Human Rights Commission

Incitement to Racial Hatred: The International Experience

Occasional Paper No. 2

October 1982

Australian Government Publishing Service
Canberra 1982

ISSN 0810-0314 ISBN 0 644 02222 1
Reprinted 1986

This is the second of the Human Rights Commission's Occasional Papers series. It was prepared within the Commission by Dr Ralph Pettman, a member of the project group that has been working on this topic, and is a companion piece to Occasional Paper No. 1, "Incitement to Racial Hatred: Issues and Analysis".

Occasional Papers are issued by the Commission from time to time to deal in depth with a particular problem or subject. In some cases, as with this paper, they are intended to provide an analytic review of a subject, raising what are seen to be key issues and arguments. In other cases, they may set out facts or background to assist in a better understanding of a problem or a subject area. Their overall objective is to promote greater awareness and public discussion of human rights.

None of the views that may be expressed or implied in the Occasional Paper series are necessarily those of the Human Rights Commission or its members, and should not be identified with it or them.

Printed in Australia by C. J. Thompson, Commonwealth Government Printer, Canberra

Table of Contents

	Page
Introduction	1
The United Kingdom	4
New Zealand	11
Canada	15
United States	25
Europe	30
— Belgium	31
— France	31
The Netherlands	32
Reference Notes	33
Appendices	
1. Racial Discrimination Bill 1975	41
2. Racial Discrimination Act 1975	42
3. International Covenant on Civil and Political Rights	43
4. Comparative Table of International Legislation	44
5. International Convention on the Elimination of All Forms of Racial Discrimination	49
6. U.K. Race Relations Act (1965)	50
7. U.K. Race Relations Act (1976)	51
8. N.Z. Race Relations Act (1971)	53
9. N.Z. Race Relations Act (1977 Amendment)	54
10. Canadian Criminal Code (1970)	55
11. Canadian Human Rights Act (1977)	58
12. Manitoba Human Rights Act (1974)	59
13. Saskatchewan Human Rights Code (1979)	60
14, British Columbia Civil Rights Protection Act (1981)	61
15. Illinois Criminal Code, Ill. Rev. Stat., Ch.38, paragraph 471 (1949)	63
16. Rhode Island Criminal Offences (1981)	64
17. Council of Europe Consultative Assembly: Draft Model Law (1966)	65

INCITEMENT TO RACIAL HATRED: THE INTERNATIONAL EXPERIENCE

Introduction

It is not at present against any Australian law to incite racism; to disseminate, that is, racially discriminatory, hostile or even violent ideas (the concept of race broadly construed to embrace that of ethno-religious or national groups as well). It is also not illegal to organise to racially hurtful and hateful ends.

When directly confronted with such problems, Australia has consistently maintained a non-interventionist stance. In debating the nation's own legislation on racial discrimination for example , the clause on incitement to racial hatred that was a part of the original bill was ultimately dropped.' And in ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, in 1975, Australia as a consequence reserved its position on Article **4** which deals with these issues.

Despite such decisions, one should note (as the Parliamentary record amply testifies) that Australian opinion has been divided on what is involved. There are those who see the need for legislation as a pressing and immediate one. They tend to consider racial prejudice as "endemic" to our way of life. Though it goes "largely unreported, ignored or not perceived as such ...", as a recent local report put it, "racial discrimination and racial prejudice perpetuate inequality on a vast scale and fuel hostility which is often not far short of communal violence".[2] Awareness of these phenomena and concern about their effects tend to prompt a sense of urgency, and the desire to do something concrete and comparatively comprehensive about them.

There are others however who would resist such logic. Democratic life relies, they rather argue, on free speech. Inequality and hostility may well be the price one has to pay to maintain something very precious - namely, the freedom of opinion and expression, and the flow of information and ideas upon which democratic discourse depends. Legislation that would make incitement to racial hatred into a crime would erode these basic values and is unacceptable, they say, on these grounds alone. Though the problem remains of what to do about groups and individuals who exploit such freedoms and who would ultimately expect to dispense with them for their own often autocratic purposes, whatever these may be, there is always the possibility of bringing a civil action of a personal sort in such a case. And there are public ordinances like the crimes and police offences legislation, that exist to control incitement misdemeanours in general - breaches of the peace, unruly demonstrations, the use of threatening and abusive language and any riotous outcome.

There are provisions that look like they might be applied in this regard. In practice, however, they have not yet been. Under section 9 of the Racial Discrimination Act 1975, for example, it is unlawful to do "any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin". While it would be drawing a rather long bow, it might be argued that "any act" could be construed as including incitement to racial hatred. The same section states further, however, that such an act, to be unlawful, would have to have the "purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of any human right or fundamental freedom". A human right or fundamental freedom, as specified in Article 5 of the Convention, includes rights, for example, to security of person, to freedom of movement, to housing and to access to places and services available to the public generally.

Section 16 of the Racial Discrimination Act makes it unlawful to publish or display any "advertisement or notice" indicative of a racially discriminatory intention, and this, as well as section 17 (wherein it is illegal to incite anything the Act specifically prohibits), if read in the light of section 9 mentioned above, might also make incitement to racial hatred a crime. Again, however, one would need to establish the nullification or impairment of a specific right or freedom for . the combination to apply.[3]

Article 17 of the International Covenant on Civil and Political Rights also proclaims a right to legal protection against attacks on one's personal "honour and reputation". It is most unlikely that this would wear in practice as an appeal against racial incitement though. Likewise with Article 2, the first part of which guarantees that the rights in the Covenant be recognised "without distinction of any kind, such as race ..."; or with Article 19(3), which provides for restrictions on free speech in respect of the rights and reputations of others, and the protection of the public peace.[4]

In 1981 Australia did ratify this Covenant, Article 20 of which also declares that "(a)ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Once again, however, in our instruments of ratification, we reserved the right not to introduce further legislation on the matter, and so far there has been none.

Should Australia have legislation against incitement to racial hatred - yes or no? Those who ask this question, . whatever their answer happens to be, typically turn to the experience of comparable politico-judicial systems elsewhere to confirm their feelings. Their basic list of relevant examples includes the United Kingdom, New Zealand and Canada; more remotely, the United States; and more remotely again, a clutch

of European .countries like Belgium, France and the Federal Republic of Germany. Such appeals are scanty at best, and selectively misleading at worst; hence the need to survey with some care the kind of .anti-incitement legislation that already exists in the world (for a comparative table see Appendix 4), and the need to establish how effectively it has been enforced and the advantages and disadvantages encountered in taking recourse to legal sanctions in such. a. sensitive area of human affairs. We shall begin by turning to the country closest to us in terms of example and. tradition,

The United Kingdom

In Great Britain incitement to racial hatred was first made a crime as such in 1965. .(Appendix 6). Before then offences of this kind - that is, the promotion of bad- feelings against social minorities - fell under common law provisions dealing with seditious libel, public mischief and defamation.[5] In statutory terms there was also the Public Order Act, particularly section 5 (designed in its original 1936 version to stall the British Union of Fascists). - This is not to say that no one at the time saw a need to _deal explicitly with the creation of racial hatred (or religious hatred for that matter) because they did.[6] They were unsuccessful, however, in having such a need •officially met.

The Conservative Government revised the Public Order Act in 1963, stiffening its penalties but rejecting at the same time initiatives to include specific reference to incitement of this sort. The Labour Party did not feel so constrained, however, and in response to a ground-swell of support on the issue[7] pledged in its 1964 election manifesto to back up section 5 with legislation that allowed the authorities to punish the perpetrators of talk or print (but not, one should note, radio or television broadcasts) intended to and likely to feed racial hatred and therefore intended to and likely to cause

public disorder. The outcome was section 6 of a more comprehensive Race Relations Act, part of the Labour Party's drive against racial discrimination in general. Under the previous legal regime, as Lord Stonham observed, "highly offensive remarks ... [could have been] disseminated and a scurrilous campaign mounted on a sufficient scale to produce a considerable effect, without falling foul of the law." It was argued that Someone "determined" enough, with "sufficient backing", could have exploited the Situation unscathed.[8] While the law as it stood allowed the government to penalise speakers and publishers who threatened the peace or impugned somebody's good name, it did nothing to stop hatemongers or those who defamed whole social groups. To pre-empt such behaviour - one made urgent by the influx of non-white Commonwealth immigrants, and by attendant ·racist tension and ultimately rioting in Nottinghill Gate and Nottingham - it was felt that something had to be done: the question was, what?

"The problem", as Stonham said, "as always in matters of this kind, is to frame a provision which will penalise indefensibly scurrilous and inflammatory speeches and publications without curtailing legitimate freedom of comment and controversy".[8] Where does one draw the line? What, for example, does one do about the dissemination "not of insults, but of ideas based on racial superiority, or facts, whether true or false, which may encourage racial prejudice or discrimination n?10

The solution, as the Labour Party saw it, was to define with great care_the circumstances under which anti-incitement legislation might apply. To be Caught under the intended Act, the words spoken or the written matter disseminated had to be public, had to be expressed in terms discernibly "threatening, abusive or insulting", and had to be intended to And likely to stir up -"hatred" (anything less like hostility, ridicule or contempt did not apply) against a section of the

public distinguished by its colour, race, or ethnic or national origins. In general what it forbade, as Secretary of State Soskice put it, was "public abuse motivated by an actual intent to incite to hatred, abuse likely to stir up hatred on account of something which nobody can help, his origin."[11] Only the Attorney-General was empowered to institute prosecution proceedings, furthermore, a provision that was designed to prevent petty and frivolous litigation.

The Bill was basically about public order. Its key clause was meant not to penalise petty racism - rife in Britain and not felt to be a fit subject for legislation anyway - but to deal with the "more dangerous, persistent and insidious" forms of propaganda campaigns; the campaign which, "over a period of time engenders the hate which begets violence" [12.] It was meant to deal with fascists, and other such dedicated intolerants, who lie beyond the reach of administrative conciliation or mediation procedures. Though probably statistically quite small, the government wanted to hive off such groups from society at large - to neutralise and encyst them; to deal "selectively" with their "leaders and organisers" rather than to harass the ordinary "man in the street". It wanted to drive racism, as one Labour member was to argue ten years later, "into the gutter where it belonge.[13]

As to free speech, "I would earnestly ask those who entertain sincere anxieties", Soskice argued, to consider again whether their anxieties are justified. What is the loss of liberty they fear? Is it other than the loss of liberty by the use of outrageous language, not privately but publicly, to seek to stir up actual hatred against mostly completely harmless groups of people ... for something they cannot possibly help ...?"[14] The point remained pertinent to all the attendant parliamentary debates. Opinions ranged from those who thought free speech on racist issues should suffer virtually no restraint, to those who found hate propaganda so wicked and

disruptive as to merit the broadest of sanctions to keep it under control. In the end, though opposition to it was vigorous, the legislation that was passed made the critical legal test not even the likelihood or otherwise of a breach of the peace, but the content of views held to be conducive to a breach of the peace. Clear proof of a threat to peace per se was not required.

