



Spring 3-1-2006

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Recommended Citation

Stefan Braun, *SECOND-CLASS CITIZENS: JEWS, FREEDOM OF SPEECH, AND INTOLERANCE ON CANADIAN UNIVERSITY CAMPUSES*, 12 Wash. & Lee J. Civ. Rts. & Soc. Just. 1 (2006).

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SECOND-CLASS CITIZENS: JEWS, FREEDOM OF SPEECH, AND INTOLERANCE ON CANADIAN UNIVERSITY CAMPUSES

Dr. Stefan Braun*

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It began with jeering, screaming, and shoving. Jewish students attempted to get through the enraged mob to their destination. They were kicked, punched, spat upon, and abused with racial epithets. The mob pushed through the police cordon, smashing the thick glass doors of the Hall Building at Concordia University in Montreal. Inside, they trashed the building, assaulting those standing in their way, hurling tables, chairs, even a fire extinguisher. Retreating police officers defended with a flurry of swinging batons and a thick cloud of pepper spray. The object of the mob's rage—former Prime Minister of Israel, Benjamin Netanyahu, listed to give a talk on the Middle-East conflict to invited guests at the university.¹

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¹ See The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *Anti-Semitism Worldwide 2002/3*, <http://www.tau.ac.il/Anti-Semitism/asw2002-3/canada.htm> (last visited Mar. 8, 2006) (describing activities of anti-Zionist and anti-Semitic protestors on Canada's university campuses); *Riot in Concordia: In Montreal, a Speech by Bibi Netanyahu is Cancelled when Hundreds of Pro-Palestinian Turn to Violence*, AISH, Sept. 20, 2002, http://www.aish.com/jewishissues/jewishsociety/Riot_at_Concordia.asp (detailing the chaos and violence directed at the Jewish students).

I. Introduction

In 1894, Anatole France sardonically wrote, "the law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."² France was deriding the charade of paper legal equality of the times that masqueraded for real social justice. The idea of equality, at least in its multicultural sense, has come a long way since France. Canada, today, is widely regarded as a model multicultural society, where national values of tolerance, diversity, and justice are etched in the minds of its citizens, and enshrined in the laws, codes, and regulations of the land. Yet, hate crimes and hate speech have risen sharply across the nation since 9/11. By far the most disproportionately targeted group has been Jews,³ despite escalating intolerance of Muslims and Arabs. Jewish university students are the most deeply and pervasively affected. At progressive Canadian campuses, it is not unusual for Israel to be singularly demonized, and for Jewish students to be openly taunted, harangued, harassed, or even physically threatened and assaulted; not for anything they did, nor even said, but for whom they are. Responsible campus officials not only tolerate inflammatory rhetoric and campus conditions that stoke the flames of Jewish intolerance but often promote them with majestic policies of paper equality that placate or reward offenders.

Some forty years after their elders' hard-fought battles for true equality, recognition, and inclusion, many Jewish students are once again finding themselves outsiders in their own house—alienated, marginalized, and consigned to second-class citizenship.⁴ The plight of Jewish students at leading Canadian campuses is not just a Jewish problem but a national shame, and a human rights dilemma. This Article suggests rethinking traditional Jewish faith in measures that undermine freedom of speech, to answer campus intolerance. I argue for a more politically nuanced and

² ANATOLE FRANCE, *LE LYS ROUGE* [The Red Lily]; JOHN BARTLETT, *QUOTATIONS* 655 (Boston, Little Brown & Co. 1980)

³ Paul Lungen, *Toronto Hate Crimes Down; Jews Most Targeted*, CANADIAN JEWISH NEWS, June 10, 2004, <http://cjnews.com/viewarticle.asp?id=626>. The article cites the Canadian Centre for Justice Statistics survey of 12 Canadian police forces in 2001 and 2002. The survey revealed the following breakdown of hate crime targets: Jews (26%), Blacks (17%), Muslims (11%), South Asians (10%), gays and lesbians (9%). Jews constitute only about 1% of the Canadian population; *Antisemitism Incidents up 50%, Audit Reveals*, JEWISH TRIBUNE, Mar. 17, 2005, <http://www.bnaibrith.ca/article.php?id=888>; OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, *COMBATING HATE CRIMES IN THE OSCE REGION: AN OVERVIEW OF STATISTICS, LEGISLATION, AND NATIONAL INITIATIVES*, http://www.osce.org/publications/odihr/2005/09/16251_453_en.pdf (last visited Feb. 17, 2006).

⁴ It wasn't until the 1970s, for example, that Bora Laskin, a young Jewish lawyer who could not get a job with any law firm in Toronto, became the Chief Justice of the Supreme Court of Canada. *Laskin Obituary*, CANADIAN PRESS, Mar. 26, 1984; see generally IRVING ABELLA & HAROLD TROPER, *NONE IS TOO MANY: CANADA AND THE JEWS OF EUROPE 1933–1948* (Toronto, Lester & Orpen Denny's 1982).

socially constructive "speech-friendly" approach, one that is responsive to political change and sensitive to fundamental principles of public discourse and democratic citizenship.

II. *The Pattern, the Picture, and the Puzzle*

While the problem varies from campus to campus, a disturbing picture of marginalization, isolation, alienation, and official culpability in promoting or failing to prevent it, is emerging. Examples include: 1) discrimination against invited Jewish speakers; 2) abridgement of a Jewish social organization's rights to cultural and religious expression; 3) tolerance of a hostile learning environment, poisoned by a pattern of organized intimidation and harassment of; 4) tolerance of illicit campus electoral campaigns that subvert the campus democratic process to disenfranchise the Jewish voice.

One of the more infamous illustrations of the first is the Concordia riot. The riot spotlighted the dilemma of balancing freedom of speech with campus safety and security. But it also raised an ugly, and unspoken truth: the plight of Jewish students at progressive Canadian campuses with large and vocal Muslim groups, which university administrators in Canada have yet to confront. Following the riot, Concordia officials instituted a temporary moratorium banning equally *all* speakers, activities, and discussions concerning the Middle East.⁵ Jewish students objected that this was discrimination, not equality. They were the targets, not the perpetrators of the violence. Why were they included in the ban? They had done nothing wrong. Why were they being re-victimized with official censorship for the criminal actions of their censoring victimizers? Fairness, however, was not the only objection to the blanket moratorium. The CANADIAN JEWISH NEWS warned, "[t]he university has effectively taught the threateners of violence that their threats are effective. It stands to reason therefore, that there will be more such threats."⁶

The warning was prescient. By October of 2004, Palestinian Authority chairman Yasser Arafat's legal adviser could freely speak on campus, uninterrupted, to his followers exactly where Netanyahu could not. But when Jewish students announced that they were inviting former Israeli Prime Minister Ehud Barak, a labour activist and noted left-wing peace architect, to speak on campus, an ominous precedent had already been set.

⁵ Bram Eisenthal, *Middle East Studies in the News: At Montreal School, Jewish Student Beaten a Week After Palestinian Riot*, CAMPUS WATCH, Sept. 23, 2002, <http://www.campus-watch.org/article/id/142>.

⁶ Editorial, *A Veto to the Thugs and Extremists*, CANADIAN JEWISH NEWS, Oct. 14, 2004, <http://www.cjnews.com/viewarticle.asp?id=4563&s=1>.

SPHR (Solidarity for Palestinian Human Rights) warned that it would organize a demonstration, if Barak spoke.⁷ Citing an audit by the university's internal security team, which found that security for those on campus, as well as for the residents and four other institutions in the neighbourhood, could not be guaranteed, Concordia declared Barak *persona non grata* at Concordia.⁸ A general moratorium had become a Jewish moratorium. Thugs and bullies now had an effective veto over Jewish rights to speak.

As both the fairness and the wisdom of Concordia's position became increasingly difficult to defend, Concordia officials appeared to retreat. But neither fairness nor foresight was what they had in mind. First, they offered to host Barak at an *off-campus* speaking venue.⁹ Then, as pressures for true campus equality mounted, they sweetened the deal. In January of 2005, two and half years after the Concordia riot, Concordia administrators announced that Barak would be permitted to speak *on campus*. But because of continuing security concerns, the unofficial official Jewish ban would not be lifted. Instead, officials offered a "separate but equal" solution that would have been scandalous if proffered to any other similarly criminally violated campus minority.¹⁰ Barak would be permitted to speak at Concordia's hockey rink, a geographically, and symbolically, inferior venue.¹¹ To make matters worse, the rink needed to undergo extensive security renovations that were not scheduled for completion for another half year. With a daunting delay, and an inferior venue ill-befitting a former head of state, the solution was certainly separate but hardly equal.

Two and a half years after being violently driven out of town, Netanyahu did finally get to speak to Jewish students at an off campus Concordia venue and at ten other Canadian campuses as well—in a pre-recorded video hook-up from Jerusalem.¹² Among duly invited world leaders, only democratically elected Jewish heads of state have ever been officially singled out or segregated at any Canadian university for

⁷ Janice Arnold, *Concordia President Silent on Barak Ban*, CANADIAN JEWISH NEWS, Oct. 14, 2004, at 29 (on file with author).

⁸ *Id.*; Janice Arnold, *Concordia Decision Called Win for the Violent Ones*, CANADIAN JEWISH NEWS, Oct. 14, 2004, at 3 (on file with author).

⁹ Janice Arnold, *Barak Rejected Off-Campus Site to Speak: Lowy*, CANADIAN JEWISH NEWS, Nov. 4, 2004, <http://www.cjnews.com/viewarticle.asp?id=4735&s=1>.

¹⁰ The now infamous "separate but equal" doctrine established in *Plessey v. Ferguson*, 163 U.S. 537 (1896) was used in the United States to justify segregation of Blacks until it was finally overturned by the Warren Court in *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) for violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

¹¹ Janice Arnold, *Concordia Hockey Arena Likely Venue for Barak*, CANADIAN JEWISH NEWS Jan. 6, 2005, <http://www.cjnews.com/viewarticle.asp?id=5211&s=1>.

