

Media Narratives in Times of Turmoil: Depictions of Minorities in Canada Post 9/11

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Abstract:

Canada is at a cross-road, at a critical junction in finding the appropriate balance between freedom of expression and hate speech. It is no coincidence that the majority of cases at the center of this debate directly deal with issues and populations that relate to Canada's military mission in Afghanistan. Portrayal of minorities by the media has played an important role in the development of stereotypes during conflicts, and is often associated with propaganda.

Canadian society was not merely an innocent bystander in the propaganda wars of the past century, as such, it was not immune from such participation, and violation of minority rights through one-sided messages occurred here as well. This pattern of minority degradation continues to the present day, albeit in a less grandiose and explicit manner, and its insidious effects are readily observable in society today.

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Introduction

Propaganda is neutrally defined as a systematic form of purposeful persuasion that attempts to influence the emotions, attitudes, opinions, and actions of specified target audiences for ideological, political or commercial purposes through the controlled transmission of one-sided messages (which may or may not be factual) via mass and direct media channels. A propaganda organization employs propagandists who engage in propagandism—the applied creation and distribution of such forms of persuasion.

~Richard Alan Nelson~²

Although propaganda has been present throughout the ages, the greatest propaganda battle in history was witnessed during WWII. Coercion replaced the consultation process, and all parties involved sought to justify their legitimacy and role in the war through mass media.³ Even though the Germans are notoriously famous for the degradation of their national minorities, similar acts occurred in North America. Linkages between negative characterizations of ethnic groups in the media and discrimination, violence, and justification of war crimes can be seen on both sides of the Atlantic. Canadian society was not merely an innocent bystander, as such, it was not immune from such participation, and violation of minority rights through one-sided messages occurred here as well. This pattern of minority degradation continues to the present day, albeit in a less grandiose and explicit manner, but its insidious effects are readily observable.

¹ Based on a paper presented by Omar Ha-Redeye, *War-Time Propaganda: From Nazi Germany to Minorities in Canada Post 9/11*, at “Sacred and Secular in a Global Canada: Past, Present and Future,” May 9-12, 2008, at Huron University College, University of Western Ontario in London, Ontario, Canada; and a Masters of Environmental Studies thesis by Daniel Simard to be defended in 2010.

² Richard Alan Nelson, *A Chronology and Glossary of Propaganda in the United States* (Westport: Greenwood Press, 1996) at 232.

³ Philip M Taylor, *Munitions of the Mind: a history of propaganda from the ancient world to the modern day*. (Manchester: Manchester University Press, 2003) at 210.

The word propaganda as a method of ideological persuasion dates back to as early as 2,500 B.C.E. when Sumerians used monumental art to reinforce the power of the state.⁴ Propaganda through monumental art and pictorial writing were predominately used for political and commercial purposes. In later eras books and other important writings were important tools in the advancement of military power. Moreover, a chronology of propaganda throughout the ages will demonstrate its malleability and its various faces which have been specifically tailored to fit the unique cultural climate unique of the time and place where it is promulgated. Its usage extends from the more mundane expressions of advertising for commercialism, to practical politics and political domination, to war-time indoctrination through notions of nationalism and *otherness*.

In contemporary times it has often been said that we live in an Information Age where control and access to information is an important determinant of peoples' fates and a major basis of the operation of economy and society.⁵ However, it has been suggested that with the unrelenting stream of spin doctors, advertisements, public relations experts, talk-show hosts and others, who ensure that we receive the correct information and interpretation according to their own interests and agendas or those of the institutions employing them, this age is more accurately characterized as the Age of Propaganda.⁶ The current level of sophistication in techniques is unparalleled and with introspective research the processes that shape and form public opinions are well understood. For these reasons propaganda in its present form is virtually undetectable, pervasive and difficult to combat. It should be no surprise then that through the mass media and other large-scale institutions individual attitudes, understandings and

⁴ *Ibid.* at 21.

⁵ Michael W. Hughey, "Propaganda in the modern world" (1996) 9 *International Journal of Politics, Culture, and Society* 569 at 569.

⁶ *Ibid.* at 569; Philip M. Taylor, *Global communications, international affairs and the media since 1945* (New York: Routledge, 1997) at 26.

sentiment are routinely manipulated to a degree in which it poses a significant challenge to liberal ideas of individualism and democracy.⁷ It is this interaction between propaganda, grounded in the fundamental right of expression, and the ominous threat to the democratic participation of minority communities that characterizes the current dispute in the Canadian climate today.

This paper will proceed with a brief historiography of selected events demonstrating the use, effects and various forms of propaganda. Nazi Germany is the starting point as it is arguably the period in which the term became attached with deadly and dangerous connotations as a result of the mass genocide that ensued. Some argue that it was the Nazi's director of propaganda who elevated the practice of one-sided messages into a systemic, artful, and quasi-scientific methodology of mass persuasion.⁸ A discussion of psychological theory regarding racism and discrimination will follow. A link will then be drawn between the modern form of racist thought and the dominant discourse pervading the mainstream media, including discursive writing practices employed in print media. All of this will lay the groundwork for the discussion and analysis of the ongoing Canadian debates with respect to the Islamic community and racism in the aftermath of September 11, 2001. Discussion will focus on clearly outlining much of the controversy with respect to media representation and the accommodation and integration of minorities into Canada's pluralistic society. Attention will be given to relevant Canadian laws and legislation.

⁷ Hughey, *supra* note 5 at 569.

⁸ Karen S. Johnson-Cartee & Gary Copeland, *Strategic political communication: rethinking social influence, persuasion, and propaganda* (Lanham: Rowman & Littlefield, 2004) at 184.

Overview of Selected Events

Nazi Germany

In 1923, Hitler proclaimed to the Germans, “Propaganda, propaganda, propaganda. All that matters is propaganda.”⁹ Propaganda was used to foster resentment towards the Treaty of Versailles and create the perception of foreign enemies. To assist in their assault, the Third Reich established the Ministry of Public Enlightenment and Propaganda in 1933, headed by Joseph Goebbels. Hitler personally endorsed the use of film over print materials, as the latter required a more “arduous reading.”¹⁰ Film was preferred as the only true mass medium of the time as propaganda requires wide dissemination to be effective.¹¹ Nazi propaganda was not limited to only adversaries outside its territorial fringe, it also aimed to create internal enemies - especially Jews. One of the classic films in this regard is *Der ewige Jude*, or “The Eternal Jew,” a production focussing on racial stereotypes and the “fifth column” argument, where a minority group is considered disloyal and undermines a society’s values internally. The premise of the Nazis was that groups like Jews and gypsies appeared to be part of Western society, but were really of an “other” that could not be depended upon in times of need. High birth rates and migration patterns were also cited as potential threats to European culture, as was the ability of minorities to visibly assimilate and fit in, thereby allowing greater infiltration in civil society.

Nazis were not alone in their use of propaganda during this period and there were many similar eugenics programs existing in Canada and the United States (US).¹² Fifth-column

⁹ Taylor, *supra* note 3 at 241.

¹⁰ Adolf Hitler, “Mein Kampf” in Anton Kaes, Martín Jay & Edward Dimendberg, eds., *The Weimar Republic Sourcebook* (Berkeley: University of California Press, 1995) 130 at 130.

¹¹ James Chapman, *The Power of Propaganda* (2000) 35 *Journal of Contemporary History* 679 at 683.

¹² Stefan Kuhl, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (New York: Oxford University Press. 1994) at 62.

arguments were not only made about Jews in France,¹³ but also Jewish refugees and other minorities in the US.¹⁴ An example of such propaganda efforts during WWII were anti-Japanese songs that became popular during this period. The most effective medium of transmission, as in Germany, was the cinema.¹⁵ In 1942 alone, twenty-five anti-Japanese feature films were released in America.¹⁶ Government collusion in these activities, though more subtle than the Nazis, was unmistakable; the films themselves advertised war bonds available for purchase in theatre lobbies. Correspondingly, US Office of War Information (OWI) Director Elmer Davis once said, “the easiest way to inject a propaganda idea into most people’s minds is to let it go in through the medium of an entertainment picture when they do not realize they are being propagandized.”¹⁷ The films also portrayed Japanese characters involved in espionage, which was to later serve as the basis for justifying interment.