In bringing the test this one step forwards (or backwards, depending on one's point of view) it remained a point of some contention whether Parliament had allowed for the fullest freedom of expression consistent with communal well-being. Many felt that they had fatally compromised the most fundamental of civil and political rights, having introduced the capacity to censor it. And it is indeed a key conundrum for democratic theorists, that the "constitutional guarantee of liberty itself implies the existence of an organised society maintaining public order, without which liberty itself would be lost ...".[15]

The whole issue is central to the contemporary political history of the United Kingdom. The prevailing drift there for the last three hundred years has been toward personal liberty, and away from the Parliamentary proscription of particular opinions, however repugnant these may be. The need to preserve the social peace has remained acute however, which has meant in practice that the law of public order is "a compromise" ’[16] with the social peace and what disturbs and secures it on the one hand, and individual freedom on the other. The position the British legislators adopted rested upon what they made of the threat to social order implicit in racial hatred. Which prompts one to ask how close, then, was the putative causal link between this and civil confusion? This is impossible to measure with any degree of precision, but the level of tension that "race" has engendered in Great Britain over the last thirty years is sufficient, the protagonists of

intervention proclaim, to have warranted the desire to curb the worst excesses of free speech where that freedom is seen to be taken as licence, inviting at most anarchy, and at very least preventable communal disrepair.[17] And it is perhaps indicative that the anti-incitement Section 6 of the Race Relations Act stood unchanged for ten years. (It was incorporated intact into the Race Relations Act of 1968, and only revised in 1976.)

In framing its anti-incitement clause the Labour Party was at pains not only to avoid unduly restricting legitimate discussion and debate but to make legislation that was effective. Did the law it passed do any more, however, than declare the government's good intentions? Was public order improved by this provision? And why was it considered necessary ultimately to revise it?

The first prosecution giving effect to Section 6 was in 1966, and, quite contrary to what the government had said about dealing with ringleaders and the like, was a relatively minor affair.[18] Later prosecutions, however, resulted in the conviction and imprisonment of the leader of the National Socialist Movement, of a Movement member, and of the black power activist, Michael Abdul Malik (Michael X). Four other blacks were fined for inflammatory speeches while four whites, members of the Racial Preservation Society, were acquitted after a copy of this Society's racist broadsheet had been found to fall within the accepted provisions for freedom of information and speech. The latter trial caused considerable legal uncertainty as to what precisely was "insulting" or "hatred".

the introduction of section 6 did have the effect of modifying the way in which racist writers and publishers cast their arguments (a debatable benefit in the long run). It also caused the creation of a number of (miniscule) racist book clubs, immune as such from the application of the law.[19] More

broadly, it tended to make the relevant issues legal ones, which led people away somewhat from a consideration of the moral questions involved, and of the extent to which offensive statements might be factually false. "In such a climate" as Lester and Bindman have pointed out "the damaging cowardly attack upon a defenseless minority can all-too-readily be interpreted as courageous conduct, carrying a real risk of prosecution and imprisonment, while members of the minority are regarded not as victims but as a privileged group, immune to criticism."[20] Enoch Powell was making just such attacks at the time. And while British blacks, for example, could see their more aggressive spokesmen being jailed and fined, Powell, with access to the mass media and the mass opinion that goes with it, went conspicuously free. Powell's defence was to argue the importance of his policies and the need for public education on race matters. And there is no denying the impact he had on the whole debate, and on those who would oppose views of the sort that he espoused.

The problems section 6 presented were thrown into stark relief by a National Front rally in Red Lion Square in 1974, and, in a belated way, by the trial of British National Party chairman John Kingsley Read in 1976. (indicted for making an inflammatory speech and ultimately acquitted). None of the Front leaders present at the rally were charged with incitement, and in his official account of that occasion Lord Scarman concluded that prosecution was not appropriate and indeed, that section 6 was an "embarrassment ... Hedged about", he said, "with restrictions '(proof of intent, requirement of the Attorney-General's consent)" it was "useless to a policeman on the street".[21] And it was the police after all who had to make such legislation work at any particularly disorderly social interface, and pretty clearly, in Seaman's estimation at least, they could not He called for radical amendment.

This was not long forthcoming and in 1976 a new Race Relations Act was passed. Given the history lightly sketched above, it should come as no .surprise to find that section 70 of the new Act relocated the incitement provisions under the Public Order Statutes of 1936 (as section 5A). See Appendix'7. Many had argued that this is where they had always belonged. Given Scarman's indictment it is likewise predictable to find the deletion of any need to demonstrate the deliberate intention to create hatred. Successful prosecution under the revised Act - still extant today - requires proof only of the likelihood that racial hatred be the consequence of the offending publication or speech. It is no longer sufficient defence to claim the honest patriotic desire to tell the nation the truth, that it might be made aware of the error of its ways and moved to mend them. As it was argued in the House of Lords, "the language used for an offence to arise has to be threatening, abusive or insulting. This is, it seems to the Government, a tight test which justifies placing the responsibility on someone using such language to take into account the likely effect of his words" .22

That this was not tight enough for the section's opponents goes without saying. Lord Hailsham of Saint Marylebone, for example, declared the creation of an indictable offence without any mental element in it at all to be a "constitutional outrage".[23]

The Attorney-General must still sanction prosecutions (a feature of this legislation which continues to be questioned, usually on the grounds that someone in the realm of public policy should not be called upon to act from outside it). And despite numerous referrals, [24] prosecutions remain few.[25] In part, this can (be explained by the fact that the key words have proved so difficult to pin down. Publishers and distributors have also been anonymous on the whole, and very hard to locate. Furthermore, juries have remained decidedly

reluctant to convict.[26] It is quite hard in fact "to find a pattern which would allow one to describe the necessary ingredients for a successful prosecution. On one hand a state of legal uncertainty prevails which breeds reluctant law enforcement, and which in turn leads to suspicion or cynicism about the use of criminal law in this area of race relations. On the other hand, .a prosecution by the Attorney-General carries a,special aura and is ascribed a political implication by the media".[27] Subsequent court cases have not made it much easier to see in detail how the new legislation will wear.

In general then, despite the changes, the anti-incitement law seems so far to have remained ineffective. Restrictive wording and lack-lustre enforcement have combined to crib and confine the part it might play in controlling Britain's racial violence. As to the former one wonders how much more, given the positions regularly rehearsed in both Houses, there is that can be done. As to the latter though the police can, it appears, use the Public Order Act section 5 (but not section 5A) to arrest offenders on the spot, and to place incitement cases before magistrates (a course of action not requiring the _ Attorney-General's consent), they have not, on the whole, done so. The reasons why are unclear but they certainly include a lack of authoritative leadership and direction.

New Zealand

Race relations in New Zealand - in their contemporary phase - date from Abel Tasman's landing there in 1642. . Their beginnings were violent and in the landing a number of men were killed. The subsequent history of how the trading and missionising Europeans penetrated the indigenous society and how the colonising British were to wrest from the Maori tribes their native land is also a bloody one. Contact was characterised, however, by negotiation as well as the imperial use of military

power (the famed Treaty of Waitangi in 1840 being representative in this regard)-,-and the fact that the Maoris proved such formidable opponents in the field and that annexation went hand in hand with diplomacy has meant that New Zealand's indigenes have always been treated with some degree of respect.- The end result is a country firmly under white control, but one in which the principle of racial equality has never really been in doubt.

Which is not to say that there have not been social and political dilemmas in this regard, racially induced - particularly if we take the broader construction typlically placed upon "race". The upsurge in Maori population and morale in recent years, the immigration of a number of other South Pacific peoples (plus refugees from South East. Asia),and demographic shifts in the distribution of such peoples within the country have meant that racial grievances and tensions have remained a feature - indeed a progressively more urgent one-of New Zealand's socio-economic life. Thus in 1968 we find the Hon.. J.R. Hanan, Minister of Justice and Attorney-General,. asserting "it has been said that in the past New Zealand had little racial conflict (if we forget the nineteenth century land' wars) because the two races lived apart to a large. extent. This has a lot of truth. Conflict was absent because contact was absent. During the last 20 years ... this has changed. The immigration of Maori and Island peoples from their homes into our larger cities is something quite new; it must inevitably carry strains. Unless both sides show a willingness to adjust, the much closer relations provide the Material for far more serious conflict". One of the possible remedies he mooted was more law: "It May well be", he said, "that from time to time legislation will be advisable, and while there is a limit to what legislation can do, it is often the most forceful and effective weapon against abuses as long as it has the general support of public opinion."28

Hanan's commitment to legal and administrative practices that might help pre-empt overt discrimination and the attitudes that go with it was the sort of public stand that eventually produced a New Zealand Race Relations. Act. The National Government of the day, concerned not only that justice be done but that it be seen doing it, wanted to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (signed by New Zealand in 1966), some time before the end of the International Year on the subject (1971). Hence the introduction of the Bill in July of that year and its final passage in December.

The parliamentary debates aroused predictable fears about the preservation of free speech as against the attempted censorship of unsavoury views; whether, that is, such legislation would provide a sword or a shield. These were met by a Bill that stayed in substance reasonably close to the model the British legislators provided. Section 25 for example (see Appendix 8), on inciting racial disharmony,[29] was reminiscent of section 6 of the U.K. Act of 1965 - though there were some significant differences. Instead of incitement to racial: "hatred" the crime was made that of inciting "disharmony" - a much broader concept. There was the same concern with "intent", but again the idea seemed to be to forbid something more general than "hatred". Penalties applied accordingly to any intention r to "exercise hostility" or "ill will" or "contempt or ridicule". Radio and television - not just publications or public speeches - were mentioned explicitly as ways of disseminating "threatening, abusive or insulting" material, something which is still absent from the British legislation. Section 26, however, did designate the Attorney-General as the source of consent for any subsequent prosecutions. Offences under this section being criminal, the Race Relations Conciliator must seek to establish if a complaint is justified before referring it to the police, who then decide whether or not to go to the Attorney-General for permission to proceed.

