to control hate. The second appendix is an article that outlines the socio-psychological influences and results of hate materials on individuals. The other sections include a comprehensive list of international legislation, a list of hate incidences in Canada, a list of then-current *Criminal Code* provisions that might apply to hate propaganda, and examples of so-called propaganda. Suffice it to say, this document acts as the primary reference point for hate propaganda debates between 1966 and the passage of the legislation in 1970. The Report is remarkably well written, at times bordering on erudite, comprehensive and asserts a very strong and clearly argued pro-legislation position.

### 3.4 *Telling the Story*

Rather than treating ANT as orthodoxy, trying to adopt an idealised version of it wholesale, I clung to the idea that I was engaged in storytelling, with the actor-network acting as my lens. Put differently, the actor-network is my genre. While I chose to use the terms most generally associated with the actor-network in writing up the empirical chapters, the precepts of narrativity were always somewhere in the back of my mind as I went about studying and ordering the thesis. Creating a story is a form of ordering, employed to make sense of concepts and circumstance. As Law (1994: 52) notes, "as we create and recreate our stories we make and remake both the facts of which they tell, and ourselves." I have tried to stay true to what is being said by the actors in the debate but I selectively chose and appropriated their words, re-ordering the debates in ordering my own story. However, if

there's one thing I've tried to avoid it's the type of heroism that lauds the words of some politicians as 'visionary' or some movements as critical. Law's methodological insight again is helpful, as he notes to narrate effectively is to poke through complexity, guarding against simplifying for simplicity's sake. To borrow his metaphor, tabloid headlines make for good copy. The announcements in the classifieds do not (Law 1994: 61).

As with all research, methodology is affected by the researcher's situated knowledge (Doucet 1996; Alvessson and Skolberg 1999). There are links between biography and epistemology (Doucet 1996). With this in mind I should say this: I have a great interest in studying moral stances and generally feel them to be more harmful than good as a basis for policy. An interesting element in investigating moral stances is how the objects behind the stance are imagined and defined. We often take names and categories at face value until we encounter someone who does not (Bowker and Star 1999). Thus the moral righteousness of opposing hate propaganda is reasonable until an event such as Ernst Zundel publishing *Did Six Million Really Die?* challenges our notion of 'acceptable' speech. Pushing this further, although we may question the example, do we question the object? Hate propaganda can be seen as an example of the monstrous: those objects, people, or acts that refuse to be naturalised (Bowker and Star 1999). I am curious about the political and moral work that goes into creating, defining, and maintaining the moral stances that define the monstrous. I also cling somewhat to the liberal ideal of free speech and the position advocated by such thinkers as Milton and Mill that debate on issues leads to understanding, whereas repression forces unpopular beliefs underground. I have tried to be aware of dismissing or discrediting politicians and special interest groups as moral entrepreneurs. Although I believe having personal beliefs is valuable, not problematic to the research process, I have tried to be

conscious not to dismiss the beliefs of others as moralistic or reactionary (Alvessson and Skoldberg 1999). Yet I am aware there is no possibility to 'remove' oneself and perform ordering from a distance (Law 1994).

### 3.5 *Cautionary Tales*

The purpose of narratives, according to Somers (1994), is to focus on 'constellations of relationships'. I have tried to be especially careful with 'emplotment', which sounds like a potentially causal element in the narrative approach and can easily be misconstrued as such. Such an approach would be antithetical to the actor-network goal to look for effects, not causes. However, this is not how I interpret the idea of emplotment. Rather, I view emplotment as an unfortunate but necessary component of constructing any form of historical sociology. Emplotment is merely the *ordering* of events (though it is in no way beholden to pre-established categories or linear chronology) that allows for understanding. We don't go into historical research 'blind', 'objectively' allowing for a story to 'emerge' by itself, as if rising from the swamp. Rather, what happens is as we research we test what we have found[34] against what we originally expected to find and see if what is found correlates with a constantly evolving series of plot hypotheses. In ANT terms, emplotment is trying to follow the actors we identify through the network, and comparing this to the directions we thought they *could* go, seeing what they encounter along the way. Both deal with constructing connections. "Further it permits us, by way of a very productive methodological decision rather than by philosophical fiat, to get out of the false opposition between 'constructivism' and 'realism' (Desrosières 1991: 196)."

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[34] This is a dangerous word, but I don't mean this is the realist sense of 'facts'.

At this point I feel it is beneficial to raise a few flags.

i) By drawing boundaries I'm not claiming that I can make definitive statements within this created box. Boundaries are necessary due to restrictions on space but they in no way confer certainty to the story I tell.

> This is because talk of discovery makes it sound as if there are facts, out there, waiting for the scientist to come along and pick them up. It trades, that is, on an empiricist notion of what should count as facts ... data may stand for what it claims to represent, but that claim is always open to contest. Data are not only simplifications but imputations too. There is, in short, no empiricist way out, no bedrock of hard fact (Law 1994: 48-49).

ii) My description, which follows in chapters 5 and 6, may appear like a snapshot in time. This is illusory. Rather, it the translation of a 'hot' process to a 'cold' medium. I have merely articulated a process and narrated it on paper. I have attempted to draw out a network of relations that I perceive led to the introduction of hate propaganda legislation. To the extent that I appear to be giving order to a situation is due to my lack of writing ability, restriction of the medium and the necessary elements of style and punctuation (i.e. paragraphs, periods, conclusions).

iii) What is described in ANT as 'effects' should be taken with a grain of salt. They are moments of stability or agreement that are not fixed but merely appear as such. In describing the initiation, articulation and cessation of debate, I describe a process that is constantly striving towards a moment of resolution that will never truly appear. What appears as consensus is stable for only as long as it continues to keep its allies.

With these caveats in mind I have attempted to create a narrative that is respectful, honest and fair to the actors I follow, the discourse I relate. I have tried to stay clear of passing judgement on the efficacy of the law as much as possible in the telling of its creation. My opinions are more evidently felt in the concluding thoughts following the narrative, which give a brief sense of where hate propaganda laws have gone since their inception. Basically, I have attempted to follow Latour's (1991: 130) advice that, "In order to make a diagnosis or a decision about the absurdity, the danger, the amorality, or the unrealism of an innovation, one must first describe the network. If the capability of making judgements gives up its vain appeals to transcendence, it loses none of its acuity."

## Chapter 4.

## Legal Orderings: *Criminal Code* Offences that Curtail Free Expression

> But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error. *John Stuart Mill, On Liberty*

> In America the majority raises formidable barriers around the liberty of opinion; within these barriers an author may write what he pleases, but woe to him if he goes beyond them. *Alexis de Tocqueville, Democracy in America*

Words can most certainly be offensive. Indeed, they can also be convincing. However, the spirit of the laws of hate propaganda appears to go beyond the notion of mere offensive, convincing words. How is it that a state can deem certain words, or assemblages of words, illegal? Such laws are certainly not a 20th century invention but have been around for some time. My intent in this chapter, and indeed in this thesis, is somewhat similar to that in Lorraine Daston's (1992) genealogy of the concept "objectivity": to determine whether the object of "hate propaganda" is a monolithic concept or whether it shifts over time. In determining this, the first question to ask is how the object is constituted. What elements fight the creation of the object, what strands capitulate and what forces amalgamate to create an apparently stable assemblage? How does this phenomenon come to the fore at this conjuncture? To attempt to answer this, it is useful to consider if what we now deem "hate propaganda" used to be governed by other laws. If this is the case, what similarities does it share with its legal 'ancestors' and to what extent is it unique?

When looking at any legal development, it is critical to determine what problem the proposed legislation is attempting to address. In a common law country such as Canada,

legislative change generally arises in one of two ways. First, legislation can be introduced that passes new acts or amends current statutes. Alternatively, changes in interpretation of the law by the judiciary form the basis of new precedents without changing the specific wording "on the books". These changes are in no way mutually exclusive or distinct. While much legislation is reactionary and is thus 'new', the wording or interpretation of 'new' law may build upon previously determined legal categories. Put differently, it is not often that an entirely new and fresh piece of legislation appears. Legislation has a history, a genealogy, and in its formation "is not 'raw' but already the result of other practices of conservation and organisation" (Dean 1999: 15). Determining the predecessors of a proposed piece of legislation is critical in attempting to assess its character. Like people, laws inherit characteristics from their relatives. A crucial element of the narrative of hate propaganda is attempting to paint the legal backdrop of the story. This chapter aims to articulate two of the immediate legal relatives in hate propaganda's family tree: sedition and defamation.[35]

Unlike the following chapters, which attempt to outline the process of ordering and translation that led to the formation of hate propaganda laws, this chapter attempts to articulate two previous orderings that pre-date hate propaganda legislation by centuries. In articulating the emergence of a legal development there is a temptation to glorify its moment of birth as the law existing in its purest form. "We tend to think that this is the moment of their greatest perfection, when they emerged dazzling from the hands of a creator or in the shadowless light of a first morning" (Foucault 1977a: 143). However, such histories, which

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[35] The primary focus in the section on sedition is on the changing nature of the laws in the British context. This is due to the fact that much of the shift can be seen as a change from the times of absolutism to a democratic form of government. The section on defamation attends to other common-law jurisdictions, including the United States.

ignore the genealogical nature of development and formation, run the risk of ignoring the conjunction of factors that came together in a certain way to create something that appears novel. The idea of genealogical histories reflects upon the "contingency, singularity, interconnections, and potentialities of the diverse trajectories of those elements which compose present social arrangements and experience" (Dean 1994: 21). By outlining these legal ancestors of hate propaganda, I aim to illustrate that hate propaganda was not a necessary outcome of a necessarily continuous past. It was not essential that hate propaganda took the form that it did.

In some respects, this can be considered almost background material to the story of hate propaganda I wish to tell. I try to tell a brief story of two powerful orderings without going into depth to look at the processes whereby they emerged. Libel and libel law alike have both been used as political weapons for a long time (Riesman 1942b: 1086). As with the formation of hate propaganda laws, the legislation surrounding sedition and defamation is complex and comprehensive.[36] My fear is that this background will make the laws of sedition and defamation appear relatively stationary with 'revolutions' every half-century or so.[37] This is not my intention. Instead, I aim to sketch out a primitive genealogical tree of

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[36] For a more complex and detailed description that gives a better sense of the long history and continual movement of these laws, I would point the reader to Riesman's indepth account of the laws of sedition and defamation (1942a; 1942b; 1942c). In 1941, the Law School of Columbia University granted Riesman a special fellowship to do an in-depth account of the history of libel and democracy (1942c: 1282). Riesman published three comprehensive articles in the school's law journal, the *Columbia Law Review*, in 1942. The articles detail the history and ongoing trends in the laws of libel, specifically seditious and defamatory libels. His work informs the majority of this chapter along with MacGuigan's history of sedition as it pertains to Canada, an article prepared for the Cohen Committee (1966). Riesman's accounts are especially comprehensive and articulate in outlining the diverse *international* history of these laws.

[37] Again, Riesman's articles (1942a; 1942b; 1942c) give a better sense of the continual movement and fluidity of these laws and their interpretation.

hate propaganda, which I feel is necessary to understand adequately the performance of hate propaganda debates.[38] However, in outlining the laws of sedition and defamation, I have sacrificed much of the fluidity of these ever-changing laws. My translation of them may make them appear fixed and stable, and by speaking as their representative (Callon 1986), I undermine much of their diversity and dynamism.

## 4.1 ***Sedition and Public Order***

> Demagogues and agitators are very unpleasant, they are incidental to a free and constitutional country, and you must put up with these inconveniences or do without many important advantages. *Benjamin Disraeli*
>
> L'état, c'est moi. *Louis XIV*

The rule of law is obviously an important ingredient in the recipe to maintain power. Laws which curb forms of dangerous political communication stretch back centuries (O'Malley 1975: 74-75). One of the important early safeguards, which still maintains relevance today, is the law of sedition; originally designed to protect the monarch, codify power over the subjects, and suppress ideas hostile to the King. The British statutory offence of *Scandalum Magnatum*, enacted in 1275, criminalised the spread of "false tayles whereby discord or occasion of discord have thence arisen between the King and his people and great men of this realm" and is considered by most as the origin of sedition, and by extension, hate propaganda legislation (Plucknett 1956: 484-85; Law Reform 1986). In essence, the original laws of sedition served to insulate the monarch from political

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[38] Although I speak of the idea of genealogy in this chapter - the various trajectories that seem to establish a certain pattern of law that is linked to the establishment of hate propaganda legislation - when it comes to articulating the process whereby this occurred, I drop the vocabulary of such studies and employ a terminology based on studies of the actor-network.

usurpation, one of the means legitimising the separation of powers between the monarch, the realm and the subject. In England, during the Tudor period of the 15th century, the authority of the royal family increased and the Court of Star Chamber took over prosecutions of seditious libel (Riesman 1942a: 735). These laws were further strengthened with the case of *De Libellis Famosis* in 1606, which made not only "false lyes" but truthful statements against the monarch a criminal offence (O'Malley 1975: 88).[39] The effect of this case was to prohibit any criticism directed against the monarch. Any charges levied against an individual were hard to defend, the truth being an unacceptable defence until a British Committee, formed by Lord Campbell, questioned the status of seditious and criminal libel[40] in 1834 (O'Malley 1981: 75-76). To this point, the law functioned as a crucial defence of public order, in terms of the monarch's right to rule free of disturbance or criticism. In the 17th century, the common law courts took over prosecution of seditious libels but little changed. Truth was still no defence. Adding to this was a 1637 decree which gave the Court the right to oversee a burgeoning press (Siebert 1952). Even into the 18th century, the ideology of the oligarchic state was that it was not responsible to any outside a small ruling elite, which protected it from public criticism (O'Malley 1981: 82). However, the sedition laws in England underwent tremendous change over the 19th century - coinciding, according to some authors, with a switch from viewing the monarch and government as masters to elected servants - in essence a downgrading of the omnipotent and absolutist view of government (MacGuigan 1966: 80). Yet this gradual so-called 'democratic' shift did not

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[39] This case will be discussed in greater detail in the section on defamation.

[40] Seditious and defamatory libel are both criminal offences, still covered under Canada's *Criminal Code* (Justice 2004a). However, for the purpose of clarity in this chapter defamatory libel is sometimes referred to as criminal libel, whereas libels that defame the government are always referred to as seditious libel.

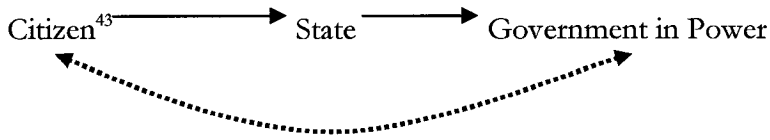
eliminate the potential for revolution, rebellion and tumult. One could say that the discursive shift to the idea of free and equal persons with the liberty to speak and act under their own free will was potentially catastrophic for those in power. As seen by revolutions both past and present, there is a tension between the ideals of unfettered liberty for the citizen and the legitimate authority of the state. How is liberty ensured while authority is maintained? Often what one sees under 'democratic' precepts are not the absolutist decrees of monarchs but rather, laws which reflect a 'breaking point', that when contravened, mobilise the means of force.

Seditious libel gradually changed from an 'offence against the monarch', meaning that which offended the majesty, to an 'offence against the state and public order', meaning that which crossed a threshold of reasonable freedom to pose a threat to the state and its citizens. Orderings of these types can be seen as a fundamental shift in the nature of authority from the period of the absolute monarchy (MacGuigan 1966). Under absolutism, laws protected not only the royal family but also various dignitaries (Riesman 1942a: 736). The ordering of the rule of law[41] under this sort of absolutist system can be seen as making the law and the monarch inseparable (O'Malley 1975: 75).

God ⟶ Monarch ⟶ Realm ⟶ Nobility (Sometimes) ⟶ Subject

[41] This is more often than not spoken of under the notion of 'power'. I have consciously avoided the use of this term, trying to avoid much of the theoretical contention and baggage associated with it. Instead, I have to tried to speak of orderings (see Chapter 2 and Law 1994), a word I find more fluid, less contentious, and process-oriented.

The ordering under an ideal democracy can be seen as[42],




The mechanism by which the rule of law is performed also differs with respect to the specific ordering. Under the absolutist model, the mechanism for preventing the *disobedience* of the decree of the monarch (and by association, the word of God) is force upon the body to *punish* the wrongdoer (see, for example, Foucault 1977b). Under this model there is no defence; indeed under an absolutist model it was said "the greater the truth, the greater the libel" (Riesman 1942a: 735). The idea of democratic law is that the citizens form (through government) the rules of the state which set limits on behaviours that pose a threat. When these borders are *contravened* the act is said to overflow the framing of 'acceptable' behaviour (Callon 1999) and is subject to *restraint* through force. However, open criticism is an acceptable defence, if the libeller can prove the truth of their statement.

Sedition has undergone gradual change over the past three centuries. This shift appears aligned in varying degrees with the evolution and changing perceptions of the role of the monarch. In his study of the British laws of sedition and their influence on Canadian policy, MacGuigan (1966: 80-86) notes a number of crucial moments in the evolution of the

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[42] These arrows could be substituted with the words "confers upon" or, alternatively, "creates". However, I find the visual form of arrows to be more easily interpreted as a process and thus more pleasing.

[43] An interesting element of in Riesman's (1942: 734-35) analysis of the laws of sedition is his contention that the performance of the law is crucially influenced by the perception of the citizen. The idea of the citizen as self-interested individual (typified by the United States and its individual guarantees) as contrasted to the idea of the citizen as a member of a collective (typified by the French 'Civil' mentality and form of law) impacts how the laws of sedition are interpreted.

treatment of sedition, from the *Fox's Libel Act* of 1792, the first statutory definition of seditious libel in 1819 and the Reform Bill of 1832. However, what stands out as pertinent for this discussion is his reference to an 1868 decision on seditious libel prosecuted against two Irish newspapers. In his instructions to the jury, Fitzgerald J. noted,

> The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government and bring the administration into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws of constitution of the realm, and generally all endeavours to promote public disorder (qtd. in MacGuigan 1966: 83).

This shift from protection of the monarch to protection of the state and maintenance of the peace is a critical transformation. The nature of common law is such that concepts are supposedly mutable. As social conditions and standards of acceptability 'evolve', 'modernise' or change in any significant way, the precedent-based system of common law hypothetically allows interpretation to keep pace with change. While the letter of the law is significant, it is the interpretation of law that alters over time. It is not enough just to look at legality when investigating the effect of law. It is necessary to look at the current context of the law and the current state of its interpretation.

Legal studies of the existing laws that could potentially cover "hate-based crimes" were part of the process of re-ordering the *Criminal Code* performed by the Cohen Committee on Hate Propaganda. The Committee pointed to the definition of "seditious intention" by Sir James Fitzjames Stephen, an English jurist, as a notable definition adopted at common law. The focus of their gaze was to the part of the definition which noted, "A seditious intention is an intention to . . . raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of

such subjects." However, they also noted that incitement to violence had become crucial to the common law interpretation of sedition in the 20th century. "The two leading English cases in the twentieth century unequivocally adopt incitement to violence as the essential ingredient of sedition" (Cohen 1966: 37-39). It is interesting that Germany was the first Western nation to adopt this distinction. The German *Penal Code* of 1871 required that incitement against classes on the basis of hatred or contempt was insufficient grounds for a seditious action. Violence was a necessary component (Riesman 1942a: 744). This change seems to speak to a shift in the laws of sedition. While still fundamentally a law reflecting the right to rule without undue interference or threat, updated in the terms of the right of the party in power rather than the monarch, the laws of sedition seemed to have lowered the gaze from the monarch to the subject. This treatment of sedition serves to move it away from an absolutist decree that defends the monarch to a democratic notion that maintains order[44].