Propaganda Fostering Animosity in North America

Years of anti-Japanese propaganda in America resulted in strong feelings of prejudice and animosity. Polls during the 1940’s revealed that 13% of US citizens wanted to kill the Japanese and 22% were disappointed that more atomic bombs were not used, despite a resolution of the conflict. The OWI had Hadley Cantril of Princeton University conduct his own study that found 73% of Americans described the Japanese as treacherous, 62% sly, and 55% said they were cruel. Depictions were often portrayed in highly racialized terms that distinguished them

¹³ Vicki Caron *Uneasy Asylum: France and the Jewish Refugee Crisis, 1933-1942* (Stanford: Stanford University Press, 2002) at 240-241.

¹⁴ Richard Breitman & Alan M. Kraut, *American refugee policy and European Jewry, 1933-1945* (Indiana University Press, 1987) at 117-118

¹⁵ Anthony W. Sheppard, *An Exotic Enemy: Anti-Japanese Musical Propaganda in World War II Hollywood* (2001) 54 *Journal of the American Musicological Society* 303 at 306.

¹⁶ *Ibid.* at 307

¹⁷ Clayton R. Koppes & Gregory D. Black, *Hollywood goes to war: how politics, profits, and propaganda shaped World War II movies* (Berkeley: University of California Press, 1990) at 64.

from other military adversaries. For example, the 1945 motion picture *Know Thy Enemy – Japan*, reasserted the notion that whereas Germans and Italians could be treated as individuals, Japanese were a herd to be treated as a group.¹⁸ Japanese were seen as a homogenous group that could not be assimilated or incorporated into Western society, and therefore provided a security risk.¹⁹ Then Secretary of War Henry Stimson acrimoniously stated, “their racial characteristics are such that we cannot understand or trust even the citizen Japanese.”²⁰

Without this foundation of racism, the suspension of the writ of *habeas corpus* and internment of Japanese in America starting in 1942 would not have been possible.²¹ Canada created internment camps on its west coast through the *War Measures Act* the same year, and nearly all of the Canadian internees were citizens. The unconstitutionality of internment, according to some Canadian legal scholars, was the arbitrary under-inclusiveness of other populations that posed the same potential threats, and over-inclusiveness by automatically assuming that all persons of Japanese ancestry were disloyal to their adopted homeland.²² Despite the lack of a single episode of Japanese espionage, this threat was cited above proven German military activities in North America. Experiences of some of the internees are also worth noting, as they revealed concerns of societal and communal ostracism when they related that neighbours and friends often shunned them out of fear of association.²³ Internment carried

¹⁸ *Ibid.* at 249-52.

¹⁹ Gary Y. Okihiro, *Cane Fires: The Anti-Japanese Movement in Hawaii, 1865-1945* (Philadelphia: Temple University Press, 1991) at 204.

²⁰ Frank H. Wu, *Profiling in the Wake of September 11: The Precedent of the Japanese American Internment* (2002) 17 *Criminal Justice* 52 at 53.

²¹ Okihiro, *supra* note 19 at 124.

²² William E. Conklin, *In Defence of Fundamental Rights* (Alphen an den Rijn: Martinus Nijhoff Publishers, 1979) at 106.

²³ Okihiro, *supra* note 19 at 219.

virtual unanimous support of the general public with only a few small groups like the Quakers vocally dissenting.²⁴

These crimes could not have occurred without the silence of unwitting accomplices. Other racialized minorities made deliberate attempts to differentiate themselves, with members of the Chinese community wearing buttons outwardly testifying their distinct identity.²⁵ But the Japanese community lacked their own advocacy, with the Japanese American Citizens' League viciously attacking any who resisted internment attempts. It was their view that complete cooperation did not create immunity since some stated that the more assimilated a Japanese American was the more deceitful they would be.²⁶ And although there were no death camps or "final solution" in North America, interment was claimed to be a deliberate attempt at ethnic cleansing.²⁷

A Shift to the Middle East

Flora Keshishian gives a highly personalized account from the perspective of an Iranian immigrant in the US during the time of the infamous "hostage crisis" in the early beginnings of the Iranian Revolution.²⁸ Up to this point the American government invested much time in building a strong intergovernmental relationship with Iran to ensure the implementation of self-gratifying measures throughout Iranian national policy. However, due to internal civil conflict, the period leading up to and following the Iranian Revolution saw a breakdown in governmental relations. As US-Iran diplomatic ties took a downward spiral so did the media characterizations

²⁴ Okihiro, *supra* note 19 at 52-53.

²⁵ Roger Daniels, *Incarceration of the Japanese Americans: A Sixty-Year Perspective* (2002) 35 The History Teacher 297 at 304.

²⁶ Wu, *supra* note 20 at 53.

²⁷ Okihiro, *supra* note 19 at 303.

²⁸ Flora Keshishian, *Acculturation, Communication, and the U.S. Mass Media: The Experience of an Iranian Immigrant* (2000) 11 The Howard Journal of Communications 93.

of Iranian culture and people. Through her autobiographical empiricism she notes that the relatively positive, yet stereotypical view of prerevolutionary and pre-hostage Iranian culture, that of Persian carpets, oil, and caviar, had vanished.²⁹ This script was replaced with references of Iranian people as religious fanatics,” “leftist-backed,” and “backward.” She further recounts how during the hostage period she heard stories about Iranian immigrants who had been attacked; a woman who had been raped and, in another incident, a few men who had been beaten in a bar, both because they were Iranian.³⁰

The eminent scholar of Iranian studies, Ali Ansari, draws comparisons between the treatment of Iranians of this period and the Japanese of the mid 40’s: “In a manner reminiscent of the experiences of the Japanese Americans in the 1940s, Iranians in the United States became scapegoats and suffered harassment and covert discrimination, mainly because of their national heritage to in its portrayal.”³¹ Like the aforementioned Japanese, the Iranians residing within American borders were recipients of reactionary treatment based on political events unrelated to themselves, as individuals on US land. With the exception of Iranians in the US around the time of their native country’s revolution, the post-WWII era was characterized by conflicts that, although often violent in nature, did not have as significant impact on minority populations from a propaganda standpoint. This changed, however, with the Persian Gulf War in 1990, where Allied troops again faced a drastically different culture - Canada being one of the first nations to join the effort. The Gulf War was characterized by an unfortunate propaganda scandal, emanating from the Kuwaiti government’s solicitation of a reputable American public relations firm to influence North American audiences to support the war. They sent a nurse named

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Ali Ansari, *Iranian Immigrants in the United States: A Case Study of Dual Marginality* (New York: Associated Faculty Press, 1988) at 120.

Nayirah to Congress, claiming in a televised address to have witnessed Iraqi soldiers dumping Kuwaiti babies from their incubators. A year after the war concluded her true identity was revealed as the daughter of Kuwait's ambassador to the U.S. and a member of the royal family. The incubator coverage was considered critical as six senators specifically cited the incident, meanwhile the vote to go to war only narrowly passed by five.³² This poses the question, if an external government could so easily manipulate the North American public, how difficult would it be to do so from the inside?

Defining a New Hate Group

A contemporary starting point in the study of essentialist, stereotypical and racist theorizing can begin through the work of preeminent post colonial scholar Edward Said and his critically acclaimed book *Orientalism*.³³ Said's main argument is that whole of western scholarship, literature and imagery creates a stereotype and reinforces a prejudice based on the notion of the other.³⁴ He claims that even the most objective Western texts contain a bias that has become normalized to Western scholars and their readers,³⁵

So far as the United States seems to be concerned, it is only a slight overstatement to say that Moslems and Arabs are essentially seen as either oil suppliers or potential terrorists. Very little of the detail, the human density, the passion of Arab-Moslem life has entered the awareness of even those people whose profession it is to report the Arab world. What we have instead is a series of crude, essentialized caricatures of the Islamic world presented in such a way as to make that world vulnerable to military aggression.

The dichotomous portrayal of an east-west divide, characterizing the former as irrational, underdeveloped and backwards and the west as rational, superior and developed is a large part of

³² Karen S. Miller, *The Voice of Business: Hill & Knowlton and Postwar Public Relations* (Chapel Hill: University of North Carolina Press, 1999) at 180-83.