The first time this actually happened was in 1977: the case of King-Ansell v. The Police. King-Ansell was prominent in the New Zealand National Socialist Party and a virulent antisemite. Two complaints were lodged with the Race Relations Conciliator about an anti-semitic Party leaflet distributed in Auckland, and though the leaflet was not particularly specific or abusive, nor did it threaten violence, King-Ansell was charged and ultimately convicted for what the Act defined as an offence.[30] The conviction was upheld by the Supreme Court and also before a Court of Appeal. The case turned in the end upon the sense in which section 25 used the word "ethnic", that is, whether it was sufficiently general to include Jews.[31] In the event the Court of Appeal rejected the antique definition used by the counsel for the appellant, and chose to accept what they considered to be the common usage in the matter.

It has been argued that the whole case was misconstrued since nowhere in any of the legal arenas involved was there a sustained attempt to come to grips with substantive issues - whether, that is, the leaflets were actually insulting or not, or whether hostility or or contempt or ridicule had been likely as a:result of their distribution. In his appeal to the Supreme Court, King-Ansell's counsel cited four relevant grounds - that there was no evidence that the appellant had published the offending pamphlet; that it was not "insulting and likely to cause ill will" against New Zealand's Jews; that Jews had no "ethnic origins" anyway; and that the evidence did not establish intent. The Supreme Court Justice only allowed special leave to take the case further on the one general question of defining ethnic origins. "In fact", one commentator has observed, "the criminal charge was treated like a civil libel and all proof of damage was omitted. ... Had a counsel for the appellant submitted in effect that his client had distributed some harmless rubbish, which had not the slightest desired effect, the case should have been dismissed."[32] Furthermore, "... at least some factual possibility of one

recipient of the literature being moved in the political direction urged by the pamphlet should have been contemplated in the mind of the Judge".[33] King-Ansell admitted himself, however, to printing the pamphlets (the original plate having been recovered by the police from his home), and as Woodhouse J. maintained in the second of the Appeal opinions, the magistrate's initial judgement of the document as offensive and insulting and calculated to incite ill will were all "quite inevitable. With good reason no attempt has been made in this Court to challenge them".[34] So the law seems to have been satisfied on this score, even if a contemporary critic was not. "The case" as it happened "provoked little reaction in New Zealand and did little more than inform the New Zealand public that a Nazi party still existed ... and, while a precedent has now been set, there seems little likelihood of it being utilised in the near future."[35]

As a sword, New Zealand's legislation on incitement to racial hatred rests largely unused in its sheath. The line between "frank discussion", and the use of "emotional and inflammatory language to incite racial hostility", has been very carefully observed.[36] As a shield it is used to parry a steady stream of complaints. However it is the conciliation provided by section 9A, rather than the road to prosecution possible under section 25, that those officially concerned seem to prefer.

Canada

When we come to Canada, we move out of the orbit of the United Kingdom. Though still legatees of the Commonwealth of course, Canadian legislators tend also to look towards their southern neighbour the United States - a country with its own distinctive traditions of jurisprudence. In stressing the significance of free speech, for example, they are much more

likely to refer to the First Amendment of the American Constitution than to English precedents of this sort. And though the whole-issue is still essentially the same, the verbal formulae used to define and expand upon it are different, as are the emphases placed on the various aspects of what is involved. Rather than "incitement to racial hatred", which is the expression typically used in Britain and in countries under more immediate -British influence, the topic is subsumed by the Canadians under the title of "hate propaganda". The formal slogan about being "threatening, abusive or insulting" disappears altogether. .Genocide is given a special place; exemptions are listed that do not appear in the equivalent legislation in the United. Kingdom; and separate mention is made of seizing published hate works under official warrant.

As with the two countries already discussed, racial hatred was first brought into clear focus for Canadian legislators inthe mid-1960s when the .UN opened for signature and ratification its International Convention on the Elimination of All Forms of Racial Discrimination. Private members had made initiatives before but it took the above, plus a resurgence of incitement activities, to prompt the then Minister of Justice to appoint a Special Committee on Hate Propaganda to look at the subject:in any great detajJ.[37] The Committee's report - now out of print - was -a most eloquent one.: After looking at the law of the day and diverse evidence on the subject, it came to four maim conclusions:

> that the problem of hate propaganda in Canada was a serious one;
>
> that Canadian law was "clearly ... inadequate with respect to the intimidation of and threatened violence against groups, and almost wholly lacking in any control of group defamation":38

that resort to law did provide a solution; and

that priority be given to freedom of expression.

Committee members seem to have been concerned primarily with written material, items that they considered "could not in any sense be classed as sincere, honest discussion contributing to legitimate debate, in good faith, about public issues in Canada".[39] The situation as they found it was not critical or even nearly critical but it was, they thought, potentially at least quite serious. Over the previous several years there had been a number of target groups including negroes, and more especially, Jews. Given any heightening of communal feelings of the sort a sustained economic depression might occasion, "abusive, insulting, scurrilous and false" propaganda might well assume, they decided, a significance barely suspected before. As a consequence there seemed to them no longer any sound excuse for not providing "groups" with legal protection. "The present state of the rules with respect to groups is merely a reflection", they concluded, "of the fact that our law developed in a more individualistic agen.[40]

What of free speech? There was not, the Committee argued, nor had there ever been an absolute right to freedom of expression, and while this right was the "most conspicuous index of the movement from government by the few to self-government by the many ... even at its highest point of historical and political acceptance, freedom to speak and to publish was circumscribed-by:-law." Free expression represented the balance struck between the "social interest in the full and frank discussion necessary to a free society on the one hand, and the social interests in public order and individual and good reputation On the other ...". Given, that is, a distinction between "legitimate" and "illegitimate" public discussion, the state had "as great an obligation to discourage the latter as to maintain the former" (it being the job of the law to

adjudicate Controversial cases with whatever "ingenuity and wisdom" it could muster) .[41] In carrying out this obligation (the Committee added reassuringly) the state should demonstrate' an explicit preference for the "rough and tumble" of vigorous debate, even at the occasional cost of contentions that were "brutal ... vicious and (in this respect) illicit" .42

In the event legislation was recommended forbidding the advocacy of genocide (something of a hangover, this, since Canada had signed the 1948 UN Convention on Genocide and had simply never ratified it). It was also suggested that the law be changed to forbid incitement to the hatred and contempt of identifiable social groups - incitement, that is, likely to cause a breach of the peace, whether intended or not and whether violence as such actually ensued. The Committee was fully cognisant of the fact that such a change could allow a determined audience to put a speaker in gaol (by their reacting in an unruly manner to whatever he or she said - the so-called "heckler's veto") and it allowed for such a contingency in the way the suggested legislation was framed. Recommendations were also made prohibiting group defamation ("group" being any section of the public distinguished by its colour, race, ethnic origin or - something which does not appear in the British or New Zealand legislation - religion), likewise regardless of whether or not there was a breach of the peace.

"In effect" the Committee saw themselves as setting out "as a solemn public judgement that the holding up of identifiable groups to hatred or contempt is inherently likely to dispose the rest of the public to violence against members of these groups and inherently likely to expose them to loss of respect among their fellow men."[43] This was, of course, the same causal link posited by the British. The Committee at least were convinced that the evidence existed to justify such a policy judgement, and that in the "present stage" of Canada's social development, the law should begin to take account of the "subtler sources of civil discord".[4]4 . Aware of the.minefield it was planting, it was careful to suggest some safeguards too.

A Bill incorporating most of these recommendations was laid before the Canadian Parliament in 1966 and they were finally put (with a number of significant amendments) into the Canadian Criminal Code in 1970 (Appendix 10). Once again, prosecutions were to *be* the province of the Attorney-General, with the exception of the sub-section dealing with incitement in a public place where a breach of the peace might occur, and where it was thought more direct action might be necessary.

There was considerable controversy about the end result. Section 281.2(2), dealing with group defamation, seems to have been the most contentious, particularly since it was worded to apply to any statements made "other than in private conversation". Where, commentators asked, tight the line lie between the "private" and the "public" here? If "private" be construed as two people not in a public place (as defined elsewhere in the Canadian Criminal Code) what scope then, they asked, for free speech?[45] The Committee had decided that if their *key* task was to pre-empt anti-group hatred, then the usual distinctions between the two could not apply., If the law was to be able to control whatever might produce such feelings, then it had to have the capacity to reach into the private domain, where much such defamation first occurred. This was of course anathema to civil libertarians.

There were several stated defences under this part of the section that were capable of exonerating the speaker or publisher. Freedom of speech applied, for example, to "truth" statements; to any statements "relevant to any subject of public interest", the discussion of which was for the public benefit and believed on "reasonable grounds" to be "true"; or to any proposition that pointed out "for the purpose of renewal" material that made (or tended to make) for anti-group feelings. Each of these exceptions allowed for considerable judicial latitude. The burden of proving the truth of abusive statements had been placed, as the Committee had planned, upon whomsoever

faced the relevant changes. It was not up to the prosecution to show them wrong. But what the standard of truth might be remained, understandably so, unstated. Which immediately raised before many concerned the image of virulent racists, their feet set in the concrete of their convictions, using the courts and court reporting to propagate the reasonableness and the public relevance of their honestly held and supposedly truthful views.

General concern was also expressed about the power of the courts under section 281.3 to order seizure of hate propaganda, and what this might in the event allow the Attorney-General to censor. Particularly Vulnerable in this regard, it was felt, were repressed minorities and members of groups or parties antipathetic to those in power.

How have these laws fared in practice? Only one prosecution has been attempted to date under section 281.2(1) - the public incitement provision - and that was not successful because the Crown could not establish to the satisfaction of the court that the member of the white supremacy organisation involved, in brandishing "White Power" and "Down with Jews" placards, had actually placed public order in jeopardy.[46] As to section 281.2(2) - that covering group defamation - nothing was done for seven years. Then in 1977 the Crown prosecuted two French-speaking Canadians - Robert Buzzanga and Jean Durocher - for putting about a satirical leaflet that criticised French Canadians in a somewhat convoluted attempt to prompt an official reaction, and thereby to consolidate French Canadian support for the building of a local French-language secondary school. They were convicted of wilfully promoting hatred against an identifiable group; they appealed; and were re-tried.

The case is a curious one since the two accused actually belonged to the "identifiable group" against whom they supposedly provoked hatred. Much issue was subsequently made of what "wilfully" meant, the nature in this instance of the

"intent", and what the mental attitude of the accused might have been. The distinctions drawn were fine ones, and it is very hard to say whether justice was eventually done.[47] One point of interest that emerged was the general difficulty, given the need to prove the intention to promote hatred and the various defences that an offender might appeal to, of ever getting a conviction. It is no wonder that the sub-section has only been used once. Section 281.3 - the "seizure" provision - has never been used at all.