¹² Frances Kraft, *Netanyahu Addresses Canadian Students*, CANADIAN JEWISH NEWS, Apr. 7, 2005, <http://www.cjnews.com/viewarticle.asp?id=6043&s=1>.

ensorship, as a security threat. All other vulnerable minorities at all Canadian campuses have security *and* freedom to speak. Only Jews need choose between the two. Only for Jewish students can their safety be the price of their right to be heard, and their right to be heard the price of their safety. To be sure, Concordia officials faced an unenviable task—balancing campus security needs and legitimate Jewish rights. But by compromising legitimate Jewish rights to equal voice, they also compromised Jewish students as first-class campus citizens. It is, therefore, important to put the riot in its proper security context.

The Concordia riot was not a spontaneous incident, an unforeseen accident that just happened despite officials' best efforts to prevent it. Impending anti-Zionist conflicts on Canadian campuses are advertised in advance. Concordia officials were forewarned.¹³ Police were waiting. Yet, Jewish students did not get the protection they deserved. The riot was just one, albeit particularly brazen, expression of a larger cross-campus agenda of hate, organized by serial protestors and known campus agitators, to marginalize the Jewish voice and de-legitimize the Jewish identity on campus. While Concordia officials countered that they were caught off guard, despite all the warnings of serious trouble to come, this acknowledgement of responsibility was never intended as a promise of future equality, security, and voice for Jewish students. Rather, as their discriminatory post-riot actions demonstrate, it was a self-serving excuse, and a self-realizing, self-justifying prophecy for shirking responsibility.

As long as campus officials continue to placate thugs and bullies with majestic policies of paper equality, and fail to accord unpopular Jewish voices the equal protection from assault enjoyed by all other historic minorities, besieged Canadian campuses will never be on guard. The Jewish voice will continue to be sacrificed to security concerns and thugs' strategy of Jewish intimidation. Jewish marginalization will continue to pay off—as it did at one of the nation's largest and proudest multicultural and multilingual campuses. More than three years after the riot at Concordia, no Jewish head of state has spoken on the campus, nor is one expected to do so anytime in the near future. If message effectively delayed is speech denied, the Concordia campaign of intimidation is the quintessential illustration of successful denial. Jewish marginalization walks in lock step with majestic policies of paper equality. At Concordia (separate and *not* equal), it is even one step ahead.

Official readiness to sacrifice Jewish rights to cultural and religious expression for campus security, at York University, further illustrates the dilemma of Jewish marginalization on Canadian campuses. In March of

¹³ Janice Arnold, *Concordia Hockey Arena Likely Venue for Barak*, *supra* note 11.

2004, Arab student activists belonging to SPHR dressed up in Israeli military gear and set up checkpoints inside Vari Hall, an academic building at York University.¹⁴ With megaphones in hand, they obstructed students from freely passing through to attend classes.¹⁵ In street style theatre, they conducted mock searches embellished with cartoonish re-enactment of sadistic Israeli soldiers mercilessly beating, kicking, and shooting helpless Arab women in the head as they lay cowering on the ground, begging for their lives and screaming for help from startled passers-by.¹⁶

York administration required all student groups setting up displays *inside* an academic building to first obtain a permit.¹⁷ SPHR did not seek a permit. Indeed, the upcoming event was widely publicized, and Jewish students complained about SPHR's illicit plans to York University security and the Office of Student Affairs, but nothing was done to prevent the disruption.¹⁸ Frustrated, Jewish students from Hillel decided to hold a *silent* vigil *outside* Vari Hall for the victims of Palestinian suicide bombers, obtaining a permit for their muted display.¹⁹

Similar invasive checkpoints, physically obstructing free passage to and from classes, contrary to university codes of conduct, had been set up at other Canadian campuses with no incident. At Carleton University, for example, four Jewish students showed up at the checkpoints with silent protest signs, and were soon met by security who told them to leave or be forcibly evicted for provoking a disturbance.²⁰ They did as they were told. But at York University, Jewish patience with violators repeated flaunting of the rules of student engagement was wearing thin. When campus officials failed to do their duty even as the checkpoints were being set up, some frustrated Jewish students decided to do so for them. The expected scuffle followed, at which point security was called in to restore order.²¹ In a familiar cross-campus refrain, York administrators followed with a temporary moratorium on all activities of both groups.

¹⁴ Anna Morgan, *Pro and Anti-Israeli Groups Clash at York U*, CANADIAN JEWISH NEWS, Mar. 25, 2004, <http://www.cjnews.com/viewarticle.asp?id=2938&s=1>.

¹⁵ *Id.*

¹⁶ *Id.* "In street-theatre style, the soldiers then proceeded to beat and kick the women as they screamed and begged for help from passersby. When the women fell motionless to the ground, the soldiers raised their hands, as if they were holding guns, and then feigned shooting the women in their heads." *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Frances Kraft, *Carleton Jewish Students Denied Right to Protest*, CANADIAN JEWISH NEWS, Apr. 3, 2003, <http://www.cjnews.com/viewarticle.asp?id=203>.

²¹ Anna Morgan, *York Lifts Suspension of Hillel Activities*, CANADIAN JEWISH NEWS, Apr. 1, 2004, <http://www.cjnews.com/viewarticle.asp?id=2991&s=1>.

York and Concordia may seem like very different situations. But there are some striking similarities. At York, as at Concordia, the ensuing conflict was instigated by illicit student conduct, which officials could and should have prevented. At York, as at Concordia, the offenders were well organized, and the conflict staged, pre-publicized, and artfully executed. At York, as at Concordia, the offenders defiantly, and physically, subverted mutual rules of democratic campus engagement, and contemptuously thumbed their nose at campus officials, to make a political point. At York, as at Concordia, official dereliction of duty to prevent the conflict was not the only inequity; official reaction to the staged conflict was also inequitable. To more fully understand how so, some background is crucial.

The SPHR, as underscored by its name, is a political organization specifically created to advance a political agenda. In contrast, Hillel's mandate on campus has historically been that of a social club. It fills many non-political needs of Jewish students, such as assembling together for prayer, kosher meals, social events, and religious education. Hillel's response in intervening against the illicit checkpoints was spontaneous, not pre-planned. Its purpose was not to make a political point, much less to subvert campus rules of democratic engagement, but rather to procure mutual respect for those rules when administrative officials and campus security would not.

These are hardly minor distinctions. The operating mandate of the two groups was not the same. The degree of culpability for the ensuing conflict was not equal. Official suspension of all group activities would not impact equally. An indiscriminate punishment could then hardly be equitable. Defending its actions, the York administration opined that both "Hillel and Solidarity for Palestinian Human Rights were aware that, as of Feb. 1, Vari Hall, an academic building, was no longer available for events."²² At no time did York officials take responsibility for their failure to prevent the pre-advertised, and unauthorized, event, or for their failure to quickly move against the violators. Nor would they reassign responsibility, and punishment, for the ensuing conflict to where they were squarely due. Ignoring the facts, York officials defended, "while we understand that one side may see the other's demonstration as a provocation, nonetheless both clubs were aware of the rules and knew that they were not permitted to demonstrate in Vari Hall."²³ Thus substituting their bodies for words, and physical intimidation for required permits to make their political point, wound up rewarded for their brazen display of contempt with a suspension of legitimate Jewish rights to cultural, social, and religious self-expression.

²² *Id.*

²³ *Id.*

Campus policies of paper equality, spotlighted by these cases, disclose a deeper and wider problem of dereliction of official duty. University officials are required by campus codes of conduct and their own lofty pronouncements of campus equity to provide a welcoming learning and speaking environment, free from fear, hate, and intimidation, equally to all. This, however, is not just the educational bargain and a moral imperative. In Canada, it is also the law. It is a human right. It may even be the subject of criminal concern.²⁴ But, by their omissions, and indifference to Jewish rights, responsible officials at progressive Canadian universities have been shirking their duty. Official tolerance of a climate of intolerance of visible Jews has taken mainly two forms: tolerance of organized demonization and vilification of the historic Jewish national self-identity, and tolerance of a pattern of demeaning taunting, harassment, and intimidation of visible Jewish students.

At McMaster University in Hamilton, an SPHR sponsored talk by Lenni Brenner entitled "Zionist collaboration from the Nazis to the U.S.A. Imperialists Today" went ahead with no objections from campus administrators.²⁵ At the University of Calgary, in January 2003, a Palestinian advocacy group held a lecture on Jewish complicity in the 9/11 attacks among other Jewish conspiracies.²⁶ In November of 2003, University of Toronto authorities initially cancelled an Al-Awda conference that openly called, among other things, for the destruction of the state of Israel but then re-instated the event after protests by supporters of the conference led to harassment and assaults targeting Jews living in the vicinity of the University.²⁷

At the University of Toronto's downtown campus, an anti-Israeli divestment rally, accompanying a weeklong symposium against the Jewish state, entitled, "Israel Apartheid Week," was re-routed from the doorstep of Hillel's Wolfond Centre, but the hate-fest went ahead anyway with beefed up security.²⁸ To be sure, the University of Toronto is no Concordia, either in

²⁴ Canadian law proscribes hate and discrimination against identifiable groups in a variety of legal provisions, besides human rights codes. For example, § 319 of the Criminal Code punishes incitement to hate and willful promotion of hatred and § 718.2 provides enhanced sentencing for hate motivated crime. Section 430 (4.1) of the amended Anti-Terrorism Act of 2001 increases sentences for hate-motivated attacks on places of worship and cemeteries. Section 3 of the of the Canadian Radio-Television and Telecommunications Commission (CRTC) mandates that programming reflect the multicultural and multiracial nature of Canadian society. Section 8(1) (b) of the CRTC prohibits commentary or pictorial representations exposing identifiable groups to hate or contempt regulations.

²⁵ Frances Kraft, *McMaster Students Express Grievances Over SPHR Event*, CANADIAN JEWISH NEWS, Apr. 21, 2005, <http://www.cjnews.com/viewarticle.asp?id=6168&s=1>.

²⁶ The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *supra* note 1.