The 1868 instructions of Fitzgerald J. seem to speak to various elements of revolution and rebellion as the crux of modern seditious libels, with disorder being a general manifestation that relates to the spirit of the law. By the 20th century we can see that while this spirit is maintained, the focus of the legislation is almost exclusively placed on the citizen or the subject (Riesman 1942c). The right to criticise the government openly, aided in part by the commercialisation of the newspaper industry in the 19th century, had significantly altered the spirit of seditious libel (O'Malley 1981). The monarch's position of omnipotence had dissipated. It is intriguing to note what sort of subject was now being described as the

[44] A classic turn of phrase for such public order offences is the notion of "peace and good government". The rationale for such laws appears to be that good government is only possible in the absence of threat. Put otherwise, revolution is frequently, if not always, 'bloody'.

focus - not an abstract indecipherable subject of the realm but a diverse and potentially fractured population of "different classes". Questions of dissatisfaction and hostile intent also appear to have lost validity as sufficient standards of proof. Intent in the form of scheming, plotting, and mobilising was no longer sufficient grounds for a seditious action. Violence had become a crucial component.

The laws of sedition in Canada's *Criminal Code* at the time of hate propaganda discussions, which remain unchanged today[45], seem reflective of this general change. The wording of the sections on sedition states:

> 60.
>
> (1) **Seditious words**. Seditious words are words that express a seditious intention.
> (2) **Seditious libel**. A seditious libel is a libel that expresses a seditious intention.
> (3) **Seditious conspiracy**. A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.
> (4) **Seditious intention**. Without limiting the generality of the meaning of the expression "seditious intention" every one shall be presumed to have a seditious intention who
>
> (a) teaches or advocates, or
> (b) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means, of accomplishing a governmental change within Canada.
>
> 61. **Exception**. Notwithstanding subsection (4) or section 60, no person shall be deemed to have a seditious intention by reason only that he intends, in good faith,
>
> (a) to show that Her Majesty has been misled or mistaken in her measures.
> (b) to point out errors or defects in
> (i) the government or constitution of Canada or a province
> (ii) the Parliament of Canada or the legislature of a province, or
> (iii) the administration of justice in Canada,
> (c) to procure, by lawful means, the alteration of any matter of government in Canada, or
> *(d)* to point out, for the *purpose of removal, matters that produce or tend to produce feelings of hostility and ill-will between different classes of persons in Canada.*

[45] While the language has remained unchanged, the numbering in the *Code* for the sections on sedition has changed. Currently, sedition spans section 59-61.

62. **Punishment of seditious offences.** Every one who,

(a) speaks seditious words,
(b) publishes a seditious libel, or
(c) is a party to a seditious conspiracy

is guilty of an indictable offence and is liable to imprisonment for fourteen years.
(Cohen 1966: 74-75; Justice 2004a, emphasis added)

The leading Canadian case at the time on sedition, *The King v. Boucher* (1950), appears to follow the English lead on sedition, especially as it pertains to incitement to violence as a crucial element for seditious intent. Boucher was a Quebec farmer and Jehovah's Witness who distributed a four page pamphlet entitled "Quebec's Burning Hate for God and Christ and Freedom Is the Shame of all Canada".[46] The case was successfully prosecuted in Quebec as a clear case of sedition (Suriya 1998: 26), but this decision was overturned in 1950 by Canada's Supreme Court. In its decision overruling the Quebec courts, a highly influential passage is that of Rand J. who states,

> Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life. The clash of critical discussion on political, social and religious subjects has too deeply become the stuff of daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality. (decision at p 680, quoted in MacGuigan 1966)

This is the common law in action. Whereas the material published by Boucher would almost certainly qualify as sedition by the standards of the 18th and 19th centuries (MacGuigan 1966: 120-26), in the 20th century it fails the necessary requirement of actual violence. Even the most inflammatory and scurrilous forms of public criticism of the state, had gradually gained acceptance as a legitimate form of debate by the 20th century, reflecting a change in the perception of government - from master to servant of the people.

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[46] 1950, 1 D.L.R. 657

Yet while a clear change in the perception of the role of government and correlated softening of the restrictions on public criticism was taking place, the essence of sedition laws remained unchanged: a statutory device that polices the relationship between the ruler (monarch or democratically elected government), the state (be it realm or nation), and the individual (be they subject or citizen). Justice Rand noted in Boucher that what the Code forbade with respect to sedition was,

> Language which, by inflaming the minds of people in hatred, ill-will, discontent, disaffection, is intended, or is so likely to do so as to be deemed to be intended, to disorder community life, but directly or indirectly in relation to Government in the broadest sense. (Cohen 1966: 37)

Thus when it came to 'hate propaganda', the Cohen Committee felt minority groups, identifiable on the basis of colour, race, religion or ethnic origin, in theory were protected under the laws of sedition. However, according to them the legislation fell short on *interpretation* because,

> On any interpretation the protection to groups extends only to situations where the prosecution can prove that violence was intended. It does not cover a situation where the prosecution cannot prove the intention, or where the threat of violence comes by way of reaction from the persons vilified, or where there is incitement to hatred *short of violence* (Cohen 1966: 37-39, emphasis added).

However, while the Committee may have deemed the language and interpretation of sedition insufficient, the spirit of sedition can be seen in the elements considered crucial in potentially governing hate propaganda. Following the lead of *Stephen's Digest of Criminal Law*, the Committee (1966: 75-76) favourably cited the idea that sedition can lead to a breach of the peace and/or can raise feelings of ill-will and hostility between various classes of citizens.

When one looks to various common law offences, in this case sedition, it appears that much of the debate hinges on whether the state is master or servant. In modern democracies, where most governments are considered servants to the people, one gets to a

tricky question: to what degree does the state get to interfere? When it comes to preserving its legitimacy, the state legislates protection through laws such as sedition. However, a corollary to this is the extent to which the state gets to interfere in matters between citizens. If actions give rise to hostility, ill-will and tumult between citizens, is the state obligated to interfere if such actions fall short of violence or direct threats to the state? A close cousin to sedition - defamation - attends to these concerns.

## 4.2 *Defamatory Libel*

> Defamation of opponents is one of the standard devices of political propaganda. In the fascist tactic, defamation becomes a form of verbal sadism, to be used in the early stages of the conflict, before other forms of sadism are safe. The violence and daring of the verbal onslaughts exercise a great appeal over the imagination of lower middle-class folk who live insipid and anxious lives; the apparent daring of their leaders, moreover, is in sharp contrast to the balanced, and often timid, speaking and writing of the teachers, preachers, and politicians who, for them, have represented "democracy". *David Riesman, Democracy and Defamation*

An obligatory point of passage for any person dedicated to the questions of personal expression is John Stuart Mill's treatise on the limits of freedom, *On Liberty.*[47] Mill (1978) explored such fundamental philosophical questions as 'when does the exercise of one person's liberty infringe upon the freedom of another' and 'what are the limits to freedom'? It also addressed what role the state should play and is entitled to play in the balancing and limiting of 'rights'. Inevitably, serious debates on freedom come to one of the supposed cornerstones of a free society, freedom of expression. The classic example is yelling "Fire!" in a crowded theatre. At what point does free speech cross a line and become harmful to others? Put more colloquially, can words hurt?

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[47] An alternate approach that could have been taken with this thesis is to investigate how the introduction of hate propaganda legislation fits within the history of the debates on free expression. While this would certainly be an intriguing study, it extends beyond the focus I employ.

The laws of defamation seek to address this question and their mere existence appears to indicate that in the eyes of government, words can hurt. Freedom of expression is not absolute. Instead, freedoms of all kinds appear to adhere to the notion of freedom of choice. For instance, we are completely free to speak as we wish - from a set of 'reasonable' choices of 'acceptable' speech. When one is perceived to have transgressed these limits of free speech, the laws of defamation act as a safeguard.

Defamation, historically, contains two components: libel and slander.[48] The common-law offence of libel is generally considered to have been created in England in 1606, with the case of *De Libellis Famosis*[49] (Suriya 1998: 22). In the case, Sir Edward Coke, Chief Justice for James I, introduced the notion of criminal defamation, deemed as a libel that affected the state or was so injurious to an individual as to cause a breach of the peace (O'Malley 1975: 87). In classical terms, libel is defamation with form, written or communicated on some material with a quality of permanence. Slander is its spoken equivalent - the manifestation of the theory that mere words can hurt. In most common law jurisdictions, the distinction between the two has, for all practical purposes, been abolished (Riesman 1942c: 1294).

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[48] This distinction between libel and slander no longer exists in Canada's *Criminal Code* (Justice 2004a). Those libels included in the *Code* are: seditious libel (sections 59 and 61); blasphemous libel (section 296); and defamatory libel (sections 298-317). Defamatory libel, also frequently referred to as criminal libel, is the primary focus of this subsection.

[49] 77 E.R. 250

Traditionally, what makes a defamation 'criminal' is that it is so outrageous, so offensive, as to cause a breach of the peace when people respond (Riesman 1942a). This is what separates a criminal from a civil libel, where the focus is more on the damage caused to the reputation of the individual libelled. As it currently stands in Canada's *Criminal Code*, the provisions on defamatory libel do not speak to this element of breaching the peace. However, as it stood in most common law jurisdictions by the 20th century, libels, which did not result in breaches of the peace, were primarily pursued civilly rather than in the criminal sphere (Riesman 1942a). Canada was no exception (MacGuigan 1966).

The *Criminal Code* provisions on hate propaganda seem closely tied to this notion. Part of the argument for implementing the amendments to the *Code* was the fear that public disorder was possible when not only individuals but entire groups were defamed (Cohen 1966).[50] This was not without precedent. At various neo-Nazi rallies held in Toronto during 1964 and 1965, near riots resulted when leaders of this white supremacist movement communicated what could be considered as defamatory statements against Jews and Blacks.

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[50] A 1963 case may have been a precursor to the contention that left unchecked, group defamation could provoke an angry response that led to a breach of the peace. In *Jordan v. Burgoyne* (1963, 2 All E.R. 227), Colin Jordon (an English Fascist leader) was prosecuted under the *Public Order Act* after he spoke in front of a hostile crowd of 5000 (including many Jews) and said that Hitler was right and that the war should have been fought against the "world Jewry". Immediately after saying this, disorder erupted. In refusing Jordan's appeal Lord Parker, the Chief Justice, noted,

> Mr. Jordan . . . has been inclined to elevate this case into a cause celebre in the sense that, if he is convicted here, there is some inroad into the doctrine of free speech. It is, in my judgement, nothing of the sort. A man is entitled to express his own views as strongly as he likes, to criticise his opponents, to say disagreeable things about his opponents and about their policies, to do anything of that sort, but what he must not do – and these are the words of the Act – he must not threaten, he must not be abusive and he must not insult them, 'insult' in the sense of hit by words (MacGuigan 1966: 93).

The 1965 'Race Riots' in the United States also lent support to the notion of group defamation causing disorder (Cohen 1966).

Similarly, in 1967, anti-German demonstrations occurred in response to perceived links between German immigrants and neo-Nazi groups (Hansard 2nd, 26th: 3977; 2nd, 27th: 12973).

However, the threat of hate propaganda, as articulated by the Cohen Committee and the Trudeau government, seemed to go beyond the idea of mere breach of the peace resulting from group defamation. An overarching narrative during the debates on hate propaganda was that what started as localised group defamation could gain a groundswell of support to become a political movement akin to National Socialism in 1920s Germany (Hansard 2nd, 28th: 5695). Equivalencies between the two situations were often constructed (Latour 1988b). The fear seemed to be that under harsh economic circumstances, such libels could lay the foundation for a Fascist movement by defaming vulnerable minority groups, painting them as responsible for the economic downturn and social ills (Cohen 1966). This line of thought is more reflective of the idea of seditious libel, discussed previously. If a group engaging in such defamation was able to amass enough allies (Ward 1996), it was thought possible that it could challenge the entire system of government. Beyond a certain threshold, group defamation could attack the very apparatus of the state, advocating its overthrow and causing persecution and disorder (Cohen 1966). This line of though is covered in detail in the following chapter, the narrative of hate propaganda debates. For now it is sufficient to say that the concept of hate propaganda was more closely aligned with criminal libel in the short term, with the potential for seditious libel if left unchecked.

A good first step in looking at hate propaganda is to look back and see where this notion of 'hate' comes from in law. The standard common-law test of defamation is that which causes: 'hatred, contempt or ridicule' (Cohen 1966). This concept speaks to the

notion that physical harm is not the only harm visited upon individuals. The 'sting' of a libel, traditionally, is that it damages the 'reputation' of an individual. No physical harm need exist. Defamation spreads across both the civil and criminal realms of law. In this thesis, the more relevant legal terrain is the criminal notion of defamation.[51] According to the *Criminal Code* at the time of initiation of the hate propaganda debate, criminal defamation, or defamatory libel, was covered by the following sections, which remain unchanged today:[52]

> 248.
>
> (1) **Definition.** A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning who it is published.
>
> (2) **Mode of expression.** A defamatory libel may be expressed directly or by insinuation or irony
>
> (a) in words legibly marked upon any substance, or
> (b) by any object signifying a defamatory libel otherwise than by words.
>
> 249. **Publishing.** A person publishes a libel when he
>
> (a) exhibits it in public,
> (b) causes it to be read or seen, or
> (c) shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.
>
> 251. **Punishment for defamatory libel.** Every one who publishes a defamatory libel is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (MacGuigan 1965: 139-40; Justice 2004a)

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[51] The question of truth is critical in libel cases in general and varies between the criminal and civil spheres. In certain jurisdictions, where criminal defamation is closely linked to the older laws of sedition, the truth of the accusation is less relevant if the intent is to subvert the public order. Truth for a seditious act against the monarch under absolutism was no defence. Indeed, the greater the truth, the greater the libel (Riesman 1942a: 735). In its modern incarnation, truth is more likely to hold as a valid defence (O'Malley 1981). In civil defamation cases, the idea of fair comment, that there is truth in a statement or even the belief of truthfulness when making an accusation, can often hold as a valid defence (Riesman 1942c). In criminal cases, the onus for fair comment is more stringent.

[52] It should be noted that the numbering of these sections in the *Criminal Code* has been changed to 298-301. In his summary of the legislation MacGuigan omits section 250 (section 300 currently). It states, "300. **Publication of libel known to be false.** Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years." (Justice 2004a)

The exception clauses to defamatory libel speak to the standard defences against a prosecution for libel: truth. However, the 'teeth' of the provisions on defamatory libel in various jurisdictions has been questionable for some time (Riesman 1942c: 1283). Not only does there appear to be a reluctance to prosecute individuals because of free speech concerns, but there also exist a large number of strong defences. For instance, in Canada, the exceptions cover material produced for Parliament or the courts, 'fair comment' on public meetings, as well as material sold, unknowingly, by a retailer. Also, there are crucial exemptions that involve "invited" or "necessary" publications as well as publications made in "good faith" and of course, the defence of truth (Justice 2004a).[53]

Much of this narrowing of the criminal libel provisions can be traced back to the commercialisation of the newspaper industry in the early 19th century. The increasing ability to lobby government and the growing economic strength of the bourgeois press, made the coercive use of criminal libel almost obsolete by the 1830s (O'Malley 1981). In the early 1800s, papers such as *The Times* and the *Manchester Guardian* positioned themselves as staunch supporters of the new industrial class. Their wealth and influence increased dramatically during the early part of the century, partially due to technological advances and partially attributable to their position as the ideological medium of the ascendant bourgeois class (O'Malley 1981: 73-74). This rise in power led to legislative concessions being offered to the mass-press industry. In 1834, Lord Campbell formed a Select Committee 'to consider the present state of the law as regards libel and slander'. His recommendations were that the legal definition of libel be tightened as its state at time made it unsafe for newspapers to

[53] Please see Appendix A for the full wording of current sections on defamatory libel, which includes a long list of exceptions, in the *Criminal Code.*

publish (O'Malley 1981: 75-76). *Lord Campbell's Act* of 1843 effectively made criminal libels a rarely used provision.[54]

As such, at the onset of the debate surrounding hate propaganda in Canada, there seems to be a question as to the effectiveness and utility of defamation provisions, there being an apparent reluctance by the courts to pursue such actions (Elman 1993). This situation was even more pronounced in the United States at the same time. The U.S. provision of defamatory libel seems to have "atrophied" over the 19th and 20th centuries and the precedents for successful prosecution were "few and somewhat doubtful" especially as it pertained to group defamation (Riesman 1942a: 750). The defences for criminal defamation can be seen as more generous in the U.S., allowing not only the defence of truth but "well-meant falsehood" after the 1964 decision of Justice Brennan in *Garrison v. State of Louisiana*[55], where he said,

> Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth (Cohen 1966: 53-54)

Defamation straddles the fuzzy zone between insult, opinion and belief. In Canada, for a successful criminal prosecution, generally, some element of wilfulness and foresight must be shown (MacGuigan 1966).

The laws of defamation are drawn up with *specifically identifiable* individuals in mind, not disparate, geographically-dispersed or diverse groups. The notion of the possibility of

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[54] This transition which occurred in England, and was mirrored in the state of law in the United States, appears less pronounced in civil law jurisdictions and other parts of Europe (Riesman 1942c: 1283-85).

general group defamation began to surface in the United States in the 1940s, David Riesman being one of its foremost proponents and scholars. Riesman's influential articles in the *Columbia Law Review*, including "Democracy and Defamation: Control of Group Libel," introduced the notion of group defamatory libel, the idea that not only individuals but entire identifiable groups could be defamed (Riesman 1942a). At the time Riesman was writing, the harsh treatment of Jews under Nazi Germany was beginning to come to light and the spread of Fascism was a concern. Indeed, Riesman (1942a: 727) quoted an estimate that approximately "one-third of all families in the United States regularly receive Fascist literature." The rise of the Nazis to power in Germany was part of the grounds for Riesman's desire to stem defamatory acts against groups through legislation. Originally, Riesman states that the Nazis libelled symbolic representatives of various groups in their rise to power. However, as the party gained strength, these attacks were extended to the group itself (Riesman 1942a: 728-29). Attacks on vague groups such as "democrats", "Reds", "Jews", and "liberals" ran little chance of being prosecuted under the German laws of criminal defamation as the focus of protection was placed on the individual.

Looking at the laws of defamation at the time in the U.S., Riesman remarked that the current state of U.S. law was similarly unable to cope with such attacks. He stated (1942a: 731) there was a "customary refusal of American law to appreciate the role of groups in the social process," and considered this dangerous. There was also a problem with precedent. What sort of contentions could be deemed defamatory - in certain areas of the United States, being called a "nigger-lover" was more defamatory than being called a supporter of Hitler (Riesman 1942c: 1301-03). Judges, who normally rely upon precedent, were unequipped to

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[55] 1964, 85 S. Lt. 209

deal with these novel threats and their intensity under the traditional notions of libel, considering the racial and ethnic history of the country. Riesman (1942a: 732) pointed to a Swiss administrative decree prohibiting group defamation that effectively controlled Nazi propaganda, while noting the only U.S. jurisdiction to enact similar legislation was New Jersey, which enacted a "race hatred" law in 1935 only to have it struck down by the New Jersey Supreme Court in 1942. In his assessment of the U.S. laws at that time, Riesman (1942a: 780) thus noted, such "defamation aims to shift to relatively powerless scapegoats–Negroes, Jews, Mexicans–the attacks which might otherwise be made against the prevailing system." Legislation which was reluctant to let the state interfere in the expression of citizens, whatever its form, "plays directly into the hands of the groups whom supporters of democracy need most to fear." His stance resonated strongly likely due in no small part to the actions that were occurring in Nazi Germany at the time of his writings.