Have these laws - so rarely enforced - been beneficial in other ways? The deterrent effect exists, but this has not - pre-empted hate campaigns by the Klu Klux Klan, or the Western Guard, in larger provinces like Ontario. Which is not to say that without such legislation these organisations would not have been much more active. They would certainly have been more overt in the absence of such restraints.

What were the alternatives? It is often argued that the same effects could have been achieved by amending provisions already in existence rather than by adding anything new.[48] This would not, however, it is said in reply, have made the same unequivocal statement of official concern that changes to the Criminal Code allowed. It has also been common to observe that hate propaganda could have been more appropriately dealt with under human rights legislation, in part at least because of the greater emphasis such legislation tends to place upon the educative as well as the punitive aspects of the problem. In 1977 the Canadians did pass a Human Rights Act, and section 13 of this (at the express request of the Attorney-General for Ontario) prohibited people (within the federal parliamentary jurisdiction) from using the telephone to expose others repeatedly to hatred or contempt by reason of their race, national or ethnic origin, colour, religion, age, sex, marital status or handicap (Appendix 11). That section has also seen only one case though - that brought by the Canadian Human Rights

Commission (and others) against the Western Guard Party and John Ross Taylor.[49] This action was prompted by a number of complaints about Taylor's pre-recorded telephone message service. In an attempt to have the service stopped, the Human Rights Commission put the matter before a Hearing Tribunal, as the Federal Act empowered it to do. Though the Tribunal was acutely conscious of the Commission's commitment to free expression, it was equally aware of the parliamentary opinion, as members put it, that "certain kinds of speech had to be curtailed in the public good because the potential for harm outweighs the value to society in the guarantee of unrestricted freedom of speech".[50] The messages were blatantly anti-semitic. An analysis of them by a media specialist confirmed this, and with the words of the Special Committee on Hate Propaganda before them, the Tribunal found Taylor and the Guard guilty and ordered them to stop (this being their sole sanction). Taylor, as it happened, did not stop, and there began a lengthy process of evasion, litigation and appeal that went finally to the Supreme Court of Canada and is currently before the Human Rights Committee of the UN.

There is provincial legislation of relevance here, too, for though each province has made provision for human rights by now, and while all outlaw discriminatory notices and signs and the like, the codes of Manitoba, Saskatchewan and British Columbia refer explicitly to incitement to group hatred (Appendices 12, 13, 14). For most the issue is not yet a very serious one[51] (though concern has been expressed about the proliferation of hate literature). Demands have also been made at various national and provincial conferences for the Federal Government to enforce section 281.2 of the Criminal Code with the "utmost vigour" , and for the Criminal Code to be amended to proscribe the activities of organisations that spread racial hatred - as would seem to follow from Canada's commitment to international conventions on the subject. (The same demand has been made by the UN Committee on the Elimination of Racial

Discrimination.)[52] Manitoba has been moved to prohibit notices, signs and the like that "expose" (or tend to expose) people to hatred, for a long list of possible reasons. ("Expose" is a useful word since, as the Tribunal pointed out in the case of Taylor and the Western Guard Party, it is more "positive" than "incite" or "promote" and is able to catch those concerned rather to create the conditions for hatred than incite hatred itself.) It has received very few complaints under this provision, however, none of which have proceeded to the Board of Adjudication or to prosecution itself.[53]

Saskatchewan has like legislation though it includes ridicule, belittling and affronts to dignity as well as hatred. The concern with more varied kinds of offence probably stems from a local case, Singer v. Isawyk and Pennywise Foods Limited, that occurred in 1976 under an earlier ordinance. The defendants in that case were accused of displaying a caricature of a coloured individual in a grass skirt and chef's hat over a drive-in restaurant called Sambo's Pepperpot. Though there seemed no malicious intent involved of the sort a sign like "No Blacks Allowed" would betray, the Commission concluded that the stereo-typing of a class of people as "incompetent, childish and funny" did show a "discriminatory predilection". It clearly jeopardised the opportunities that members of that class would enjoy in gaining responsible jobs and in receiving their equal rights. Caricatures of this sort could only reinforce, it said, negative images of coloured peoples and the racial prejudice that goes with them, and as such prolong the existence of prejudice. The defendants were ordered to desist. A similar case in Nova Scotia (Rasheed and Black United Front v. Bramhill) had a similar result.

More serious in some ways is what has happened in British Columbia. In January 1981 the province passed a Civil Rights Protection Act which prohibits promoting hatred or contempt toward or the superiority or inferiority of a person or

class of persons because of their colour, race, religion, ethnicity or place of origin. This Act followed directly upon a report to the provincial Minister of Labour by a local lawyer, John McAlpine, that arose out of the activities in the province of the Klu Klux Klan. McAlpine was asked to determine if the Klan had contravened the current Human Rights Code, R.S.B.C.c.186. He concluded that it had not, that the Code was framed too narrowly, and that it ought to be amended[54] along the lines of the Saskatchewan one In the event the local legislature decided to provide for a private right of action before the Supreme Court (rather than just an administrative remedy); that no breach of the peace need be involved; that a fine and imprisonment or damages (or exemplary damages) were appropriate rather than just an injunction; and that "any conduct or communication" of an indictable kind should be included - thereby covering practically all aspects of hate propaganda whether spoken, written, broadcast, cinematic Or symbolic. Indeed, British Columbia's Civil Rights Protection Act is the only legislation in the country other than the Canadian Criminal Code that covers words spoken in person. The "superiority or inferiority" clause (unique in Canada's legal experience) also enables that province to prohibit any material that, rather than inciting hatred, affects (as Klansmen sometimes do) a paternalistic air.

McAlpine was particularly concerned that British Columbia act in a pre-emptive rather than corrective way; that it take steps at once to anticipate race problems so as to prevent social relations from deteriorating any further; and that the Government not seem indifferent, but be seen to be committed to the task of promoting good community relations. The arrival in Vancouver in **1980** of the Klu Klux Klan's two chief Canadian organisers was something of a media event, and one of the things that concerned McAlpine was the way a group like this was able to use the media as a way of disseminating its doctrines and the extended emotional message that these

contained, gaining in the process a patina of "credibility and acceptability" and something of the public image of representing "just another point of view in the context of the legitimate exchange of ideas"..[55] In a pluralistic society, to allow such a group in from beyond the pale was to invite,. he argued, heightened social tensions, hostility, fear, and ultimately violence. Such a group could serve as a catalyst, creating an atmosphere of "overtness" that others could use to their own advantage.

The main issue was more profound again however. In McAlpine's view the values under dispute were not just those of "civil disorder as against individual freedom". They involved nothing less than a choice between the individual values of freedom of speech, and the recognition of the "dignity and worth of each person to live without discrimination ... the inherent right every citizen has of equal opportunity ... the right to make his or her life and to feel part of the community, without being hindered ... to grow up and live in a climate of understanding and mutual respect".[56] Which is an approach to the problem that has particularly far-reaching implications.

United States

The United States is a law unto itself, something very evident when we look at the provisions made to prevent incitement to racial hatred. Their revolutionary tradition has left them with an abiding respect for the individual and group right to be free of governmental restrictions, and in particular, for freedom of speech, a tradition enshrined in the First Amendment of the federal Constitution. On the whole it is this tradition that has prevailed, and those restraints upon it that are officially allowed are very narrow ones indeed. Only where a breach of the peace is imminent and public order is obviously and immediately under threat are American courts and

legislators likely to countenance its restriction, which means in practice that they are likely to permit all kinds of provocative behaviour in their general desire not to constrain debate.

Which is not to say that the reform of race relations has failed to feature in the country's legislative experience. The first such law (forbidding schools in Massachusetts from excluding students on racial or religious grounds) was enacted in 1855. The tortuous progress of the provisions prohibiting first slavery, then discrimination, and most recently, the attempt to secure the civil and social rights of blacks and others, are a prominent feature of its legal history. Few attempts have been made, however, to enact or enforce laws to do with the incitement of racial hatred.

The leading case in this domain is still that of Beauharnais v. Illinoit..[57] Joseph Beauharnais was president of a body called the White Circle League of America Inc. He was fined under a local statute for purveying a pamphlet supposedly exhorting the aldermen of Chicago to act to protect the city's whites from being "mongrelized" by blacks, and from "negro aggressions ... rapes, robberies, knives', guns and marihuana •.."•[58] The statute concerned -(Appendix 15) made it unlawful for anyone to put about publications or exhibitions portraying "depravity, criminality, incest, or lack of virtue" on the part of any class of citizens (defined in terms of their race, • colour, creed or religion), or that had the effect of exposing the latter to "contempt, derision or obloquy or which is productive of breach of peace or riots ...".[59] (This was later revised to make the key provision not injury to reputation, but public disorder alone.)

Beauharnait appealed to the Supreme Court claiming that the original statute violated his liberty of speech and the freedom of the press, guaranteed against state intervention by

the Due Process clause of the Fourteenth Amendment.[60] It was also, he said, "void for vagueness n.61 „ The appeal was quashed by a vote of five to four, Mr Justice Frankfurter refusing to charge the jury, as requested by the appellant, that in order to convict they had to find the offending lithograph "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest".[62] The significance here of the need to establish a "clear and present danger" was first formulated as such by Justice Holmes in Schenk v. United States.[3] In that case it was used to uphold the defendant's right to purvey military anti-recruitment propaganda and to advocate insubordination. While free speech and a free press were said not tote absolutes (Justice Holmes citing the famous analogy of a person falsely shouting fire in a crowded theatre), they were only to be abridged, he decided, under emergency conditions of an unequivocal sort. This was very much in line with traditional judgements on the matter. The majority decision in Beauharnais v. Illinois, while not unique, was therefore something of an anomaly. It is worthwhile as a consequence considering Mr Justice Frankfurter's opinions rather more closely.