²⁷ *Id.*

²⁸ Frances Kraft, *Venue Changed for "Israeli Apartheid Week" Rally*, CANADIAN JEWISH NEWS Feb. 3, 2005, <http://www.cjnews.com/viewarticle.asp?id=5464&s=1>.

terms of the threat to Jewish identity and security, or official response to it. But neither are Jewish and Muslim students equally intimidated, or equal intimidators. Since organized vilification, harassment, and even violence, against identifiable minority groups on Canadian campuses is not, as this article will show, an equal opportunity employer, but a singularly anti-Jewish phenomenon. Campus administrators need not worry that their 'unshakeable' commitment to freedom of academic speech—and attendant tolerance of the marginalization and alienation of Jewish students—will anytime soon be tested for true equality.

Defenders, as well as pretenders, of freedom of speech argue that a distinction need be drawn between legitimate criticism of the Jewish state and illegitimate vilification of Jews. And it should be—at least in principle.²⁹ However, in actual campus hate practice, the distinction rapidly breaks down. Intolerance of Jews hides behind criticism of Israel. At the University of Toronto's Mississauga campus, for example, flyers were posted on the school's bulletin board depicting an Israeli soldier standing on a bleeding corpse, with money pouring from the soldier's pockets.³⁰ Prejudice has been effectively politicized and thereby legitimized on Canadian campuses—but only against Jews. The vocabulary of national liberation, and the symbols of historic wrongs—Holocaust, colonialism, ethnic cleansing, Apartheid, Nazi swastika—are routinely appropriated by the haters as smokescreens to validate an insidious agenda of Jewish marginalization and delegitimation.³¹

Julia Kristeva, the renowned French psychoanalyst has written that national identity is that "indistinct domain of psychic and historical experience which transforms identity into belonging."³² Demonization and vilification of the Zionist state on campus has a dual, and duplicitous, purpose that goes beyond mere legitimate condemnation of the policies of particular Israeli governments. It is an insidious camouflage designed to deny Jewish belonging by delegitimizing the historic Jewish national identity. Noah Slepkov observes, "the debate Jewish students [at York University] are having with their Arab classmates is no longer about settlements, refugees, or even borders, but about Israel's right to exist. Israel

²⁹ For a general discussion of legitimate line-drawing, see Paul Michaels, *The Line Between Criticism and Anti-Semitism*, CANADIAN JEWISH NEWS, Aug. 19, 2004, http://www.cicweb.ca/publications/reports/reports_081904.cfm.

³⁰ *Id.*

³¹ Saying much the same thing, a French government report commissioned by the Interior Minister went so far as to urge the French government to combat "radical anti-Zionists who were anti-Semitic by proxy" with laws against comparing Israel to apartheid or Nazism. Editorial, CANADIAN JEWISH NEWS, Oct. 28, 2004, <http://www.cjnews.com/viewarticle.asp?id=4677&s=1>.

³² Rabbi Dow Marmur, *Identity and Belonging*, CANADIAN JEWISH NEWS, May 19, 2005, at 10 (on file with author).

is no longer accused of occupying the West Bank and Gaza since 1967, but all of Palestine since 1948!"³³ At Carleton University, in the nation's capital, for example, posters announcing the demise of Israel, and a painting of Palestine shrouding the entire state of Israel with a keffiyah, greeted first year students.³⁴ Jewish *politicide* is a widely accepted, and officially tolerated, language of campus hate discourse and Jewish exclusion.

Venomous hostility to the Jewish state is more than just a fair comment on the policies of particular Israeli governments in still another way. It also engenders a physical threat to Jewish students. The Concordia riot was the premier example of this. But there are other illustrations. The weeklong Israel Apartheid hate-fest at the University of Toronto, for example, included an inflammatory student parade of posters that called, in Arabic, for the murder of all Jews and openly bore the marks and logo of the Al Aqsa Martyrs' Brigade, banned under Canadian law as a terrorist organization.³⁵ In November of 2004, in an exchange on a Burlington talk show with Mohamed Elmasry, a professor of engineering at the University of Waterloo and President of the Canadian Islamic Congress (CIC), the professor reportedly declared that all Israeli civilians (presumably Jews) over the age of 18 are legitimate targets for terrorist attack, *wherever they may reside*.³⁶ While Elmasry later issued a general, pressured, public apology, the damage had already been done, raising visible Jewish students' fears of attack from receptive campus zealots.³⁷

The singular assault on Jewish national belonging and historic self-identity runs wide and deep on Canadian campuses, embracing compatriot, faculty, and even institutional roots. It is actively promoted by socially conscious "progressive" students and their mentoring faculty who benefit from those very values of campus tolerance and social sensitivity that they piously proclaim but hypocritically subvert in the name of justice and equality. When, for example, Daniel Pipes, a pro-Israel, former Harvard Professor, came to speak at the University of Toronto, 110 academics signed an "open letter to the university community and the citizens of Toronto" protesting his presence and accusing him of "having a long record of

³³ Noah Slepkov, *The Most Important Thing is not to be Afraid*, CANADIAN JEWISH NEWS, Mar. 11, 2004, <http://www.cjnews.com/viewarticle.asp?id=2910>.

³⁴ Anna Morgan, *Anti-Israel Environment Creating Identity Crisis for Students*, CANADIAN JEWISH NEWS, Mar. 6, 2003, <http://www.cjnews.com/viewarticle.asp?id=853&s=1>.

³⁵ Tribune Staff, *Concerns Over Links to Terror at U. of T.*, JEWISH TRIBUNE, Feb. 8, 2005, <http://www.bnaibrith.ca/article.php?id=872>; Rick Kardonne, *Jewish Students Turn Other Cheek, Promote "Israelfest"*, JEWISH TRIBUNE, Jan. 27, 2005, <http://jewishtribune.ca/tribune/jt-050127-01.html>.

³⁶ *Spate of Campus Incidents Leaves Jewish Students Feeling Vulnerable*, JEWISH TRIBUNE, Nov. 25, 2004, <http://www.bnaibrith.ca/tribune/jt-041122-01.html>.

³⁷ *Id.*

zenophobia, racist and sexist speech" and of promoting "hate, prejudice and fearmongering."³⁸

In contrast, Al Aqsa Martyrs Brigade's posters calling for the killing of all Jews sparked not a single public condemnation from these same signatories. Faculty hypocrisy is particularly injurious to Jewish students, not solely because of its legitimating moral authority, but also because it is not simply freewheeling or free-floating but institutionally anchored. For example, despite the subordination of women in Muslim and Arab countries, Israel Apartheid Week at the University of Toronto was publicized through the listserv of the Institute for Women's Studies and Gender Studies at the University and reportedly organized through the office of the department of Women's Studies at Concordia University.³⁹ A demonizing lecture on the Jewish state given by Aijaz Ahmad at York University was sponsored in part by the national Canadian Academics in Solidarity with Palestinian Academics.⁴⁰

Besides suffering the singular and incessant demonization of the Jewish state, Jewish students also have to endure personally directed vilification, taunting, harassment, and intimidation for who they are, which responsible officials refuse to acknowledge as a violation of their human rights. In November of 2003, police were called on to the York campus after students' election posters were vandalized and defaced in response to a Hillel-endorsed slate running for office.⁴¹ In a more personally directed attack, a Jewish student wearing a kippah (religious skull-cap) was beaten at York University.⁴² Another, at McMaster University, had eggs thrown at him.⁴³ At Dalhousie University in Halifax, a lone Jewish student quietly eating his lunch in a dining hall was surrounded by a hostile mob and berated with anti-Israel diatribes as he sat motionless in fear for his safety.⁴⁴ At McGill University in Montreal, Jewish students were confronted with graffiti warning, "there will be no more anti-Semitism when there are no more

³⁸ Rick Kardonne, *Pipes Inaugurates New Toronto Chapter of Middle East Forum*, JEWISH TRIBUNE, Apr. 7, 2005, <http://jewishtribune.ca/tribune/jt-050407-30.html>.

³⁹ Frances Kraft, *U of T Arab Students Plan Anti-Israel Event*, Jan. 27, 2005, <http://www.cjnews.com/viewarticle.asp?id=5427&s=1>; Daniel Smajovits, *Concordia University Duped by Apartheid Week Organizers*, JEWISH TRIBUNE, Feb. 16, 2007, <http://www.jewishtribune.ca/tribune/jt-060216-05.html>.

⁴⁰ Ann Morgan, *Israel, U.S. Blamed for World's Problems*, CANADIAN JEWISH NEWS, Nov. 21, 2002, <http://cjnews.com/viewarticle.asp?id=1018>.

⁴¹ Frances Kraft, *Police Called in for Defacements of Election Posters*, CANADIAN JEWISH NEWS, Nov. 27, 2003, at 30 (on file with author).

⁴² Geraldine Sherman, *Universities Must Help End Intimidation of Jewish Students*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at 25 (on file with author).

⁴³ *Id.*

⁴⁴ *Id.*

Jews."⁴⁵ Even Jewish professors are not immune to be targeted for intimidation. Alan Dershowitz had to be accompanied by five armed guards to deliver a lecture at the University of Toronto, and several dozen students prevented a Jewish professor at the Universite de Quebec from delivering a class on the fundamentals of democracy.⁴⁶ Compounding the injury, white supremacists exploit existing campus climates of Jewish hate to promote their own racist agenda. In November of 2005, anti-Semitic pamphlets with links to United States-based White Supremacist websites, titled "Jewish Supremacism Unmasked," were found inserted into books at York University's Scott Library, Ryerson University and at all three University of Toronto campuses.⁴⁷

To be sure, some bold university administrators, like York University's President Lorna Marsden, have unequivocally denounced the offenders and their tactics. But while she declares her commitment to a learning environment "founded on mutual understanding and inclusivity,"⁴⁸ Jewish students at York, and at other campuses, continue to be singularly vilified, and buildings, washrooms and even elevators, are defaced with Nazi Swastikas or even exhortations like, "Jews must die."⁴⁹ The size or the visibility of the Jewish student population seems to not matter. At the University of Western Ontario, where Jews number some 3,000 students, premises were vandalized with graffiti depicting a swastika superimposed on a Star of David.⁵⁰ At Carleton University, where the Jewish presence is tiny and largely invisible,⁵¹ a Jewish student encountered a choking, burning odor in an elevator and found the ceiling smoldering with the imprint of a swastika.⁵² Four days later, after officials promised to paint over the

⁴⁵ *Id.*

⁴⁶ Stuart Nulman, *Now is Right Time for Peace in Middle East: Dershowitz*, JEWISH TRIBUNE, Nov. 24, 2005, <http://www.jewishtribune.ca/tribune/jt-051124-04.html>; Geraldine Sherman, *Universities Must Help End Intimidation of Jewish Students*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at 25 (on file with author).