³³ Edward W. Said, *Orientalism*, (Toronto, Random House of Canada, 1979).

³⁴ *Ibid.* at 26, 58, 254, 285.

³⁵ Edward Said, "Islam Through Western Eyes" *The Nation* (26 April 1980), online: The Nation <<http://www.thenation.com/doc/19800426/19800426said>>.

the framework that is shaping and forming Arabs and Muslims as a homogenous group to be feared, disliked and ridiculed. A reification of Said's *Orientalism* can be found throughout the media and popular cinema. For instance, derogatory depictions of Arabs in Western cinema are plentiful and precede the catastrophic events of Sept. 11, 2001. A comprehensive review of nearly every Hollywood film since 1896 found that the vast majority of the over 900 films were characterized by degradation and dehumanization.³⁶ This demonization carried such close parallels to that of Nazi propaganda that some term it the "New Anti-Semitism." Not because these depictions are new in the media, but because while racial stereotypes of other groups are steadily on the decline, this particular archetype is rapidly gaining prominence and acceptance. American author Sam Keen told the Association of Editorial Cartoonists in San Diego on May 15, 1986, "You can hit an Arab free; they're free enemies, free villains – where you couldn't do it to a Jew or you can't do it to a black anymore."³⁷

Perhaps then it comes as no surprise that one of the most contentious depictions of an Arab in our time comes from a cartoonist published in the conservative Danish paper *Jyllands-Posten*'s. In 2005, several caricatures of the Prophet Muhammed were portrayed in hardcopy. Canadian papers largely showed constraint on republication, not merely because it was offensive to Muslims, but because it offended secular notions of respect and was not necessary to report the story objectively.³⁸ The cartoons exceeded sacred concerns as they made clear linkages between bombs and terrorism and the religion of Islam, attempting to mischaracterize an entire faith. The *Western Standard* was the first English paper in the world to republish the cartoons, though the print paper was to become defunct the following year due to financial hardship. Rod

³⁶ Jack Shaheen, *Reel Bad Arabs* (New York: Olive Branch Press, 2001) at 1, 4.

³⁷ *Ibid.* at 5-6

³⁸ Mary Vallis, "Editors weigh free press, respect for religious views" *National Post* (4 February 2006), online: *National Post* < <http://www.nationalpost.com/story.html?id=bd2a1182-255c-4cb4-a7ef-f725bb5a9d41>>.

A. Martin, psychology professor at the University of Western Ontario, discussed the cartoons at the 2006 International Society for Humor Studies conference in Copenhagen and presented studies showing that humour can actually create a discriminatory work environment by creating normative standards. Martin also stated that humour can be ambiguous, and the intentions behind these particular cartoons are uncertain.³⁹ Western Standard's former owner was far less ambiguous about his motives for publicizing: the "most offensive reason, for the most unreasonable reasons."⁴⁰

Progression of Racism in Psychological Theory

Social psychological research began investigating racism through measures examining outward expressions of racism easily identifiable to the average person. Segregation and open discrimination are beliefs endorsed by what are now referred to as *old-fashion racists*.⁴¹ Such infamous acts and policies fitting within this classification are the discriminatory public transit policies forcing blacks to sit at the back of buses and the infamous cross burnings of the Klu Klux Klan. Correspondingly, psychologists used scales of measurement that sought to measure explicit and overt racial attitudes. It was not long before psychologists realized that overt bigotry was becoming a thing of the past and measuring racial attitudes through techniques based heavily in self-report were becoming less accurate. A shift in theorizing has now focused on the notion of implicit or subconscious racist attitudes that are beyond self-detection. The new theories of racism are rooted in the ostensible paradox of opinion polls during the period following World

³⁹ Rod A. Martin, *Humor, laughter, and physical health: Methodological issues and research findings* (2001) 127 *Psychological Bulletin* 504.

⁴⁰ Keith Bonnell, "Levant doesn't back down at human rights hearing" *National Post* (11 January 2008), online: *National Post* <http://www.nationalpost.com/news/story.html?id=231714>.

⁴¹ J. B. McConahay, "Modern racism, ambivalence, and the modern racism scale" in J. D. Dovidio & S. L. Gaertner eds., *Prejudice, discrimination, and racism* (San Diego, CA: Academic Press, 1986) 91.

War II that showed a steady decline in negative evaluations of racial minority groups, while at the same time only a moderate decline in racial conflicts.⁴² To reconcile this apparent discrepancy social psychologists began to look deeper into the human psyche by searching for a more subtle and automatic process of discrimination that could not be manipulated for the sake of appearing socially desirable. Arguably three major theories developed under this notion, and consequently, quest to find an unfettered pathway that directly taps into the subconscious removing, or at the very least limiting, the possibility of individual obscurities. One of the more favoured and heavily supported theories of this advanced form of subtle and nonconscious racism can be attributed to the work of Samuel Gaertner and Jack Dovidio in their 1986 publication *The Aversive Form of Racism*. According to their *aversive racism* theory, aversive racists are on the whole well-intentioned people who typically avoid acting in a racist manner and who possess strong egalitarian values. At the same time, aversive racists almost unavoidably possess negative feelings and emotions about African-Americans and other minority groups. According to Dovidio and Gaertner these feelings are thought to be based on factors such as:⁴³

- a) socialization experiences in local cultures with racist traditions and;
- b) the ongoing competition between social groups in a world with little resources

Preservation of strong egalitarian values underlies aversive racists' behaviours. When a situation arises where a discriminatory act, decision, policy or statement would be obvious to oneself and others an aversive racist will not discriminate. On the other hand, in a similar situation where the discriminatory act would be ambiguous or where it could be strongly justified, aversive racists' harboured feelings towards the targeted group will be realized.

⁴²A Campbell, *White attitudes towards Black people* (Ann Arbor, MI: Institute for Social Research, 1971).

⁴³J. F. Dovidio & S. L. Gaertner, "On the nature of contemporary prejudice: The causes, consequences and challenges of aversive racism" in S. T. Fiske & J. L. Eberhardt, eds., *Confronting racism: The problem and the response* (Newbury Park, CA: Sage, 1998) 3-32.

Although very few studies have utilized the few key predominant implicit or subconscious research paradigms to test discriminatory attitudes towards Muslim and Arabs, individuals harbouring implicit biases towards other ethnic groups, especially blacks, is well documented. Nevertheless, one notable exception to the scarcity of psychological investigations into the realm of Islamophobia is a very recent study of what has been termed the “turban effect” investigated by Christian Unkelbach.⁴⁴ Prompted by the mistaken shooting and death of a Brazilian man, who according to British police officers resembled a Muslim, researchers queried whether Muslim appearance increases aggressive tendencies. Because people are often unwilling or unable to reveal anti-Muslim prejudice, the researchers adopted a “shooter bias” paradigm. A computerized study asked participants to only shoot at targets wielding a gun and to resist firing at targets holding similar (in size, shape and position being held) non-threatening objects. The experiments manipulated the targets (either those holding a gun or non-threatening object) by dressing them in traditional Muslim headgear. There were time constraints and a scoring scheme both influencing the participant to discharge the weapon. The reasoning was that fast and spontaneous responses are theorized to be influenced by underlying stereotypes rather than explicit processes. Participants were more likely to shoot characters wearing Muslim headgear (turban or hijab) relative to the same characters bare-headed. The results showed that people were more likely to shoot a Muslim looking character, even if they were wielding a non-threatening item,⁴⁵

The evidence supports the prediction that the shooter bias against Muslims was the behavioral manifestation of acquired negative stereotypes towards this group. Angry people shot more at everybody, while happy people shot selectively more at Muslims.

⁴⁴ Christian Unkelbach, Joseph P. Forgas & Thomas F. Denson, *The turban effect: The influence of Muslim headgear and induced affect on aggressive responses in the shooter bias paradigm* (2008) 44 *Journal of Experimental Social Psychology* 1409.

⁴⁵ *Ibid.* at 1412.

In an interview for the *National Post*, Unkelbach revealed that when participants were debriefed to the true purpose of the experiment they insisted they were not prejudiced and their reactions must have been distinct from others.⁴⁶ The head researcher also declared that people are not doing this willingly, if they could, they would control their behaviour; in his view people are almost victims of what they are fed by their environments. Interestingly, professor Unkelbach largely blames one-sided media portrayals for this bias.⁴⁷ This is not the first time that negative feelings towards minority out-groups have been linked with the media, allowing contemporary insights from media and racism to be used for this specific population group.