These were several. Not only did he hold that classifying the statute as a law of libel successfully took it outside the class of speech protected by the First Amendment but that also, given the racial problems the city of Chicago actually faced, the Illinois legislature deserved all the room for manoeuvre it could get in dealing with them (particularly when, as in this case, the putative crime so clearly promoted a breach of the peace). Frankfurter quoted the unanimous view of the court in Chaplinsky v. New Hampshire:[64] "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words - those which by their very utterance inflict

injury or tend to incite to immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality •.•".[65]

Talk of this sort seemed to him no more, in other words, than "rotten fruit in the market-place of ideas", to be plucked out before it despoiled the rest.[66] Frankfurter continued: "... if an utterance directed at an individual may be the object of criminal sanctions, we cannot deny to a State power to punish the same utterance directed at a defined group, unless we can say that this is a wilful and purposeless restriction unrelated to the peace and well-being of the State •.•"•[67] In this case, this restriction did not, he argued, apply. A long history of racial violence and civil destruction, or murder, bombings, and the bloody rioting that had accompanied Illinois' struggles to assimilate large numbers of immigrants, did not make it difficult for him to find that "wilful purveyors of falsehood concerning racial and religious groups promote strife and tend powerfully to obstruct the manifold adjustments required for free ordered life in a metropolitan polyglot community ... we would deny experience to say that the Illinois legislature was without reason in seeking ways to curb false or malicious defamation of racial and religious groups, made in public places and by means calculated to have a powerful emotional impact ...".[68] Quoting in a footnote the work of Riesman on democracy and defamation, he observed how such purposeful attacks were hardly something new "What is new, however," to use Riesthan's own words, "is the existence of a mobile public opinion as the controlling force in politics, and the systematic manipulation of that opinion by the use of calculated falsehood and vilification".[69] As a consequence, Frankfurter said "It would ... be arrant dogmatism ... for us to deny that the Illinois legislature may warrantably believe

that a man's job and his educational opportunities and the dignity accorded him may depend as much on the reputation of the racial and religious group to which he willy-nilly belongs, as on his own merits. This being so, we are precluded from saying that speech concededly punishable when immediately directed at individuals cannot be outlawed if directed at groups with whose position and esteem in society the affiliated individual may be inextricably involved."'"

That this might put power and control in the hands of the state of a kind that could be abused to the detriment of democratic society as a whole was no good reason, Frankfurter concluded, for denying the need in this case, where the dangers were well-defined ones and the risks worth taking for the good of all "That the legislative remedy might not in practice mitigate the evil, or might itself raise new problems, would only manifest once more the paradox of reform. It is the price to be paid for the trial-and-error inherent in legislative efforts to deal with obstinate social issues" 71

As indicated above however, such an opinion was somewhat anomalous. Those dissenting at the time construed the case in terms of a genuine effort to petition the powers-that-be. Furthermore, allowing a state legislature to decide what questions the public might discuss was a doctrine Justice Black, for one, found both "startling and frightening" [72] To condone a law of group libel, despite the attractions of the analogy between this and that applicable to individuals, meant expanding it in a way clearly subversive of the First Amendment - in Black's opinion an absolute injunction "without any 'ifs' or 'buts' or 'whereases".[73] One of his colleagues in dissent, Justice Jackson, most concerned that the case dealt only in the probability of public disorder and not the actual event, pointed out the "clear and present danger" test as the only just and workable one under the circumstances. More recent Supreme Court pronouncements have taken the same

sort of stand, favouring the unimpeded flow of information and ideas at the expense, where necessary, of sanctioning those who "merely" cast aspersions or "advocate" civil unrest.[74]

As indicated, Americans have generally required the demonstration of a particularly close link between defamation and disorder before they have been prepared to view incitement to racial hatred or the dissemination of hate propaganda as a , crime. They would rather let the rivers of prejudice and bigotry run their course than try to interrupt or redirect them with jerry-built judicial devices doomed in conventional parlance always to fail. Underlying this preference, of course, lies the assumption that given the chance truth must prevail, and that what is true is good. Ultimately at issue, however, is that phrase "given the chance". Doubts about getting such a "chance" have given rise to the underdog doctrine of "strict security",[75] and the counter-tradition that depicts the reduction of intolerance and exploitation as desirable social ends in themselves, and the law, even the First Amendment of the American Constitution, as subordinate to them. This is, though, the minority view.[76]

Europe

Though the four countries discussed above are the main examples (in terms of their common heritage) of relevance here, they are not the only ones to have faced the question of incitement to racial hatred. For what it is worth, quite a number of nations now have laws on the subject, some enacted in response to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, others passed independent of it Just after the Convention was opened for signature, in 1966, the Consultative Assembly of the Council of Europe offered a Model Law, drafted for the guidance of its members, implementing the same features as Article 4 - finding it an offence to call for or to incite "hatred, intolerance,

discrimination or violence", or to "insult, slander or hold others up to contempt because, of their colour, race, ethnic or national origin or religion". It also sought to ban socially inflammatory insignia or written matter, and the organisations that propagate them (Appendix 17).

The general effect of these initiatives was widespread. Belgium, for example, passed a law on the Suppression of Certain Acts Prompted by Racism or Xenophobia (1981) specifically prohibiting - on the usual grounds - incitement to hatred. The sanction was a fine, or imprisonment of up to six months, or both (though for a civil servant jail was mandatory for twice the usual term). Private citizens were permitted to prosecute, as were public interest organisations and special interest ones (of more than five years' standing) provided they had been established for the express purpose of defending human rights or fighting racism.[77]

The French can point to legislative provisions, particularly against the perils of anti-semitic newspaper reporting and propaganda generally, that have stood since 1939. They have been moved in more recent times, however, to amend the law (1972) - also to do with freedom of the press - to include racial defamation and incitement to racial hatred, at least where such incitement is seen to be having some notable effect. The same prosecution provisions obtain as in Belgium, though the sanctions have one novel aspect, which is the right of a successful respondent to have the court ruling disseminated at the defendant's expense. Prosecutions have been few, though the most recent case - that of Robert Faurisson, a professor at the University of Lyons - created a considerable stir. Faurisson was convicted in 1981 of racial defamation and incitement after he had claimed in the course of a radio broadcast that the Nazi "holocaust" was a lie, and part of a politico-financial hoax on behalf of Israel and of international Zionism. He was not only fined but was found in a separate and in some ways more

controversial action to have failed in his duties as a scholar. The cost of placing the court's judgement in national newspapers, as he was subsequently charged with a duty to do, has been estimated- at $200,000.[78]

It would be possible to catalogue parallel provisions in the penal codes of countries like Austria, Denmark, Norway and Sweden and the Netherlands (where satisfying the International Convention on the Elimination of All Forms of Racial Discrimination prompted some particularly detailed legislative amendments),[79] but there seems little point in doing so here since they all follow Similar lines. Each makes explicit mention of the importance of freedom of expression or opinion (the Netherlands citing the need for scientific research relating to race problems to remain untrammelled), and would give it precedence where it comes into direct conflict with other freedoms. (Again, the Dutch are more inclined to talk in terms of striking a "balance", than of applying absolute standards per se.)

Reference Notes

1. See Appendix 1.

2. Commissioner for Community Relations, Sixth Annual Report (1980-81), p. 7.

3. For the text Of these sections, see Appendix2. The civil remedies allowed list only "loss of dignity by, humiliation to, or injury to the feelings of a person" (section 25(d)), so that a racist speech inciting hatred would have to name individuals to *be* actionable.

4. For the text of these Articles, see Appendix 3.

5. P. Leopold, "Incitement to Hatred - the History of a Controversial Criminal Offence", Journal of Public Law, 1977, pp. 390-392; A. Dickey, "English Law and Incitement to Racial Hatred", Race, Vol. 9 No. 3 (1968), pp, 311-321; also his "English Law and Race Defamation", New York Law Forum, Vol.14 (1968) pp. 11-16; A. ,Lester and G. Bindman, Race and Law (Penguin 1972), pp. 344-360.

6. See, for example, the attempt to amend the original Public Order Bill to include an anti-incitement clause, House of Commons, Vol.318 (26 November 1936), Col. 638-654.

7. B. Box, Civil Liberties in Britain (Penguin) 1975

8. House of Lords, Vol. 268 (26 July 1965), col. 1010

9. I b i d

10. Lester and Bindman, op.cit., page 357.

11. Sir F. Soskice (Secretary of State), House of Commons, Vol.711 (3 May 1965), cols. 937 and 939 (the second reading address).

12. Ibid, col. 941 (see also col. 938).

13. Lord Stonham, House of Lords, op.cit., col. 1011; Mr Bidwell, House of Commons, Vol. 914 (8 July 1976), cols. 1953 and 1954.

14. Sir *F.* Soskice, House of Commons, op.cit., col. 938.

15. Mr Justice Goldberg, in D. Williams, Keeping the Peace (Hutchinson, London 1967), p. 10. In a letter from the National Council for Civil Liberties, it is interesting evidence of how far opinion has moved on this issue to find its spokesperson arguing that:

> "Although NCCL hesitates to support legislation which infringes freedom of speech, it takes the view that the need to mitigate the injustice caused to members of ethnic minorities who are the subject of racial abuse necessitates legislation of this kind". (signed Sarah Spencer, Research Officer, 2 June 1982).

16. ibid, p.9.

17. Great Britain boasts a rich tradition of social disorder. Revolutionary unrest and rioting have been endemic, and what with militant suffragettes, police strikes, marching workers, disaffected troops, communists fighting facists and so On, it is no wonder that the legislative and legal responses should have been of such an extensive and complex kind, c.f.. ibid., PP. 11-15.

18. That this involved race activist Sidney Bidwell, Labor MP for Southall, may have had something to do with the fact that the case reached the courts: see A. Dickey, "Prosecutions Under the Race Relations Act 1965, s.6 (Incitement to Racial Hatred)", Criminal Law Review, 1968, p.495.

19. A. Dickey, op.cit., pp. 321-323; also R. Longaker, "The Race Relations Act of 1965: an Evaluation of the Incitement Provision", **Face, Vol**. 11 No. 2 (1969), pp.125-156. In a Written Answer to MP, Mr Bugden, on 11 December 1975, the Attorney-General testified to 19 persons having been prosecuted under section 6. There had been convictions in 12 of those cases, one of which was later quashed on appeal; four drew terms of imprisonment; one a probationary order; two were conditionally discharged and four fined. House of Commons, Vol.902 (11 December 1975), co1.295. Hardly impressive for ten such turbulent years.

20. Lester and Hindman, op.cit., pp.372.

21. Scarman L.J., Comnd.5919, paragraph 125. See also G. Bindman, "Incitement to Racial Hatred", New Law Journal, March 25, 1982, p. 300.

22. Lord Harris of Greenwich, House of Lords, Vol.374 (4 October 1965) co1.1050.

23. House of Lords, Vol.377 (15 November 1976), co1.1092.

24. "In the periOd 14 September 1977 to 27 November 1978 the CRE (Commission for Racial Equality) alone made 51 submissions." Francis Deutsch (CRE SoliCitor), letter to the Hon. A.J. Grassby, 4 January 1879.

25. As of January 1982, 21 people have been charged under the Public Order Act section 5A. 15 were convicted and six acquitted before or after trial proceedings took place. *See* P. Gordon, Incitement to Racial Hatred, Runnymede Trust, January 1982, page 17. Again, .4- dismal number given the amount of racist/fascist activity in the United Kingdom at large. See also G. Bindman, op.cit., p.300.