⁴⁷ The pamphlets openly appealed to Arabs and Blacks to denigrate Jews. Nancy White, *Racist Materials Found on Campus*, Nov. 4, 2005, <http://www.yorku.ca/mediar/archive/Release.asp?Release=979>.

⁴⁸ Frances Kraft, *Student Sukkah was Destroyed at York University*, CANADIAN JEWISH CONGRESS, Oct. 22, 2003, <http://www.cjc.ca/template.php?action=itn&Story=461>.

⁴⁹ Ann Morgan, *Anti-Israel Rhetoric Concerns Jewish Students*, CANADIAN JEWISH NEWS, Mar. 18, 2004, at 21; *Spate of campus incidents leaves Jewish students feeling vulnerable*, JEWISH TRIBUNE, Nov. 25, 2004, at 1, 2 (on file with author).

⁵⁰ The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *supra* note 1.

⁵¹ The combined Jewish population at Carleton and the University of Ottawa is only about one-fifth of the Jewish population at York University (estimated at 4,500 in 2005). Robert Walker, *Israel Advocacy in Ottawa is in Trouble*, CANADIAN JEWISH NEWS, Mar. 25, 2004, <http://www.cjnews.com/viewarticle.asp?id=6044>.

⁵² Jonah Brotman, *Feeling Unwelcome at my Own School*, CANADIAN JEWISH NEWS, Mar. 25, 2004, <http://www.cjnews.com/viewarticle.asp?id=2960>.

offending mark, the same student noticed a Magen David (Jewish Star of David) scrawled beside the swastika.⁵³

In October 2003, police were finally called to the York University campus after vandals repeatedly tore down the Jewish sukkah (tent serving religious meals).⁵⁴ At the University of Toronto, vandals scrawled anti-Israel graffiti on the side wall of the Bora Laskin Law Library, within clear view of the provincial legislature across the street.⁵⁵ In March 2003, at an anti-war rally at York University that saw placard carrying Palestinian students heckling Jewish students with cries of "Nazi-Jews and fascist," two Jewish female students were physically assaulted.⁵⁶ During anti-Israel rallies held at several Canadian universities in 2003, the Arabic cry "Death to the Jews" (*idbah al-yahud*) could clearly be heard.⁵⁷ At Concordia, just one week after the infamous riot, a Jewish student was chased down several corridors by irate Muslims, past a throng of indifferent students, and beaten bloody for taking down an inflammatory Palestinian poster from a building wall.⁵⁸ On November 22, 2005, two large rocks were hurled through the window of Hillel house at the University of British Columbia, shattering a deceptive calm.⁵⁹

Faced with such a hostile learning and living environments, Jewish students find themselves stuck between the proverbial rock and a hard place. They must somehow reconcile the irreconcilable—the need for self-actualization with the need for campus inclusion and acceptance. Some are choosing to stay clear of any visible cultural, religious or political self-identification for fear of the psychological, physical, and possibly academic, repercussions of openly expressing who they are, and what they may believe. Jewish students at York University openly admit feeling "intimidated walking around with kippahs or yarmulkes or Magen Davids (historic Star of David symbolizing Jewish people-hood)."⁶⁰ Some orthodox Jews have even taken to covering their yarmulkes with baseball caps to avoid drawing hostile attention to themselves.⁶¹ A Waterloo Jewish student is "embarrassed to admit" that her escape from campus anti-Semitism is to avoid difficult

⁵³ *Id.*

⁵⁴ Frances Kraft, *Student Sukkah was Destroyed at York University*, *supra* note 48.

⁵⁵ *Id.*

⁵⁶ The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *supra* note 1.

⁵⁷ *Id.*

⁵⁸ Eisenthal, *supra* note 5.

⁵⁹ Sheri Shefa & Ron Csillag, *Envoy's Peace Tour Marred by Vandalism*, CANADIAN JEWISH NEWS, Dec. 1, 2005, <http://www.cjnews.com/viewarticle.asp?id=7951>.

⁶⁰ Carolyn Blackman & Frances Kraft, *Students Must be Proactive, Says Hillel Shaliach*, <http://www.cjnews.com/specials/proactive.asp> (last visited Feb. 6, 2006).

⁶¹ The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *supra* note 1.

situations and "usually to just ignore it."⁶² She rarely wears her Star of David necklace in public and identifies herself when pressed as a Canadian from an Eastern European background.⁶³ For these students, self-segregation is not an option. Self-denial, in the hope of garnering campus inclusion and normalization, is a preferred escape.

Professor Ken Green has observed that the university experience is a critical formative stage of self-identity, "where many students will make a decision about how they will live the rest of their life."⁶⁴ Jewish students, already alienated by current conditions of campus hostility, carry the added weight of Jewish history on their backs. Disaporic Jewry's unparalleled vulnerability to exclusion, prejudice, persecution, and even genocide is etched in the deep psychological scars of those driven to self-denial trying to escape it. One should expect special administrative sensitivity to the plight of Jewish students on campus. Yet, even at York University, which has a particularly large Jewish presence, a panel discussion on freedom of speech and intolerance on campus was allowed to proceed, ironically enough, right after Muslim prayer services ended late Friday afternoon in early April and on the eve of the Jewish Sabbath, when many concerned Jews could not adequately prepare or attend.⁶⁵

Historically, minority intolerance and official indifference to it have stoked veritable power-keys of victim frustration, often boiling over and exploding in angry public demonstrations, and even violence. The civil rights movements of Blacks, Natives, and even women are cases in point. But historically, that has not been the Jewish approach to inclusion. Some Jews even diminish their own pain of alienation, degradation, and humiliation, and downplay official indifference to their community's plight.

At York University, for example, some Jewish students claim that vile anti-Semitic graffiti, such as Nazi swastikas and the words "Jews Must Die," scrawled on campus walls are not typical, and besides, officials promptly remove them every time they appear.⁶⁶ At McMaster University, where swastikas and assorted anti-Semitic graffiti were brazenly painted right on the Jewish Students Association's door five times in two academic years, the Association's president gratefully opined, "the administration

⁶² Leora Bereskin, *There is no Easy Way to Confront Anti-Semitism*, CANADIAN JEWISH NEWS, Apr. 3, 2003, at 47 (on file with author).

⁶³ *Id.*

⁶⁴ Frances Kraft, *Left-wing Israel Supporters Needed on Campus: Prof*, CANADIAN JEWISH NEWS, Mar. 24, 2005, <http://www.cjnews.com/viewarticle.asp?id=5915>.

⁶⁵ Anna Morgan, *York Panel on Mideast and Free Speech Called Biased*, CANADIAN JEWISH NEWS, Apr. 10, 2003, <http://www.cjnews.com/viewarticle.asp?id=232>.

⁶⁶ Anna Morgan, *Anti-Israel Rhetoric Concerns Jewish Students*, CANADIAN JEWISH NEWS, Mar. 18, 2004, at 21 (on file with author).

quickly paints over the door so that Jewish students are not alarmed."⁶⁷ At Ryerson University, where Muslim students set up an anti-Zionist lecture with tables and chairs in the middle of a hallway, physically blocking passersby and refusing official requests to move, the coordinator of Hillel expressed her hope that Ryerson would not use the "incident" to punish Jewish students by restricting *all* Middle East discussions.⁶⁸ And in a haunting echo of the subservient pre-civil rights mind-sets of segregated Blacks, prominent Jewish leaders in Montreal welcomed Concordia's thug-shaped speaking offer of separate and not equal, expressing understanding for officials' security dilemma and acceptance of Jewish marginalization.⁶⁹ These are telling indictments of the deep state of Jewish self-denial and alienation. Jewish second-class citizenship is not just an unspoken state of campus fact. It is also now a state of Jewish mind

Not all Jewish students or their community leaders are willing to accept their lot. For some, being singled out for collective demonization and personal intimidation has, paradoxically, and painfully, revitalized their sense of Jewish consciousness.⁷⁰ For them, campus isolation, alienation, and exclusion, is a price worth paying to be visibly Jewish. But this is not a choice that they feel they should have to make—at least not in Canada. They want what every other historic community (including Arab and Muslim communities) on progressive Canadian campuses expect—unconditional acceptance. Why should others dictate who they are? In short, they want campus acceptance *and* visibility. They refuse to suffer their indignities in abject silence or defiant self-exclusion or deny their plight in blissful self-deception.

Hostile fellow students and indifferent officials are not the only targets of Jewish concern. The role played by progressive teaching faculty, in the alienation and marginalization of Jewish students, is also being questioned. The charge is that some professors condone a hostile and intimidating in-class learning environment for Jewish students through omission, by looking the other way, or by diminishing or dismissing the

⁶⁷ Anna Morgan, *Anti-Israel Environment Creating Identity Crisis for Students*, *supra* note 34.

⁶⁸ Ann Morgan, *Author Deals with Tensions Between Muslims, Jews*, CANADIAN JEWISH NEWS, Apr. 10, 2003, <http://www.cjnews.com/viewarticle.asp?id=2065>.