With this history in mind, it seems odd that laws of group defamation were not strongly argued for much earlier in common-law jurisdictions. Much of this absence can be attributed to the theoretical treatment of the laws of defamatory and seditious libel. With a flexible legal interpretation, both seem to offer the *possibility* of extending to protect groups. This stance is not without precedent. The case of The *King v. Osborne*,[56] prosecuted under the British laws of sedition in 1732, is generally acknowledged as a successful prosecution of group libel (Riesman 1942a; MacGuigan 1966). Osborne published an account, detailing the "occurrence" of Portuguese immigrant Jews burning a local woman and her "illegitimate" offspring after her encounter with a Christian Englishman. Osborne went on to say that this was a common "practice" among this group of immigrant Jews, living near Broad Street in

[56] 2 Barn. K.B. 138, 166

London. Mobs responded with attacks (MacGuigan 1966: 94-95). Critics who opposed expansion of defamation laws to cover groups often cited this case. They stated that *Osborne* made expansion of defamatory libel redundant (Riesman 1942a: 742). The findings of the *Porter Committee on Defamation*, which were released in England in 1948, cited Osborne as their justification when they held that group defamation was protected in the ultimate instance by the laws of sedition. They held that, short of an insurrection of seditious magnitude, group defamation should not be included as a distinct criminal offence - they likened it to a political prosecution.[57] The research of Riesman calls this stance into question and typifies the separation of legal theory from judicial practice. In *Osborne*, the group being libelled was specific, in that it was easily defined, explicit and readily identifiable. Normally, of course, such specifics are not available - the libel is more general in character. Proof of the impotence of the *Osborne* ruling in the 20th century seems apparent when one looks to case law. For instance, a 1975 British Report on Defamation noted that, with respect to criminal libel against groups,

> It is also a criminal libel to libel any sect, company or class if it is proved that the object is to excite the hatred of the public against the class libelled. As far as we know there has been no prosecution for this offence this century and probably today any proceeding resulting from incitement to racial hatred would be taken under the Race Relations legislation (Report on Defamation 1975: 119).

Thus, until the spate of legislation that occurred in the mid-20th century, this precedent did

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[57] England's *Race Relations Act* of 1965 overturned the recommendation of the 1948 Defamation Report by noting:

> 6. (1) A person shall be guilty of an offence under this section if, with intent to stir up hatred against any section of the public in Great Britain distinguished by colour, race, or ethnic or national origins -
>
> a) he publishes or distributes written matter which is threatening, abusive or insulting; or
>
> b) he uses in any public place or at any public meeting words which are threatening, abusive or insulting, being matter or words likely to stir up hatred against that section on grounds of colour, race, or ethnic or national origins. (MacGuigan 1966: 96)

not readily cover protection for group libel at least in England, where prosecutions from the mid-19th century onwards were extremely rare (Riesman 1942a: 736).

The same could be said to be true in the United States and other common-law countries (Riesman 1942). In the first half of the 20th century some states in the U.S. passed laws proscribing Nazi and Communist "propaganda" while others outlawed group libel based on race. However, these pieces of legislation did not withstand judicial scrutiny (Jacobs and Potter 1998: 128). There appears to be only one case (pre-Cohen) in the U.S. of a successful prosecution under a state group libel law (MacGuigan 1966). No federal provisions existed at the time. In *Beauharnais v. Illinois*[58], Beauharnais was convicted of violating a section of the Illinois Penal code which forbid, in part any "publication or exhibition which exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots." The decision was upheld by the U.S. Supreme court 5-4, with the 4 dissenting supreme court views stating that such state legislation violated first and fourteenth amendment principles (MacGuigan 1966: 104-115). However, despite being upheld 5-4, the dissenting opinion of Justice William O. Douglas has become precedent in the defence of free expression (Jacobs and Potter 1998: 115). Although *Beauharnais* has not since been overturned, it is no longer considered valid precedent or "good" law (Bollinger 1995). Generally, it appears U.S.[59] and British sentiment was opposed to group libel laws (not only amongst the judiciary but politicians) leading up to the period of the Cohen report.

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[58] 1952, 343 U.S. 250

[59] The Cohen Committee (1966: 53-54) also noted the passage of various state laws pertaining to civil rights and against discrimination but noted that in the U.S., "protection against group defamation, however, generally is lacking."

The potential extension of the existing laws of sedition and defamation to cover groups was not completely without precedent at the time of the *Cohen Committee Report on Hate Propaganda in Canada*, though the strength of the precedents and the willingness to prosecute was certainly questionable. It seems the question of identification was problematic when it came to general, indistinct and geographically-dispersed groups. Yet the laws of sedition and defamation can be seen as the legal ancestors of hate propaganda. Sedition appears to have imparted notions of public order,[60] harmony amongst the citizens, and protection of the 'democratic' apparatus of government in the formation of hate propaganda. While seemingly difficult to enforce, the laws of sedition appear to speak to the idea of prohibiting ill-will between classes. Defamation is responsible for hate propaganda's first name, as its definition of 'hatred, contempt and ridicule' appears to have been partially inherited. It also relayed the idea of public disorder resulting from a particularly offensive and outrageous libel. The two laws, sedition and defamation, are closely linked - seditious libel in essence, being a protection against the defamation of the monarch and aristocracy until the 19th century (Riesman 1942a: 735; O'Malley 1981). Group libel appears to draw connections between both laws (Somers 1994), being "somewhere between libel of the government and libel of an individual" (MacGuigan 1966: 117). Yet in the eyes of the Cohen Committee (1966), neither by extending seditious libel nor by broadening defamatory libel could the necessary protection be offered to the groups who were 'targets' of so-called hate propaganda.

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[60] The laws against seditious libel are found under Part II of the Criminal Code, "Offences Against Public Order" (Justice 2004a). Defamation laws appear under Part VIII, "Offences Against the Person and Reputation." Hate Propaganda laws also appear under this section.

The spirit of hate propaganda laws appears to go beyond simple public order and curtailing of group libel. Education and signalling, arguably a component of most sections of the *Criminal Code*, appear especially relevant to hate propaganda legislation. Grand themes, such as protection of the multicultural 'fabric' of Canada, echo throughout its debates. As influential as the legal relatives of sedition and defamation may have been to the idea of hate propaganda, the shifting nature of social relations during the 1950s and 60s, with respect to racial discrimination, is also quite telling. The process of re-ordering the laws of sedition and defamation to cover a new 'threat' constituted an entirely new criminal object: hate propaganda. It is to this object I now turn my attention.

## Chapter 5.

## Pre-existent Orderings - Building an International Network Against Discrimination

> **Article 1**
> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
>
> **Article 2**
> Everyone is entitled to all the rights and freedoms set forth in the Declarations, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> ...[*however*]
>
> **Article 18**
> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
>
> **Article 19**
> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. *Universal Declaration of Human Rights.*

Often, historical incidents such as the fall of absolutism or slavery or the inferior status of women are portrayed as distinct social movements (i.e. the French Revolution, Emancipation Proclamation, and Suffrage Movement) where society undergoes tremendous change. I submit that such narratives are misleading. Instead, more often than not, specific institutions, principles and actors need to be in place to allow an amalgam of forces to be assembled together into something coherent which can be acted upon (Desrosières 1991). The noteworthy moment is no more than the climax of the play.

Two such incidents are the Civil Rights movement in the U.S. during the 1950s and 60s and the Holocaust perpetrated during World War II. What these climaxes hold in

common is that they challenge some of the fundamental precepts of Western civilisation in terms of 'equality' and what it means to be 'civilised' (Henkin 1995). These incidents can be seen as helping forge connections between disparate ideologies and governments, forming relations between countries to direct common sentiments and 'make sense' of the world (Somers 1994). The result of this co-operation and alliance-building can be seen to contribute to a variety of strong legal and moralistic orderings that pre-date the initiation of hate propaganda debates in Canada. I speak here of the international declarations of the United Nations, international legislation against Fascism and Fascist ideals, and legislation in Canada that looked to address troublesome manifestations of racial, ethnic and religious discrimination. These histories helped shape the social life, customs and legislation that provide firm bases for discussion and calls for action surrounding 'hatred' and 'hate propaganda' (Ward 1996)[61]. This chapter outlines some of the more influential orderings and institutions, which formed a strong international network against discrimination, in the decades leading up to Canada's hate propaganda debates.

## 5.1 *The Rise of a Strong Supranational Body*

What we speak of today as 'equality' and 'freedom' - the treatment of individuals absent of discrimination on the basis of race, gender, creed or colour - changed dramatically following World War II. The 'Universality' of these goals began to be discussed in institutions such as the United Nations. Additionally, the practice of various governments was brought closer in line with these philosophical ideals. In Canada, various government acts began to 'legislate out' discrimination, focussing on such areas as housing, immigration

[61] As Ward (1996: 3) refers to in his article on the social history of self-esteem, the narrative I construct in the following two chapters can be viewed as akin to the studies undertaken by Hacking (1999) into child abuse and madness, which he refers to as sociologies of concept formation.

and employment. These international influences, along with the various acts passed in Canada around this time, appear as pre-existent orderings that formed a basis for discussions on hate propaganda. As governments worked at legislating out discrimination, hate propaganda emerged as a 'reasonable' area of debate.

In essence, these institutional declarations can be seen as forming a *path* for governments that outlined the direction states needed to take in removing overt discriminatory practices (Latour 1988b).[62] This international network became strong by spreading itself out. This culmination of various pieces of international legislation and UN declarations took the idea of equality and made it potent by recruiting a growing list of allies that supported it in principle, and more important, in practice (Ward 1996). It formed an eddy (Latour 1988b) that grew progressively stronger as more countries came to address their discriminatory practices and became signatories to international declarations that outlined the practices of good government.

Though these countries may be dispersed, their forms of government different, their cultures distinct, these processes, in particular the declarations and conventions of the United Nations, served to bring them together. The path from discrimination to equality united many nations towards a common goal and served to create a benchmark against which countries could measure themselves (United Nations 2004a). As Desrosières (1991: 210) notes, "The other way of interpreting these regularities is to link them to institutions

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[62] I am not trying to claim that this pathway was a 'logical' movement for governments. Rather, I claim such a path provided a reasonable direction for governments to take towards an end goal of legislating 'equality'. As Latour (1988b: 179) notes, "A path always goes somewhere. All we need to know is where it goes and what kind of traffic it has to carry. Who would be so foolish as to call freeways "logical," roads "illogical, " and donkey tracks "absurd"?"

that are socially and historically standardised, and thus capable of *holding things together.*" As such, nations, predominantly from the West, came to align themselves on this goal of equality. The United Nations, in particular, standardised what it meant to be 'civilised'.

5.2 *The UN Defines 'Universal' Standards*

The positioning of the United Nations as a legitimate supra-national institution can be seen as a response to the devastation and barbarous nature of World War II (United Nations 2004a). In a first significant step to regulate the relations between nations, the Member States drew up the *Universal Declaration of Human Rights*, affirming the right of all humans to be protected from violence, discrimination and persecution. The unanimous adoption of this resolution can be seen as a significant step in the willingness of the international community to act in unison (Henkin 1995). This achievement is even more remarkable considering the ideological, governmental, economic and religious differences that existed among the various member states at this time (United Nations 2004a). The effect of this and other UN resolutions can be seen as a growing international alliance "framing" (Callon 1998) a set of acceptable practices of government.

As the UN expanded its reach and accepted new members, it came to draw up resolutions on a number of issues. Three UN resolutions are especially relevant to the discussion of the inception of hate propaganda legislation in Canada: The *Universal Declaration of Human Rights* (1948), The *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), and The *Convention on the Elimination of All Forms of Racial Discrimination* (1965). The *Universal Declaration of Human Rights* and the *Convention on Genocide* came on the heels of the Nuremberg trials which brought into focus the sheer scope of the Holocaust. While such

actions had certainly been frowned upon previously, the timing of these resolutions can be seen as signifying a common agreement to do away with such practices in future wars.

Despite being signatories to all three agreements, Canada lagged in its adoption of these resolutions, introducing legislation well after the fact. The *Bill of Rights*, passed in 1960, can be seen as codifying portions of the *Universal Declaration of Human Rights*, passed in 1948. The *Convention on Genocide*, passed in 1948, is closely associated with Hate Propaganda Legislation, passed in 1970. The *Convention on the Elimination of Racial Discrimination* is reflected in multiple pieces of legislation but is really only fully realised (along with the *Universal Declaration of Human Rights*) in the *Canadian Charter of Rights and Freedoms*. These lags were a focus in the debates on hate propaganda. David Lewis, a significant player in the founding of the New Democratic Party in Canada, summarised the frustration felt by many in clarifying Canada's intention to adopt these agreements.

> I do not say this is conclusive but it seems to me that one of the things we suffer from in this world is this: Members of the United Nations vote for international conventions and for international undertakings; this implies that member states should do something to implement such undertakings. Nevertheless, when the representatives at the United Nations return home, nothing is done in this regard. This is one of the evils of the present situation that we ought to rectify (Hansard 2nd, 28th: 915).

While hate propaganda legislation should not be viewed as merely fulfilling international requirements, it appears UN resolutions are significant orderings that carry with them a certain expectation (Henkin 1995).[63] They appear to create a pathway that becomes widened and paved as more nations implement the resolutions, either in whole or in part, as national legislation (Latour 1988b).

The *Universal Declaration of Human Rights* was adopted on December 10, 1948 and was only marginally important to the Cohen Committee (United Nations 2004b; Cohen 1966). Although it laid out fundamental principles it stopped short of the type of specific legal obligations under consideration in drafting hate crimes legislation. However, as one can see from the relevant provisions considered by the Cohen Committee, what the *Declaration* highlighted was a conundrum - how to legislate against so-called hate propaganda while maintaining freedom of expression and religious debate.

Looking more closely at the Cohen Report and the final legislation passed in Parliament, what seems more significant are the *Convention on Genocide* and the *Convention on the Elimination of All Forms of Racial Discrimination.*[64] In the *Convention on Genocide*, Articles II and III are relevant. They state, in part,

> **Article II**
> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group.

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[63] While the delay in adopting and codifying these declarations is certainly an interesting question, it goes beyond the bounds of this thesis as capable of satisfactory analysis.

[64] It should be noted that the *Convention on the Elimination of Racial Discrimination* was only a Declaration at the time the Committee met. Whereas UN Conventions are binding, Declarations are not. However, Declarations are considered a "moral standard for the world" despite the fact that they do not "impose any specific legal obligation on the states which vote for it." Instead the Committee deemed Canada's obligation under such a Declaration as "quasi-legal." The wording remained unchanged between the *Declaration* (1963) and the *Convention* (1965) (Cohen 1966: 56-57).

**Article III**
The following acts shall be punishable,[65]
(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide. (United Nations 2004c).

Taken in conjunction with Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, passed 21 December 1965, the basis for Canada's hate propaganda laws was effectively laid out. Article 4 outlines that,

> State Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of person of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:
> (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
> (b) Shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law;
> (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination. (United Nations 2004d).

The responsibility of signatories to the convention is spelled out in Article 2, part 1(d) which states, "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons,

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[65] When drawing up their recommendations for hate propaganda legislation, the Cohen committee notes that certain portions of the UN *Convention on Genocide* were dropped because they were unwarranted, specifically a portion on the transferral of children from one group to another as being genocide. It is stated in the report that this has "little essential relevance to Canada, where mass transfers of children to another group are unknown" (Cohen 1966: 61). Ironically, in light of the modern debate on the residential schools, had this been included in the legislation, the Government of Canada might have, historically, contravened the first section of hate propaganda legislation: advocating genocide.

group or organisation" (United Nations 2004d; Cohen 1966: 304-18 lists full text of both Conventions).

Both these conventions were cited numerous times by members of Parliament in the debates over hate propaganda legislation, lending credence to the notion that UN declarations create a pathway of expectations (Hansard 2nd, 28th: 881-97; Hansard 2nd, 26th: 5356-58). The United Nations can almost be viewed as a crucial node in an international network of ethics and morality. The effect of such nodes can be seen as power and agreement arising on certain universal concepts (Ward 1996; Latour 1988b). While dissent is still possible, when it comes to unanimously adopted declarations, the strength of the network seems apparent. As part of the international community, many members of Parliament felt Canada was compelled, as a 'responsible' nation, to uphold its obligations to international conventions. The proposed legislation on hate propaganda appeared to many Members of Parliament as satisfying the requirements of not one but two landmark conventions. The growing number of international allies that had adopted such legislation (see Henkin 1995), only served to make the pathway towards hate propaganda legislation, a more well-travelled route (Latour 1988b).

### 5.3 *International Legislation Attempts to Address Concerns over Fascism*

In researching international precedent on hate propaganda, the Cohen Committee (1966: 277-88) looked at the post-WWII introduction of various 'hate' or 'discriminatory'-based pieces of legislation. The first sweep of this legislation occurred in the countries most associated with the Holocaust; those nations who had either supported Hitler or had

Fascist[66] or National Socialist movements of their own.[67] These forms of government became tied in the consciousness of many to this particular aspect of the war. In Austria, a Constitutional Law was enacted regarding the "Ban of the National Socialist German Workers' [Nazi] Party" and like entities. Furthermore, the Penal Code of Austria was amended in 1945 to outlaw "Incitement to Hostile Acts against National Groups, Religious Communities, Corporate and Similar Bodies," which stated,

> Whoever invites, instigates or induces others to hostile acts against the various nationalities (national groups), religious or other communities, particular social classes or estates or against legally recognised bodies, or whoever generally invites, instigates or induces citizens of the State to form hostile groupings against each other, shall be guilty of an offence ...

In Italy, Law 645, Article 1 of the Constitution was drawn up soon after the war. It dissolved the Fascist Party and forbid the formation of any like parties. Tellingly, a characteristic enshrined in defining such parties was "engaging in racial propaganda."

With the formation of the Federal German Republic upon the division of the former German Empire, the "*Basic Law for the Federal German Republic*" was enacted in 1949. As part of this foundational text, Article 9, Paragraph 2 clearly stated that "Associations whose aims

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[66] While Hitler and other infamous leading Nazis took their share of the blame, Fascism as a form of government in itself, was deemed by many as inherently 'evil'.

[67] Of course, the memories of the Holocaust were not the only catalysts for legislation attempting to pacify the tension between different racial and ethnic minorities. Two World Wars had been fought in the 20th century and the populations of many Western nations were 'replenished', in large part, by immigration. In Britain the increase in racial tensions following the mass immigration from the colonies culminated in the perceived need for a *Race Relations Act* in the 1960s. The Act, approved though not yet enacted into law by the time the Cohen Committee met in 1965, replaced and 'updated' the previous *Public Order Act* of 1936. A crucial element of the Act was the notion that specific groups, "distinguished by colour, race, or ethnic or national origin," were entitled to protection. There was to be no exception for so-called "legitimate debate". It stated, "Public discussion on all matters involving colour, race, or ethnic or national origin is proscribed if it occurs in a form which is 'threatening, abusive or insulting' and if it is 'likely to stir up hatred', regardless of the merits of its content, i.e., irrespective of its truth or falsity (Cohen 1965: 51-53)."

or whose activities are contrary to the Criminal Laws, or which are directed against the constitutional order or against *the idea of understanding among peoples are prohibited.*" (Cohen 1966: list of international legislation spans 277-88, emphasis added).[68]

Other countries, mostly in Western Europe, had similar provisions in their criminal or penal codes. Generally, the legislation was either highly specific (clearly describing what *types* of groups could be discriminated against) or more broad (referring to groups in general). The point here is that Canada was not an actor at the forefront of the construction of an international network of legislation protecting groups from prejudice and discrimination. As the Cohen Committee stressed "it is evident, that however varied the social and legal tradition, the problems of group discrimination, intimidation or defamation have invited the attention of many advanced countries and that most of them have attempted by legislation to control or eliminate such practices and expressions" (Cohen 1966: 57). The ordering of international laws on discrimination had extended to another level. Not only had the most visible supranational institution passed declarations against it, but many nations had codified these Declarations and Conventions into national law.

The idea that people were 'equal' within a state was relatively easy to stomach when the population was comparatively static and largely homogeneous. However, as people began to move more freely between countries, the increasing heterogeneity and contact of previously unmet cultures, styles, skin tones, ethnicities and religions was not necessarily smooth. Tolerance was something that needed encouragement, often through acts of legislation. The freedom of the movement of peoples led to conflict within regions

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[68] A more comprehensive summary of the international legislation is offered in Appendix B.

previously consistent or relatively uniform in ethnicity, race, religion, attitude, appearance, and dress. As nations struggled with increasing multiculturalism, laws were introduced to ensure the equality of all members, both old and new, within the nation. It is to some of these measures taken in Canada that I now turn.

