

## PARLIAMENTARY PANEL INQUIRY SUBMISSION

Karen Eltis

Associate Professor of Law, University of Ottawa

Past Director, Centre for Research and Education in Human Rights

A Jewish student threatened with beheading at the University of Toronto; another grabbed by the neck and verbally assaulted during an “anti-Israel” event at the same institution; Jewish students trapped at Hillel (Jewish Center) for fear of physical attack while the doors are pounded on and racial slurs shouted at York; verbal and physical attacks on Jewish students reported at Carleton.<sup>1</sup> These incidents – a mere sampling of a growing phenomenon of intimidation increasingly prevalent on Canadian campuses, rarely (if ever) met with decisive condemnation let alone concerted action<sup>2</sup> – seem to confirm Pierre-Andre’s Taguieff’s observation that “not since the Second World War have we witnessed such a rash of anti-Jewish acts, which have met with such limited intellectual and political resistance”.<sup>3</sup>

This is indeed a time when historical truth and values such as equality struggle to endure in the face of increasing attacks on Jews, insidiously couched in human rights rhetoric. Thus, for instance, Iran's president Mahmoud Ahmadinejad's recurring and unequivocal assertions that Israel “should be wiped off the map,” and his incitement of students to ultimately commit genocide, chanting “death to the Jews” at a government-sponsored conference<sup>4</sup> was tactically justified in terms of human rights. Namely, free speech and open debate.

These occurrences are by no means isolated nor are they far removed from Canadians. Instead, as noted above, they echo similar calls for incitement to violence against Jews

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<sup>1</sup> See e.g. “Students Threatened with beheading at U of T’s Israeli Apartheid Week” *The Jewish Tribune* (10 March 2009), online: <<http://www.jewishtribune.ca/TribuneV2/index.php/200903101454/Student-threatened-with-beheading-at-U-of-T-s-Israeli-Apartheid-Week.html>>. For a more detailed report of such incidents on Canadian campuses see e.g. <[www.peaceoncampus.ca](http://www.peaceoncampus.ca)>.

<sup>2</sup> See e.g. Shlomo Lapin’s critique infra Note 15.

<sup>3</sup> Pierre-Andre, Taguieff, *The New Judeophobia* (Editions Mille et une nuits, 2002).

<sup>4</sup> See e.g. BBC News

< [http://news.bbc.co.uk/2/hi/middle\\_east/8010702.stm](http://news.bbc.co.uk/2/hi/middle_east/8010702.stm)>. Transcript of speech available at

< <http://www.haaretz.com/hasen/spages/1024097.html>> See also Ewen MacAskill & Chris McGreal, “Israel Should Be Wiped off Map, Says Iran’s President, *Guardian*” *The Guardian* (27 October 2005), online: <<http://www.guardian.co.uk/world/2005/oct/27/israel.iran>>.

(including but not limited to chants for “death to Jews”) at so called “anti-Israel” rallies in Montreal, Toronto and Calgary earlier this year.<sup>5</sup> Blatantly antisemitic rhetoric, masking as the exercise of constitutionally enshrined rights is widespread at Canadian Universities, epitomized by recurring high-profile events such as “Israel Apartheid Week”. Its disturbing but clear implication is that Israel is a racist entity that must be dismantled.<sup>6</sup> The campaign further suggests that the Jewish state’s supporters (including Jewish and certainly Israeli students and faculty who have not disowned their heritage) must be greeted with opprobrium as proponents of vile racism by any peace-loving Canadian.

Most disturbingly perhaps, the antisemitic or even genocidal affirmations (and I do not use this term lightly) voiced on Canadian campuses in the context of these events and beyond, not only serve to intimidate and silence Jews on campus but are – as noted – progressively cloaked in human rights discourse. In a word, classic anti-Jewish motifs are made palatable to the Canadian ear when craftily phrased in terms of freedom of expression or a right of the oppressed to self-determination. This racist rhetoric, evoking familiar themes of Jewish power and domination (e.g. posters on campus often evoke blood libels with Palestinian children substituting their Christian counterparts...)<sup>7</sup> are often preceded by the denial of atrocities perpetrated against the vilified group and veiled in rights rhetoric.