⁶⁹ Janice Arnold, *Concordia Hockey Arena Likely Venue for Barak*, *supra* note 11. Federation CJA responded favorably but the more conservative B'nai Brith Canada expressed "disappointment" at the offer, pointing out that if "they [Concordia] can invest in more security in one venue [inferior hockey arena], they can do it at another" [superior downtown location]. *Id.*

⁷⁰ Tillie Shames, *Plenty of Reasons to be Proud of our Students*, CANADIAN JEWISH NEWS, Apr. 10, 2003, <http://www.cjnews.com/viewarticle.asp?id=2308>; Abigail Cukier, *Anti-Semitism, Anti-Zionism Rampant, Campus Activists Say*, CANADIAN JEWISH NEWS, Jan. 5, 2006, <http://www.cjnews.com/viewarticle.asp?id=8161>.

abuse.⁷¹ Others, it is argued, actively promote such environments by abusing their positions of academic authority, turning their classrooms and offices into bully pulpits of intimidation for their anti-Zionist, anti-capitalist, anti-colonialist political agenda.⁷² Martin Lockshin, director of York's Centre for Jewish Studies, recounts how some professors misuse their podiums for their anti-Israel political agenda in courses that have nothing to do with the Middle East, leaving ill-equipped and unprepared Jewish students upset and squirming in their seats.⁷³ Josh Shuval, a past president of the Jewish students' union at the University of Western Ontario asks, "how do we deal with reputable academics" who brazenly "spread anti-Israel propaganda."⁷⁴ Jewish students have reported keeping their opinions, and their self-identity, out of class discussion, for fear of compromising their academic standing.⁷⁵ Ed Morgan, professor of law at the University of Toronto, and chair of the Canadian Jewish Congress, points out, "the sheer quantity of anti-Israel programs, courses, brochures, posters, banners, guest lecturers, newspaper articles, photo exhibits, rhetoric and even graffiti found on some campuses can present an overwhelmingly hostile environment for Jewish and Israeli students."⁷⁶

Personally directed faculty intimidation of Jewish students may well be less common. But it is no less injurious, when it occurs. To be sure, documentation is mostly anecdotal. Victimized Jewish students would rather swallow their indignities and move on than openly challenge their tormentors and establish their charge.⁷⁷ Sherman writes, "within the cloistered world of the university . . . where there are no cameras, incidents often go

⁷¹ See Frances Kraft, *Left-wing Israel Supporters Needed on Campus: Prof, supra* note 64 (reporting on a lecture on the subject given by Professor Nora Gold ("Being Jewish on Campus") at Toronto's Beth Tikvah Synagogue).

⁷² Mordechai Ben-Dat, *Anti-Semitism in Academia*, CANADIAN JEWISH NEWS, Oct. 10, 2002, at 4 (on file with author); *Special Report*, CANADIAN JEWISH NEWS, Jan. 16, 2004, at 24 (on file with author). Professor Alan Dershowitz alludes to similar problems in the United States; Janice Arnold; "McCarthyism" Chills Pro-Israel Campus Voices: Dershowitz, CANADIAN JEWISH NEWS, Dec. 1, 2005, <http://www.cjnews.com/viewarticle.asp?id=7938&s=1>; Frances Kraft, *Dershowitz "Cautiously Optimistic" About Peace*, CANADIAN JEWISH NEWS, Mar. 24, 2005, <http://www.cjnews.com/viewarticle.asp?id=5911>.

⁷³ Anna Morgan, *York Panel on Mideast and Free Speech Called Biased, supra* note 65.

⁷⁴ Blackman & Kraft, *supra* note 60.

⁷⁵ The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *supra* note 1.

⁷⁶ Ed Morgan, *Anti - Racists Cloud Campus Dialogue*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at B14 (on file with author).

⁷⁷ Reports on harassment of Jews in Canada generally, bear this out. Rosie Dimano writes "[h]arassment generally does not meet the criminal standard required for prosecution and it should be further noted that only about 10 per cent of incidents according to authorities are ever reported, even to B'nai Brith. Victims suck up the indignity." Rosie DiManno, *After Everything Jews Still Vilified*, TORONTO STAR, Mar. 20, 2004, at B1, B3 (on file with author).

unreported."⁷⁸ For good reason. Faculty intimidation can be open to interpretation, and the exact incidents difficult to document for want of witnesses if committed outside of class, in private faculty offices. But, tellingly, it can also be difficult to pursue even if committed within class, in public. The reason for the latter includes witness fear of classroom censure or of faculty reprisal. Allegations of conspiracies of silence, impeding incidents of faculty wrongdoing from being brought forward and effectively held to account, may seem far-fetched. But on Muslim or progressive dominated campuses with pervasively one-sided, anti-colonialist curricula, and virulently anti-Zionist faculty, it is more far-fetched to dismiss them.

In short, Jewish students risk re-victimization for speaking out. They are caught in a lose-lose situation. At best, if successful, they can expect tepid official relief, for administrators' fear of student revolt, faculty discord, and campus unrest.⁷⁹

To be sure, bold administrative action is not without its costs. Much of what Jewish students have to endure on Canadian campuses is neither spontaneous nor local, nor necessarily indigenously led. The web of Jewish de-legitimation is a world-wide, phenomenon, well organized and well funded. Whenever, for example, there is a big anti-Zionist event on the York university campus (like the one that recently found Imam Mohamed Al-Asi enlightening his faithful that 9/11 was a conspiratorial plot by Israeli Zionists and the American Jewish Lobby to discredit Islam),⁸⁰ one can usually find the Canadian Union of Public Employees (CUPE), Local 3903, (the official representative of York teaching faculty), funding, advising, or otherwise sponsoring or promoting it. And wherever there is a vocal anti-Zionist in need, one can usually find CUPE ready to aid. Ann Morgan documents how, among its other politically selective activities, the Canadian labour union helped defray the campus speaking fees of Norman Finkelstein, a vocal critic of Israel and the Jewish community who had appeared on Holocaust denying websites.⁸¹

The Local also paid part of the legal defense fees of a former president of York's Founders College Council, an anti-Israel political activist arrested and charged in Canada for allegedly embezzling funds from his own council during his tenure, and who was later arrested in the West Bank by Israeli police for defying orders against an illegal demonstration.⁸² Writes

⁷⁸ Geraldine Sherman, *Universities Must Help End Intimidation of Jewish Students*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at 25 (on file with author).

⁷⁹ See *infra*, Part V (discussing censorship to control campus activities).

⁸⁰ Ann Morgan, *Sept. 11 was Used to Protect Zionist Interests*, CANADIAN JEWISH NEWS, Apr. 10, 2003, <http://www.cjnews.com/viewarticle.asp?id=3068>.

⁸¹ Ann Morgan, *Union's Anti-Israel Activities Draw Criticism*, CANADIAN JEWISH NEWS, Mar. 18, 2004, <http://www.cjnews.com/viewarticle.asp?id=2861&s=1>.

⁸² *Id.*

Morgan: "A union official, who asked not to be named, said, 'I'm sure that [Local 3903] had not supported any pro-Israel presentation on campus.'"⁸³ A formal policy statement by the executive council of the Canadian Labour Congress openly equated Israel to South Africa under Apartheid.⁸⁴

At the University of Waterloo, the Waterloo Public Interests Research Group (WPIRG), an organization that supports environmental and human rights groups, helped defray Finkelstein's speaking costs.⁸⁵ For the Concordia riot, anti-Zionist political agitators were bussed onto campus by their progressive brethren. Of the five arrested and charged for instigating the Concordia riot, only two were reported to be Concordia students.⁸⁶ Many anti-Zionist campus conflicts are union sponsored, faculty supported, outside financed, and professionally executed. Riots on Canadian campuses may indeed be rare, but intolerance and intimidation of Jews is organized, orchestrated, and well funded.

But even this does not describe the whole picture. Jewish marginalization on Canadian campuses is only one piece of a larger global agenda of Jewish isolation and de-legitimation that respects no borders. Canadian campus agitators are linked locally, nationally, and internationally, with groups of similarly minded anti-Zionist ideologues, social activists, and progressive academics.⁸⁷

Michael Neumann, professor of philosophy at Trent University in Canada, is a case in point. In defence of his statement in which he advised that anti-Semitism should almost never be taken seriously,⁸⁸ he writes:

[My aim is to] help the Palestinians [and] I am not interested in the truth, or justice, or understanding, or anything else, except so far as it serves that purpose If an effective strategy means that some truths about the Jews don't come to light, I don't care. If an effective strategy means encouraging reasonable anti-Semitism, or reasonable hostility to Jews, I also don't care. If it means

⁸³ *Id.*

⁸⁴ Paul Lungen, *Labor Group Criticizes Israel*, CANADIAN JEWISH NEWS, June 20, 2002, <http://www.cjnews.com/pastissues/02/jun20-02/main.asp>; Paul Lungen, *Workers Mull Leaving CUPE Ontario*, CANADIAN JEWISH NEWS, Oct. 10, 2002, <http://cjnews.com/viewarticle.asp?id=1154>.

⁸⁵ Lauren Krugel, *Brock's Jewish Students Put Fun on the Agenda*, CANADIAN JEWISH CONGRESS, Aug. 13, 2003, <http://www.cjc.ca/template.php?action=itn&Story=387&CJC=ae7fef>.

⁸⁶ Eisenthal, *supra* note 5; *Concordia Students Charged for Roles in Protest*, CANADIAN JEWISH NEWS, <http://www.cjnews.com/viewarticle.asp?id=1105&s=1> (last visited Mar. 8, 2006).

⁸⁷ Sheldon Kirshner, *Anti-Semitism Permeates: Scholar*, CANADIAN JEWISH NEWS, Oct. 10, 2002, at 24 (on file with author); Mordechai Ben-Dat, *Anti-Semitism in Academia*, CANADIAN JEWISH NEWS, Oct. 10, 2002, at 4 (on file with author).

⁸⁸ Michael Neumann, *What is Antisemitism?*, COUNTERPUNCH, June 4, 2002, <http://www.counterpunch.org/neumann0604.html>.

encouraging vicious racist anti-Semitism, or the destruction of the state of Israel, I still don't care.⁸⁹

Progressive warriors of hate are on a mission to turn Canadian campuses into intellectual battlegrounds for the soul of humanity. This is about a collision of cultures, a war between East and West, a "clash of civilizations," as Samuel Huntington presciently foretold,⁹⁰ where classrooms serve as local beachheads, the Jewish state as the demonic Pariah to be slain, and progressive curricula as the intellectual battering ram. For many campus officials, the price of Jewish identity and inclusion, in such climates of intolerance, is simply too heavy to pay.