The Link Between Media and Aversive Racism

Racism or the racialized discourse existent in today's printed press has been argued to be a form of the "new racism", that of which could be viewed as a subtext of *aversive racism*.⁴⁸ Racialized discourse is a set of practices that marginalize, denigrate and oppress the out-group, the other, at the behest of the in-group. To put it in context, it is the way the press, controlled by the corporate elite, control the mode of dissemination and content. Or, in the eloquent words of John Fiske: "There is a discourse of racism that advances the interests of the whites and that has an identifiable repertoire of words, images, and practices through which racial power is applied."⁴⁹ Like *aversive racism*, racialized discourse is so deeply embedded and engrained that much of it is normalized and is constructed without thought.

⁴⁶ Shannon Proudfoot, "Study suggests "turban effect" as a source of Islamophobia" *National Post* (29 June 2008), online: National Post <<http://www.nationalpost.com/news/story.html?id=622705>>.

⁴⁷ *Ibid.*

⁴⁸ Teun van Dijk, *Racism and the Press* (London: Routledge, 1991).

⁴⁹ John Fiske, *Media Matters: Everyday Culture and Political Change* (Minnesota: University of Minnesota, 1994) at 5.

Frances and Tator, two of Canada's leading experts in racism and anti-racism have constructed the term democratic racism to denote the fundamental dissonance that is characteristic of many liberal states. This dissonance, and like the conflicting beliefs inherent in *aversive racists*, refers to the internal manifestation of two contradictory ideologies; the desire to be egalitarian, individualistic and to uphold fundamental liberal values, and the everyday racialized behaviours that are embedded in society through cultural, economic and social systems and institutions. Further, it is argued that this form of racism is subtler and it carries with it a veneer of democratic respectability as a result of its grounding in democratic tenets. It is Frances and Tator's contention that democratic racism is part of the discourse of dominance that is used to establish, reinforce, and sustain racism in society, including the media. Additionally, they also contend that the flexible meanings of tolerance, equality, and freedom of expression - central concepts of fundamental liberalism - often become the language and conceptual framework through which intolerance and exclusion are enabled, reinforced, defined and defended. For example, liberal principles that include the primacy of individual rights over collective rights, freedom of expression, equal opportunity and tolerance have been used against marginalized and excluded groups. This is due to the paradox that liberalism is both egalitarian and inegalitarian.⁵⁰

Perhaps an even larger and more illuminating contribution to the study of racist discourse is their delineation of discursive strategies invoked by the proponents of racist discourse, namely, journalists, editors and publicists. Under the framework of democratic racism, several discourses commonly used in mainstream press have been identified.⁵¹ Accordingly, they are the discourses of: *denial, political correctness, colour evasion or colour blindness, equal opportunity, blame the victim or white victimization, otherness, national identity, moral panic, and tolerance. A*

⁵⁰ Frances Henry, Carol Tator, *Discourses of Domination: Racial Bias in the Canadian English Canadian Press* (Toronto: University of Toronto, 2002).

⁵¹ *Ibid.*

brief discussion of the discourses most germane to current practices and issues in the Canadian context follows:⁵²

Discourse of denial

The principle assumption here, very simply, is that racism does not exist in a democratic society. Journalists and writers scoff at this notion by declaring the improbability of racism's existence, in Canada in particular, due to Canada upholding such strong ideals of a liberal democracy and multiculturalism. This argument is not only provincial but made in ignorance. As explained above, racism is no longer the overt expressions that most journalists see as problematic and discriminatory, it is of a more sophisticated kind, draped in clever rhetoric and usually aligned with extreme political movements.

Discourse of political correctness

This discourse has become a central rhetorical strategy by the mainstream media and is seemingly more persuasive as it is mired in issues of debate and carries with it justificatory arguments and is not merely dismissive. It functions as an expression of resistance to social change and the status quo. Demands by minority groups for more inclusive policies, social services, equity and employment measures, are often discredited using this discourse. Most antagonistic, those opposed to pro-active measures to ensure the inclusion of non-dominant voices, stories and perspectives dismiss these concerns as the wailing and whining of radicals whose polemics (and actions) threaten the cornerstones of democratic liberalism.

The discourse of blame the victim, or white victimization

This discourse is grounded in the notion that the failure of minority groups is due to their inability to adapt and integrate into mainstream society as a result of their own cultural practices and traditions. Certain cultures are said to be culturally deficient as it is assumed they lack the skills, education and motivation to fully participate in Canadian society. Further, much of minority communities shortcomings are of their own doing.

The discourse of tolerance

Canada prides itself in being a tolerant nation, and underpinning much of the media coverage is this concept which has been linked with the notion of reasonable accommodation. A prime example is the debate and discontent over reasonable accommodation of cultural minorities within Quebec's historically francophone society which prompted the Quebec government to establish the Consultation Commission on Accommodation Practices Related to Cultural Differences on February 8, 2007.⁵³ The underlying premise is that the dominant way is superior, however, within this constructed order the idiosyncrasies of the other are accepted. Within this minimal form of recognition of difference, the guardians of the dominant culture and social order, which includes the media, create a ceiling of tolerance that stipulates what differences are tolerable.⁵⁴ Exploiting Canada's record of tolerance is an accusation that allegedly leads to disharmony, division and discontent.

Discursive tactics are used as a double-edged sword. It is part of the discourse interwoven within the media and imbibed by passive audiences on a daily basis. At the same time, when concerns are brought forth with respect to biased reporting, the media's tightly knit consortium of professionals close ranks and collectively shield themselves from any such

⁵² *Ibid.* at 54.

⁵³ Gérard Bouchard & Charles Taylor, *Building the Future. A Time for Reconciliation – Abridged Report* (2008), online: Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles <<http://www.accommodements.qc.ca/documentation/rapports/rapport-final-abrege-en.pdf>>.

⁵⁴ Kira Mirchandani & Evangelia Tastsoglou, *Toward a Diversity Beyond Tolerance* (2000) 61 *Studies in Political Economy* 49, online: St. Mary's University <<http://www.smu.ca/academic/arts/sociology/bios/documents/DiversityBeyondTolerance.pdf>>.

allegations by employing these tactics; making members of the profession virtually immune from large-scale self-inflicting media campaigns.

A New Paradigm of Intolerance

The terrorist attacks on Sept. 11, 2001 were a new paradigm for most Westerners and perhaps it is no surprise that the most similar incident in the collective consciousness, the attack on Pearl Harbor, was frequently cited.⁵⁵ Political responses between these events differed and officials appeared to present greater restraint in 2001. Some analysts claim that media coverage was more balanced and somewhat protective of civil liberties, which may explain in part the comparatively constrained reaction by officials. However, similar discourse was also found such as how to differentiate a Sikh from a Muslim, just as Chinese differentiated themselves from Japanese.⁵⁶ Media coverage made some efforts to avoid stereotypes of Arabs and Muslims, and made specific invocations of victimization and the innocence of interned Japanese during WWII.⁵⁷ At the same time, sweeping condemnations were issued internationally on the categorizations and generalizations made in the media about Muslims, most notably in Canada in its only nation-wide magazine.⁵⁸

One faith-based organization collected a number of published articles in Maclean's magazine from 2005-2007 in a comprehensive review that they claimed demonstrated a consistent pattern of establishing Muslims as an entity to be feared. Assertions of demographic concerns, the fifth column argument, undermining Canadian values, and even absurd notions of

⁵⁵ Deborah J. Schildkraut, *The More Things Change... American Identity and Mass and Elite Responses to 9/11* (2002) 23 *Political Psychology* 511 at 511-512.

⁵⁶ *Ibid.* at 522-24.

⁵⁷ Mary Ann Weston, *Post 9/11 Arab American Coverage Avoids Stereotypes* (2003) 24 *Newspaper Research Journal* 92 at 10.