26. See, for example, the transcript of the case of R. V. George Albert Jones and Michael Anthony Cole, the Crown Court at Warwick, 24 July 1978 7 the first prosecution under section 5A - and .particularly the summing up by Judge Clarke: "What words were used", he asked, "were they abusive or insulting and, having regard to all the circumstances, was racial hatred likely to be stirred up by those words ...? It may well be (as the defence had asserted) that many people who hear the words would react against them, feel sympathy for coloured people...". It was this latter point that the (all white) jury seemed to accept (see page 25). Both defendants Were acquitted.

27. F. Deutsch, op.cit.

28. "Human Rights: the Prospect", in K.J. Keith (ed), EssaU on Human Rights, (Sweet and Maxwell,. Wellington, 1988), p.193.

29. This was reinforced in 1977 by the insertion of a similarly worded section 9A ("Racial,disharmonr section 9 covers "measures to ensure equality") under section 86 of the Human Rights Copmmission Act. Section 9A (Appendix 9) does not mention intent, and seems meant to catch reckless or inadvertent incitement. It carries the possibility of conciliation (section 13) but no ?Once power to prosecute. (For a sketch of those provisions relevant prior to 1971, see Bracegirdle, Race Relations in New Zealand, unpublished dissertation, Davis Law Library University of Auckland, pp. 109-110.)

30. This was followed by a similar conviction of fellow Party member, Martin Alfred Hughes. As in the UK there have been many more complaints (to the Race Relations Conciliator in this case), and referrals to the police, - than there have been prosecution's, The first prosecution occurred five years after section 25 was passed, though as of 31 March 1981 (according to the most recent Report of the Human Rights Commission), there have been 1,297 complaints. 541 have had to do with racial disharmony or incitement threats (242 under section 9A and 299 under

section 25. The latter have been falling off since 1977, when 9A was inserted, and in 1980-81 no section 25 complaints were listed at all. In some instances however complainants took action under this section privately, as well as filing under 9A). In 1977-78 (the last year for which statistics list section 25 complaints alone), there were 56 of them, and of these 37.5% were referred to the police. Given the insignificant number that then proceeded to prosecution, we can see that the same reluctance to bring such cases to court has prevailed in New Zealand as in the UK. In New Zealand's case, this is generally explained by the reluctance to give "prominence to extremist views", and the "original wish of Parliament that the powers of prosecution should be used sparingly". See Paul Spoonley "Inciting Racial Disharmony in New Zealand", New Commentary, Winter 1978/79, p. 111; A. Trlin, "The Act, the Conciliators, Complaints and Functions: A review of the operation of New Zealand's Race Relations Act, 1972-1981", pp. 12-13, 29-30.

31. See the opinions of Richmond P., Woodhouse J. and Richardson J. in the Court of Appeal, New Zealand, 14 December 1979.

32. W. Bodge, "Incitement to Radial Hatred in New Zealand", International Compendium Law Ouartetly, Vol.30, October 1981,_ pp. 925 and 926.

W. Hodge¯, "Incitement to Racial Disharmony: King-Ansell V. Ponder, The New Zealand Law Journal, No. 9 (20 May 1980), p.189.

Woodhouse

35. Spoonley, OP.Cit.4 p.113

36. See, for example, the Report of the Human Rights Commission, Wellington, on the "New Force" Party (16 February 1982).

37. It had generally been felt, since the Boucher trials of 1950 and 1951, that Canadian law was unable adequately to deal with hate propaganda. In this case (in which a Jehovah's Witness was charged with sedition for having published a pamphlet condemning Quebec for hating ¯"God, Christ and Freedom") the precedent was established that sedition involved more than just the stirring up of hostility and but had also. to include the "intended or natural Or probable" consequence of anti-governmental activity of some kind.

38. Report of the '¯Special Committee on Hate Propaganda in Canada, Ottawa, 1966, p.59.

39. Ibid

40. Ibid, pp. 59-60.

41. Ibid, P. 60. Note the Position Paper by the British Columbia Civil Liberties Association (cf. The British NCCL, fn. 13 above) on "Censorship: Hate Literature (1968-69)[a] which takes the view (1) that publications of this sort are only none form among many" (not to be singled out in any way) taken by ideas said to be so "dangerous, indecent, ugly, harmful, or offensive as to require suppression"; and (2) that a politically free self-governing people cannot authorise its Government to "serve as a censor" of such ideas without thereby damaging its self-governing capacity - rendering its members "less fit for their civic role", and providing the precedent for extending censorship into other areas. "A People's political freedom is not divisible; especially it is not divisible into the 'dangerous' and 'non-dangerous' ... That's what it means to be free."

42. Ibid.

43. Ibid, pp. 64-65.

44. Ibid, p.65. Talking of sources, most of the written propaganda came from the United States, hence the Committee's condemnation of Canada's current postal and customs law. (Canadians have remained very sensitive to the use of the mails in this regard and section 7 of the Post Office Act permits the Postmaster-General to withdraw the mail privileges of any person using the mails tb commit an offence. The Postmaster-General has on several occasions issued prohibitory orders' against persons sending hate propaganda through the mails.

45. R. Hage, "The Hate Propaganda Amendment to the Criminal Code", University of Toronto. Faculty of Law. geView V.28 (1970), p.71.

46. H. Sinclair, "Legal Control of Hate Propaganda in Canada", personal paper, March 22, 1982, pp 4-5

47. Regina v, Buzzanga and Durocher, 49 C.C.t. pp 369-390 (2d),

48. Sinclair, ibid, pp. 72-73.

49. See text of Human Rights Tribunal hearings, June 12th, 13th, 14th, 15th, 1979.

50. The Canadian Human Rights Act, Human Rights Tribunal Decision, (20 July 1979).

51. Personal correspondence with the Human Rights Commission of Nova Scotia (May 25, 19982). Also Newfoundland and Labrador, the Yukon, Prince Edward Island, Ontario and Alberta.

52. CERD: Study of the 5th Report of Canada, Geneva, April 7 and April 114, 1981: clause 13 (p.4).

53. Personal correspondence, the Manitoba Human Rights Commission, May 17, 1982.

54. J.MCAlpine, "Report Arising Out of the Activities of the Klu Klux Klan in British Columbia", Vancouver, April 30,

55. Sinclair, op.cit.', p.40.

56. McAlpine, op.cit., pp.46, 57, 60.

57. 343 U.S. (1952), pp. 250-305.

58. Ibid, p. 276 (where the text of the pamphlet is given in full).

59. Ill. Rev. Stat. 1949, c.38 s. 471.

60. Which reads in part that: "no State shall make or enforce any law which shall abridge the privileges or immunities of any citizens of the United States ...".

61. Beauharnais v. Illinois, op.cit., p.250.

62. Ibid, p. 253. A quotation (unacknowledged as such) from the statement by Justice Douglas on behalf of the majority in the case of Terminiello v. Chicago, 337 U.S. (1949).

63. 249 U.S. (1919), p.247.

64. 315 U.S. (1942), pp. 571-572.

65. Beauharnais v. Illinois, op.cit., pp. 256-257.

66. T.D. Jones, "Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and the First Amendment", Howard Law Journal V.23 (1980), P.433.

67. Beauharnais v. Illinois, op.cit.. p.259.

68. Ibid, p. 259, 261.

69. Ibid, p.261 fn. 16 (D. Riesman, "Democracy and Defamation: Control of Group Libel", Columbia Law Review, V.42 No.5 [May 19421, p.728).

70. Ibid, p.263.

71. Ibid, p.262.

72. Ibid, p.270.

73. Ibid, p.275.

74. c.f. New York limes co. V. Sullivan, 376 U.S. (1964), where libel was declared, contra Frankfurter, to be protected by the First Amendment. Also Brandenburg v. Ohio, 395 U.S. (1968). This has not however stopped state legislators from passing statutes specifically to prohibit group defamation (e.g. Rhode Island, Connecticut, West Virginia, Indiana and Massachusetts - actual cases have been rare), as well as banning the harassment and intimidation of others on racial, ethnic and religious grounds, and the defacement of religious and public property (e.g. Rhode Island, Washington, New York, New Jersey, Arizona and Oregon). State courts have also been known to appeal to the Beauharnais judgement rather than that of Schenk (though sometimes to the detriment rather than the benefit of the repressed minority concerned). See J. Pemberton Jnr. and F. Cochran "Can the Law Provide a Remedy for Race Defamation?", New York Law Forum,V.18 (1968) p.39. (As Executive Director of the American Civil Liberties Union at the time, Pemberton emerges as very much a First Amendment man.)

75. Jones, op.cit., p.456.

76. For one contemporary example, see Appendix 16.

77. Gordon, op.cit., p.30. For an account of the Council of Europe's Model Law see N.Lerner, "International Definitions of Incitement to Racial Hatred", New York Law Forum, V.1 (1968) pp.49-59.

78. The Age, 20 June 1981.

79. See the "International Convention on the Elimination of All Forms of Racial Discrimination: Commonwealth Information Paper". The Dutch provisions are cited in full as Annexure B (p.23). See for example Sections 137c and d, where any person who by spoken, written or pictorial means gives public expression to views insulting to others on account of their race, religion, or conviction, or "deliberately or publicly" incites to hatred, discrimination or violence against such persons or their property, risks imprisonment (for a maximum of one year) or a stiff fine. Section 137e is similar, citing any person "who for reasons other than the provision of factual information" publicly utters anything or

distributes an object "he knows or has reasonable cause to expect is insulting" to any member of the above groupings because of their membership. No breach of the peace is necessary to transgress this Section. Thus on 29 March 1977, M.G. Glimmerveen was convicted in Rotterdam for possessing, "with a view to distributing", leaflets which the Regional Court considered incited racial discrimination under 137e (the leaflet Advocated removal of all non-whites from the Netherlands regardless of their nationality, duration of residence, family ties, or any other social, economic or humanitarian Considerations). Glimmerveen appealed to the Court of Appeal in The Hague which confirmed the conviction. He then went to the Supreme Court, which rejected his plea, and finally to the European Commission Of Human Rights - Charging violation of freedom of expression - which did likewise. The latter body made the general point that no totalitarian group ought to be :permitted to exploit freedom of expression to deny the rights of others, as was attempted in its opinion in this case.
See the European Human Rights Reports, V.4 part 14 (April 1982), p.267.

APPENDIX 1

Racial Discrimination Bill 1975

28. A person shall not, with intent to promote hostility or against, or to bring into contempt or ridicule, persons included in a group of persons in Australia by reason of the race, colour or national or ethnic origin of the persons included in that group -

(a) publish or distribute written matter;

(b) broadcast words by means of radio or television, or

(c) utter words in any public place, or within the hearing of Persons in any Public Place, or at any meeting to which the public are invited or have access,

being written matter that Promotes, or words that promote, ideas based on -

(d) the alleged superiority of persons of a particular race, colour or national or ethnic origin over persons of a different race, colour or national or ethnic origin; or

(e) hatred of persons of a particular race, colour or national or ethnic origin.