Finally, official tolerance of an agenda to marginalize the Jewish presence and de-legitimize the Jewish identity on campus is singularly well highlighted by administrators' responses to illicit campus electoral campaigns aimed at disenfranchising the Jewish voice. Consider the brazen abuse of power to reverse the legitimate results of student elections at York University in early November of 2004. An outvoted pro-Palestinian student council refused to relinquish power to a newly elected council with a significant Jewish representation and a commitment to a less controversial student (progress not politics) agenda.⁹¹ The incoming student council had overwhelmingly won the elections (capturing 27 of 32 council positions) on a platform calling for less focus on divisive mid-east politics, and a return to more traditional, shared, student concerns; such as rising tuition fees, student services, class size, parking, security, and academic student grievances.⁹² But the outvoted student council alleged that the literature expenses of the winning council had violated campaign-spending regulations, and refused to ratify the results.

When an investigating committee voted (three for, one abstaining) to dismiss the complaints, its decision was attacked and ratification again delayed amid new allegations that the abstaining committee member had been intimidated.⁹³ An investigation of the investigating committee found this allegation also to be groundless. Moreover, it would not have changed the final result, as the votes of the un-impugned committee members would still have constituted a majority for ratification.⁹⁴ The outvoted council,

⁸⁹ The Stephen Roth Institute for the Study of Anti-Semitism and Racism, *supra* note 1.

⁹⁰ SAMUEL P. HUNTINGTON, *THE CLASH OF THE CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (New York, Simon & Schuster 1996).

⁹¹ Frances Kraft, *York Hillel Endorses Student Govt. Slate*, CANADIAN JEWISH NEWS, Nov. 20, 2003, <http://www.cjnews.com/viewarticle.asp?id=1997&s=1>.

⁹² *Id.*

⁹³ Frances Kraft, *York University Recognizes Hillel-backed Slate*, CANADIAN JEWISH NEWS, Jan. 22, 2004, <http://www.cjnews.com/viewarticle.asp?id=2388&s=1>.

⁹⁴ *Id.*

meeting late at night, unilaterally overturned the verdict of the original investigating committee. When it was pointed out that the chair of the second investigating committee happened to be the outvoted council's own President, and he had expressly said that the new slate rightfully deserves to be in office, the outvoted council promptly filed a notice to impeach him.⁹⁵ More baseless allegations followed and the nefarious stalling continued.

Like the Concordia riot, these tactics were designed to deny Jewish students a public voice. Here, as there, intimidation substituted for democracy, in an illicit campaign to marginalize and de-legitimize the opposition. To be sure, there was no physical violence here. But, in an important way, what happened at York posed a more serious censorial threat to Jewish inclusion. Unlike the Concordia riot, this was not simply an assault on a particular exercise of Jewish voice, but a direct attack on the very democratic process itself by which all Jewish voice may be legitimately, and officially, exercised. This was about Jewish disenfranchisement. It was censorship that unmasked the progressive-Muslim agenda of Jewish marginalization and de-legitimization. Given Jewish students' sordid history of victimization at York, this brazen attempt to subvert the very democratic means by which it may be officially countered, and the culprits effectively challenged, constituted the quintessential snub to the administration's proclamations of inclusivity.

The York administration could have sent a firm and unequivocal message to the offenders: those who subvert the campus democratic process to disenfranchise another campus minority violate the university's code of equity and its prohibitions against discrimination, which the university is committed to uphold, and will not be tolerated. Instead, they took a more hands-off approach. Two months after the election, in a familiar refrain of moral equivalency and paper equality, the administration suspended all student council funding until such time as the students themselves, violated and violators, sorted out their own affairs.⁹⁶ At York, Jewish marginalization and de-legitimization is an internal student affair.

In mid-January of 2004, with half the academic year gone, the York administration finally recognized the November election results.⁹⁷ Yet, one week later, the defrocked council was still, defiantly, refusing to ratify the new slate and hand over the keys. With still no office or financial control, one frustrated member of the new council described the surreal atmosphere as follows: "It's almost like there are two councils right now—one which has

⁹⁵ *Id.*

⁹⁶ Francis Kraft, *York U Suspends Student Council Funding*, CANADIAN JEWISH NEWS, Jan. 15, 2004, <http://www.cjnews.com/viewarticle.asp?id=2342&s=1>.

⁹⁷ Frances Kraft, *York University Recognizes Hillel-backed Slate*, *supra* note 93.

the approval of York and one that doesn't, and yet for some strange reason is still functioning."⁹⁸ The impasse continued for several more weeks before the offenders, under the glare of national publicity, finally backed down. But not before making their mark—demonstrating how bullies and thugs who substitute intimidation for democracy to marginalize a besieged minority, can hold an entire university hostage to their abuse of power.

Like paying tuition fees, enduring harassment, intimidation, and degradation has become just one more cost of being visibly Jewish at leading progressive Canadian campuses. In a déjà vu of a bygone era, senior Jewish high school students report selecting their university campuses not just on the basis of academic standards but also on the level of anti-Semitism.⁹⁹ While Canadian universities hold themselves out as beacons of inclusivity, diversity, equality, and tolerance, where official commitment to these values is most tested—protecting one of Canada's historically most vulnerable minority—they are failing most. By November of 2004, Jewish students at Concordia finally had enough. Citing a hostile climate of intolerance, counsel filed an anti-discrimination suit against the university with the Quebec Human Rights Commission.¹⁰⁰ It is a telling indictment of the subordinate status of Jews at progressive Canadian campuses that despite a plethora of otherwise functioning anti-discrimination, equity, and speech codes, Jews need turn outside to provincial human rights legislation to secure the basic rights to dignity, equality, identity, and voice enjoyed by all other historic minorities.

The "Jewish" problem on Canadian campuses is an unspoken subject, one that most University administrators would rather artfully dodge than boldly confront. In a reported *National Post* interview with 10 university administrators, "most of them denied the problem exists on their respective campuses. If they did acknowledge its existence, they said it isn't serious."¹⁰¹ Responsible officials strip orchestrated attacks on Jewish dignity, Jewish identity, and Jewish voice of their essential discriminatory character. They answer Jewish marginalization piecemeal and blindly, fail to

⁹⁸ *Id.*

⁹⁹ Jonah Brotman, *Feeling Unwelcome at My Own School*, CANADIAN JEWISH NEWS, Jan. 24, 2004, <http://www.cjnews.com/viewarticle.asp?id=2960>.

¹⁰⁰ Mike Cohen, *B'nai Brith Vows to Protect Jewish Students*, B'NAI BRITH CANADA, Nov. 11, 2004, <http://www.bnaibrith.ca/article.php?id=830>; Human rights codes of every province and the federal Canada Human Rights Act also contain provisions proscribing hate speech against specified vulnerable groups. See, for example, Ontario Human Rights Code R.S.O. 1970, c.318 (as amended); Canada Human Rights Act 1985, c. H-6. Criminal sanctions against hate speech are found in the hate propaganda provisions of the Criminal Code. In the summer of 2004, it was amended to include protection for homosexuals.

¹⁰¹ Geraldine Sherman, *Universities Must Help End Intimidation of Jewish Students*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at 25 (on file with author).

see the forest of organized abuse of Jewish human rights for the separate trees of individual incidents.

Vulnerable Jewish students, victimized by fellow students and allied progressive faculty, are re-victimized by an unofficial official double standard. University administrators can shirk their responsibility to act boldly in the ways they should, when it is hard. At the same time, they can embrace that responsibility in ways they should not, when it is easy. Off-times, Jewish students end up with neither equal freedom to speak and to hear nor equal freedom from hate and intimidation. While university administrators proclaim the mutuality of freedom of speech and their commitment to equality, inclusivity, and tolerance, the Jewish student, and only the visible Jewish student, slips through the cracks. In times of stress, the burden of protecting the educational bargain from disorder and disarray is most easily loaded on the backs of the human rights of the most vulnerable—the Jewish victim. Apologists for official failures just refuse to see the pattern and fail to connect the dots.

To date, no one, individual or organization, at any Canadian university, has ever been held to account specifically for violating or threatening to violate Jewish human rights on campus. To be sure, disciplinary action has, on occasion, been taken against offenders, but only to protect everyone's campus rights to peace and order, generally. No action has ever been taken against anyone for violating Jewish rights to equality, dignity, identity, and voice, specifically. At York University, a known anti-Zionist serial agitator using a bullhorn in the environs of classroom windows to make his point was finally suspended, but not for violating Jewish rights but for causing "flagrant disruption of campus life," which "meant students weren't able to pursue their studies in class."¹⁰²

Even at Concordia, disciplinary action against rioters spoke to the violation of rights to safety and security of the campus community as a whole, not to violation of the right to safety, security, and equality of the Jewish students, in particular. Yet that, after all, is what the riot was all about. Remove visible Jews, and the Jewish voice, and there is no issue of collective harassment, intimidation, or student safety and security based on minority identity at any Canadian campus. When everyone's rights, in general, are deemed violated, no one groups' rights, in particular, need be acknowledged. Jewish students on Canadian campuses today are alone in their collective degradation. This is second-class citizenship, based on

¹⁰² *Id.* The student has since been re-instated after the university failed to block his legal action for judicial review. Christian Cotroneo & Louise Brown, *Student Activist Returns to York but Plans to Sue*, TORONTO STAR, July 22, 2004 (on file at the Washington and Lee Journal of Civil Rights and Social Justice); *Student Sues York*, CANADIAN JEWISH NEWS, Oct. 21, 2004, at 2 (on file with author).

Jewish identity. A cross-campus human rights breakdown—the brazen, systematic, and singular, violation of a historic, millennially persecuted, minority's equal rights to dignity, identity and voice—is being excused as just global politics or defended as internal students affairs, or an administrative matter of general campus security. Where officials have failed, the offenders have succeeded.