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<sup>5</sup> See e.g. Paul Lungen, “Police asked to Investigate Anti-Israel Protest” *The Canadian Jewish News* (22 January 2009), online:

<[http://www.cjnews.com/index.php?option=com\\_content&task=view&id=16092&Itemid=86/](http://www.cjnews.com/index.php?option=com_content&task=view&id=16092&Itemid=86/)> In a video released by the Canadian Jewish Congress (Canadian Jewish Congress, News release, “CJC exposes incitement to hatred and violence at pro-Hamas rallied” (14 January 2009), online:

<<http://cjc.ca/template.php?action=news&story=1003>>): “some protesters are heard repeating the medieval anti-Semitic libel that Jews drink blood. One woman is seen yelling, “Jewish child, you’re going to f\*\*\*ing die, Hamas is coming for you.” At a rally in Calgary men were photographed giving the Nazi salute...”. The calls effectively mimic those housed within the Hamas covenant, which – interestingly for our purposes – frames its demand for the “obliteration from existence” of the Jewish state as a “religious right”.

Covenant is available at: < [http://avalon.law.yale.edu/20th\\_century/hamas.asp](http://avalon.law.yale.edu/20th_century/hamas.asp)>.

<sup>6</sup> See the Hon. Irwin Cotler’s statement on point. More generally (focusing on U.S. campuses) see also Khaled Abu Toameh, “On Campus: The Pro-Palestinians’ Real Agenda” (24 March 2009), online: The Hudson New York Briefing Council

<<http://www.hudsonny.org/2009/03/on-campus-the-pro-palestinians-real-agenda.php>>.

<sup>7</sup> See e.g. SPHR poster . The image and an article on the subject have been made available at the Fulcrum online at < <http://www.scribd.com/doc/12845977/Fulcrum-022609>. See also Gerald M. Steinberg & Sarah Mandel, “Watching the Watchers” (2006) 43 *Justice* 24 at 26 (chronicling the inversion of human rights narratives by various “human rights” NGOs. “In Belgium, the local branch of Oxfam, which was headed for many years by a radical socialist named Pierre Galand, distributed an anti-Semitic poster in 2003 based on the theme of the blood libel, in promoting a campaign to boycott Israeli goods and Israelis themselves”).

## ***From the General to the Specific***

This phenomenon is particularly worrisome in the context of a University, whose mission is generally “to promote the advancement of learning and the dissemination of knowledge”<sup>8</sup> and whose responsibility is to “foster an environment of respect, conducive to the sharing of knowledge free from harassment, verbal or other violence and fear of reprisals”.

This new anti-Jewishness (or so called “antizionist” discourse)<sup>9</sup> not only significantly impacts on Jewish students’ ability to learn and share as equal members of the campus community but also affects their psychological health and well being.

Plainly put, many Jewish and Israeli students are intimidated and even afraid. Afraid to reveal their Jewishness, their support for Israel, or to engage in discussion and debate in what is an ever hostile and aggressive environment for anyone who dares to challenge engrained views concerning Jews and the Jewish state (be it in the classroom or outside). Some are even ashamed of their identity, having internalized the vilification repeatedly directed at them and been regularly exposed to hateful discourse and symbols (i.e. Jewish star alongside swastika...). All this shamelessly cloaked as an exercise of the right to legitimate political protest to the mid-east situation.

Significantly, this harassment and incremental demonization<sup>10</sup> is not without long-term consequence and sequela for young Jewish students in particular. As Engel explains more generally: “Harassment can wear down a person’s defences and resistance over time...tiring them out and making them insecure and anxious. It is another powerful form of psychological violence”.<sup>11</sup>

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<sup>8</sup> See e.g. *University of Ottawa Act*, 1965. The Act is cited not to single out a particular university but merely offered as an example of a university’s stated mission (that is arguably parsimonious and generally applicable to sister-institutions).