### 5.4 *Canada 'Legislates Out' Discrimination*

The opening pages of the *Cohen Report* outline the problems that come from having such a diverse geographical supply of immigration. They note,

> Society itself has changed greatly in the last century. The simple society of the past was more homogeneous. Until the 20th century, very few people in a society had to rub shoulders with others of strange voice, dress and customs. Nowadays, the mobility of populations expose most of us to the unfamiliar, inviting us to react adversely to the unfamiliar in times of stress (Cohen 1966: 9).

The *Bill of Rights*, passed by the Diefenbaker government in 1960, was arguably the most substantial demonstration of this new-found dedication to racial equality in the decades immediately following WWII. The *Bill*, which borrowed heavily on parts of the UN *Declaration of Human Rights*, was heralded as sort of a 'foundational' law; one which signals the morals and ethics of a nation as opposed to simply forbidding or codifying the legality of certain practices.[69] However, the *Bill of Rights* only applied to Federal jurisdiction and was far less comprehensive and reaching than the *Canadian Charter of Rights and Freedoms* passed in

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[69] Part one of the *Bill*, which outlines the "recognition and declaration of rights and freedoms" reads, **1.** It is hereby recognised 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,

> (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
> (b) the right of the individual to equality before the law and the protection of the law;
> (c) freedom of religion;
> (d) freedom of speech;
> (e) freedom of assembly and association; and
> (f) freedom of the press. (Justice 2004b)

1982.[70] Nonetheless, it was a significant step towards signalling the renunciation of discrimination in government and in Canada.

As the debate on hate propaganda was heating up, questions of Canada's immigration policies were also taking place in the House. For instance, a Private Members' Bill presented during the 1964/65 session asked that parts of the *Immigration Act* be entirely repealed based on the grounds of racial discrimination.[71] The offensive portion of the *Act* was section 61(g), which covered,

> The prohibiting or limiting of admission of persons by reason of
> (a) nationality, citizenship, ethnic group, occupation, class or geographical area of origin,
> (b) peculiar customs, habits, modes of life or methods of holding property,
> (c) unsuitability having regard to climatic, economic, social, industrial, educational, labour, health or other conditions or requirements existing, temporarily or otherwise, in Canada or in the area or country from or through which such persons come to Canada, or
> (d) probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their admission.

Agreeing with the spirit of the bill, the government asked for time in producing a more comprehensive overhaul (Hansard 2nd, 26th: 12319-23).

Policies breaking down racial barriers of exclusion and addressing perceived intolerance and discrimination were also gaining support in Canadian provinces around this

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[70] The *Charter* came far closer to the goals set out in the *Declaration of Human Rights*, by placing the *Charter* within the *Constitution*

[71] The government at the time delayed immediate support of the motion. In defending the provision the Parliamentary Secretary to the Minister of Immigration noted that repealing all of the section removed some valuable grounds of refusal, for instance economic and educational requirements. He further noted that the purpose in the 1953 legislation that drafted this provision was to accept those immigrants, based upon citizenship, that would adapt most easily to Canada because of a similar "culture and political philosophy" in their home countries. The inclusion of ethnicity as a prohibiting factor, he claimed, was an effect of this. The intent was not to ban people based on racial prejudice.

time. Ontario was the standard bearer, with the *Racial Discrimination Act* (1944), *Labour Relations Act* (1950), *Fair Employment Practices Act* (1951), *Fair Accommodation Practices Act* (1954), and the *Ontario Human Rights Code* (1962) addressing perceived imbalances in legislation (Cohen 1966: 36). The Federal government had also started on this trend. A significant step can be seen as giving the vote to status Indians in 1960 (Martin 1995). The Federal government was also moving on labour standards at this time, ratifying an International Labour Organisation convention on human rights in 1964.[72] The measure seeked to remove discrimination in "employment and occupation based on grounds of race, colour, sex, religion, political opinion, national extraction or social origin, and to promote equality of opportunity" (Hansard 2nd, 26th: 156). The Federal government also began addressing concerns of housing for immigrant populations in the 1950s. The Canada Mortgage and Housing Corporation was set up in the late 1940s and the *National Housing Act* was amended in 1954. Part of its mandate was to ensure "affordable" housing for "all" Canadians. The refurbishment of run-down communities populated primarily by immigrants, for instance Regent Park in Toronto, began around this time (CMHC 2004).[73]

Immigration from 'non-traditional' countries in the period leading up to and after the Second World War contributed to the initiation of debate over discrimination in Canada. As the 'face' of Canadian society began to alter, racial discrimination became increasingly legislated against beginning in the 1940s. The rise of a strong supranational government

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[72] Canada, again lagging internationally, had been a signatory to the convention passed at the 1958 conference (Cohen 1966).

[73] Debates in the House of Commons in the 1950s and 60s spoke to the accessibility of housing for poorer immigrant communities and actions to improve the living conditions of new Canadians were soundly supported. However, it is important to note that policy does not always equal practice - many of the poorer regions of Canada are still dominated by visible minorities and Native Canadians.

force, the UN, articulated a 'Universal moral positioning' which was crucial in the adoption of measures that looked to curtail racism and prevent the atrocity of genocide. These declarations can be seen as creating a legislative *pathway* for the countries of the 'civilised', 'developed' Western world. The multiple forms of legislation appearing in the 1950s seem to subscribe to a notion that equality must not only be spoken to, it must be protected. The gradual elimination of such provisions and the passing of new legislation expressly outlawing discrimination can be viewed as one of the hallmark shifts in social policy during this period.

While certain elements of Canadian legislation were quickly passed following this move against discrimination, hate propaganda was a more difficult fight. Rather than merely legislating against overtly racist practices, the legislation touched upon an established cornerstone of Canadian democracy: freedom of expression. However, the connection between Canada and other states and international bodies should not be underestimated (Somers 1994). The paths formed through international agreements, though narrow at first, were broadening and becoming paved as more countries implemented legislation against varying degrees of discrimination. As Latour (1988b: 185) notes, networks gain strength as greater and stronger allies subscribe to and adopt the concepts advanced. "Nothing short of revolution or natural cataclysm would lead those who use these paths to suggest another route to the traveler." The process of 'legislating out' discrimination, through international agreements and national legislation, created an increasingly well-worn path. This can be viewed as a crucial foundation in the movement to legislate against 'hate'. It is to this process I now turn.

## Chapter 6.

## The Conceptualisation of Hate Propaganda in Canada

> With satanic joy in his face, the black-haired Jewish youth lurks in wait for the unsuspecting girl whom he defiles with his blood, thus stealing her from her people. With every means he tries to destroy the racial foundations of the people he has set out to subjugate. Just as he himself systematically ruins women and girls, he does not shrink back from pulling down the blood barriers for others, even on a large scale. It was and it is Jews who bring the Negroes into the Rhineland, always with the same secret thought and clear aim of ruining the hated white race by the necessarily resulting bastardisation, throwing it down from its cultural and political height, and himself rising to be its master. For a racially pure people which is conscious of its blood can never be enslaved by the Jew. *Adolph Hitler, Mein Kampf*

The emergence in Canada of zealous forms of discriminatory writing during the 1960s raised the question: to what extent could such material influence the population? The Holocaust, perpetrated during World War II, appeared to follow from a growing anti-Semitic sentiment that many feel had roots in discriminatory writings that began to appear in Germany during the 1920s (Cohen 1966). The appearance of similar writings in the Canadian landscape was perceived as cause for concern. Just how susceptible are people to these sorts of attack? To what extent are they believed and believable? The conceptualisation of hate propaganda reflected these anxieties.

This chapter aims to narrate how, in Canada, hate propaganda came to be taken as self-evident fact (Ward 1996; Latour 1988b). I begin by looking at the emergence of white supremacist material in Canada in the early 1960s, and how this raised questions over the proper role of government in stemming the tide of 'hatred'. The climax of this debate was the creation of a crucial obligatory passage point, the Cohen Committee, in the process that conceptualised the network of hate propaganda (Callon 1986). From here, I explore the

translation that eventually led to its formation as an offence, spelled out in the *Criminal Code* as:

> **Section 318 - Advocating genocide**
>
> (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
>
> *Definition of "genocide"* (2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,
>
> (a) killing members of the group; or
>
> (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.
>
> *Definition of "identifiable group"* (4) In this section, "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.
>
> **Section 319 - Public incitement of hatred**
>
> (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of
>
> (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
>
> (b) an offence punishable on summary conviction.
>
> **Section 319 (continued) - Wilful promotion of hatred**
>
> (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of
>
> (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
>
> (b) an offence punishable on summary conviction.
>
> (Justice 2004a).[74]

Hate propaganda can be seen as an ongoing translation - from an original idea of discrimination, translated to hate literature and re-translated to hate propaganda. The effect of this translation was the implementation of a new *Criminal Code* offence, which re-ordered previous legislation on sedition and defamation. In this case, the process of translation can alternatively be thought of as how hate propaganda came to be separated out from similar

[74] What appears here is only a selection of the most relevant aspects of the legislation on hate propaganda, unchanged since its passage in 1970. The full-text of the *Criminal Code* sections on Hate Propaganda, including defences, warrant of seizure and other provisions, can be found in Appendix C.

notions of discrimination and prejudice. By linking certain forms of literature with destructive consequences, hate propaganda came to be viewed as something "matter of fact" (Ward 1996: 4).

The form I have chosen for this chapter is to write it in a set of Acts. I wish to follow the basic methodological precept of actor-network theory: 'follow the actor' (see Law 1992; 1997, Latour 1983; 1999). However, it is impossible for me to follow my actors everywhere as they go about creating their world (Latour 2003). As such, the metaphor of the play seems appropriate. I note various scenes that I feel are important in advancing the story of hate propaganda. Yet I am aware that I cannot articulate an absolute description of the process whereby the Canadian government conceptualised and legislated against 'hate'. Backstage moments and rehearsals are not available to me - I only see the acts within the 'spotlight' (Latour 1983; 1988b: 210). As such, this narrative represents my construction of a plot/hypothesis as to how the object of hate propaganda came to be organised (Somers 1994). I have been careful when articulating this narrative to avoid a few pitfalls that potentially come from interpreting politics. Notably, just because this narrative is about hate propaganda does not mean this is the only issue at stake. There are numerous interpretations possible and a number of complex interconnected issues involved in its conceptualisation (Mol 1999). Some of these I try to articulate, for instance, discrimination, and some I miss. While I do not claim this account mirrors 'reality', I believe it articulates a coherent story of how the government of Canada went about organising legislation to criminalise the most zealous forms of discrimination an actionable object (Law 1994).

## 6.1 **Act I: Problematisation - 'Scurrilous' Material and its Distribution**

The rise of neo-Nazi groups in Toronto in the early 1960s and the recruitment drive and push of American White Supremacist groups into Canada is the type of event that reawakens dormant fears. While nearly 20 years had passed since the Holocaust was perpetrated, it still sustained fears of the fragile 'enlightenment' engendered by Western civilisation. In many cases, the fear of *the possibility* of such an event occurring again or even that such prejudice *could and did* remain was enough to arouse anger and hostility towards such 'hate'.

With the emergence of these groups, and the distribution of discriminatory writings in the early 1960s, the government was faced with a new conundrum: to what extent could it interfere in the discriminatory practices of the citizenry? To date, the government had legislated in a number of areas involving discriminatory practices, from housing, to immigration to employment. Indeed, it could be said the government had been highly effective, whether intentionally or not, in rendering itself indispensable in the problematisation of discrimination (Callon 1986). To solve problems of discrimination, one now frequently passed through Ottawa.[75] While individuals still might resort to their own measures in the face of discriminatory practice, the federal government had become an obligatory passage point in the project to eradicate racial discrimination by legal fiat. In essence, the early stages of government discussions on hate propaganda were merely extensions of policies attempting to eliminate racial discrimination pursued over the previous decade.

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[75] I borrow this notion from Latour (1983; 1988b), who, in his description of the Pasteurisation of France, notes the successful problematisation undertaken by Pasteur which forced farmers who wished to solve their problems with anthrax to deviate through his laboratory.

6.1.1 *Scene I: Letters Arrive in the Post*

Almost by definition, for a problem to be identified, there must be a sense of the possibility of solution. During these processes, actors become interposed in a network of relationships that helps conceptualise the problem. Those actors which recruit enough allies to their proposal end up becoming indispensable in the network that is created. This double movement, the emergence of an impasse and the intersection of actors who claim to be able to 'bypass' it, is what is known as problematisation (Callon 1986).

The wide distribution of anti-Semitic writings, cresting with the founding of the Nazi Party in Toronto, April 20, 1965, is a significant moment in the problematisation of hate propaganda. The distribution of these materials played not only upon the receptive minds of like-minded people; it played upon the emotions of a vast number of Canadians who took the threat of Nazism[76] and the catalysing effect of racial discrimination seriously. Between 1963 and 1965, 58 hate-related activities were recorded in Canada despite the lack of a coherent definition of what constituted 'hate literature' (Cohen 1966). Primarily, the actions involved the distribution of recruitment letters through the post. Typically, the letters took a similar form and tone to the following example.[77]

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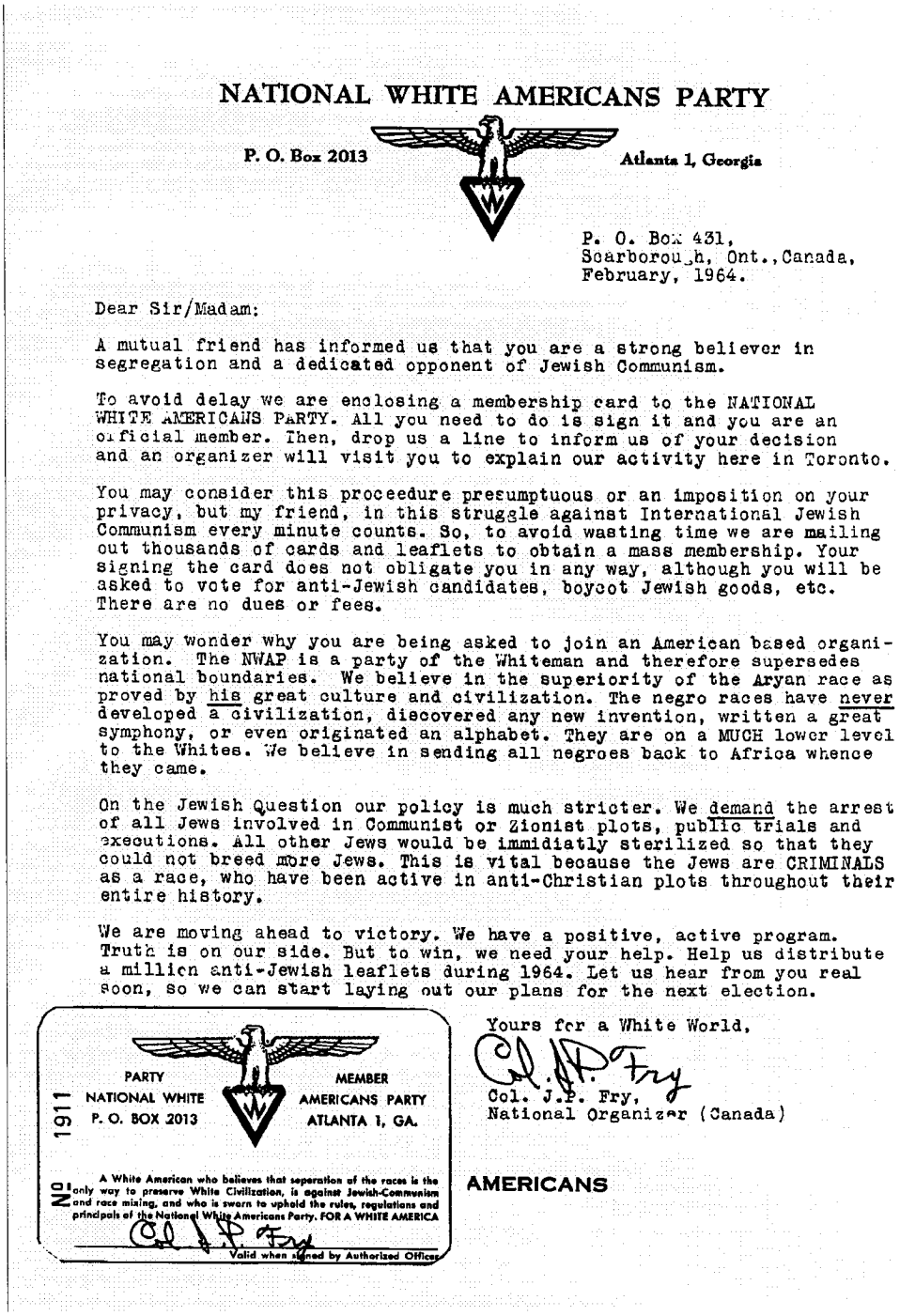
[76] The Holocaust can be seen as a catalysing event that threw into sharp contrast the commonly-held belief of many Westerners and their governments; that the West was 'civilised' and 'enlightened'. When these events occur in other, less developed nations, they are no less deplorable or damaging. However, when genocide of this magnitude occurs in a country rich in philosophical tradition and 'progressive' legislation - viewed by many as at the core of the 'Great Civilising' nations of the Modern World - it is not just brutality, it is precedence.

[77] This example appeared in the Cohen Report (1966: 261). Various examples of the materials being distributed in Canada in 1964, were considered by the Cohen Committee and are included in Appendix IIIC of its report (Cohen 1966: 260-70). Further examples are offered in Appendix D of this thesis.



NATIONAL WHITE AMERICANS PARTY

P. O. Box 2013 — Atlanta 1, Georgia

P. O. Box 431,
Scarborough, Ont., Canada,
February, 1964.

Dear Sir/Madam:

A mutual friend has informed us that you are a strong believer in segregation and a dedicated opponent of Jewish Communism.

To avoid delay we are enclosing a membership card to the NATIONAL WHITE AMERICANS PARTY. All you need to do is sign it and you are an official member. Then, drop us a line to inform us of your decision and an organizer will visit you to explain our activity here in Toronto.

You may consider this proceedure presumptuous or an imposition on your privacy, but my friend, in this struggle against International Jewish Communism every minute counts. So, to avoid wasting time we are mailing out thousands of cards and leaflets to obtain a mass membership. Your signing the card does not obligate you in any way, although you will be asked to vote for anti-Jewish candidates, boycot Jewish goods, etc. There are no dues or fees.

You may wonder why you are being asked to join an American based organization. The NWAP is a party of the Whiteman and therefore supersedes national boundaries. We believe in the superiority of the Aryan race as proved by his great culture and civilization. The negro races have never developed a civilization, discovered any new invention, written a great symphony, or even originated an alphabet. They are on a MUCH lower level to the Whites. We believe in sending all negroes back to Africa whence they came.

On the Jewish Question our policy is much stricter. We demand the arrest of all Jews involved in Communist or Zionist plots, public trials and executions. All other Jews would be immidiatly sterilized so that they could not breed more Jews. This is vital because the Jews are CRIMINALS as a race, who have been active in anti-Christian plots throughout their entire history.

We are moving ahead to victory. We have a positive, active program. Truth is on our side. But to win, we need your help. Help us distribute a million anti-Jewish leaflets during 1964. Let us hear from you real soon, so we can start laying out our plans for the next election.

Yours for a White World,

Col. J.P. Fry,
National Organizer (Canada)

AMERICANS

1911 PARTY NATIONAL WHITE P. O. BOX 2013 MEMBER AMERICANS PARTY ATLANTA 1, GA.

No. A White American who believes that seperation of the races is the only way to preserve White Civilization, is against Jewish-Communism and race mixing, and who is sworn to uphold the rules, regulations and principals of the National White Americans Party. FOR A WHITE AMERICA

Valid when signed by Authorized Officer

Eventually, the existence of these sorts of writings was identified and brought up in Parliament. The material was deemed "scurrilous" and obscene (Hansard 2nd, 26th: 9156-62). The treatment of these letters, which formed part of a recruitment drive by the National

White Americans Party, was that they were blights upon the Canadian landscape. As John Diefenbaker, then leader of the Progressive Conservatives in Opposition described it, the letters were, "anti-Jewish propaganda and venomous attacks on the Negroes of our country" (Hansard 2nd, 26th: 733-34). Amid calls for a response, the Pearson Liberal Government turned to the question of distribution.