Jewish students have not instigated the kinds of intolerant conduct that they routinely have to endure, even in response to those who do, to make their point and test official resolve. Just one month after the Concordia riot, for example, Jewish restraint and comparative civility in the face of unceasing provocation was again put to the test.¹⁰³ Writes Jonas: "Concordia's student union could defy, without any fear of inciting a [Jewish] riot, not only the university's ban on Mideast debates but a court injunction on November 15 [2002] . . . when the union had NDP MP Svend Robinson and feminist Judy Rebick speak to a crowd, along with journalist Robert Fisk, in a street just outside the campus."¹⁰⁴

Jewish students are not above reproach. No community holds a monopoly on political truths, social justice, or fair play. None can lay claim to immunity from accountability for inappropriate conduct. But Jewish students have not instigated campus conflicts with their bodies, fists, tables, chairs, or broken glass in place of words to make their point. Nor have they orchestrated illicit campaigns to disenfranchise opponents to prevent them from making theirs. Most importantly, they have not sought victory by denying that their adversaries "too, have a personality, they too, have a culture, they too, have an existence."¹⁰⁵ Muslim and Arab students on Canadian campuses need not fear Jewish students for their human dignity or their historic identity as Jewish students need fear Muslim and Arab students for theirs, even where Jews are a comparative campus majority. As long as Canadian Jewish students, unlike their opponents, continue to defer to the rules—respect the campus democratic process, engage in civil discourse, and value the dignity of their adversaries—the Jewish case against officialdom can remain untestably hypothetical, and excusably political.¹⁰⁶ Anti-Zionist

¹⁰³ Tu Thanh Ha, *MPs Skirt Concordia Ban*, THE GLOBE AND MAIL, Nov. 16, 2002, <http://www.opuswindsor.ca/communication.asp?Nav=Communication&Table=Dialogue&ID=149>.

¹⁰⁴ George Jonas, *Concordia Should Do the Right Thing*, Nov. 28, 2002, <http://www.benadorassociates.com/article/147>.

¹⁰⁵ Bob Rae, *Israel is not Alone*, CANADIAN JEWISH NEWS, Nov. 4, 2004, <http://www.cjnews.com/viewarticle.asp?id=4734>.

¹⁰⁶ In January 2004, at the University of Western Ontario, the Israel Action Committee apologized and withdrew flyers distributed on campus that condemned a culture of Muslim terrorism after campus officials deemed the flyers to be offensive to some students. In contrast, campus officials did not ask for the removal of SPHR (Solidarity for Palestinian Human Rights) flyers disseminated ten months later equating Israel with South Africa and accusing the Jewish state of Nazi-like genocide. Anna Morgan,

bullies, and self-righteous, progressive ideologues pleading global injustice, can continue to orchestrate a hostile climate of Jewish intimidation, isolation and alienation with relative impunity, as cowed campus officials proclaim their commitment to inclusivity but placate offenders with majestic policies of paper equality. No historically vulnerable minority's human rights to identity, dignity, and inclusion on Canadian campuses should depend on global politics or offenders' belligerence.

III. The Jewish Censorship Response

In his book, *CHUTZPAH*, Alan Dershowitz explored the lingering problem of Jewish second-class citizenship in America, arguing that it is more a self-imposed state of mind than an outside composed condition of fact.¹⁰⁷ Diaspora Jewry, he writes, have tended to view themselves as foreigners in their own countries, there at the pleasure of their generous hosts, to whom they must constantly demonstrate their worthiness, civility, and loyalty.¹⁰⁸ Canadian Jewry is no exception but case in point. Historically, Canadian Jews have combated exclusion mostly with good public deeds and excelled personal performance. Jewish community leaders have preferred hate censorship over freedom of speech to answer open bigots,¹⁰⁹ and privately often advised self-restraint and even self-censorship in lieu of public advocacy for fear of provoking more anti-Semitism by boldly and openly speaking out.

Consider community misgivings over the decision to take Concordia, perhaps the most flagrant institutional violator of Jewish students' human rights, before the Quebec Human Rights Commission. Calling the action very destructive, Jeff Boro, head of the Canadian Jewish Congress Quebec branch, opines: "You know a lot of people have the impression that every little thing that happens to a Jewish person, we make a big deal over. That perception has to be cleared up. We have to show we are not complainers, that we are good citizens of Canada who do things the way every other Canadian does."¹¹⁰ Even proactive American Jewish advocates for Israel, like Michael Jankelowitz, have inadvertently fed such brazenly self-

Anti-Israel Display Permitted by UWO officials, CANADIAN JEWISH NEWS, Dec. 9, 2004, at 28; *see infra*, Part IV (discussing censorship of Jewish perspectives).

¹⁰⁷ ALAN DERSHOWITZ, *CHUTZPAH* (Little Brown & Co. 1992).

¹⁰⁸ *Id.*

¹⁰⁹ *See generally* S. BRAUN, *DEMOCRACY OFF BALANCE: FREEDOM OF SPEECH AND HATE PROPAGANDA LAW IN CANADA* (Toronto, University of Toronto Press 2004).

¹¹⁰ L. Viviane Spiegelman, *What's the Real Story on Anti-Semitism in Canada?*, JEWISH TRIBUNE, Feb. 17, 2005 (on file with author).

conscious sentiments of fear, lecturing Canadian Jews against belittling the Holocaust by exaggerating anti-Semitism on campus.¹¹¹

Tellingly, the advice was offered when uniformed guards were being assigned to synagogues across Canada to protect Jewish worshippers inside. As described by Senator Jerry Grafstein, "[I]n my own synagogue, I must enter through the parking lot while others can enter their churches and their mosques through the front door."¹¹² Continues Grafstein, "the Jewish community doesn't exercise its democratic rights. Canadian Jews have an abominable misunderstanding of the democratic process."¹¹³ To illustrate the point, Grafstein contrasts the zero correspondence from Jews on the anti-Semitism resolution currently before the Senate Standing Committee on Human Rights, with the 3,500 emails he received on one week alone on the same sex marriage issue.¹¹⁴ Or, consider Jewish response to the new security legislation following 9/11, which their Muslim opponents have most to fear. Grafstein reveals, "I got lots of letters from [Jewish] people concerned about potential abuses in the anti-terrorist bill, but nothing on the fire-bombing of the Montreal Talmud Torah and the growing number of cemetery and synagogue desecrations."¹¹⁵ While Jewish human rights advocates fearlessly advocate for the civil rights of others, including for those of Canadian Muslims, they have been markedly more self-conscious and tardy in openly and boldly defending their own.¹¹⁶

Jewish self-consciousness, however, on and off campus, has been noticeably less evident defending Jewish rights with hate censorship.¹¹⁷ In November 1989, for example, Jewish students brought a police investigation against a Muslim Student Association Film at the University of Toronto, which depicted Jews as Christ-killers, corrupt financiers, and world conspirators, to "ascertain whether the hate provisions of the Canadian Criminal Code had been violated."¹¹⁸ In 1997, Jewish students at the University of Toronto tried to have those responsible for a Palestinian campus display (put up during Arab culture week) equating Zionism with Nazism criminally charged under the Hate Propaganda provisions of the

¹¹¹ Blackman & Kraft, *supra* note 60.

¹¹² Paul Lungen, *Community Organizations Step Up Security*, CANADIAN JEWISH NEWS, Apr. 1, 2004, <http://www.cjnews.com/viewarticle.asp?id=2976>.

¹¹³ Viviane Spiegelman, *Jews Don't Exercise Democratic Rights, Angry Grafstein Says*, B'NAI BRITH CANADA, Dec. 30, 2004, <http://www.bnaibrith.ca/article.php?id=857>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Abigail Cukier, *Hamilton Jews, Muslims Call for Action in Darfur*, CANADIAN JEWISH NEWS, May 12, 2005, <http://www.cjnews.com/viewarticle.asp?id=6320>; Paul Lungen, *Cotler Defends Egyptian Activist*, CANADIAN JEWISH NEWS, Jan. 2, 2003, <http://cjnews.com/viewarticle.asp?id=572>.

¹¹⁷ See generally BRAUN, *supra* note 109, at 12–13, 91, 102, 131, 208, 243.

¹¹⁸ *Id.* at 124.

Criminal Code.¹¹⁹ In 2005, after Halton Regional Police decided there were insufficient grounds to lay criminal charges against Waterloo engineering professor Mohamed Elmasry for his comments on terrorism, B'nai Brith issued a statement challenging the decision.¹²⁰ Most recently, B'nai Brith tried to have the University of Toronto ban Israel Apartheid Week, while Betar-Tagar, a Zionist student group, announced that it was filing a complaint, "with fully documented evidence," with the Toronto Police Services hate crimes unit against the organizers of the event for "inciting hatred against Jews and Israelis."¹²¹

Given current conditions of campus hostility to the Jewish case, Jewish fear of open advocacy, without censorship "in aid," is understandable. But, at one time, the political climate in Canada was far more receptive to the historic Jewish case and sympathetic to the Zionist cause. Israel, before the Six Day War, was not the oppressive Goliath that it is seen as today, but the downtrodden David. Hitler and the Nazi Holocaust were not distant public memories, but still fresh realities. Neo-Nazis were not popular underdogs pleading a just minority cause, but a common public enemy that thousands of Canadians had died fighting against. But Canadian Jewish leaders still looked to censorship to make their case against open hate and bald bigotry. The Special Report of the Cohen Committee whose recommendations in 1966 to Parliament to outlaw hatemongering was the basis for the criminalization of hate speech in Canada, was, after all, the crowing jewel of a campaign led by the Canadian Jewish Congress for such law.¹²² Jewish community leaders have historically been acutely sensitive to public accusations of Jewish aggressiveness, disloyalty, or pushiness in making the Jewish case—but not in muzzling their more belligerent opponents from making theirs. Yet, Jewish calls today to silence popular Muslim clerics, revered Arab nationalists, and influential progressive faculty for hate may well fuel a politically more insidious intolerance of Jews (and progressively more problematic democratic dilemma for Jews) than the intolerance feared from transparent extremists' uncensored diatribes or bold Jewish counter-advocacy in reply.

¹¹⁹ *Id.*

¹²⁰ *B'nai Brith Canada Challenges Police Decision Regarding Elmasry*, Mar. 11, 2005, <http://www.bnaibrith.ca/prdisplay.php?id=885>.

¹²¹ Sheri Shefa, *Complaints pending over Israeli Apartheid Week*, CANADIAN JEWISH NEWS, Mar. 16, 2006, <http://www.cjnews.com/viewarticle.asp?id=8736>.