⁵⁸ Khurram Awan, Muneeza Sheikh, Naseem Mithoowani, Ali Ahmed, Daniel Simard, *Maclean's Magazine: A Case Study of Media-Propagated Islamophobia* (2007), online: Canadian Islamic Congress <http://canadianislamiccongress.com/ar/Report_on_Macleans_Journalism.pdf> at 15.

bestiality, were all recorded.⁵⁹ As a result of their research, along with their previous documentation of the backlash against the Muslim community immediately following September 11 (discussed below), the Canadian Islamic Congress (CIC) waged human rights complaints against the magazine for the consistent publication of what they perceived to be discriminatory and inflammatory articles which did not publish one counterinterview.

In addition to media watches documenting discrimination, more objective and extensive forms of racism such as hate-based crimes have been reported. Unfortunately ample and adequate statistics on these crimes are lacking and unreliable.⁶⁰ For one, many victims are reluctant to report crimes in general and even more so to attribute them to personal characteristics such as ethnic origin. There are also many flaws and inconsistencies with respect to the identification process. A second factor is that not all Canadian police services uniformly report hate crimes and some do not record them at all.⁶¹ Nevertheless, in 2001 the Toronto Police Service Hate Crime Unit noted a 66% increase in hate crimes from the previous year.⁶² This spike in reported hate crimes is attributed largely to the events of September 11, 2001 according to the annual report.⁶³ Further, in 2000 there was only one reported hate crime against Muslims, whereas 2001 had a total of 57 reported victims of the Muslim faith. The CIC, which happens to be one of Canada's larger pan-Canadian Muslim organizations, collected data showing an increase of 1600% in hate crimes during the one-year period following September 11. Additionally, a slowly emerging body of polls, surveys and commissions that do indicate

⁵⁹ *Ibid.* at 4

⁶⁰ Denise Helly, *Are Muslims discriminated against in Canada since September 2001?* (2004) 35 *Canadian Ethnic Studies* 24.

⁶¹ *Ibid.*

⁶² Toronto Police Services Hate Crime Unit, *2001 Hate Bias Crime Statistical Report*, online: Toronto Police <<http://www.torontopolice.on.ca/publications/files/reports/2001hatecrimereport.pdf>>.

⁶³ *Ibid.*

that the tide of racism is indeed rising against Muslims in Canada and that they are likely the most discriminated against segment of society is surfacing.

The Bouchard-Taylor Commission was formed to response explore the controversy over reasonable accommodation in Quebec which was initiated and preceded by 13 cases involving the legal rights of minorities and characterizations framed by the Quebec media. Of these events the most notable was the 1995 decision of the *Commission des droits de la personne et des droits de la jeunesse* (CDPDJ) over the hijab.⁶⁴ The decision of the CDPDJ was that a ban on the hijab in schools had more disadvantages than benefits because it would force some Muslim parents to send daughters to a private school, thereby unduly limiting the right of these young Muslim girls to a free public education as guaranteed by Article 40 of the Quebec Charter. A social context of suspicion towards Muslims in Canada and insecurity regarding their presence developed between May 2002 and February 2006, arising from issues such as consideration of Shari'ah based family arbitration in Ontario. Society was closely monitoring developments such as this and largely through the only information vehicle available to them, the mainstream media. The Bouchard-Taylor Commission notes a significant escalation between March 2006 and June 2007 of media coverage relating to the issue of accommodation. It states that the discussion of reasonable accommodation of religious practices then extended into the question of integration of immigrants and minorities generally. The Bouchard-Taylor Commission calls this a "time of turmoil," and claims that 55% of cases reviewed on the subject of accommodation are found in this period alone. The media was especially insensitive towards the needs and safety of minorities during this time.⁶⁵

⁶⁴ Bouchard & Taylor, *supra* note 53 at 14.

⁶⁵ *Ibid.* at 14-16.

During this exceptionally intense “time of turmoil,” some members of the Canadian public began to feel as if they were wronged by the perceived privileges afforded to minorities and Muslims. This included a letter by the Action démocratique du Québec (ADQ) that claimed that the Quebecois would eventually fade into the background, and the life standards raised in Hérouxville pronouncement. The highpoint of media coverage during this period therefore coincided with landmark incidents of intolerance observed in Quebec. The result of the controversy was a negative public perception of the accommodation of religious minorities as illegitimate and a threat to Quebecois values. These negative attitudes were attributable to erroneous or partial perception of practices, based on media coverage fuelling the controversy where blatant discrepancies between fact and perception were noted. The authors contend that the accommodation crisis would not have occurred in the absence of distortions between facts and perceptions, with the media specifically named as a major cause of such distortions.⁶⁶ The Bouchard-Taylor Commission recognized that Muslims, especially Arab Muslims, are most affected by discrimination, and that the cases of accommodation regarding the Muslim community received the most media coverage, largely due to a climate of fear among the public after September 11, 2001 which fostered a sense of suspicion towards innocent Muslim citizens. The underlying causes of the crisis at hand included the role played by the media. Muslims are also under-represented in political staff, boards of directors and in other decision-making centres, and scarcely, if ever, present in the media. The inability of Muslims to express themselves in the media, according to the Commission, creates a stigmatization of their community, in turn creating stereotypes and discrimination. Minor incidents are exploited by the media to create negative images of minorities, which are attributed to individual members of the group, giving credibility to stereotypes and discriminatory behaviour. The solution to overcoming

⁶⁶ *Ibid.* at 14-17, 21.

Islamophobia according to the Bouchard-Taylor Commission is undertaking “vigorous soulsearching” to avoid subjecting Muslims to unjust treatment as they have during this period, and instead draw closer towards them, which is the true solution to avoiding marginalization and radicalization.⁶⁷ Other studies also indicate an acute stage of Islamophobia in Canada today. The Leger Marketing Survey in early 2007 ranked Arabs as highest for prejudicial views among Canadians, well above other minorities including Jews and blacks.⁶⁸ At the same time, the majority of Canadians believe that Canada is less racist than it was 10 years ago, and half think that racism is not a significant problem.⁶⁹ Other polls show that this is not the case, and that attitudes towards accommodating religious minorities and immigrants are actually getting worse over time, especially towards non-Christian religious minorities.⁷⁰ This might be because most Canadians do not consciously realize the new forms and targets of racism that they themselves harbour and profess.

Canadian Legislation and Legal Remedies

Firstly, Canada’s *Multiculturalism Act* (1988) states: “the Government of Canada recognizes the diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism.” This is a distinctly Canadian creation making issues pertaining to racial and cultural diversity of national concern. Though it does not have a direct legal effect per se, it is a guiding Canadian principle that is intended to be manifested throughout all government decision-

⁶⁷ *Ibid.* at 73, 81, 83-84

⁶⁸ Leger Marketing. *Racial Tolerance Report* (2007), online: Sun Media <<http://www.legermarketing.com/documents/SPCLM/070119ENG.pdf>> at 7.

⁶⁹ *Ibid.* at 9-10

⁷⁰ Andrew Chung, “Attitudes toward immigrants not softening, polls show” *Toronto Star* (30 December 30, 2009), online: Toronto Star <<http://www.thestar.com/news/canada/article/744086--attitudes-toward-immigrants-not-softening-polls-show>>.

making and ideally, Canadian civil society. What can be considered a second Canadian principle in this context, is s.15(1) of the *Charter* concerning equality rights. This provision guarantees equality for all individuals before the law and allows for occasional distinctions to be made in order to treat all equally. Thus, it recognizes that equality may, at times, require unequal treatment. One of the seminal judgments presently dictating interpretation of this provision, *Andrews v. Law*,⁷¹ held that any piece of legislation may be struck down as discriminatory whether the discrimination is present on its face or through its effect. Like equality, freedom of expression is another fundamental right enshrined in the *Charter*. It is this constitutional guarantee that lies at the heart of the debate between propaganda, creating new hate groups and minority communities. Section 2(b) guarantees all forms of expressive content, excluding violence, but which would quite clearly include all forms of propaganda. However, the *Charter* is distinguishable from like legislation, such as the US Constitution, in that its crafters included a provision that allows for limits to be placed on individual rights and freedoms. Specifically, section 1 of the *Charter* states: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”⁷² Therefore, all the rights contained therein may be limited in view of overriding public policy goals that outweigh the benefits of upholding any one of the inherent guarantees.