### 6.1.2 *Scene II: The Post-Master General is Called to Act*

While the government had been gradually moving away from practices that affirmed notions of racial discrimination, it had really yet boldly to enter the private sphere to 'legislate out' discrimination. One of the first forays into the private sphere entertained by the government was the role of the post office. While the post office was surely a public institution, correspondence between individuals had traditionally been considered a 'private' affair. "Use of mails for dissemination of racial discrimination literature," first appeared on the orders of the day February 24, 1964 (Hansard 2nd, 26th: 132). It would appear soon after, on the 17th of March and would continue to be a focus in the following years (Hansard 2nd, 26th: 1158-59). The significance of such a discussion was twofold: first, it moved the debate into the role of the government in policing the private sphere with respect to racist literature. Second, it was the first session where mention was made within the Parliamentary index that associated 'hate' with 'discrimination'. A network of hate propaganda began to take form.

This pairing of the ideas and terms, 'hate' and 'discrimination', is crucial. While discrimination can certainly be viewed as a practice the government was trying to regulate against at the time, the idea of hate seems to go beyond basic discrimination. While the strand of curtailing racial discrimination was still certainly part of the debate, a new focus

took centre stage in the months leading up to the formation of the Cohen Committee: the offensiveness of the 'hate' material itself. One of the first times "hate literature" appeared on the orders of day, John Diefenbaker, then leader of the Progressive Conservatives in opposition, demanded what steps the government was going to take in preventing the spread of these "venomous attacks" (Hansard 2nd, 26th: 733-34). What is interesting about such a line of questioning is not just the moral tone of the language employed ("venomous attacks") but the focus of the complaint. The debate on this occasion was not the effect of these letters nor was it the success of the membership recruitment drive. Rather the debate was on the material itself and how such material was unacceptable in Canadian society. By problematising this type of material, Diefenbaker helped define not only the *role* but the *obligation* of the government in finding a solution.

This line of questioning by Diefenbaker to then Minister of Justice, Guy Favreau, would continue for some time. Virtually on a monthly basis, Diefenbaker would demand of Favreau what steps the government was taking to stop the spread of such "hate literature" (Hansard 2nd, 26th: 132-33, 733-34, 795-96, 3116, 5540, 7822-23). The Postmaster General, J.R. Nicholson, eventually became involved in the debate, closing down multiple post office boxes and suspending the mailing privileges of groups who were disseminating material he deemed "scurrilous" (Hansard 2nd, 26th: 9156-62). While noting that "scurrilous" material was a subjective distinction, he added that there was no doubt the anti-Semitic literature being distributed would meet this test by any interpretation of the term. In essence, what occurred at first was an administrative response. The idea of creating a whole new criminal category to address these writings was only beginning to come forth. It was the New Democrats who first introduced a Private Members' Bill that addressed "hate literature",

though others would follow. David Orlikow, a New Democratic MP, proposed Bill C-43, which looked to amend the Post Office Act by removing the mailing privileges of those who distribute hate literature.[78] By employing this term, and proposing laws under its name, hate literature took on a somewhat independent existence that helped confirm it as 'real' and 'actionable' (Desrosières 1991). In his response to the bill, the Postmaster General noted, "As I have stated more than once in this House, my Department is working closely with the Department of Justice in an effort not only to find some effective legislation to deal with this situation, but to find an effective means of applying existing laws to cut off what I think has properly been referred to as traffic in hate" (Hansard 2nd, 26th: 9158).

In other words, hate *literature* had become a hot topic. However, not only was it a hot topic, to some extent it was unopposable - morally laden and 'unpopular' to stand against (Hacking 1999). Largely, this was because the debate was highly pragmatic at this point. It was not free speech that was being debated - it was condemnation of offensive 'material'. It is unlikely that any party wished to stand up and validate attacks on Jews and blacks as 'legitimate' forms of free expression. In the early stages of the debate on hate propaganda, the idea of harm thus appears secondary or altogether ignored. Rather, the focus appears to be on the offensive material, a form of zealous discrimination that came to be conceptualised, partially through its performance in Parliament, as hate literature (Latour 2003). However, in the early stages of debate, this new object of 'hate' appeared to exist in

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[78] Both this bill and another dealing with the promotion of genocide, C-21, gained popular support in the house. The purpose of private members' bill C-21 was to extend the defamatory libel section of the *Criminal Code* to cover group libel. The Liberal MP proposing the bill, Milton Klein, noted that group libel is the "seed of genocide" (Hansard 2nd, 26th: 5356-58). Eventually, both private members bills were referred to the external affairs standing committee for consideration. It is interesting to note that the motion to refer these bills received unanimous support in the house (Hansard 2nd, 26th: 9397-9400).

somewhat of a liminal state, betwixt and between the objects of 'discrimination' and 'hate'. While the material itself was deemed 'objectionable', a decision on whether or not to treat it as a distinct object appears unsure. The nature of the debate and the indexing of the object reflected this; it had shifted only slightly from the discourse on discrimination to the right of the government to intercede in private matters. However, it was still subsumed under the larger umbrella of 'racial discrimination.' Indeed, these two foci, discrimination and hate literature, overlapped both temporally, conceptually and within the treatment in the index (Hansard 2nd, 26th; 3rd, 26th).

In the early stages of the debate on the dissemination of racially discriminatory materials, the Postmaster General noted reluctance for the post office to morph into a "censorship bureau" (Hansard 2nd, 26th: 9156). However, on more than one occasion, the Postmaster General shut down or suspended the privilege of postal service to individuals deemed to be using the mail to distribute 'scurrilous' material dealing with race and ethnicity (Hansard 2nd, 26th: 687, 795-96, 9368, 9520, 12015). By suspending the mailing privileges of a few white supremacist groups who were using the post as a means of recruitment in 1964, the Postmaster General initiated one of the crucial relationships that would create and shape the network of hate propaganda. Even if only on a small scale, by using executive orders to foreclose on the mailing privileges of a few individuals the government entered new grounds in the debate over prejudice - it had begun to regulate the *actions* of individuals in their right to express discriminatory viewpoints.

From a political standpoint, even more telling is the result of the investigation into the three suspensions of mailing privileges undertaken by the Postmaster General in 1964.

In the conclusions of a report commissioned to investigate these directives, his actions were applauded. Not only was the government cleared of any wrongdoing, the leader of the opposition congratulated the Postmaster General on his decisions (Hansard 2nd, 26th: 12015). This is significant as it indicates a lack of opposition to the government pursuing such policies. Parties on both sides of the aisle were allied in their commitment to fight this new form of obscenity. This sort of consensus helped take a fragile set of discourses surrounding a set of heterogeneous materials and transformed it into the beginning of a powerful and encompassing network (Law 1992; Latour 1988b). With this sort of co-operation, the network would not encounter many strong points of resistance for quite some time.

### 6.1.3 *Scene III: The Cohen Committee is Formed*

Although one cannot declare a certain time point as year zero in the idea of hate propaganda, the Parliamentary sessions in 1964 and 1965 can be considered the first point when the Canadian government began conceptualising the concept of hate propaganda in earnest. The Pearson government was being called upon to police the forms of private communication between individuals that espoused fervent ideas of racial superiority. Not only were such communications deemed discriminatory, they were touted as examples of 'hate', thereby ratcheting up the moral tone of the debate. As discussions on the emergent threat - the membership recruitment drive of white supremacist groups in Canada - turned toward legislation, then Minister of Justice, Guy Favreau stated that the "first characteristic of hate literature is discrimination" (Hansard 2nd, 26th: 3976-77).[79] Following the lead of

[79] This is also the first instance we see of jockeying for position as being a recognised 'target' for 'hate'. In response to Favreau's declaration linking discrimination to hate, a Quebecois MP asked if literature against Roman Catholic French Canadians would fall under this label. Favreau responded in the affirmative, provided it is discriminatory.

various government precedents in attempting to curtail racial discrimination, the immediate response was to limit the use of the mail for the purpose of distribution. In essence, communication between individuals had become part of the government push that *followed the path* formed by the UN *Declaration on Racial Discrimination* - eliminating all forms of racial hatred. However, while the focus at this time was primarily on action - the immediate government response to the problem - the grounds of debate would soon shift from the offensiveness of the material itself. 'Hate' began to distinguish itself from discrimination.

The treatment of this new object, "hate literature", in the index and debates of Parliament is not a trivial matter in investigating the conceptualisation of hate propaganda. "Racial and religious discrimination" appears on the index of Hansard debates from the time the United Nations is conceived. Varying in importance from year to year, discussions in the 1950s spanned such topics as education against discrimination (Hansard 7th, 21st: 3772-76); Civil Rights (Hansard 1st, 22nd: 3709-15); discrimination in the Immigration and Housing Acts (Hansard 3rd, 22nd: 540, 2689); and of course, the *Bill of Rights* (Hansard 2nd, 24th; 3rd, 24th). However, it was not until early into the parliamentary session of 1964/65 that 'hate' appeared as something subsumed under the more established concept of racial discrimination.

In the year that followed, other Private Members' Bills respecting hate literature were proposed. A portion of one Private Members' Bill included an element that would mandate "mental observation" for those accused of distributing hate literature. In suggesting such a step, Wallace Nesbitt, a Progressive Conservative MP noted, "I might add that evidence to the effect that many people who disseminate hate literature are to some degree mentally

unstable" (Hansard 3rd, 26th: 2411). Strands such as the notion of mental instability and such material as the 'seed of genocide' began to speak to ideas that 'hate literature' was more than just 'offensive' material in and of itself. However, the potential effect of such literature was rarely if ever discussed in the opening months of debate. Rather than looking ahead the debate was reactionary.[80]

This pressure eventually led to the formation of a Commission to investigate "hate literature." The "Cohen Committee on Hate Literature" was announced by Minister of Justice Guy Favreau on the 25th of February, 1965 (Hansard 2nd, 26th: 11717). Its appointment was met with great approval on both sides of the House. As such, it seems that one can describe the Cohen Committee as a critical obligatory point of passage in the network of hate propaganda. By deferring to its expertise, both sides of the House appear to indicate that in terms of the problematisation of hate literature, the Cohen Committee was necessary to solve it. Without the Report of the Committee, neither side could solve its 'hate' problem. As such, the Committee was intended to be non-partisan and independent. It was chaired by McGill University Law School Dean Maxwell Cohen and was composed of many "well known students of civil liberties." The other members included J.A. Corry, Principal of Queen's University, Gerard Dion from the Faculty of Social Sciences at Laval University, Saul Hayes, Executive Vice-President of the Canadian Jewish Congress, Shane MacKay, Executive Editor of the Winnipeg Free Press, Mark MacGuigan, Associate Professor of Law at the University of Toronto and Pierre-Elliot Trudeau, then Associate Professor of Law at the University of Montreal (Cohen 1965: 1).

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[80] An example of an early response to this pressure is a review board announced on October 23, 1964 by the Postmaster General to "review hate literature distribution" (Hansard 2nd, 26th: 9368).

## 6.2 **Act II: Translation - Literature Becomes Propaganda**

In a crucial translation, the Cohen Committee left Parliament to study "hate literature" and came back with a report on "hate propaganda". When Guy Favreau appointed the commission, its role was clearly defined: to study the status of "hate literature" in Canada. Something obviously transformed it along the way as it returned newly defined and with a greater purpose than just detailing the status of racially discriminatory writings. The "Cohen Committee on Hate Literature" (Hansard 2nd, 26th: 11717) had been transformed into the "*Report of the Special Committee on Hate Propaganda in Canada*" (Cohen 1966).[81]

The opening page of the *Cohen Report* is an announcement of sorts, an abstract detailing its purpose and significance. The position of the Committee was clear.

> This Report is a study in the power of words to maim, and what it is that a civilised society can do about it. Not every abuse of human communication can or should be controlled by law or custom. But every society from time to time draws lines at the point where the intolerable and the impermissible coincide. In a free society such as our own, where the privilege of speech can induce ideas that may change the very order itself, there is a bias weighted heavily in favour of the maximum of rhetoric whatever the cost and consequences. But that bias stops this side of injury to the community itself and to individual members or identifiable groups innocently caught in verbal cross-fire that goes beyond legitimate debate.
>
> An effort is made here to re-examine, therefore, the parameters of permissible argument in a world more easily persuaded than before because the means of transmission are so persuasive. But ours is also a world aware of the perils of falsehood disguised as fact and of conspirators eroding the community's integrity through pretending that conspiracies from elsewhere now justify verbal assaults – the non-facts and the non-truths of prejudice and slander.
>
> Hate 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 (Cohen 1966: xii).

The focus of the Committee from hate 'literature' to hate 'propaganda' thus marked a

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[81] It is unclear what lineage, if any, prompted the change in terminology employed, rather than say 'crime' or 'speech' or 'offence'.

dramatic shift in the nature of the object being questioned. As opposed to 'literature' - material that is just *blatantly offensive* - 'propaganda' insinuates material capable of *mounting an offensive*. Whereas the discourse surrounding hate literature appeared aimed at the nature of the material itself, hate propaganda speaks to the idea of the conduct encouraged by the material. The writings of white supremacist associations had been translated (Latour 1983; Callon 1986; Law 1992).

I make the argument in this section, that by undergoing a translation, from literature to propaganda, the Cohen Committee re-conceptualised the object being governed. This translation can be seen as forming a coherent object that allowed the problem of hate propaganda to be thought of in a certain way and provided a schema to act on it (Desrosières 1991: 215). Under this conceptualisation, the emotion normally referred to as 'hate' did not just exist within the body or the mind of an individual - it had the capacity to effect and spread (Ward 1996). The emotions we normally ascribe to humans are generated within networks that exist both within and beyond the body (Law 1992: 4). The idea of hatred is no exception. For it to exist, for it to be felt, for it to be *criminalised*, powerful networks that made it external to the individual needed to be in place.

### 6.2.1 *Scene I: Interessement Devices Serve to 'Corner' Hate Propaganda and Parliament*

For the report generated by the Cohen Committee to receive credence, perspective needed to become translated into fact (Ward 1996). The first step in this process, ensuring its role as an indispensable and authoritative actor in the network, was made remarkably easy. The Committee was an initiative of the Pearson government but was the result of calls for its formation by the Opposition at various points during 1964 (Hansard 2nd, 26th: 795-96,

5540, 7822-23). As such, it can clearly be seen as an obligatory point of passage agreed upon by both sides of Parliament. This forced Parliamentarians to deviate through it if they wished to understand the phenomenon of hate propaganda. This positioning, as an obligatory requirement for knowledge, gave great strength to the contentions put forth by the Committee, allowing their basic statement - hate propaganda is a clear and present danger which requires legislation - to separate itself off from competing claims.

The report generated by the Cohen Committee therefore acted as an interessement device that served to 'corner' Parliament as well as hate propaganda (Callon 1986). It took a set of fragile materials - leaflets distributed in a membership recruitment drive - and placed these in a network of established legal doctrine and influential scientific fact, extending the network of hate propaganda by recruiting reputable actors to speak beside it (Latour 1988b). The writing, printing and distribution of a report made the idea of hate propaganda more *tangible*, *durable*, and *comparable* than mere debate in Parliament. The initial material being investigated, so-called hate literature, was translated to a more perilous threat: hate propaganda.

This is how a small number of non-widespread incidents seemed to reach a position as representing a 'clear and present danger' to Canadian society.[82] The idea advanced in the *Cohen Report* was that this literature was more than just merely obscene and offensive, along the lines of pornography or cursing - it had the power to influence. This network of hate propaganda relied upon historical networks as its justification of the potential of words not only to maim but to "incite". Time and time again, the evidence offered for causality was the "triumphs of Fascism in Italy, and National Socialism in Germany through audaciously false propaganda" which illustrated "how fragile tolerant liberal societies can be in certain circumstances" (Cohen 1966: 9). The situation in Canada in the 1960s is likely not the same as that in 1920s or 30s Germany. However, in making this connection, by translating the events from Germany to Canada, the Committee can be seen as constructing an equivalency between these circumstances (Latour 1988b). This idea of a "fragile" society appeared quite ingrained in its considerations. Despite the relatively small number of 'hate' incidents

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[82] With respect to U.S. precedence, an important case is Schenck v. United States (1919, 249 U.S. 47) where the defendant was charged under the Espionage Act of 1917 which forbade the wilful obstruction of recruiting during times of war. In his decision, Justice Holmes noted,

> We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done . . . The question in every case is whether the *words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.* It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional rights (MacGuigan 1966: 100, emphasis added).

Despite being critiqued by many justices afterwards as not a valid test of constitutionality, the 'clear and present danger' test was noted frequently in the Canadian governmental debates on hate propaganda as grounds either for or against enacting such a provision.

recorded in Canada in the years leading up to the formation of the Cohen Committee, the potential for "dangerous" effects was referred to on multiple occasions.[83]

> "The continuing harassment of any minority groups and the uncontrolled repetition of fabrications and pseudo-facts may leave behind a residue of actual or pending belief that becomes the seedbed from which a more dangerous and more widespread prejudice can flower tomorrow" (Cohen 1966: 18).

This "seedbed", with the potential to "flower" into a growing threat, is a telling metaphor. 'Hatred' can apparently lay fallow, in wait. But just like sun, fertiliser and water can produce a vibrant crop from a previously barren field, economic downturn, hate propaganda and the mobilisation of the population can give rise to 'hate'. This 'hate', directed at various identifiable minorities, can take forms ranging from mild manifestations of discrimination in policy to its ultimate form, the act of genocide. In this regard, one can see the relation to the ideas of criminal defamation and seditious libel raised in chapter 4. Group defamation led to breaches of the peace in Toronto in 1964 when white supremacists made defamatory statements against Jews and Blacks (Hansard 2nd, 26th: 3977). However, in its ultimate form, genocide and Fascist government, hate propaganda can be seen as a seditious libel that threatens the apparatus of government itself. This line of reasoning led to the recommendation that laws be put in place that protected not just individuals but groups

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[83] The *Cohen Report* addresses the actual incidence of 'hate' activities versus the perception of its potential to damage and take root on multiple occasions. The justification, as mentioned previously, generally harkens back to the Holocaust. For instance,

> It is evident from the foregoing that there exists in Canada a small number of persons and a somewhat larger number of organisations, extremist in outlook and dedicated to the preaching and spreading of hatred and contempt against certain identifiable minority groups in Canada. It is easy to conclude that because the number of persons and organisations is not very large, they should not be taken too seriously. The Committee is of the opinion that this line of analysis is no longer tenable after what is known to have been the result of hate propaganda in other countries, particularly in the 1930's when such material and ideas played a significant role in the creation of a climate of malice, destructive to the central values of Judaic-Christian society, the values of our civilisation. The Committee believes, therefore, that the actual and potential danger caused by present hate activities in Canada cannot be measured by statistics alone (Cohen 1966: 18-25).

from this sort of defamation. The aim was to curtail the growing threat of hate propaganda, "For in times of social stress such "hate" could mushroom into a real and monstrous threat to our way of life" (Cohen 1966: 20).

Additionally, the *Cohen Report* recruited a number of powerful allies to its side. It 'scientised' its assertions by drawing upon much of the social-psychological literature of the time to make the assertion that hate propaganda had a measurable impact on both those who were susceptible to act on it and on those who were its targets.[84] Hate propaganda was dealt with in the *Report* like a "virus"[85] capable of infecting through the spread of "hate arguments and pseudo-facts" (Cohen 1966: 18-22). These were said to prey upon the weak immune system of "uncritical and receptive minds." The Committee further asserted that the John Stuart Mill position - exposing these ideas to the public will serve to confirm their fraudulent nature and throw aspersions on their validity - was misguided. In critiquing CBC and various newspapers who did stories on propagandists, the Committee noted the nature

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[84] To summarise all of the considerations looked at by the Committee goes beyond the scope of this thesis. However, if the reader wishes further details they can consult the article prepared at the request of the Committee, "Social Psychological Analysis of Hate Propaganda", by Harry Kaufman, which appears on pages 171-251 of the Report. Mostly it covers the idea of certain people having a 'susceptibility' to propaganda and false claims, how propagandists' assert their claim, why they are effective, and how such writings are 'internalised' by target groups. A very interesting piece could be written about the science of hate propaganda legislation - the link of socio-psychological sciences as substantive proof of the 'effects' of hate propaganda on identifiable groups. Ironically, the contention of many early ANT studies is that science is, "the key to a sociological understanding of society itself, since it is in laboratories that most new sources of power are generated. (Latour 1983: 160)." Hate propaganda legislation, surprisingly, is not immune to this contention despite being on the face a 'political' or 'legislative' problem.