Penalty: **$5,000.**

APPENDIX 2

Racial Discrimination Act (1975)

Section 9.(1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

16. It is unlawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of this Part.

17. It is unlawful for a person -

(a) to incite the doing of an act that is unlawful by reason of a provision of this Part; or

(b) to assist or promote whether by financial assistance or otherwise the doing of such an act.

APPENDIX 3

International Covenant on Civil and Political Rights

ARTICLE 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

ARTICLE 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

ARTICLE 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discriminiatin, hostility or violence shall be prohibited by law.

Comparative Table of International Legislation

APPENDIX 4

	2 International Covenant on Civil and Political Rights (1966)	3 International Convention on the Elimination of All Forms of Racial Discrimination (1965)	4 U.K. Act (1965)
Constituency	20.1 All individuals 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	4(a) Any race or group of persons of another colour or ethnic origin	6(1) Any section of the public in G.B. distinguished by colour, race, or ethnic or national origin
Act	20.1 Propaganda	. Propaganda • Provision of assistance to racist activities including financing and participation . Organisations . Dissemination (of ideas)	6(1)(a) Written matter (including any sign or visible representation) published or distributed (exclusive associations exempted) (p) Words used in any public place of meeting.
Nature of Act	1. Propaganda 2. Advocacy . Incitement	• Attempts to justify or promote (racial hatred or discrimination) • Incitement (of racial discrimination)	(a) & (b) . Threatening, abusive or insulting
Consequences	1. War 2. National, racial or religious hatred . Discrimination, hostility or violence	. Racial hatred . Ideas or theories of superiority . Discrimination . Violence	(a) & (b) . Likely to stir up hatred (against the constituents)
Intent	(No provision)		
Defences	(No provision)	(No provision)	(a) & (b) With intent
Sanctions	1. & 2. prohibition by law (local)	(No provision) 4(a) Punishable by law (local)	(No provision) On summary conviction – up to 6 months and/or up to b200 On indictment – up to 2 years and/or up to 1.1000 (No prosecution without A/G's consent).

	U.K. Act (1976) - amending the Public Order Act (1936)	N.Z. Act (1971)	N.Z. Act (as amended bys.86 of the Human Rights Commission Act 1977)
Constituency	5A(1)(a) & (b) Any racial group in G.B. (defined by reference to colour, race, nationality or ethnic or national origin - including citizenship)	25(1) Any group of persons in N.Z. distinguished by colour, race or ethnic or national origin	9A(1) Any group of persons in N.Z. distinguished by colour, race or ethnic or national origin (the latter to include nationality and citizenship)
Act	(a) Written matter (including any sign or visible represent-ation) published or distributed (exclusive associations exempted) (b) Words used in any public place or meeting	25(1)(a) Written matter published or distributed, plus radio or TV broadcasts (b) Words used in any public place or meeting	9A(1)(a) Written matter published ordistributedplus radio or TV broadcasts (b) Words used in any public place or meeting
Nature of Act	(a) & (b) . threatening, abusive or insulting	(a) and (b) • threatening, abusive or insulting	(a) and (b) . threatening, abusive or insulting
Consequences	(a) and (b) • having regard to all the circumstances, hatred likely to be stirred up (against the constituents)	(a) & (b) . likely to excite hostility or ill-will, or bring constituents into contempt or ridicule	(a) & (o) • likely to excite hostility or ill-will or bring constituents into contempt or ridicule
Intent	(No provision)	(a) & (b) With intent	(No provision)
Defences	. Above does not apply to judicial or parliamentary proceedings • Or where accused not aware of content	(No provision)	(No provision) 10. Conciliation procedure/ Race Relations Conciliator
Sanctions	On summary conviction - up to 6 months and/or up to B400 On indictment - up to 2 years and/or a fine (unspecified) (No prosecution without A/G's consent)	On summary conviction - up to 3 months or up to $500 ($1000 as of 1977) (No prosecution without A/G's consent)	

	8. Canadian Criminal Code (1970)	9. Canadian Human Rights Act (1977)
Constituency	281.1(4) Any section of the public distinguished by colour, race, religion or ethnic origin	13(1) Race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted, and discriminatory employment practices based on physical handicap
Act	281.2 Statements i.e. words spoken or written or recorded electronically or electromagnetically or otherwise, and gestures, signs or other visible representations plus communicating by telephone, broadcasting or other audible or visible means (i) in any public place (ii) other than in private conversation.	13(1) Telephonic communication (broadcasting excepted)
Nature of Act	281.1(1) . Advocates or promotes (genocide) 281.2(1) . Communicates statements inciting hatred (2) . Communicates statements promoting hatred	13(1) Likely to expose
Consequences	281.1(1) Genocide 281.2(1) Hatred likely to lead to a breach of the peace (2) Hatred	13(2) Hatred or contempt
Intent	281.1(2) Wilfully	(No provision)
Defences	281.1(1) No provision 281.2(1) No provision 281.2(2) No offence if a. statements true b. religious subject c. statements of public interest, believed true ch pointed out for purpose of removal	(No provision)
Sanctions	281.1(1) indictable of years (no prosecution without A/G's consent) 281.2(1) . indictable offence/2 years . summary conviction 281.1(2) • indictable offence/2 years . summary conviction (no prosecution without A/G's consent	41. Tribunal order - to desist - restitution of rights, opportunities & privileges - compensation of lost wages, or expenses, and for alternative goods & services - up to $5000
281.1 & 2 Forfeiture of anything used to commit offence	281.3 A judge, satisfied by information on oath, can impound hate propaganda	

	Manitoba Human Rights Act - (1974)	Saskatchewan Human Rights code (1979)	British Columbia Civil Rights Protection Act (1981)
Constituency	2(1)(d) Race,nationalitv, religion, colour, sex, marital status, physical handicap", age, source of income, family status', ethnic or national origin	14(1) Race, creed, religion, colour, sex, marital status, physical disability, age, nationality	1(1) Colour, race, religion, ethnic origin, place of origin
Act	2(1)(b) Notice, sign, symbol, emblem or other representation; published, displayed, transmitted or broadcast to the public/ newspaper, TV, radio"; telephone, or any other medium	14(1) Notice, sign, symbol, emblem or other representation; published, displayed/TV, radio, newspaper, or any otherbroadcasting device or any other medium	1(1) Any conduct or communication
Nature of Act	2(1)(d) Expose or tend to expose	14(1) • Tending or likely to tend to deprive, abridge or otherwise restrict (rights) • expose or tend to expose (to hatred) • ridicules, belittles or otherwise affronts (dignity)	1(1) . Interference (with civil rights) . Promotion (of hatred or contempt; superiority or inferiority)
Consequences	2(1) (d) Hatred	14(1) . Restrict enjoyment of rights . hatred . affront dignity	1(1) . Civil rights interfered with • hatred or contempt • comparative superiority or inferiority
Intent	(No provision)	(No provision)	1(1) "As its purpose"
Defences	. Representation displayed to identify facilities customarily used by one Sex	(No provision)	(No provision)
Sanctions	(Incomplete)	(Incomplete)	4(1) Up to $2000 or 6 months (2) A corporation or society up to $10,000 2(1) A/G may intervene.

	13.	14,	it-
	Illinois Criminal Code (1949)	Rhode Island Criminal Offences (1981)	Council of Europe Consultative Assembly: Draft Model Law (1966)
Constituency	Race, colour, creed or religion	I1-53-1 ''Race, colour, creed, religion, ideological persuasion, or national Origin	1(a) Colour, race, ethnic or national origin, or religion
Act	Manufacture, sell, offer for sale, advertise or publish, present or exhibit in a public place any_ ' lithograph, moving picture, play, drama or sketch	11-53-2 . Activities of violentgroupsland individuals .,:Burning Or desecrating crass or other religious_sympol . Marking On property a symbol such as Nazi SwaStika (out:not limited to it)	2(a) • Written patter (including signs or visible 'representations) • Insignia (flags, badges, uniforms, slogans, forms of salute)
Nature of Act	Portrays depravity, criminality, unchastity, or lack of virtue, and exposes citizens to ...	11-532 . Terrorises	1(a) . Calls for or incites (b) , Insults4 hOldS up to contempt slanders , 5(a) :Publicly uses
Consequences	• Contempt, derision or obloquy • Breach of the ***peace*** or riots	- 11-5371 • Fear, intimidation' • Physical harm I • Death, great bodily injury, damage to property 11-53-2 , Injury to person, reputation or property . Threat, terror	1(,a) Hatred, intolerance, discrimination or violence
Intent	(No provision)	11-53-2 With intent or in reckless disregard	(No provision)
Defences	(No provision)	(No-provision)	(No provision)
Sanctions	(Incomplete)	• Up to $5000 and/or 2 years • Up to $15000 and/or 10 years for any subsequent offence	(Incomplete)

APPENDIX 5

International Convention On the Elimination ot All Forms of Racial Discrimination (1965)

Article 4

States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons 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 alial

(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 organized and all other propaganda activities, which promote and incite racial discrimination, and shall. recognize participation in such organizations 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.

APPENDIX 6

U.K. Race Relations Act (1965)

Section 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 origin -

(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.

(2) In this section the following expressions have the meanings hereby assigned to them, that is to say:-

"public meeting" and "public place" have the same meanings as in the Public Order Act 1936

"publish" and "distribute" mean publish or distribute to the public at large or to any section of the public not consisting exclusively of membersof an association of Which the person publishing or distributing is a member;

"written matter" includes any writing, sign or visible representation.

(3) A person guilty of an offence under this section shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two **years** or to a fine not exceeding one thousand pounds, or both;

but no prosecution for such an offence shall be instituted in England and Wales except by or with the consent of the Attorney-General.

APPENDIX 7

U.K.Race Relations Act (1976)

Section 70. Incitement to racial hatred

(1) The Public Order Act 1936 shall be amended in accordance with the following provisions of this section.

(2) After section 5 there shall be inserted the following section:-

"5A. 'Incitement to racial hatred

(1) A person commits an offence if -

(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,

in a case where, having regard to all the circumstances, hatred is likely to be stirred up against any racial group in Great Britain by the matter or words in question.

(2) Subsection (1) above does not apply to the publication or distribution of written matter consisting of or contained in -

(a) a fair and accurate report of proceedings publicly heard before any court or tribunal exercising judicial authority, being a report which is published contemporaneously with those proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, is published as soon as publication isreasonably practicable and (if previously unlawful) lawful; or

(b) a fair and accurate report of proceedings in Parliament.