Shifting towards criminality, section 718.2 of Canada’s *Criminal Code*⁷³ recognizes that offences perpetrated against individuals because of their ethnic origin or similar immutable characteristics are more heinous and require more forceful reprimand as it permits elevated sentencing when there is “evidence that the offence was motivated by bias, prejudice or hate

⁷¹ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

⁷² *Canadian Charter of Rights and Freedoms* (1982) s.1.

⁷³ R.S., 1985, c. C-46.

based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.” These prescriptions validate and attempt to address minority group concerns as victims of malicious acts of racialized discrimination. Further, sections 318 and 319 are colloquially known as Canada’s hate speech laws as they safeguard against hate propaganda and messages of genocide. Accordingly, like all criminal code offences, the requisite burden of proof for a criminal conviction is proof beyond a reasonable doubt. Additionally, consent of the Attorney General is an added requirement for the initiation of any proceeding under either of these offences. In contrast, civil law demands a lower standard of proof for all civil complaints. A plaintiff must prove his/her case to the satisfaction of the trier of fact based on a balance of probabilities. In civil law, there is a recognized cause of action for individual claims of libel, but no common law recognition of community defamation exists. Therefore, civil courts afford no remedy to ethno-religious or other minority groups for slander directed towards the group as a whole. These limited civil law remedies are bifurcated by Ontario’s *Libel and Slander Act*⁷⁴ which creates a statutory element in addition to reliance on common law jurisprudence. It was created specifically to govern libel disseminated through newspapers and broadcasts generally. It operates under a compensatory framework but like the common law, its use is primarily for individuals and not group actions. Lastly, many human rights codes contain provisions that may be used to curb and remedy discriminatory messages or communications which may include newspaper editorials. For example, section 13(1) of the *Canadian Human Rights Act*⁷⁵ contains a provision aimed at remedying hateful messages and other forms of communication likely to expose target groups to hatred or contempt. Human rights commissions are of federal and provincial and territorial

⁷⁴ R.S.O. 1990, c. L.12.

jurisdictions maintaining independent codes, however, many contain similar if not nearly identical provisions. Sections geared towards hateful messages and other forms of communication, however, are one of the few areas where Codes differ greatly between provinces and pertinent provisions are not implemented uniformly. Although there are only a few examples where provincial human rights legislation contain provisions that capture hateful or contemptuous messages, as stated, federal human rights legislation contains such a provision which may be used by all citizens, and which has been upheld under constitutional constitutional scrutiny by the Supreme Court of Canada in the 1990 case of *Canada (Human Rights Commission) v. Taylor*.⁷⁶ With respect to remedies, the *Canadian Human Rights Act* grants a Tribunal the power to give a cease and desist order for any activities contrary to section 13; compensate victims specifically identified up to \$20,000 if the actions of the respondent have been willful or reckless and; pay a penalty of not more than \$10,000.⁷⁷

Human Rights Commissions and Freedom of Expression

Both the cartoons in the *Western Standard* and the content in *Maclean's* were targets of independent human rights complaints in Canada waged by members of the Muslim community. It is important to note that while the complaint against the *Western Standard* and its publisher Ezra Levant was based solely in the province of Alberta, the complaint against *Maclean's* was filed with the British Columbia, Ontario and Canadian human rights commissions. Given the lack of empowerment of the communities in question, the legality and historic use of human rights commissions for identical purposes and their given mandates, they would appear to be

⁷⁶ [1990] 3 S.C.R. 892

⁷⁷ Canadian Human Rights Commission, *Special Report to Parliament: Freedom of expression and Freedom From Hate in the Internet Age* (2009) online: Canadian Human Rights Commission <http://www.chrc-ccdp.ca/pdf/srp_rsp_eng.pdf>.

appropriate venues to voice community concerns. The Ontario Human Rights Commission has already weighed in on the issue saying that they do not have jurisdiction to hear the case, but still strongly condemned the content as Islamophobic. Part of this discrepancy arises in differences between the *Ontario Human Rights Code*⁷⁸ and the *British Columbia Human Rights Code*,⁷⁹ the latter allowing for hearings based on discriminatory publications under their s. 7(1). The Ontario Commission did express the intent to broaden their mandate in the future to work to prevent hate.⁸⁰

Both the *Western Standard* and *Maclean's* cite s. 2(b) freedom of speech rights in their defence but such a reading is simplistic and misleading. As mentioned, the *Charter* operates with a limitation clause in s.1, declaring “reasonable limits... as can be demonstrably justified in a free and democratic society.” Part of this limitation is ensuring a proper balance between parties, recognizing the more poorly situated position of minorities. Dickson, C.J. of the Supreme Court of Canada explicitly said,⁸¹

In interpreting and applying the *Charter* I believe that the courts must be cautious to ensure that it does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons.

The imbalance of powers between the parties here is so acute that one of the complainants was intimidated into actually withdrawing after the respondent broadcasted tribunal proceedings and orchestrated an online anti-human rights campaign, even calling for the disbandment of tribunals and the removal of s. 7(1) from the B.C. Code. These tactics by “free speech” advocates are employed to discourage public criticism and quell legal proceedings. They are effectively acting

⁷⁸ R.S.O. 1990, c. H.19.

⁷⁹ R.S.B.C. 1996, c. 210.

⁸⁰ Ontario Human Rights Commission, *Commission Statement Concerning Issues Raised by Complaints Against Maclean's Magazine* (2008), online: OHRC <<http://www.ohrc.on.ca/en/resources/news/en/resources/news/statement>>.

⁸¹ *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713 at p. 78.

against free speech being objectively challenged by the law and therefore against any speech that is against theirs.⁸²

Free speech fosters a vibrant and creative society, and vigorous and open debate is essential to democratic government.⁸³ The exception is hate speech, and the Supreme Court of Canada preferred that these issues are addressed by human rights tribunals to avoid the criminalization of speech.⁸⁴ But the courts also note the detrimental effect of hate propaganda to the goals of democracy,

90 ... expression can work to undermine our commitment to democracy where employed to propagate ideas anathemic to democratic values. Hate propaganda works in just such a way, arguing as it does for a society in which the democratic process is subverted and individuals are denied respect and dignity simply because of racial or religious characteristics. This brand of expressive activity is thus wholly inimical to the democratic aspirations of the free expression guarantee.

91 ... one must be careful not to accept blindly that the suppression of expression must always and unremittingly detract from values central to freedom of expression.

Although Canadian courts seek a minimal impairment of free speech, they will not “take a restrictive approach to social science evidence and require legislatures to choose the least ambitious means to protect vulnerable groups.”⁸⁵ Imbalances of power are more pronounced when dealing with the only national news magazine, or the Canadian media in general - which is increasingly held in ownership of a few small corporations. Perhaps more disturbing is the expressed intent by media groups to deliberately shift the fabric of Canadian society by changing the way people look and think about the world. Canada’s largest media company, readily identifiable with a specific segment of the political spectrum, has been identified as making a concerted effort to change the fabric of Canadian society. Although they deny a reporter bias, the comingling of commentary with reporting and visibility afforded to the former makes such

⁸² John W Dozier, *Copyright Rights and Free Speech* (29 January 2008), online: Dozier Internet Law, PC <<http://johndozierjr.typepad.com/dozierinternetlaw/2008/01/dozier-intern-3.html>>.

⁸³ *R. v. Keegstra*, [1990] 3 S.C.R. 697 at p. 10 [“Keegstra”].

⁸⁴ *Ibid.* at paras. 128, 326.

⁸⁵ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at p. 75.

distinctions minimal.⁸⁶ There might be some solutions within the market. Due to recent financial difficulties, the media conglomerate is experiencing a change of ownership, which could potentially lead to more balanced coverage.⁸⁷

The legal system may also play a role in providing solutions. The effect of legal interventions only result in less overt forms of racist language, and instead creates a more subtle racism and prejudice that has hidden and delayed effects observable in the long-term.⁸⁸

However, even the smallest tribunal case with the least harsh of sanctions can send an important message to society as to where the boundaries of tolerance are. But even human rights commissions are struggling to identify the boundaries of hate speech. The Saskatchewan Human Rights Commission is currently appealing the Saskatchewan Court of Appeal decision in *William Whatcott v. Saskatchewan Human Rights Tribunal*,⁸⁹ which dealt with negative messages towards members of the homosexual community that were held to not violate s. 14(1)(b) of the *Saskatchewan Human Rights Code*.⁹⁰ Hunter J.A. stated for the court,

55 In sum, neither the perspective of the person who sends the message, nor the sensibilities of the person who may be the target of the message, has a part to play in determining the effect of the message. The utilization of a subjective approach would either "create an unacceptable chilling effect on free speech" or make the provision "inapplicable to even the most offensive and dangerous messages and, consequently, of defeating its purpose". An objective approach is to be followed. The key to an objective examination of the offending material is to consider the message in context, i.e., after giving careful consideration to the situations and conditions in which the message was delivered.