[85] In his defence of the bill, Mark MacGuigan, one of the members of the Committee and a member in the House during the Trudeau government, seems to speak to this biological metaphor. "My colleague also suggested that the effect of this bill would be to drive hatred and hatemongers underground. If that were the case, I submit the purpose of this bill would be fully achieved . . . If we could succeed in driving hate and hatemongers underground, we would succeed in ridding the democratic dialogue of our country of this cancer" (Hansard 2nd, 28th 5604).

of these views "do not justify giving propagandists a mass platform as if what they had to say was normal debate on real issues. Plainly it is not (Cohen 1966: 19)."

This is how hate propaganda came to be conceptualised thorough the act of naming it and giving examples in its name.[86] The report of the Cohen Committee acted as a strong interessement device in the formation of hate propaganda laws as it served to corner two crucial actors: Parliament and hate propaganda itself. The Committee thus formed brackets on the legislative debate. Hate propaganda, a subjective construction, became 'black boxed' by this process, objectified and made 'matter of fact' (Ward 1996: 6). Debate on whether existing laws covered this new threat, whether the threat represented a 'clear and present danger' or whether the threat warranted placing further limits on free speech were acknowledged as reasonable areas of contention in the *Report* (Cohen 1966). By framing the problematisation thus, the Committee controlled what elements of their conceptualisation were certain and which were debatable (Callon 1998). By recognising these areas of dispute, it seems the Cohen Committee even 'cornered' the potential regions for acts of dissent. This is what an effective interessement device does - it separates the project from competing claims and orders the boundaries of acceptable manoeuvre. Debate in the House seemed to conform. If one were to draw up a summary of the discourse and direction of the debate in the House after the *Cohen Report* was presented, it would align in almost perfect symmetry to the conclusions put forth by the Committee. In summary,

1) **Hate propaganda is a "serious problem"** - "The propaganda distributed has attacked various racial, religious and ethnic groups, particularly Jews and Negroes, in abusive, insulting, scurrilous and false terms", and these pamphlets, handbooks, booklets etc., "could not in any sense be classed as sincere, honest discussion contributing to legitimate debate, in good faith, about public issues in

[86] I borrow this idea from Ian Hacking's (1986) "Making Up People".

Canada."

2) **Inadequate legal remedies** - "Canadian law clearly is inadequate with respect to the intimidation of and threatened violence against groups, and almost wholly lacking in any control of group defamation. There is no longer any valid reason for continuing to exclude "groups" from the protection of the law." The current laws are somewhat archaic, arising from a more individualistic age when the rights of the individual preceded the rights of the community or the group.

3) **Law: A Solution** - "Democratic society no longer accepts, if it ever did accept, the notion that freedom of expression is an absolute right which must exist wholly independent of qualification. . . . There is an evident distinction between "*legitimate*" and "*illegitimate*" public discussion, and the state has as great an obligation to discourage the latter as it has to maintain the former." (emphasis added)

4) **Priority to freedom of expression** - Freedom of expression is still a foundational right and definitive of Canadian and Western society, however, "at some point that liberty becomes licence and colours the quality of liberty itself with an unacceptable stain. At that point the social preference must move from freedom to regulation to preserve the very system of freedom itself." (Cohen 1966: 59-61)

### 6.2.2 *Scene II: The Government is Enrolled*

In Parliament, the conclusions of the Cohen Committee were not met with unanimous approval. Specifically, the initiation of legislation was stalled many times in an effort to clarify wording in terms of whether or not to include along with 'hatred' the traditional definition of 'contempt'; balancing the legislation against concerns over free speech; and determining whether there was a need for immediate attention. Part of the concern seemed tied to the frequency of 'hate', which peaked between 1963 and 1965, the year the Cohen Committee filed its report. During this time, 58 'hate'-related activities had occurred in 8 provinces, Ontario being the primary centre of these disturbances (Cohen 1966).

The legislative history of hate propaganda legislation was, in many respects, lengthy. The first meeting of the Cohen Committee took place on January 29, 1965 after lengthy debate in the House during the preceding year. Private Members' Bills were introduced in 1964 at various points during the initial stages of debate. Upon its formation, the Committee met for 14 days over the year, finishing in September. Among the presenters heard were various high-ranking government officials (the Minister of Justice, Postmaster General, Attorney General of Ontario, President of the CBC, Chief Superintendent of the RCMP) along with other MPs, police officers, lawyers, and lobbyists (Cohen 1966: 2). The report was received in November of 1965 and by February 7th, 1966 this information was brought up in the House (Hansard 1st, 27th: 804). Over the remainder of this year, the government dodged multiple questions, from the leaders of the NDP and PCs, regarding the content and recommendations of the report. The formation of a joint Senate/House committee to look into drafting legislation was the eventual result (Hansard 1st, 27th: 13471). Bill S-49, a Senate proposal on hate propaganda, was introduced on November 7, 1966 during the 27th Parliament, which spanned 1966-67. On March 20th, 1967 this bill was referred to the special joint committee noted above. Parliament ended May 8, 1967 without resolution on the bill. In the second session of the 27th Parliament, the bill was reintroduced in the Senate as Bill S-5, receiving a first and second reading before being again sent to committee, November 2, 1967. This time the committee was only composed of members from the Senate. Parliament again came to an end before the bill received a 3rd reading. It was reintroduced as Bill S-21 in the first session of 28th Parliament, given first and second readings before being sent to a Senate committee on legal and constitutional affairs. This standing committee held 11 public meetings, heard 32 witnesses and received representations from some 17 organisations. Senate read and passed the bill June 17, 1969.

The House amended the bill at this time to alter the 'advocating genocide' section. Originally five acts were said to constitute, 'advocating genocide'. This was eventually dropped to two.[87] The idea of 'identifiable group' was also altered at this point, with religion being included to update the definition of identifiable groups to include colour, race, ethnic origin and religion (Hansard 2nd, 28th: 881-97, traces this history). However, the session ended before the House could pass the bill.

It seemed that, following the release of the *Cohen Report*, the Pearson Government was hesitant to spearhead legislation. Perhaps this can be attributed to its status as a minority government. However, what can be seen as important in constructing the network of hate propaganda is that during this time, the idea of hate propaganda legislation recruited numerous allies. This is evidenced by the number of members from different parties that spoke out in support of Bill C-3, the eventual basis of the *Criminal Code* amendments. "An actor expands while it can convince others that it includes, protects, redeems, or understands them. It extends itself faster and further if it can secure actors who have already made themselves equivalent to many others" (Latour 1988b: 173). This legislative history can be seen to strengthen the concept of hate propaganda over these years. All parties, in varying degrees, were onboard with the problematisation of hate literature and its translation to hate propaganda. From John Diefenbaker, leader of the Progressive Conservatives in Opposition under Pearson, to David Lewis, a prominent founding member of the NDP, both sides of the aisle spoke of hate propaganda as a problem that demanded attention. Demands on the

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[87] However, the narrowing of the definitions of genocide and hate provisions have since been re-expanded in procedural documents by regulatory agencies such as Customs. This runs contrary to the express wishes of the Committee that Agencies only use the definitions appearing in the *Criminal Code*.

government to find a solution, along with various Private Members' Bills that had been proposed by both opposition parties in Parliament, brought hate propaganda beyond being a peripheral concept. Objects and concepts must move beyond the periphery and be employed in day-to-day processes to transform into a taken-for-granted statement of fact (Ward 1996). Hate propaganda underwent this performance through House debate and the repeated proposal of government and Private Members' Bills. Additionally, a key proponent of hate propaganda legislation was thrust into a position of power. Although he stayed clear of the spotlight of the debate, Pierre Trudeau, elected to Parliament after sitting on the Cohen Committee, became Prime Minister in 1968. Amendments to the *Criminal Code* to add a section on 'Hate Propaganda' now had the support of a Prime Minister who had authored significant parts of the Cohen Report. The government noted in its introduction of Bill C-3 that it accepted the conclusions of the Cohen report, placing special attention on the statement "it is evident that the *Criminal Code*, even on the widest interpretation, does little or noting to protect groups from the evils of hate propaganda."[88] On first reading, C-3 had three provisions, which created the offences of:

1) "advocating or promoting genocide";
2) "public incitement of hatred and contempt likely to lead to a breach of the peace"; and
3) "wilful promotion of hatred or contempt."

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[88] Among the *Code* provisions investigated by the Committee that might allow for protection against hate propaganda were: defamatory libel, false news, false messages, public mischief, conspiracy, and the mailing of obscene and scurrilous matter. Yet for a variety of reasons (problem of extending laws from individuals to protect groups, definitional issues, defences of believed truth and difficulty in determining the public interest) the Committee rejected all existing provisions as unsuitable (Cohen 1966: 43-51).

By the third reading the idea of contempt had been removed from the second and third provisions.[89]

In the initial stages of debate a number of related strands began to come together in constituting the object of hate propaganda. These strands had long been in place, appearing historically in legislation and legal precedent, appearing socially and culturally in terms of debate on race relations and discrimination, and receiving international attention on the floor of the UN. Additionally, the Cohen Committee had alluded to all of the concerns that were raised during debate although more than 40 members spoke over multiple days. It is interesting to note that the legislative limits placed on debate, including private members' allotted minutes for debate, were extended or relaxed frequently. Indeed, the tone of the debate could be deemed suprisingly amicable, with members on both sides of the House commenting on multiple occasions of the high levels of 'respect' and the even higher level of debate. No one condoned the nature of 'hate propaganda' or questioned its evident 'offensiveness'. Indeed, the virulent nature of the attacks - calling for the elimination or at least the sterilisation of Jews and the deportation of all Negroes - pushed the frontiers of the debate from the pragmatic (this material is okay) towards the abstract (free speech is fundamental) or the legal (existing legislation is sufficient or the 'clear and present danger' test). Indeed, opposition critiques generally came with caveats and apologies calling upon the 'intelligence' and 'fundamentally good nature' of Canadians in ignoring such material.

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[89] The Committee dropped 'ridicule' from their extension of the defamation laws protecting individuals to groups during the original meetings. They noted certain types of satire needed ridicule and that hate propaganda legislation, particularly on genocide, was a far more virulent form of defamation. Contempt was withdrawn during the last committee stage (after second reading) for similar reasons. It was argued that the legislation was intended to cover only the most heinous forms of defamation, which could incite hatred and lead to genocide. Material which was merely contemptuous was deemed below the threshold of danger this law attempted to curb.

For those who supported the legislation, the reawakening of a perceived menace against Jews and reassertion of the inferiority of blacks appearing in a Canadian context was not assumed to be an anomaly or impotent threat. David Lewis spoke eloquently to this opinion noting,

> In 1922 and 1923, Mr. Speaker, there were a few fringe-lunatics in Germany concentrated in one city. No one took them seriously. They were looked upon with contempt and disdain and every political party in Germany in the early 1920s, including the party which I would support, the Social Democrats, said, "This is nonsense. We do not have to worry about this lunatic fringe. No intelligent people such as ours will fall for this kind of thing."... I say to the hon. members that Canadians, as far as I am concerned, are the best people on earth. But they are human beings and history shows that racial antagonism is present in practically all of us. Let us be honest with ourselves about it. If adverse social and economic circumstances appear, if there is a recession or economic difficulty, or if there are national problems such as we face in Canada today with two different languages, it is quite possible for racial difficulties to come to the surface as they have in the United States and in other countries. To anyone who says complacently, "we in Canada are incapable of this," I say, not as an alarmist but as an historian, "you are deluding yourself." There is no people in the world that is not capable of collective evil (Hansard 2nd, 38th: 5695).

With the election of a majority Liberal government in 1968, headed by Trudeau, the historical *enrolment* of supporters from both sides of the aisle *paved the pathway* for the legislation to be pushed. However, political interests can be seen as *temporarily* stabilised outcomes that reflect the previous processes of enrolment (Callon and Law 1982). By the time the legislation seemed to have found its track towards acceptance, other enrolments, based along party lines, suddenly reared up as points of resistance (Callon 1986).

### 6.2.3 *Scene III: Dissension Surfaces along Party Lines*

Bill C-3, "an amendment to the Criminal Code with respect to hate propaganda" was introduced and received first reading on October 27, 1969. John Turner, then Minister of

Justice, oversaw most of the debate, while Pierre Trudeau, one of the 'fathers' of the Cohen report, stayed silent. After lengthy debate the Bill passed 89-45 on third reading, April 13, 1970 (Hansard 2nd, 38th: 5807).[90] The desire for new-found law seemed to subscribe to a notion that changed and evolving definitions of acceptable speech, opinion and conduct were unsuitably protected by archaic laws. Members against the legislation supported a notion that socially-inspired legislation was troublesome. However, the Trudeau government at this time could be considered somewhat 'progressive'. Following the idea that new social awareness demands new and specific legal protections drawn up, Philip Givens, a Liberal MP noted,

> It is true that legislation against murder does not prevent murders from being committed; legislation against rape does not save people from rape. Nevertheless we pass laws against these crimes because they constitute anti-social conduct and because decent-minded people are opposed to these practices . . . There are those who say this legislation will not work. If it won't work, what are you worried about? So, it won't work. The time has come for us to do some experimentation in connection with sociological legislation (Hansard 2nd, 28th: 5655).

However, the uniform voice that had been condemning these forms of communication since 1964 underwent its first challenge. John Diefenbaker, who had campaigned strongly for action in 1964 (Hansard 2nd, 26th: 3116), now reverted to a position that the *Bill of Rights*, passed by his government in 1960, and the existing laws of sedition

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[90] In addition to the sections quoted in the first part of this chapter the final legislation passed by Parliament included a provision on consent, which instructed that proceedings on advocating genocide needed the consent of the provincial Attorney General and the following defences for the provisions on hatred;

(3) No person shall be convicted of an offence under subsection (2)

(a) if he establishes that the statements communicated were true;

(b) if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject;

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada (Justice 2004a).

were sufficient to control hate propaganda (Hansard 2nd, 28th: 5796). It is unclear why Diefenbaker and certain Conservatives changed their position over these years.[91] Their dissent against the previously supported Cohen Committee Report is difficult to understand. One argument that could be made was that temporally, the 'hot' moment of hate literature distribution had come and passed by the time the Trudeau government came to power. During times of heightened controversy, facts and values can become entangled in a hybrid form making them indiscernible (Callon 1998). Perhaps many members who were aghast at the anti-Semitic distributions between 1963 and 1965, re-ordered their stance on the role of government and free expression once such actions ceased to be apparent. Often, this was summarised by the idea of questioning whether the threat anymore represented a "clear and present danger" (Hansard 2nd, 28th: 5787).[92] It seems the effectiveness of the *Cohen Report* as an interessement device, well received at first, had been supplanted. As has been said, from translation to treason is a small step (Callon 1986: 224; Latour 1988b; Law 1992). The strength of a network can be challenged quickly when allies divert from previously agreed obligatory points of passage and disregard interessement devices to pursue their own goals.

Perhaps some of this sudden reversal in flow by certain members can be attributed to the system of party politics. Free speech activists, including some *Globe and Mail* editorials,[93] questioned the judgement of the legislation as the Bill progressed through first and second readings. This sentiment was picked up, represented, and given a voice by many

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[91] Perhaps the political legacy of the *Bill of Rights*, promoted as a foundational piece of legislation, was perceived as being challenged.

[92] Another common phrase bandied about was to call the law "crisis legislation" in the face of calm.

in the Opposition who stated that the legislation was a good idea but was over-reaching[94] or would be ineffective (Hansard 2nd, 28th: 5787-96). Eldon Woolliams, a Progressive Conservative MP, put this position well when he noted, "it is tragically true that in Canada tiny groups of perverted individuals circulate literature that is filthy, malicious and scurrilous; but ideas, good or bad, are seldom buried in jail . . . Matter such as hate and love are in a realm of human behaviour where law is a very awkward and clumsy form of control" (Hansard 2nd, 28th: 5543). Yet not all provisions in Bill C-3 were critiqued. The proscription against advocating genocide was not challenged by a single dissenting voice. It appears a vital distinction was drawn between "advocating genocide" and "hatred". Much of this can be seen as tied to the idea of morality raised by Woolliams. While legislating against hatred was considered by some to be difficult, advocating genocide seen by most to transgress an ultimate moral standard: the idea of 'evil'. This portion of the bill flew through debate unhindered and unchallenged, the Holocaust being constantly invoked as its justification.

The idea that 'True' examples of hate propaganda were morally unacceptable and evil is at the crux of hate propaganda as an object. While some deemed only advocating genocide should be elevated to this moral status, others felt that hate propaganda in itself

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[93] Two influential editorials from the *Globe*, the first appearing April 26, 1970, the second on April 7, 1970, adopted a classical Millsian stance in defending the right to free expression. Both were quoted at various points in Parliament.

[94] In making these charges, other sections of the *Code* were highlighted as potentially appropriate, including: section 60, dealing with sedition; section 66, dealing with the punishment of a rioter, section 67, the punishment of a member of an unlawful assembly; section 68, the Riot Act; section 30, which aimed to prevent a breach of peace; section 120, covering public mischief; section 150, offences tending to corrupt morals; section 160, the causing of disturbances; section 246, blasphemous libel; or section 166, spreading false news. The idea that hate propaganda legislation overreached was summed up by a Conservative MP, Robert MacCleave, who noted, "If we are not using atomic weapons, we are using a great deal of parliamentary puff to dispel things that largely do not exist. (Hansard 2nd, 28th: 5557).

was sufficient to be deemed 'evil'. *Hate became associated with criminality.* This moral element is quite apparent in the Parliamentary debate, where the law was openly being discussed not only as a mechanism to prevent harm but as an agent of moral change. As John Turner noted, "the measure of our laws, it has been said, is the measure of our civilisation" (Hansard 2nd, 28th: 5557). However, the debate on hate propaganda had some significant omissions. One of the most glaring omissions was that no member critiqued the lack of a definition of 'hatred' or 'hate' within the bill.[95] The strength of the network surrounding the basic idea of hate seemed to make it a matter taken as self-evident truth (Ward 1996; Hacking 1999).[96] This reflects the attitude taken by the Cohen Committee who at no time defined 'hatred' or 'propaganda' nor offered a common law interpretation, instead proposing a circular definition that defined 'hate propaganda' in terms of communication that fell under the three provisions of the bill.

### 6.2.4 *Scene IV: Different Acts are Mobilised in Ottawa*

The conceptualisation of hate propaganda and the passage of the law which made such practices a criminal act, can be seen to perform a process of equalising various acts. The *Criminal Code* has the effect of *flattening* actions and thoughts. It takes events and active processes, perpetrated in geographically-distinct locations, and sums them up in a legally binding statute (Latour 1999). The strength of this representation can be seen as improving

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[95] The closest anyone came to questioning labelling such material as 'hate', came from a Ralliement de Créditistes MP, René Matte, who queried how one determines what is 'heinous' (propagande haineuse being the term for hate propaganda in French) (Hansard 2nd, 28th: 891).

[96] The reason I feel such an omission is significant is because such seemingly obvious terms can undergo tremendous transformation over time. The point is this - one must be careful in dealing with loaded moral terms like 'evil', 'hate', 'free' and 'equal'. What we think they mean today may not be what they always meant (Daston 1992).

the ability of cognition by simplifying the event (Latour 1986). This has the effect of making otherwise distinct acts and events comparable. "Though places are distant, irreducible, and unsummable, they are nevertheless constantly brought together, united, added up, aligned, and subjected to ways and means. If it were not for these ways and means, no place would lead to any other" (Latour 1988b: 164). The law performs a process of ordering that classifies disparate events, making its application possible (Bowker and Star 1999).