<sup>9</sup> In order to avoid tautological debate regarding antisemitism versus antizionism, I proposed elsewhere that the EUMC Working Definition of Anti-Semitism (available at <<http://eumc.eu.int/eumc/material/pub/AS/AS-WorkingDefinition-draft.pdf>>) be incorporated by reference in campus codes of conduct respecting harassment.

<sup>10</sup> Recently described in this context by Natan Sharansky as “comparisons of Israelis to Nazis and Palestinian refugee camps to Auschwitz” applying a double standard, singling out Israel for human rights abuses “when countries like China and Syria are ignored”. See Mike King, “Anti-Semites Focus on Israeli State: Sharansky” *The Gazette* (15 March 2004).

<sup>11</sup> Engel: 1998, 44.

It is in fact, as a US court dealing with anti-Semitic comments in the workplace context recently opined, the *accumulation* of vilifying and derogatory comments that create an atmosphere of fear, silencing and shame for its victims exposed to this propaganda.<sup>12</sup> *A fortiori* for the campus environment, which unlike the workplace, also serves as a home for many students, thus exacerbating the effects of intimidation.

### ***Affirmative or positive right to expression***

The human rights narrative disturbingly co-opted by proponents of traditional antisemitic discourse misleadingly suggests that the only rights at stake and worthy of protection are their own – to the exclusion of the rights of the Jewish campus community members to an environment free of harassment.

In other words, the human rights rhetoric in this context rests on the premise that restraints on speech alone pose a threat to this constitutionally protected value. Instead –and in line with the Canadian Supreme Court’s decision in *Keegstra*<sup>13</sup> and elsewhere – let it be argued that if permitted to proceed uninhibited, certain forms of speech, particularly racist and harassing rhetoric such as “Israel Apartheid” serves not only to undermine Jews’ equality and dignity on campus but effectively threatens to muzzle them and prevent them from participating in campus community life.<sup>14</sup>

Other than being antithetical to Canadian values such as tolerance, multiculturalism and equality, and to the university mission, this is an Orwellian inversion manipulated to promulgate hate, and to undermine the above stated values.

Therefore, it stands to reason that universities (and indeed society) are duty-bound to take corrective action to protect not only the “Anti-Israel” protesters’ freedom *from* infringements on

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<sup>12</sup> See *Cutler v. Dorn* 196 N.J. 419, 955 A.2d 917 available at: <<http://lawlibrary.rutgers.edu/courts/supreme/a-51-07.opn.html>>. Held the court, “The threshold for demonstrating a religion-based, discriminatory hostile work environment is no more stringent than the threshold that applies to sexually or racially hostile workplace environment claims”.

<sup>13</sup> *R. v. Keegstra*, [1990] 3 S.C.R. 697.

<sup>14</sup> I will refrain from cataloguing the incidents on Canadian campuses, which have been well-documented elsewhere. See also <[www.peaceoncampus.ca](http://www.peaceoncampus.ca)>.

free speech – as they have done already – but Jewish victims’ positive<sup>15</sup> or affirmative rights to expression, dignity and equality. In this case and in the balance of rights, the latter must prevail.

To quote Professor Shalom Lapin (who declined an invitation to speak at York University by reason of its failure to address the lamentable Hillel incident cited above): “If one group of students is permitted to engage in violent harrassment of another without the decisive intervention of the University's administration, then the conditions for a free and unfettered exchange of ideas are completely undermined, and the primary purpose of university life is betrayed.”<sup>16</sup> For surely the purpose of protecting speech “is not to carve out a private, solipsistic sphere but, rather, to protect our efforts to communicate with other people. Freedom of expression should not be seen as a solely negative right whose only function is to protect us against interference and not to give us any right to positive assistance in our endeavour to communicate with others...”<sup>17</sup>

### ***A Final Word***

However incredulously, constitutionalism – the anticipated safeguard against the devastation of democracy from within – may itself, it seems, be co-opted for that very purpose. Once issues are proffered “in terms of conflict of right as opposed to conflicts of interest” the balance of power inevitably changes as he invoking ‘rights’ is presumed to be of higher moral caliber – a “Constitutional Warrior” fighting injustice – even if it is a genocide denier or a proponent of racist doctrines.