...

74 To use the derogatory form of a word is not by itself hatred. Many in Canadian society would find it offensive, may refrain from using such a word and not associate with persons who use the word. In balancing the right of freedom of expression against the limitation contained in s. 14(1)(b) of the Code, one must not seize on a word or phrase in isolation and censor persons who use the offensive form of a word or

⁸⁶ Lawrence Martin, "As the media tilt rightward, so will the country" *Globe and Mail* (14 February 2008), online: *Globe & Mail* <<http://www.theglobeandmail.com/servlet/story/RTGAM.20080214.wcomartinopen14/BNStory/specialComment/home>>.

⁸⁷ Andrew Willis, "Star vs. Star for CanWest papers" *Globe and Mail* (6 May 2010), online: *Globe & Mail* <<http://www.theglobeandmail.com/globe-investor/markets/streetwise/star-vs-star-for-canwest-papers/article1558591/>>.

⁸⁸ Bernard Guerin, *Combating Prejudice and Racism: New Interventions from a Functional Analysis of Racist Language* (2003) 13 *Journal of Community & Applied Social Psychology* 29 at 23-30.

⁸⁹ *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26; [2010] S.J. No. 108 ["*Whatcott*"].

⁹⁰ S.S. 1979, c. S-24.1

phrase in a publication. There, of course, will be circumstances in which a word or phrase in another context, or without any context, may well breach s. 14(1)(b) of the Code. This does not give a license to use such words or phrases, but neither is it obviously hatred within the meaning of s. 14(1)(b) of the Code.

In his concurring opinion, Smith J.A. stated,

97 It is reasonable to conclude, in my view, that although **the general context and aims of the Code must be taken into account** in determining whether any impugned expression falls within the prohibition in s. 14(1)(b) and **in particular the causal connection between the expression and the discriminatory practices** otherwise prohibited in Part II of the Code, **this requirement may be met by a finding that the causal effect of the expression is**, for example, **to promote stereotypes** that themselves jeopardize equal opportunities for employment, housing, education, and so on...

134 ...the fact that it is the activity, rather than the individuals themselves, to which the polemic in the impugned flyers is directed, is of considerable significance when considering the broad context of the flyers, and, therefore, how they must be interpreted for the purpose of s. 14(1)(b). Moreover, it is also of significance in considering the s. 2(b) value that is in issue in their suppression, for this reason: **questions of sexual morality are questions intricately involved in public policy** as well as individual autonomy. For this reason, **in a free and democratic society, they lie near the heart of speech worthy of protection** from the chilling effects legislative prohibition.
[emphasis added]

If propagators of hate speech in Canada were to take note of this passage, they would realize that hateful messages could still receive constitutional protection if they are cloaked in a framework of public policy. The position of the Saskatchewan Human Rights Commission is that although the Code protects religious freedom and freedom of expression, the wording used in *Whatcott* was so extreme that they were irreconcilable with the objectives of promoting equality and eliminating discrimination. The current decision by the Court of Appeal has in their view impaired the ability of the Commission to achieve these objectives,⁹¹

The anti-hate provisions of human rights legislation have been the subject of recent public debate. The Saskatchewan Human Rights Commission is seeking direction from the Supreme Court on the proper balance to be struck between the right to free expression and the right to freedom from the harmful effects of publications which incite discriminatory actions or contain extreme, discriminatory words and images... Because of the *Whatcott* decision, the Commission believes its current ability to accept hate speech complaints is very limited.

⁹¹ “SHRC Applies to Supreme Court on Hate Speech Ruling,” *Saskatchewan Human Rights Commission*, online: SHRC <<http://www.shrc.gov.sk.ca/pdfs/Whatcott.pdf>>.

How Stereotypes can Affect Policy

Stereotyping terrorism creates the perception of an inevitable clash of civilizations. Japanese internment was not motivated by military necessity, but rather of political leadership, wartime hysteria, and racial prejudice.⁹² Political influence can address components of hysteria and race-based policies to mitigate the adverse effects of stereotypes. Hysteria and fear can best be addressed by elaborating on the complexities of current political crisis. Politicians should dispel the notion that global conflicts are grounded in theology. Intelligence experts claim that even if Islam did not exist, the colonial history, cultural differences, and economic disparities would still result in an identical political situation.⁹³ Some also claim that current terrorist threat is disproportionately inflated by politicians and the military industry for personal benefit.⁹⁴ Others state that global terrorist threats have little influence and connection to each other. Terrorist inspiration comes instead from an unlikely source – domestic media that create feelings of alienation in society for marginalized groups.⁹⁵

Politicians should also play a more active role in opposing race-based policies, specifically racial profiling initiatives. Secret detentions are compared by some to the curfews and other measures that actually preceded Japanese internment, and similar justifications have backed both efforts.⁹⁶ Perhaps more concerning is that while 60% of Americans thought racial profiling was unfair, unwise, and wanted it eliminated, before Sept. 11, 2001. But after, 60%

⁹² Okihiro, *supra* note 19 at at 56.

⁹³ Graham E. Fuller, “A World Without Islam” *Foreign Policy* (January/February 2008), online: Foreign Policy <http://www.foreignpolicy.com/story/cms.php?story_id=4094>.

⁹⁴ John Mueller, “Terror, without terrorists” *Ottawa Citizen* (25 April, 2008), online: Ottawa Citizen <<http://www.canada.com/ottawacitizen/news/opinion/story.html?id=451cde94-97e5-4a6c-a01c-9acfddc44b60&p=1>>.

⁹⁵ Marc Sageman, “The Next Generation of Terror” *Foreign Policy* (March/April 2008), online: Foreign Policy <http://www.foreignpolicy.com/story/cms.php?story_id=4168>.

⁹⁶ Okihiro, *supra* note 19 at at 57-8.

thought it was acceptable to racially profile Arabs and Muslims, including minorities that had experienced profiling themselves.⁹⁷ Important lessons of hit rate studies on racial profiling were quickly forgotten. Racial profiling based on ethnic or racial appearances actually make policing worse, significantly decreasing success rates and efficiency.⁹⁸ And although these practices were legally challenged unsuccessfully, it was law enforcement establishment itself that realized it was not in their best interests to utilize racial profiles.⁹⁹

Prejudicial thinking fostered by popular media can also find its way into the courtroom. US Supreme Court Justice Antonin Scalia reportedly justified the use of torture in combating terrorism, citing the effectiveness of a fictional counter-terrorism character, Jack Bauer, on the television sitcom “24.” He has repeated these statements while participating on a panel on the subject at a conference in Ottawa.¹⁰⁰ Not only would such efforts run contrary to Article 2 of the *UN Convention Against Torture*, but torture techniques, like racial profiling, are highly ineffective.¹⁰¹ Perhaps the best illustration is the false confessions provided by Maher Arar, an Arab-Canadian citizen deported by the US and tortured in Syria.¹⁰² In addition to providing faulty information and creating innocent convictions, torture tends to foster a bloodlust within the torturer.¹⁰³ Arguably, dehumanization found in cases like the Abu Ghraib abuses require stereotypes as a necessary prerequisite to justifying and accepting inhumane treatment.¹⁰⁴ But

⁹⁷ David A Harris, *Racial Profiling Revisited: “Just Common Sense” in the Fight Against Terror?* (2002) 17 *Criminal Justice* 36 at 36-37.

⁹⁸ William H. Press, *Strong profiling is not mathematically optimal for discovering rare malfeasors* (2009) 106 *PNAS* 1716. See also Peter Siggins, *Racial profiling in an age of terrorism* (Santa Clara, CA: Markkula Center for Applied Ethics, 20 March, 2002), online: Santa Clara University <<http://www.scu.edu/ethics/publications/ethicalperspectives/profiling.html>>.