When we look to the incidents studied by the Cohen Committee in the years preceding its *Report*, we can see a remarkable translation taking place. Events from different parts of Canada, from different times, are brought together and subsumed under one label: hate propaganda. Alternately, this can be thought of as leveraging (Latour 1983). By putting forth hate propaganda legislation the government took a collection of dispersed incidents, which might otherwise remain distinct, and made them equivalent and comparable, summing them up under 2 new sections in the *Criminal Code*.[97]

| Events considered by the Cohen Committee as examples of 'hate' | Criminal Code Provisions |
|---|---|
| Stickers placed on a window in Toronto reading "Hitler was right" (1963).<br><br>Leaflets entitled "Communism is Jewish" dropped from upper floors in downtown Toronto (1963).<br><br>'Hate' pamphlets mailed to people in Toronto whose last names start with the syllable 'Rosen' (i.e. Rosenblatt, Rosenbloom) (1964).<br><br>On Jewish New Year, cards picturing a Jew fleeing a large swastika are mailed from the Canadian Nazi Party to Jewish families in Toronto and Ottawa (1964). | **318.** Advocating Genocide<br>**319.** (1) Public Incitement of Hatred<br>(2) Wilful Promotion of Hatred |

[97] The full list of the 58 recorded hate-related activities which occurred in Canada between 1963 and 1965 can be found in the *Cohen Report* (1966: 21-25).

| | |
|---|---|
| Anti-Black pamphlets distributed on cars in downtown North Bay (1964).<br><br>McGill University students are mailed hate pamphlets (1964).<br><br>Pharmacists in British Columbia receive the "Ottawa Anti-Communist Report" detailing "Jews in Pharmacy" and the alleged government finding that Jews were trying to take over the pharmaceutical trade (1964).<br><br>Pamphlets are mailed to residents of Dartmouth, N.S., as part of the National White American Party recruitment drive (1964).<br><br>Neo-Nazi rallies are held in Allan Gardens, Toronto, leading to disorder and arrests (1965). | |

The durability and strength of this new concept can be seen in the intermediary it employs, the *Criminal Code*.[98] The only way hate propaganda legislation could come to be spoken of, problematised, to enrol government and become law is by taking a set of diverse statements and making them readable. The end product of this debate is its inclusion in a powerful inscription device that sets the basis for criminality by making the perceptive judgement of various acts *simpler* (Latour 1983: 161). The *Code* serves to undermine counter-arguments by performing a simple, straightforward, logical ordering of certain actions that organises what is prohibited and what forms 'acceptable' behaviour (Law 1994). Hate propaganda legislation rendered various forms of zealous discrimination *comparable*, *durable*, and *mobile* through this process.

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Those who can get others to speak in their language carry the day (Latour 1983). In this regard, one of the most significant elements in the process of ordering hate propaganda came when the Cohen Committee performed a remarkable trick – translating the idea of

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[98] For more on intermediaries and inscription devices and their significance, please see Callon, 1991.

hate literature to hate propaganda. This transformation went unchallenged by all sides of the House. Instead, debate in Parliament mimicked those elements of the *Report* that had already been framed by the Committee as possible areas of contention. At first, the voices in Parliament spoke in unison, condemning the nature of the material and applauding the formation of the Committee. When the legislation came to be passed in 1970, it appears some of the members were no longer comfortable letting the *Cohen Report* represent them and speak in their name.

In pushing through the legislation the government seemed concerned with a multitude of considerations. Advocating genocide, the flagship provision in the legislation, was seen as emblematic of the ideas of racial supremacy. Hatred, though a lesser crime, was prescient of a greater underlying potential to 'do' evil. Interestingly, the Holocaust, a historical event, figured prominently in the justification of the need for legislation.[99] Its temporal mobility was a crucial node in the network conceptualising hate propaganda. Common-agreement surrounding it served to connect and align actors in the process of conceptualising what was meant by 'hate'. It appears the Holocaust was still felt and experienced by many as current, which gave credence to the notion that civilised, cultivated, and cultured societies were capable of a 'collective evil'. By linking the idea of 'hate' to the Holocaust, it was easy to argue that such bias should be criminalised.

Without legislation on the books against such incitement, it was said an injustice would exist with which the law was unable to cope. Race riots in the United States and

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[99] Perhaps Canada's relation to the Holocaust helped engender this sense of obligation. Canada, similarly to the United States, refused thousands of Jewish asylum seekers in the 1930s. Indeed, China accepted more European Jewish refugees than Canada (Martin 1995: 192).

violent demonstrations at organised neo-Nazi rallies in the early 1960s had led many in the government to feel that without the legislation, this type of tumult could result as people took the law into their own hands (Hansard 2nd, 28th: 5577-97). Forsaking Mill's position on the inadvisability of limiting free speech - while following the lead of the UN and other Western nations on the dangers of propaganda - the Government enshrined the idea of 'hate' and 'hatred' in the *Criminal Code.* This in the absence of questions about whether or not such a thing existed as 'immoral speech' or what constituted 'hate'. Intolerance between individual citizens was no longer tolerable. A threshold of discrimination had been constructed.

In the decade that followed, the idea that hate propaganda could receive a political audience during economic downturns gradually dissipated as a viable contention.[100] While there were a few cases that received national attention, briefly thrusting hate propaganda back in the spotlight, it was not discussed at any length in the House. However, the concept of 'hate' was about to undergo another transformation. First racial discrimination was translated to hate literature. It was re-translated soon after to propaganda, the focus of this chapter. Over the next 20 years a new focus would emerge, translating the idea of criminal hatred once again - this time, to hate crime. This is the modern object which most refer to when the ideas of criminality and 'hate' are linked. Its focus, as seen in chapter 1, is notably different than that discussed during the inception of hate propaganda laws. Hate propaganda legislation conceptualised the object of 'hate' as having a ruinous political

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[100] It was not until the 1973/74 session that hate propaganda was brought up again in the House, this time only briefly, to highlight the investigation of a potential hate case (Hansard 1st, 29th). For the rest of the decade, hate propaganda was discussed only 9 times in the Parliament (Hansard 3rd, 28th - Hansard 1st, 31st).

potential. Basically, the essence of the debate was the potential that the Holocaust could repeat itself in Canada under the right circumstances. The legislative action tried to control this object by criminalising hate movements at their roots. With hate crime, the primary focus is on individuals who are targeted and subject to violence because of their race, ethnicity, religion or sexual orientation. As such, the threat of criminal hatred appears to be different under the two conceptualisations although the basis for the hatred - various forms of bias - appears the same. However, as I hope to have illustrated through this narrative, the idea of isolated violence and similar notions were not on the minds of Canada's Parliamentarians when they drew up hate propaganda laws, the legal precursor to hate crime, in the 1960s. What is meant by criminal hate when we speak of it today has been translated.

## Concluding Thoughts

In Canada, it appears the idea of criminal hatred is a concept that has taken root, increasingly becoming an everyday object of inquiry discussed in the media, in Parliamentary debate, and among the general public. A growing number of academics are studying hate crime, using a variety of theoretical approaches, while governments are introducing legislation and programs in the name of controlling 'hate'. My interest in this thesis was first shaped by a desire to investigate how it came to be that the idea of hate, a term usually associated with emotion, came to be connected and associated with criminal acts. In particular, I was interested in the idea of hate propaganda, those statements and material that were deemed to be such overzealous forms of discrimination that they crossed a threshold of mere offensive opinion, transforming into a form of criminal communication. While debate on hate crime seems to have been initiated in the 1980s, Canada's hate propaganda laws linked 'hate' with criminality in 1970. Just how did Canada come to conceptualise and legislate against 'hate'?

To investigate this question, I decided the best place to start was the *Criminal Code.* I wanted to see where and how the idea of hatred was conceptualised and defined. To my surprise, despite having sections in the *Code* that allow judges to declare that certain materials are hate propaganda and certain actions are examples of hatred, no definition of hate was offered. It appeared the object of hate was something taken-for-granted or self-evident. I wondered how the concept of criminal hatred came to be so strong that it didn't demand a definition. I began to consider how I could investigate the development of this law and the form of this object. What sort of analytic would be useful to explore the process through which hate propaganda was conceptualised as a coherent object that could be acted upon?

I was drawn to the idea that the sociology of translation, more commonly referred to as actor-network theory, might prove quite useful in analysing the formation of the concept of criminal hatred. Specifically, as an approach that investigates the process whereby concepts are transformed from fragile assertions to self-evident facts, I find many actor-network studies to be quite appealing. I feel the vocabulary employed in such studies is highly flexible and descriptive. From the outset, it appeared the actor-network could be a useful lens to view the process whereby hate propaganda laws were constituted. I felt hate propaganda might be understood by looking at how, through the mobilisation of allies, a network was built around the notion of 'hate' being something not only offensive, but criminal. However, there were potential problems in adopting this approach. The actor-network theory, advanced by authors such as Bruno Latour, Michel Callon and John Law in the 1980s and 90s, had been primarily employed in Science and Technology Studies. How effective would it be outside its traditional realm of comfort?

The vocabulary frequently employed in these studies transferred smoothly to explore a legislative process. From the idea of problematisation (hate literature), to the creation of obligatory points of passage (the Cohen Committee), the use of interessement devices (the *Cohen Report*), the enrolment of actors (the Trudeau government, headed by one of the 'fathers' of the Cohen Committee), translation (how 'hate' transformed into something greater than mere scurrilous material), and leveraging (how a multitude of actions came to be summed up under one object) the language employed to look at the stages or moves in a process of translation was easily able to investigate politics.

The dominant methodological precept of the actor-network also proved valuable. By following the actor, I came to see how hate propaganda was built up as an object by enrolling allies. As it was increasingly performed through the legislative process, with bills being introduced and debate surrounding it, hate propaganda gained validity as a concept. As well, through repeated discussion of hate propaganda as a distinct concept in Parliamentary debate, and by claiming ownership of a number of diverse events in its name, hate propaganda gained an increasingly irreversible existence as something matter-of-fact. It moved from being a peripheral assertion to a self-evident statement by building itself up through an increasingly powerful network of legislative allies. It defined the boundaries and manoeuvres of debate through its framing, and controlled the regions of possible dissent by extending its network to encompass legal and scientific 'fact'.

The formation of the Cohen Committee on Hate Literature in 1965 and its subsequent translation into the *Special Report of the Committee on Hate Propaganda* in 1966, can be seen as one of the most crucial moments in the development of the criminalisation of 'hate'. The findings and recommendations of the report shifted the object of 'hate' considerably. When originally brought up in the House, 'hate' was discussed in terms of "hate literature". The materials that led to the problematisation of 'hate' in Parliament were the forms of white supremacist literature that circulated throughout Canada in the early and mid-1960s. Originally, such pamphlets and mailings were deemed merely offensive and were subsumed in the Parliamentary index under racial and other forms of discrimination. As such, the original push towards curbing the distribution of such writings can be seen in the larger context of the Canadian government attempting to remove racial discrimination from government practice beginning in the 1950s. The use of the post to disseminate such

writings was perceived by some as tacit consent of the contents within. However, with the release of the *Cohen Report*, such material transformed from being merely scurrilous and objectionable. "Hate literature" was translated into "hate propaganda", an object that embodied the idea of material that was not just offensive but was capable of *mounting an offensive*. Under the right economic conditions, with the right audience, hate propaganda was conceived as an object capable of initiating racially-motivated political movements that could result, at the very least, in public disorder. In its more extreme manifestation, it was thought such propaganda could eventually lead to genocide. In essence, what was spoken of in Parliamentary debates was the prevention of a political movement akin to what Germany saw with National Socialism in the 1930s. The idea behind hate propaganda legislation was to halt the growth of hate movements at their roots.

As I progressed through my research, historical forms of criminal hatred also became apparent. Defamatory libel, defined as a libel that causes 'hatred, contempt or ridicule', was the most obvious example. The spirit of criminal defamation is to cover instances where a libel against an individual is so offensive and so egregious that it results in a breach of the peace. In this sense, criminal hatred, as imagined in hate propaganda legislation, appears to be a notably different conceptualisation than hatred as conceptualised in criminal defamation. The object of hate propaganda seems more closely tied to discrimination and bias against identifiable groups, rather than libellous attacks against an individual. Additionally, criminal libel, as a practical legal device, largely fell out of use and favour by the mid-19$^{th}$ century. Another historical ancestor of hate propaganda also warrants a mention. The laws of sedition aim to keep public order and defend the government from libellous attacks that threaten the authority of the state. However, when the Cohen Committee

released its report in 1966, it declared neither of these provisions was sufficient to cover the new threat of hate propaganda. The concept of hate propaganda that was conceived in the 1960s thus appears to be a different form of criminal hatred than the concept articulated before it.

It also appears the idea of criminal hatred, as legislated by the Canadian government in 1970, is quite different from the object predominantly spoken of today in terms of hate crime. The idea of criminal hatred embodied in the concept of hate crime is spoken of as increasing the culpability of offenders based upon the idea that criminality is more offensive when motivated by prejudice or bias. What I draw from this is that what we generally mean when we link the concept of 'hate' to criminal acts today, most notably when we speak of hate crime, is different from the object first conceptualised under the moniker of hate propaganda in the 1960s. While both objects share a focus on the idea of zealous discrimination precipitating criminal acts, the magnitude of the threat embodied in the concept is markedly different. The object of hate crime seems centred on the objectionable nature of bias-motivated criminality. Its conceptualisation can be seen as engendered by the belief that there should be an increased level of culpability for offences where bias is the primary motivation. The threat of hate crime is addressed in terms of the harm being more palpable for hate crime victims, with ancillary harms being visited upon targeted communities. There is a widespread application of this concept, as can be seen through hate crime statistics, hate crime units and hate crime legislation. In contrast, hate propaganda had a more Political conceptualisation. It was concerned with the political ability of hate propaganda to incite, potentially culminating in a situation that rivalled that of 1930s Germany.

Examining these different conceptualisations of criminal hate can be seen as contributing to two distinct literatures. First, the narrative constructed challenges our current understanding on hate crime, at least within a Canadian context. It questions the assertion that the idea of hate crime appeared in the early 1980s. While this may be true with respect to terminology, the idea of criminal hatred - in terms of crimes based on bias - can be seen to date back to the 1960s and the debate on hate propaganda. Although the threat imagined is conceptualised differently under the two objects, they share a focus on prejudice-based criminality. Second, this study can also be seen to contribute, from a theoretical standpoint, to the literature on the actor-network. The idea of the actor-network originated in science and technology studies, and indeed, most of the notable research performed under the actor-network approach is concentrated in this area. However, in the past decade, there have been successful attempts to utilise the actor-network outside its traditional realm. Callon (1998) has used it to look at economics. Ward (1996) employed it to investigate the formation of self-esteem. Recently, Valverde (2003) has adopted elements of the actor-network to investigate law. This thesis can be seen as positioning itself as one of a growing number of attempts to utilise the actor-network and the sociology of translation outside of science.

However, the adoption of the actor-network was not undertaken in wholesale fashion. As Law (1992) notes, actor-network theory was intended primarily to look at situations of heterogeneous ordering. As Callon (1998) puts it, the actor-network was designed to investigate those imbroglios where the human and non-human interact. In terms of hate propaganda, the non-human, or material, plays less of an obvious role than in

science. In the laboratory, measurement apparatuses, observational tools, and comparative devices play a more overt role in the formation of concepts and the mobility of knowledge. The most significant non-humans in the process of hate propaganda's conceptualisation were the examples of hate literature, the report of the Cohen Committee and the *Criminal Code*; no less crucial but significantly less intriguing human, non-human hybrids. This is not to say the non-human plays less of a role in Politics - merely that its form is more discursive, less technical.

If this research was less limited in terms of time and space, there are other areas that could emerge as natural extensions of the narrative. It would be interesting to outline where the adoption of hate propaganda legislation could be placed into the longer history of the debate surrounding free expression. How does hate speech fit in this literature? It would also be interesting, now that I've established a narrative around this actionable object known as hate propaganda, to see how it is acted on in a governmental context. Within Canada, the police are responsible for investigating complaints of hate propaganda. Generally, this takes the form of citizen complaints regarding alleged hate propaganda and occasional monitoring of groups and stores identified as proprietors or generators of hate literature. However, Canada Customs targets packages through a risk management framework, singling out high-risk parcels for investigation. These two spheres, one dealing with internationally-generated hate and one dealing with state-based hate material, are autonomous. This begs the question: is international 'hate' judged by the same standards as Canadian 'hate'?

Criminalising 'hate', in any form, attempts to extend, strengthen and make durable the network against discrimination. The threat imagined during the conceptualisation of

hate propaganda was that hate material was not just offensive, it was capable of mounting an offensive. Hate crime, on the other hand, has a victim-centred focus of criminal hatred that concerns itself with criminal acts performed not based upon who the victim is but what the victim is. Yet both share a focus on criminal hatred as a form of criminal activity spurred on by bias. Both are advocated for by special interest organisations that represent minority groups. However, what is meant now when we speak of criminal hate, is not what was always meant.

# Appendix A

## Criminal Code Sections 297 - 317: Defamatory Libel

*Definition of "newspaper"*

**297.** In sections 303, 304 and 308, "newspaper" means any paper, magazine or periodical containing public news, intelligence or reports of events, or any remarks or observations thereon, printed for sale and published periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers, and any paper, magazine or periodical printed in order to be dispersed and made public, weekly or more often, or at intervals not exceeding thirty-one days, that contains advertisements, exclusively or principally.

*Definition*

**298.** (1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

Mode of expression

(2) A defamatory libel may be expressed directly or by insinuation or irony

(*a*) in words legibly marked on any substance; or

(*b*) by any object signifying a defamatory libel otherwise than by words.

*Publishing*

**299.** A person publishes a libel when he

(*a*) exhibits it in public;

(*b*) causes it to be read or seen; or

(*c*) shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

*Punishment of libel known to be false*

**300.** Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

*Punishment for defamatory libel*

**301.** Every one who publishes a defamatory libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

*Extortion by libel*

**302.** (1) Every one commits an offence who, with intent

(*a*) to extort money from any person, or

(*b*) to induce a person to confer on or procure for another person an appointment or office of profit or trust,

publishes or threatens to publish or offers to abstain from publishing or to prevent the publication of a defamatory libel.

Idem

(2) Every one commits an offence who, as the result of the refusal of any person to permit money to be extorted or to confer or procure an appointment or office of profit or trust, publishes or threatens to publish a defamatory libel.

Punishment

(3) Every one who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

*Proprietor of newspaper presumed responsible*

**303.** (1) The proprietor of a newspaper shall be deemed to publish defamatory matter that is inserted and published therein, unless he proves that the defamatory matter was inserted in the newspaper without his knowledge and without negligence on his part.

General authority to manager when negligence

(2) Where the proprietor of a newspaper gives to a person general authority to manage or conduct the newspaper as editor or otherwise, the insertion by that person of defamatory matter in the newspaper shall, for the purposes of subsection (1), be deemed not to be negligence on the part of the proprietor unless it is proved that

(*a*) he intended the general authority to include authority to insert defamatory matter in the newspaper; or

(*b*) he continued to confer general authority after he knew that it had been exercised by the insertion of defamatory matter in the newspaper.

Selling newspapers

(3) No person shall be deemed to publish a defamatory libel by reason only that he sells a number or part of a newspaper that contains a defamatory libel, unless he knows that the number or part contains defamatory matter or that defamatory matter is habitually contained in the newspaper.

*Selling book containing defamatory libel*

**304.** (1) No person shall be deemed to publish a defamatory libel by reason only that he sells a book, magazine, pamphlet or other thing, other than a newspaper that contains defamatory matter, if, at the time of the sale, he does not know that it contains the defamatory matter.

Sale by servant

(2) Where a servant, in the course of his employment, sells a book, magazine, pamphlet or other thing, other than a newspaper, the employer shall be deemed not to publish any defamatory matter contained therein unless it is proved that the employer authorized the sale knowing that

(*a*) defamatory matter was contained therein; or

(*b*) defamatory matter was habitually contained therein, in the case of a periodical.