(3) In any proceedings for an offence under this section alleged to have been committed by the publication or distribution of any written matter, it shall be a defence for the accused to prove that he was not aware of the content of the written matter in question and neither suspected nor had reason to suspect it of being threatening,, abusive or insulting.

(4) Subsection (3) above shall not prejudice any defence which it is open to a person charged with an offence under this section to raise apart from that subsection.

(5) A person guilty of an offence under this section shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding 400 pounds, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;

but no prosecution for such an offence shall be instituted in England and Wales except by or with the consent of the Attorney General.

(6) In this section -

"publish" and "distribute" mean publish or distribute to the public at large or to any section of the public not consisting exclusively of members of an association of which the person publishing or distributing is a member;

"racial group" means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and in this definition "nationality" includes citizenship;

"written matter" includes any writing, sign or visible representation."

'APPENDIX 8

N.Z. Race Relations Act (1971)

25. Inciting racial disharmony - (1) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding ($1,000) who with intent to excite hostility or against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons -

(a) Publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting; or

(b) Uses in any public place (as defined in section 40 of the Police Offences Act 1927), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive or insulting,

being matter or words likely to excite hostility or against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race or ethnic or national origins of that group of persons.

(2) For the purposes of this section -

"Publishes" or "distributes" means publishes or distributes to the public at large or to any member or members of the public:

"Written matter" includes any writing, sign, visible representation, or sound recording.

26. No prosecution without Attorney-General's consent - No prosecution for an offence against section 24 or section 25 of this Act shall be instituted without the consent of the Attorney-General.

APPENDIX 9

N.Z. Race Relations Act 11977 AMendment)

Section 9A. Racial disharmony - (1) It shall be unlawful for any person -

(a) To publish or distribute written matter i which i8 threatening, abusive, or insulting, or to broadcast by means of radio or television words which are threatening, abusive or insulting; or

(b) To use in any public Place (as defined in Section 40 of the Police Offences Act 1927), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting, -

being matter or words likely toexcite hostility or ill will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground Of the colour, race or ethnic or 'national origins of that group of persons.

(2) For the purposes of this section, the terms "publishes", "distributes"; and "written matter" have the respective meanings given to them by section 25(2) of this Act.

This section and heading were inserted by s.86 of the Human Rights Commission Act 1977.

Conciliation

10. Race Relations Conciliator - (1) There shall be appointed a conciliator to be called the Race Relations Conciliator ...

APPENDIX 10

CANADIAN CRIMINAL CODE, (1970)

HATE PROPAGANDA

281.1 (1) Every one who advocates or promotes genocide is guilty of an indictable offence and is liable to imprisonment for five years.

(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.

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

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

281.2 (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 two years; or

(b) an offence punishable on summary conviction.

(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 two years; or

(b) an offence punishable on summary conviction.

(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 upon a religious subject;

(c) if the statement 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 towards an identifiable group in Canada.

(4) Where a person is convicted of an offence under section 281.1 or sub-section (1) or (2) of this section, anything by means of or in relation to which the offence was committed, upon such conviction, may, in addition to any other punishment imposed, be ordered by the presiding magistrate 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.

(5) Subsections 181 (6) and (7) apply mutatis mutandis to section 281.1 or subsection (1) or (2) of this section.

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

(7) In this section

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

"identifiable group" has the same meaning as it has in section 281.1;

"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 electromagnetically or otherwise, and gestures, signs or other visible representations.

281.3 (1) A judge who is satisfied by information upon 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.

(2). Within seven days of the issue of the warrant, the judge shall issue a summons to the occupier of the premises requiring him to appear before the7court and show cause why the matter seized should not be forfeited to Her Majesty.

(3) The owner and the author of the matter seized 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 said matter.

(4) If the court is satisfied that the publication 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.

(5) If the court is not satisfied that the publication 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.

(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 XVIII, and sections 601 to 624 apply mutatis mutandis.

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

APPENDIX 11

.canadian Human Rights Act (1977)

Hate messages

13 (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause *to* be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

Exception

13 (2) Subsection (1) does not apply in respect of any matter that is comMunicated in whole or in part by means of the facilities of a broadcasting undertaking.

Interpretation

13 (3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of such matter.

APPENDIX 12

Manitoba Human Rights Act (1974), PART I

Prohibited Discriminatory Practices Discrimination

Prohibited in notices, signs etc. 2(1) No person Shall

(a) - publish, display, .transmit or broadcast, or cause to be published; displayed, transmitted or ' broadcast; or

() permit to b[illegible] transmitted to the public, On lands or Premises, in a newspaper, through television or radio or ' telephone, or by means of any other medium which he owns or controls;

any notice, sign, symbol,. emblem or other representation

(c) indicating discrimination or intention to discriminate against ,A person; or

(d) exposing or tending to expose a person to hatred;

because of the race, nationality, religion, colour, sex, marital status, physical handicap, age, source of income, family status, ethnic or national origin of that person.

Exception as to matters of opinion

2(2) Nothing in subsection (1) shall be deemed to interfere with the free expression of opinion upon any subject.

Exception

2(3) Subsection (1) does not apply to the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one sex.

APPENDIX 13

Saskatchewan Human 'Rights Code (1979)

PART II

Prohibitions against publications

14(1) No person shall publish or display .or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device or in any 'printed matter or publication or by means of any other medium that he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons of any right to which .k is or they are entitled under the law, or which exposes, or tends to expose, to hatred, ridicules, belittles, or otherwise affronts the dignity of any persons, any class of persons or a group of persons because of his or their race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin.

14(2) Nothing in subsection (1) restricts the right to freedom of speech. under the law upon. any subject.

APPENDIX 14

British Columbia Civil Rights Protection Act (1981)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Prohibited act is actionable

1. (1) In this Act, "prohibited act" means any conduct or communication by a person that has as its purpose interference with the civil rights of a person or class of persons by promoting

(a) hatred or contempt of a person or class o persons, or

(b) the superiority or inferiority of a person or class of persons in .comparison with another or others,

on the basis of colour, race, religion, ethnic origin or place of origin.

(2) A prohibited act is a tort actionable without proof of damage,

(a) by any person against whom the prohibited act was directed, or

(b) where the prohibited act was directed against a class of persons, by any member of that class.

(3) Where a corporation or society engages in a prohibited act, every director or officer of the corporation or society who authorized, permitted or acquiesced in the commission of the prohibited act may be sued by the persons referred to in subsection (2) and is liable in the same manner as the corporation or society.

(4) In an action brought under this section, the commission of a prohibited act by any director or officer of a corporation or society shall be presumed, unless the contrary is shown, to be done, authorized or concurred in by the corporation or society.

(5) An action under this section shall be commenced in the Supreme Court.

Attorney General may intervene in action

2 (1) The Attorney General may intervene in an action commenced under section 1, and where the Attorney General intervenes, he becomes a party to the proceedings.

(2) Where a person commences an action under section 1, he shall serve the Attorney General with a copy of the writ of summons within 30 days after commencing the action.

Remedies

3 (1) A party to an action brought under section 1 may be awarded damages or exemplary damages.

(2) Where the court awards damages or exemplary damages in an action brought by a member of a class of persons under section 1, the court may order payment of the damages to any person, organization or society that, in the court's opinion, represents the interests of the class of persons.

(3) In an action brought under section 1, the court may, in addition to any other relief, grant an injunction.

Offence

4 (1) A person who engages in a prohibited act commits an offence and is liable to a fine of not more than $2000 or to imprisonment for not more than 6 months, or to both.

(2) A corporation or society that commits an offence under subsection (1) is liable to a fine of not more than $10000.

(3) Where a corporation or society commits an offence under subsection (1), every director or officer of the corporation or society who authorized, permitted or acquiesced in the commission of the prohibited act commits an offence and is liable to the penalties under subsection (1).

APPENDIX 15

Illinois Criminal Code, Ill. Rev. Stat.,
Ch.38. paragraph 471 (1949)

"It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, Moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of Virtue of a class of citizens, of Any race, color, creed or religion which said publication or exhibition 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. ..."

This was repealed in 1961, and the provision redrafted to read:

"... a person commits criminal defamation when, with intent to defame another, living or dead, he communicates by any means to any person matter which tends to provoke a breach of the peace,"

APPENDIX 16

Rhode Island Criminal Offences (19.8D

Chapter 11-53

DEFAMATION

11-53-1. Declaration of Purpose. --The general assembly finds and declares that it is the right of every person regardless of race, color, :creed, religion, ideological persuasion, or national origin, to be secure and protected from fear, intimidation, and physical harm caused: by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The general assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The general assembly further finds however that the acts by groups against other persons or groups under circumstances where death or great bodily injury to that person or group or damage to property is likely to result is not constitutionally protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions...

11-53-2. Threat by Terror. --Any person who with the intent of terrorizing another or group of others or in reckless disregard of terrorizing another or group of others or with the intent of threatening any injury to the person, reputation or property of another or group of others, burns or otherwise desecrates a Cross or Other religious symbol or who places or displays a sign, mark, symbol, emblem, or other physical impression, including but not limited to a Nazi swastika on the property of another or group of others without authorization shall be punished by imprisonment in the adult correctional institution for—notmore than two (2) years, or by a fine of not more than five thousand dollare- ($5,000), or by both such fine and imprisonment for the first such conviction and by imprisonment in the adult correctional institution for not more than ten (10) years, or by a fine of not more than fifteen thousand dollars ($15,000), or by both such fine and imprisonment for any subsequent conviction.

APPENDIX 17

Council of Europe Consultative Assembly: Draft Model Law (1966)

Article 1

A person shall be guilty of an offence:

(a) if he publicly calls for or incites to hatred-, intolerance, discrimination or violence against persons or groups of persons distinguished by colour, race, ethnic or national origin, or religion;

(b) if he insults persons- Or groups of persons, holds them up to contempt or slanders them on account of the distinguishing particularities mentioned in paragraph (a).

Article 2

(a) A person shall be guilty of an offence if he publishes or distributes written matter which is aimed at achieving the effects referred to in Article 1.

(b) "Writ ten matter" includes any writing, sign or visible representation.

...

Article 4

Organisations whose aims or activities fall within the scope of Articles 1 and 2 shall be prosecuted and/or prohibited.

Article 5

(a) A person shall be guilty of an offence if he publicly uses insignia of organisations prohibited under Article **4.**

(b) "Insignia" are, in particular, flags, badges, uniforms, slogans and forms of salutes.