⁹⁹ Harris, *supra* note 96 at 38.

¹⁰⁰ Joan Biskupic, “Scalia’s comments on torture latest taste of bluntness” *USA Today* (14 February 2008) p. A.4.

¹⁰¹ Anne Applebaum, “The Torture Myth” *The Washington Post* (12 January 2005) P. A21, online: Washington Post <<http://www.washingtonpost.com/wp-dyn/articles/A2302-2005Jan11.html>>.

¹⁰² Jeannine Bell, *Behind This Mortal Bone: The (In) Effectiveness of Torture* (2008) 83 *Ind. L.J.* 339 at 352.

¹⁰³ *Ibid.* at 357.

¹⁰⁴ Michelle Brown, ‘Setting the Conditions’ for Abu Ghraib: *The Prison Nation Abroad* (2005) 57 *American Quarterly* 973 at 988.

when the highest levels of the judiciary in the most power country in the world are influenced more by popular culture than best practices, the role of the law in media exchange raises important questions. Ultimately then the responsibility for addressing these issues falls squarely on the elected officials. The Committee on the Elimination of Racial Discrimination stated in their 2002 observations of Canada that in “the aftermath of the events of 11 September 2001 Muslims and Arabs have suffered from increased racial hatred, violence and discrimination.”¹⁰⁵ Canada was encouraged to ensure that anti-terrorist legislation does not have negative consequences such as racial profiling for minority groups, reforms to the Canadian human rights commission to ensure that complaints are being properly addressed, and reinforcement of Canadian hate speech legislation. The role of the Prime Minister in accomplishing all of this was central for preventing racism in Canada.¹⁰⁶

¹⁰⁵ UN CERD, 61st Sess., 1547 Mtg., UN Doc. A/57/18 (2002) at para. 338.

¹⁰⁶ *Ibid.* at paras. 338-339.

Conclusion

Freedom of speech is a highly valued principle in Canadian society. Even as it is valued, Canadian courts have noted its dangers,¹⁰⁷

Freedom of expression is seen as a means of promoting a "marketplace of ideas", in which competing ideas vie for supremacy to the end of attaining the truth... [but] there is no guarantee that the free expression of ideas will in fact lead to the truth. Indeed, as history attests, **it is quite possible that dangerous, destructive and inherently untrue ideas may prevail, at least in the short run.** [emphasis added]

The propaganda model requires an increasingly concentrated media motivated by profit over truth, and preoccupation with negative events to instil fear.¹⁰⁸ The most blatant forms of hate speech will still be caught by the *Criminal Code*. What is less clear is how secular laws will deal with more subtle forms of propaganda towards faith communities.

As societal attitudes, behaviours and sentiment evolve so will the form and manifestation of propaganda. Research has demonstrated that racism of the present is just as virulent as the past yet less detectable. Therefore, propaganda may be spread through ostensibly innocuous commentaries, opinion pieces, news stories and various other printed media. This can be collectively accomplished, purposefully or unknowingly, through the dominant discourse prevalent in the media today. An example of this with reference to the global Muslim community has been the application of epithets such as 'islamist', 'fundamentalist', 'terrorist', 'jihad', 'religious fanatic', 'illiberal' to name some of the more commonly used. Of course nearly every time these racialized designations are employed, they are enmeshed within legitimate and fair journalistic practice. The printed exposition may be of some value but the use, and consistent utilization of these terms is unnecessary and often unwarranted.

¹⁰⁷ Keegstra, *supra* note 83 at 174.

¹⁰⁸ Edward S. Herman, *The Propaganda Model: A Retrospective* (2003) 1 Against All Reason 1, online: Against All Reason < <http://human-nature.com/reason/01/herman.pdf>>.

Furthermore, as the British Columbia Human Rights Tribunal duly noted in *Abrams v. North Shore Press*,¹⁰⁹ a complaint filed against a local newspaper for publishing a string of invective opinion pieces, articles taken as a collective are a major factor contributing to racist discourse; thus in isolation these words may be correctly viewed as relatively harmless. The cumulative effects, however, taken to a larger scale, can theoretically be devastating and widespread if the media industry or large-scale conglomerates collude in the dissemination of racist propaganda.¹¹⁰ This is especially true if these messages tap into historic stereotypes that tap into patterns of persecution.¹¹¹

As propaganda becomes increasingly complex it also becomes more subtle, cloaked and masqueraded, and drawing links to its effects becomes an increasingly elusive feat. Beyond generalized research on racism, stereotyping, the media and the converging of academic disciplines, it is extremely difficult to unequivocally prove the causal effects of today's racist propaganda. Because of this, the arguments of 'free speech' advocates are strengthened and often legitimized; that is, expression should not be suppressed or censored except possibly in the most extreme cases. In all other instances the hurt feelings of the targeted group(s) or individuals as a result of others views and opinions must be disregarded to uphold the fundamental right of expression.

We do know, however, that some members of the Canadian public responded to the Maclean's piece with calls for genocide, coincidentally posted on the Western Standard website,¹¹² a clear example of an inextricable link of cause and effect. One way to disentangle contemptuous, hate-filled, stereotypical, racist propaganda from legitimate commentary might be

¹⁰⁹ *Abrams v. North Shore Free Press Ltd.* (c.o.b. "North Shore News"), [1999] B.C.H.R.T.D. No. 5

¹¹⁰ *Ibid.* at paras. 45, 69.

¹¹¹ *Ibid.* at para. 63.

¹¹² Bonnell, *supra* note 40.

through education. Through this approach the responsibility ultimately then falls on the Canadian citizen to educate themselves outside of this discourse. Another approach is to regulate the profession through a mandatory regulatory body, in the same way Ontario's voluntary Press Council (OPC) has been adjudicating and resolving complaints for the past 30 years. This could also be accomplished through peer-review, similar to how academic theses are scrutinized before publication in academic journals. Of course the process would have to be fitted to the fast-paced world of daily news and commentary. Undoubtedly either of these approaches to combating propaganda is less restrictive than state intervention as the absence of any monetary penalty, legislative sanction, and public reprimand will reduce the potential chilling effect that comes through the transgression (or fear thereof) of government law. Until either of these proposed suggestions are implemented or any others, human rights commissions may be one of the only feasible remedies to address minority concerns as recalcitrant and incredulous large-scale news outlets have the power and wealth to simply dismiss and ignore any allegations or complaints. It is true as the frequency of human rights commissions for this use increase, the potential for misuse, false claims, unfair judgments and a potential chilling of expression may occur. However, this does not necessarily mean that they are not suitable venues for adjudication. A review and debate of the process may be in order to ensure consistency, reliability and the wading through of false claims.

The power imbalance and the historic marginalization endured by minorities must be an unshakeable forethought. When media personnel or members of the majority assert that minority members are more sensitive, this may be true, however, it can be directly linked to their feelings of marginalization and exclusion of sense of *otherness* within the cultural and representational

systems.¹¹³ Members of socially empowered groups need not be as gravely concerned about stereotypes and distortions as a corrupt Anglo-Canadian politician is not perceived as stigmatizing an entire Anglo community; however, nearly every negative image or representation of an individual belonging to minority group quickly becomes charged with symbolic meaning.¹¹⁴ Moreover, Canada prides itself in multiculturalism and this notion is not only reified but sustained through legislation. Therefore, it is incumbent on the government and should be on all Canadian citizens to take reasonable steps to facilitate the inclusion of all people on equal footing in this democratic and pluralistic society. Rebutting stereotypes is a gradual process but requires breaking the silence - even among academics and officials.¹¹⁵ Goebbels himself knew that that was the best defence against the effects of propaganda was awareness. But this awareness is even more indispensable in a liberal society, as the techniques are likely less obvious, and therefore more effective.¹¹⁶

¹¹³ Ella Shohat & Robert Stam, *Unthinking Eurocentrism: Multiculturalism and the Media* (London: Routledge, 1994).

¹¹⁴ *Ibid.*

¹¹⁵ Shaheen, *supra* note 36 at 31.

¹¹⁶ Taylor, *supra* note 3 at 210.