*Publishing proceedings of courts of justice*

**305.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter

(*a*) in a proceeding held before or under the authority of a court exercising judicial authority; or

(*b*) in an inquiry made under the authority of an Act or by order of Her Majesty, or under the authority of a public department or a department of the government of a province.

*Parliamentary papers*

**306.** No person shall be deemed to publish a defamatory libel by reason only that he

(*a*) publishes to the Senate or House of Commons or to the legislature of a province defamatory matter contained in a petition to the Senate or House of Commons or to the legislature of a province, as the case may be;

(*b*) publishes by order or under the authority of the Senate or House of Commons or of the legislature of a province a paper containing defamatory matter; or

(*c*) publishes, in good faith and without ill-will to the person defamed, an extract from or abstract of a petition or paper mentioned in paragraph (*a*) or (*b*).

*Fair reports of parliamentary or judicial proceedings*

**307.** (1) No person shall be deemed to publish a defamatory libel by reason only that he publishes in good faith, for the information of the public, a fair report of the proceedings of the Senate or House of Commons or the legislature of a province, or a committee thereof, or of the public proceedings before a court exercising judicial authority, or publishes, in good faith, any fair comment on any such proceedings.

Divorce proceedings an exception

2) This section does not apply to a person who publishes a report of evidence taken or offered in any proceeding before the Senate or House of Commons or any committee thereof, on a petition or bill relating to any matter of marriage or divorce, if the report is published without authority from or leave of the House in which the proceeding is held or is contrary to any rule, order or practice of that House.

*Fair report of public meeting*

**308.** No person shall be deemed to publish a defamatory libel by reason only that he publishes in good faith, in a newspaper, a fair report of the proceedings of any public meeting if

(*a*) the meeting is lawfully convened for a lawful purpose and is open to the public;

(*b*) the report is fair and accurate;

(*c*) the publication of the matter complained of is for the public benefit; and

(*d*) he does not refuse to publish in a conspicuous place in the newspaper a reasonable explanation or contradiction by the person defamed in respect of the defamatory matter.

*Public benefit*

**309.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter that, on reasonable grounds, he believes is true, and that is relevant to any subject of public interest, the public discussion of which is for the public benefit.

*Fair comment on public person or work of art*

**310.** No person shall be deemed to publish a defamatory libel by reason only that he publishes fair comments

(*a*) on the public conduct of a person who takes part in public affairs; or

(*b*) on a published book or other literary production, or on any composition or work of art or performance publicly exhibited, or on any other communication made to the public on any subject, if the comments are confined to criticism thereof.

*When truth a defence*

**311.** No person shall be deemed to publish a defamatory libel where he proves that the publication of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published and that the matter itself was true.

*Publication invited or necessary*

**312.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter

(*a*) on the invitation or challenge of the person in respect of whom it is published, or

(*b*) that it is necessary to publish in order to refute defamatory matter published in respect of him by another person,

if he believes that the defamatory matter is true and it is relevant to the invitation, challenge or necessary refutation, as the case may be, and does not in any respect exceed what is reasonably sufficient in the circumstances.

*Answer to inquiries*

**313.** No person shall be deemed to publish a defamatory libel by reason only that he publishes, in answer to inquiries made to him, defamatory matter relating to a subject-matter in respect of which the person by whom or on whose behalf the inquiries are made has an interest in knowing the truth or who, on reasonable grounds, the person who publishes the defamatory matter believes has such an interest, if

(*a*) the matter is published, in good faith, for the purpose of giving information in answer to the inquiries;

(*b*) the person who publishes the defamatory matter believes that it is true;

(*c*) the defamatory matter is relevant to the inquiries; and

(*d*) the defamatory matter does not in any respect exceed what is reasonably sufficient in the circumstances.

*Giving information to person interested*

**314.** No person shall be deemed to publish a defamatory libel by reason only that he publishes to another person defamatory matter for the purpose of giving information to that person with respect to a subject-matter in which the person to whom the information is given has, or is believed on reasonable grounds by the person who gives it to have, an interest in knowing the truth with respect to that subject-matter if

(*a*) the conduct of the person who gives the information is reasonable in the circumstances;

(*b*) the defamatory matter is relevant to the subject-matter; and

(*c*) the defamatory matter is true, or if it is not true, is made without ill-will toward the person who is defamed and is made in the belief, on reasonable grounds, that it is true.

*Publication in good faith for redress of wrong*

**315.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter in good faith for the purpose of seeking remedy or redress for a private or public wrong or grievance from a person who has, or who on reasonable grounds he believes has, the right or is under an obligation to remedy or redress the wrong or grievance, if

(*a*) he believes that the defamatory matter is true;

(*b*) the defamatory matter is relevant to the remedy or redress that is sought; and

(*c*) the defamatory matter does not in any respect exceed what is reasonably sufficient in the circumstances.

*Proving publication by order of legislature*

**316.** (1) An accused who is alleged to have published a defamatory libel may, at any stage of the proceedings, adduce evidence to prove that the matter that is alleged to be defamatory was contained in a paper published by order or under the authority of the Senate or House of Commons or the legislature of a province.

Directing verdict

(2) Where at any stage in proceedings referred to in subsection (1) the court, judge, justice or provincial court judge is satisfied that the matter alleged to be defamatory was contained in a paper published by order or under the authority of the Senate or House of Commons or the legislature of a province, he shall direct a verdict of not guilty to be entered and shall discharge the accused.

Certificate of order

(3) For the purposes of this section, a certificate under the hand of the Speaker or clerk of the Senate or House of Commons or the legislature of a province to the effect that the matter that is alleged to be defamatory was contained in a paper published by order or under

the authority of the Senate, House of Commons or the legislature of a province, as the case may be, is conclusive evidence thereof.

*Verdicts in cases of defamatory libel*

**317.** Where, on the trial of an indictment for publishing a defamatory libel, a plea of not guilty is pleaded, the jury that is sworn to try the issue may give a general verdict of guilty or not guilty on the whole matter put in issue on the indictment, and shall not be required or directed by the judge to find the defendant guilty merely on proof of publication by the defendant of the alleged defamatory libel, and of the sense ascribed thereto in the indictment, but the judge may, in his discretion, give a direction or opinion to the jury on the matter in issue as in other criminal proceedings, and the jury may, on the issue, find a special verdict.

# Appendix B

## Summary of the International Legislation Considered By The Cohen Committee

*The following summary is composed based upon a long list of international legislation considered by the Cohen Committee (1966: legislation spans 277-88). Information that appears in the body of Chapter 5, regarding laws in Germany, Austria and Italy, has not been repeated.*

In the years leading up to and immediate following World War II, many Western European nations enacted legislation that amended either Criminal or Penal Codes to address the potential problem of racial or bias-based criminal acts. As the *Cohen Report* (1966: 55) noted, "Most countries in Western Europe have group defamation legislation of either two kinds, according to the comprehensiveness of the group protected" (Cohen 1966: 55). Generally, the legislation was either highly specific (clearly describing what *types* of groups could be discriminated against) or more broad (referring to groups in general). One example of broad legislation is Article 137c of the *Netherlands Penal Code* which states, "Anyone deliberately and publicly expressing himself either in speech or in writing, or by means of a pictorial representation, in a manner offensive to a *group of the population or a group of persons belonging partly to the population*, is liable to imprisonment for a maximum of one year or to pay a fine of a maximum of 600 guilders." This type of legislation can be considered generous because it allows for a wide interpretation of the 'group' being offended. Not only does it protect groups within a country (i.e. Polish immigrants) but also groups that are partially within a country (e.g. Jews). Greece and Norway had similar legislation on their books, although, in these cases, the provision was coupled with threats to the peace.

The second type of legislation enacted in the decades following the end of WWII could be considered more specific and in line with the legislation eventually adopted in Canada. The crucial distinction is that it demarcates the type of group protected. Chapter

15, section 8 of the *Swedish Penal Code* provides a good example when it states, "If a person publicly threatens, slanders or vilifies an *ethnic group having a certain origin or religious creed*, he shall be sentenced for agitation against ethnic group to imprisonment for at most two years or, if the crime is petty, to pay a fine." This type of legislation constitutes the 'acceptable' lines or categories upon which a population may be divided. Ethnicity, religion and race are the conventional divisors. Denmark, France, Norway and Switzerland had similar protections in place pre-Cohen.

Other countries also had provisions similar to those in Western Europe to in try to curb and control racial and ethnic divisiveness among the population. Some of these countries were the USSR (Swedish style), India (Dutch model), parts of Eastern Europe (Swedish), and Australia (with group-recognised sedition).

# Appendix C

## Criminal Code Section 318 - 320: Hate Propaganda

*Advocating genocide*

**318.** (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Definition of "genocide"

(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(*a*) killing members of the group; or

(*b*) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

Definition of "identifiable group"

(4) In this section, "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

*Public incitement of hatred*

**319.** (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) an offence punishable on summary conviction.

*Wilful promotion of hatred*

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) an offence punishable on summary conviction.

Defences

(3) No person shall be convicted of an offence under subsection (2)

(*a*) if he establishes that the statements communicated were true;

(*b*) if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject;

(*c*) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(*d*) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Forfeiture

(4) Where a person is convicted of an offence under section 318 or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the presiding provincial court judge or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

Exemption from seizure of communication facilities

(5) Subsections 199(6) and (7) apply with such modifications as the circumstances require to section 318 or subsection (1) or (2) of this section.

Consent

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

Definitions

(7) In this section,

"communicating" includes communicating by telephone, broadcasting or other audible or visible means;

"identifiable group" has the same meaning as in section 318;

"public place" includes any place to which the public have access as of right or by invitation, express or implied;

"statements" includes words spoken or written or recorded electronically or electro-magnetically or otherwise, and gestures, signs or other visible representations.

*Warrant of seizure*

**320.** (1) A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is hate propaganda shall issue a warrant under his hand authorizing seizure of the copies.

Summons to occupier

(2) Within seven days of the issue of a warrant under subsection (1), the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

Owner and author may appear

(3) The owner and the author of the matter seized under subsection (1) and alleged to be hate propaganda may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the matter.

Order of forfeiture

(4) If the court is satisfied that the publication referred to in subsection (1) is hate propaganda, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

Disposal of matter

(5) If the court is not satisfied that the publication referred to in subsection (1) is hate propaganda, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

Appeal

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

(*a*) on any ground of appeal that involves a question of law alone,

(*b*) on any ground of appeal that involves a question of fact alone, or

(*c*) on any ground of appeal that involves a question of mixed law and fact,

as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XXI, and sections 673 to 696 apply with such modifications as the circumstances require.

Consent

(7) No proceeding under this section shall be instituted without the consent of the Attorney General.

Definitions

(8) In this section,

"court" means

(*a*) in the Province of Quebec, the Court of Quebec,

(*a*.1) in the Province of Ontario, the Superior Court of Justice,

(*b*) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(*c*) in the Provinces of Prince Edward Island and Newfoundland, the Supreme Court, Trial Division,

(*c*.1) [Repealed, 1992, c. 51, s. 36]

(*d*) in the Provinces of Nova Scotia and British Columbia, in Yukon and in the Northwest Territories, the Supreme Court, and

(*e*) in Nunavut, the Nunavut Court of Justice;

"genocide" has the same meaning as in section 318;

"hate propaganda" means any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under section 319;

"judge" means a judge of a court.

*Warrant of seizure*

**320.1** (1) If a judge is satisfied by information on oath that there are reasonable grounds for believing that there is material that is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, that is stored on and made available to the public through a computer system within the meaning of subsection 342.1(2) that is within the jurisdiction of the court, the judge may order the custodian of the computer system to

(*a*) give an electronic copy of the material to the court;

(*b*) ensure that the material is no longer stored on and made available through the computer system; and

(*c*) provide the information necessary to identify and locate the person who posted the material.

Notice to person who posted the material

(2) Within a reasonable time after receiving the information referred to in paragraph (1)(*c*), the judge shall cause notice to be given to the person who posted the material, giving that person the opportunity to appear and be represented before the court and show cause why the material should not be deleted. If the person cannot be identified or located or does not reside in Canada, the judge may order the custodian of the computer system to post the text of the notice at the location where the material was previously stored and made available, until the time set for the appearance.

Person who posted the material may appear

(3) The person who posted the material may appear and be represented in the proceedings in order to oppose the making of an order under subsection (5).

Non-appearance

(4) If the person who posted the material does not appear for the proceedings, the court may proceed *ex parte* to hear and determine the proceedings in the absence of the person as fully and effectually as if the person had appeared.

Order

(5) If the court is satisfied, on a balance of probabilities, that the material is available to the public and is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, it may order the custodian of the computer system to delete the material.

Destruction of copy

(6) When the court makes the order for the deletion of the material, it may order the destruction of the electronic copy in the court's possession.

Return of material

(7) If the court is not satisfied that the material is available to the public and is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, the court shall order that the electronic copy be returned to the custodian and terminate the order under paragraph (1)(*b*).

Other provisions to apply

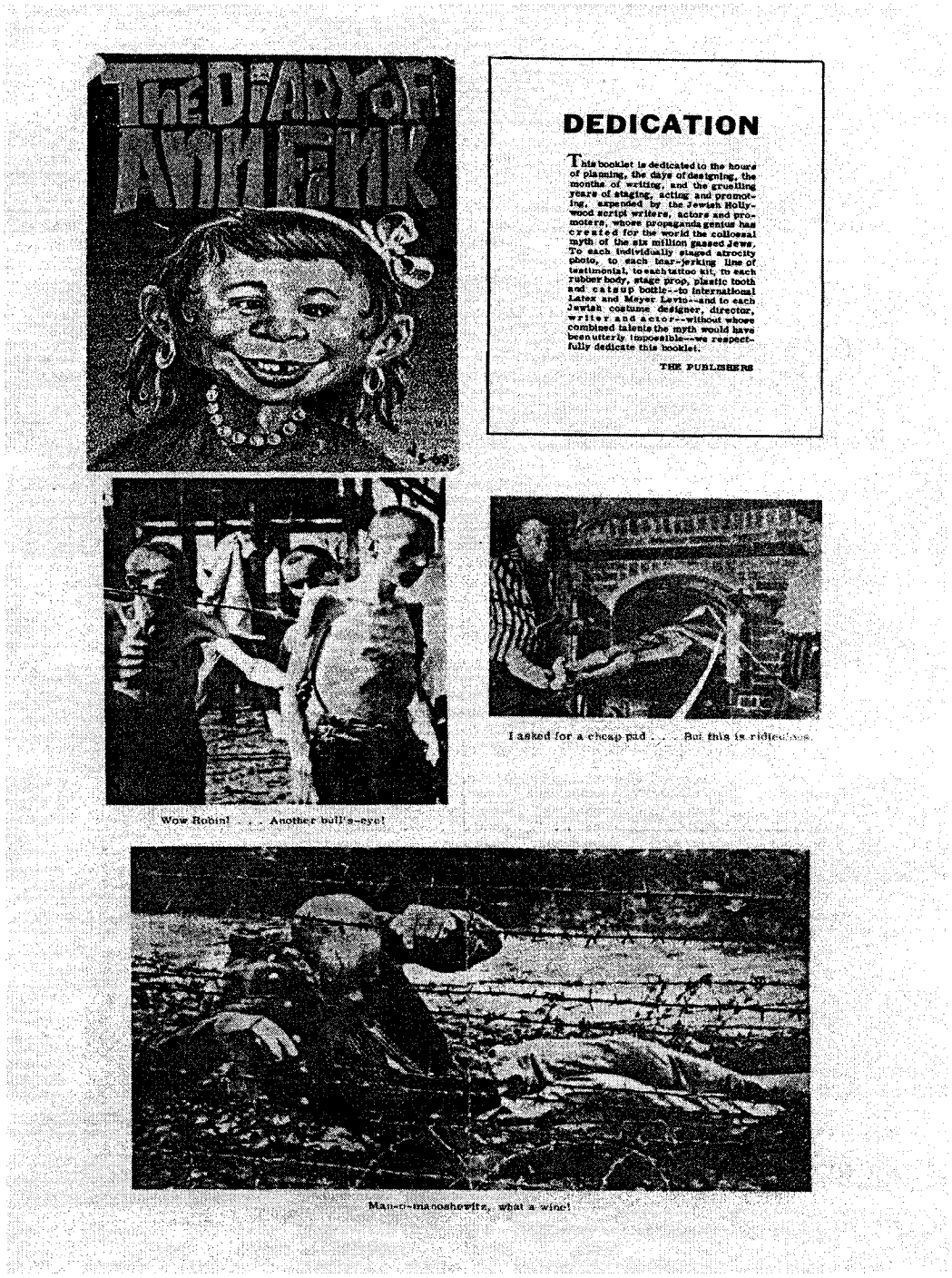
(8) Subsections 320(6) to (8) apply, with any modifications that the circumstances require, to this section.

When order takes effect

(9) No order made under subsections (5) to (7) takes effect until the time for final appeal has expired.

# Appendix D

## Examples of "Hate Literature"




The following illustrations are examples of "hate literature" which circulated in parts of Canada between 1963 and 1965. These appear in the *Report of the Special Committee on Hate Propaganda in Canada* (Cohen 1966: 262, 265, and 266 respectively).

# "Communism is Jewish"

Nikolai Lenin-Goldmann  Leon Trotsky-Bronstein  Bela Kun-Cohn  Karl Liebknecht  Emma Goldmann

Tobias Axelrod  Zederbaum  Levine-Rissen  Jankel Jurowsky  Dr. Rosenfeld  Cohn-Colbert

Moses Uritzky  Allina  Szammely  Hamburger  Beganh  Sobelsohn

Adler  Apfelbaum  Cohen

**Placed by:**

**CANADIAN ACTION**

**P.O Box 431**

**Scarboro Ont.**

**This list incomplete due to space limitations**

Above we print illustrations of the foul, ugly Communist Jews who were poisoning Christian Russia in 1917. They were not alone in their task. The big Jewish New York bankers such as Jacob H. Schiff (Kuhn, Loeb & Co.), Felix M. Warburg, and Otto H. Kahn supplied them with twenty million dollars for the "Russian" Revolution.

Even today the picture has not changed. Almost every Communist spy, such as Julius and Ethel Rosenburg, Begun, Soblen, Col. Rudolph Abel, Morton Sobell, Sam Carr (Cohen), Gerhard Eisler, Robert Oppenheimer, Fred Rose (Rosenburg), Philip Jaffe, Harry Gold (Goldodnitsky), David Greenglass, Harry Dexter White (Weiss) and Judith Coplin, has been a racial Jew.

**Published as a public service**

# SPECIAL BULLETIN
# WHITE MEN AWAKE

*By World Service*

**Our beloved President J. F. Kennedy was assassinated by Marxist Lee H. Oswald, who was silenced by Jew Jacob Rubinstein before he could expose that**

**COMMUNISM IS JEWISH.**

**The following characters were and are all JEWS: Karl Marx, Liebknecht, Trotzky (Bronstein), Rosa Luxemburg, Ehrenburg, H. Morgenthau, F. Frankfurter, Oppenheimer, Baruch, T. N. Kaufman, H. Dexter White (Weiss), P. Rachmdn.**

**All the convicted communist spies (atom) were also JEWS: The Rosenbergs, Greenglass, F. Rose, G. Eisler, Sobien, Kaufman and many more.**

**NOTE: In all communist countries, top government positions are occupied by Jews, according to Jewish newspapers.**

## Fellow Kinsmen Wake Up
## THE ENEMY IS AMONG US

**Unconsciously you pay the way for Jewish world domination by purchasing kosher foods, filth literature, or taking loans from the Jewish owned finance companies.**

## LOOK

**at television and you just see murder, rape, perversion and hatred against the white man. All brought to you by your friendly ZIONIST JEW. Let Jews deny these facts in front of any unprejudiced reliable court or panel, they can not and they will not reveal their aim. It is up to you to do so.**

**White men stand up and be counted. SAVE YOURSELF and YOUR CHILDREN!**

***FIGHT COMMUNISM OR DIE A SLAVE.***

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