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<sup>15</sup> To employ Isaiah Berlin’s Two Conceptions of Liberty (Four Essays on Liberty, 1969) at 118. See also J.F. Gauldrault-Desbiens, “From Sisyphus's Dilemma to Sisyphus's Duty? A Meditation on the Regulation of Hate” (2001) 46 McGill L. J. 1117-1137. He argues that “this dilemma [of inhibiting speech] becomes a *duty to regulate against abusive forms of expression*, because a constitutional democracy cannot tolerate radical denials of the humanity of some of its citizens...”.

<sup>16</sup> See Professor Lapin’s letter to the President and Vice-Chancellor of York University available at : <<http://www.peaceoncampus.ca/articles/articles-detailed.php?artclid=1&artname=Letter-to-the-President-and-Vice-Chancellor-of-York-University-from-Professor-Shalom-Lappin-after-canceling-his-appearance-to-lecture-due-to-the-lack-of-response-to-student-intimidation->>.

<sup>17</sup> See *inter alia* Denise Meyerson, “The Legitimate Extent of Freedom of Expression” (2002) 52 U. Toronto L.J. 331 (citing Moon and Anderson’s research).

As to the 'slippery slope' argument, or the 'hate speech' conundrum respecting where the proper line is to be drawn, I have argued elsewhere<sup>18</sup> in favour of incorporating the EUMC Working Definition of Anti-Semitism<sup>19</sup> by reference into various University policies regarding hostile speech/harassing behaviour on campus (in order to prevent the need for problematic ad hoc responses). I submit further that the "set of indices" that the Hon. Irwin Cotler proposes, by which we can in his words "identify, and pour content into, the nature and meaning of the new anti-Jewishness"<sup>20</sup>, serve to demarcate legitimate criticism of Israel from blatant anti-Semitism, masking as such.

The danger of hijacking human rights narratives towards racist incitement is not unprecedented. Most informative indeed are the lessons of France's Vichy regime, which as Richard Weisberg demonstrated, appropriated legal language associated with profound pre-existing social values in order to seamlessly subvert those very principles and lay the foundation for their destruction. If constitutionalism is to serve the purpose for which it was intended – that is to safeguard substantive democracy - we must not be fooled by the cynical invocation and manipulation of human rights values. History teaches the importance of the precautionary principle as it relates to incitement to hatred against historically vulnerable groups. The Canadian Supreme Court has embraced this view by upholding carefully drafted anti-hate provisions. It bears repeating that in Canada, the willful promotion of hatred under certain circumstances is deemed a justifiable and proportional limit on free expression in light of its deleterious effects upon the dignity and equality of the vulnerable and society as a whole<sup>21</sup>. The hope here is to raise awareness of the problem and to prompt meaningful intervention. The challenge for political leaders, university administrators, the media and particularly civil society now is not to let constitutionalism be undermined by the very narrative it conceived.

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<sup>18</sup> As the context of this report does not allow for further elaboration. See e.g. CAFI conference "Emerging trends in anti-Semitism" (unreported). CAFI website: <http://caficonference.com/>

<sup>19</sup> <http://eumc.eu.int/eumc/material/pub/AS/AS-WorkingDefinition-draft.pdf>.

<sup>20</sup> See Irwin Cotler, "Human Rights and the New Anti-Jewishness" 38 Justice 24 (2004), available at <http://www.intjewishlawyers.org/docenter/frames.asp?id=9285>; see also Irwin Cotler, Human Rights and the New Anti-Jewishness, FrontPageMagazine.com, <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=12191> (referring to "genocidal or existential anti-Semitism"). See also e.g. Ruth Wisse, "Why Anti-Semitism Succeeds,"

<sup>21</sup> While it is beyond the scope of this report to elaborate on the legal or jurisprudential framework see e.g. R. v. Keegstra, [1990] 3 S.C.R. 697, where the Court recognized the role of words in ushering in violence. See also Mugesera v. Canada (Minister of Citizenship and Immigration), [2005] SCC 40 § 8, available at for the potential of abuse of the protected human rights guarantees.