¹²² BRAUN, *supra* note 109, at 12, citing the Special Committee on Hate Propaganda.

IV. *The Silencing Dilemma*

That a people who have suffered universal persecution and prejudice for three thousand years should seek shelter from intolerance under the canopy of hate censorship laws and campus speech codes should come as no surprise—especially where opponent belligerence and majestic polices of paper equality make defending with words prohibitive, and deploying physical intimidation, or violence, is not the Jewish approach to civil rights. But the silencing shield is an insidious Trojan horse, subverting the Jewish cause from within, and undermining the very pillar of democratic society on which it ultimately depends.

Broadly, there are six reasons why. First, paradoxically, hate censorship laws in Canada have weakened rather than strengthened official accountability for campus intolerance. Second, official decisions to silence hate are irretrievably tainted by campus politics and evolving minority power-relations, and not necessarily vulnerability or harm based. Third, hate censorship is a double-edged sword and a slippery political slope. Over time, Jewish hate censors undercut their own voice and arm that of their enemies. Fourth, Jewish attempts to silence opponents for promoting hate have produced a mixed message of Jewish tolerance and Jewish commitment to democratic values of discourse and dialogue, injuring Jewish credibility and diminishing the Jewish case against intolerance. Fifth, hate censorship indirectly promotes the message and the messengers of hate, often in more subtle and insidious ways. Finally, Jewish faith in hate censorship has promoted a self-debilitating dependence on public silencing.

First, unlike the United States, where courts have struck down hate censorship laws,¹²³ Canada's criminal hate speech law is constitutionally valid.¹²⁴ One might expect this crucial legal difference to bestow on responsible campus officials the moral authority and political legitimacy they need to boldly confront and combat the problem of Jewish degradation and alienation occurring on their watch. Instead, it seems to have given them more cause and cover to shirk their duty and pass the buck to outside authorities. "Call the police if you're concerned," the university administrator says. "We have hate laws in this country." A variation on that

¹²³ *Collin v. Smith*, 578 F.2d 1197 (7th Cir. 1978) (holding that a neo-Nazi march could proceed though a Jewish neighbourhood in Skokie, Illinois; *RAV v. City of St. Paul*, 505 U.S. 377, 381 (1992) (concluding that even if the expression reached by the ordinance was proscribable under the "fighting words" doctrine, the ordinance was facially unconstitutional because it prohibited otherwise permitted speech solely on the basis of the subjects the speech addressed). *Id.* The Court held that the First Amendment did not permit the government to impose special prohibitions on speakers who express views on disfavored subjects. *Id.* at 391. While the statute served a compelling interest, there were content-neutral alternatives available. *Id.* at 395.

¹²⁴ *R. v. Keegstra*, 1990 3 S.C.R. 697 (1990).

statement has been repeated at least half a dozen times during the past several years, writes Ed Morgan, chair of the Canadian Jewish Congress.¹²⁵

Take, for example, the anti-Israel diatribes of Professor Aijaz Ahmad. For general reference, Ahmad is the author of *The Nazification of Israel* and *Israel's Killing Fields*. York University's Dean of Arts told reporters that "if Ahmad's talks or articles cross any legal line there are means at law to deal with it, otherwise it is my practice not to expect that I will agree with everything my colleagues write but to defend their freedom to write it."¹²⁶ Even mutual agreements of civility, are no bar to passing the buck, if the message of the offenders is popular. In December of 2004, Jewish students at the University of Western Ontario complained to campus officials and to officials of the student union about an offensive SPHR wall display that not only equated the Jewish state with racist South Africa, but also accused it of ethnic cleansing and Nazi-like atrocities.¹²⁷ Just months before, under university auspices, the Jewish Israel Action Committee (IAC) had successfully negotiated an agreement with the student union against such inflammatory displays being erected by either side. The University Student Council (USC) vice-president responded, inter alia, that a police officer from the hate crimes unit had seen the wall and declared it to be legal under the provisions of the Canadian Criminal Code.¹²⁸ Ironically, the very civil and criminal hate speech laws that Jews look to for protection against intolerance have served as both cause and cover for responsible officials to shirk their duty to act under campus codes of equity and civil conduct. Stuck between the daunting rock of off-campus legal procedures and standards of proof, and the hard place of on-campus administrative inaction, victimized Jews on Canadian campuses are falling through the equity cracks.

Second, public concern with hate speech may be about minority harm but official decisions to silence it are more about campus politics and evolving power-relations. They invariably catch the easy picks of public offense while letting the more popular, and more dominant, fish of intolerance to escape. Typically, university administrators answer Jewish complaints by reiterating their commitment to both freedom of speech and the universities' zero tolerance for intolerance. However, with Muslim or

¹²⁵ Ed Morgan, *Campus Hate Laws are a Shield, not a Sword*, CANADIAN JEWISH NEWS, Mar. 4, 2004, <http://www.cjnews.com/viewarticle.asp?id=2683&s=1>.

¹²⁶ Ann Morgan, *Israel, U.S. Blamed for World's Problems*, *supra* note 40.

¹²⁷ Frances Kraft, *National Jewish Campus Body Begins Second Year*, CANADIAN JEWISH NEWS, Sept. 15, 2004, <http://www.cjnews.com/viewarticle.asp?id=4331&s=1>.

¹²⁸ Anna Morgan, *Anti-Israel Display Permitted by UWO Officials*, *supra* note 106. USC's vice-president also said that the wall did not breach existing campus policies and regulations, but promised to have them reviewed. *Id.* Just ten months earlier, the Israel Action Committee apologized for distributing flyers on campus that condemned a culture of Muslim terrorism and promptly withdrew them after less wary campus officials declared the flyers to be offensive to some students. *Id.*

progressive invitees, in contrast to pro-Israel presenters, free speech has never lost out to campus security concerns or Jewish sensibilities, at any Canadian university. Consider York University's invitation to Imam Mohamed Al-Asi who attributes 9/11 to a plot hatched by a Jewish conspiracy of Israeli Zionists and the American Jewish lobby to discredit Islam. York officials did nothing to prevent, proscribe, relocate, or delay his vilifying sermon, or to notify outside law enforcement officers of his hateful message.

Contrast this with the invitation to York University in February of 2003 of former Harvard professor, Daniel Pipes, a highly unpopular pro-Israel scholar. Following extended negotiations between student and faculty representatives, and anxious York officials fearful of campus unrest, Pipes was finally offered a speaking venue—ignominiously hidden behind a curtained-off section of the university's main basketball court.¹²⁹ Adding injury to insult, Pipes promptly found himself in a chilling encounter with a Toronto police officer who personally warned Pipes, before speaking, to be careful not to violate Canada's anti-hate laws.¹³⁰

In November of 2004, York University history professor David Noble, a vocal critic of the Jewish state, reportedly distributed flyers on campus which alleged that the York University Foundation board (the university's fundraising arm) was under the control of "pro-Israeli lobbyists, activists and fundraising agencies."¹³¹ The pamphlet reportedly singled out prominent philanthropists with Jewish sounding names and links on the Board, which many felt exploited prejudicial stereotypes of Jewish influence and fed age-old conspiracy theories of world Jewish domination and control.¹³² To be sure, York President Lorna Marsden, and others, did condemn Noble. But no suspension or disciplinary action was taken, nor official notice of serious consequences against future such action, of any kind, issued. Instead, it was Noble who filed suit against the university for infringement of his academic freedom of speech, and for defamation.¹³³

In the Fall of 2004, Senator Jerry Grafstein brought before the University of Toronto chancellor, Vivienne Poy, a front-page photo of

¹²⁹ Students had to go through metal detectors to hear Pipes. Daniel Pipes, *The Rot in Our [Canadian] Universities*, Jan. 30, 2003, <http://www.danielpipes.org/article/1013>. After Pipes spoke, pro-Palestinian protesters proceeded to occupy Lorna Marsden's [President of York University] office. Pipes' lecture was initially cancelled for security reasons, than reinstated. Frances Kraft, *Pipes Discusses Barriers to Peace and Free Speech*, CAMPUS WATCH, Feb. 6, 2003, <http://www.campus-watch.org/article/id/526>.

¹³⁰ Sheldon Kirshner, *Jewish Interests Harmed by Anti-hate Law: Borovoy*, CANADIAN JEWISH NEWS, June 12, 2003, <http://www.cjnews.com/viewarticle.asp?id=600&s=1>.

¹³¹ *Spate of Campus Incidents Leaves Jewish Students Feeling Vulnerable*, *supra* note 37.

¹³² *Id.*

¹³³ Carole Blackman, *Professor Denounced for York U Charges*, CANADIAN JEWISH NEWS, Nov. 25, 2004, <http://www.cjnews.com/viewarticle.asp?id=4957&s=1>.

graffiti that openly advocated the killing of Jews, carried in the university's student newspaper, *The Varsity*.¹³⁴ The chancellor promised to take a look at it.¹³⁵ The University is still looking. Meanwhile, Waterloo campus officials have rebuffed all calls to reprimand, much less suspend, engineering Professor Mohamed Elmasry, finding his publicly pressured apology to the nation, but not to Waterloo Jewish students, sufficient despite a pending investigation of his terrorism comments by police from the Halton Hate Crimes Unit.

Understandably, university officials do not want to take political sides in a controversial global conflict that they cannot possibly locally resolve. But official reluctance to act in the face of such brazen challenges to campus tolerance and equity cannot be explained simply by administrative concern for neutrality. Nowhere else on Canadian campuses is fear of political controversy, or fear for freedom of academic speech, proffered to excuse a hostile climate of hate, harassment and intimidation of a historically vulnerable community, whether real or merely apparent.

Consider, for example, the case of Matin Yaqzan, a male mathematics professor at the University of New Brunswick. Yaqzan was suspended for sexual harassment pending what even his own teachers' union (who helped write the harassment code under which he was suspended) described as a witch-hunt.¹³⁶ Yaqzan's offence was not with his teaching competence, classroom conduct, or with anything he *did* or said *to* any female student but with what he said to the media *about* some women. Even a student-media fishing expedition, openly soliciting harassment dirt on Yaqzan to justify his suspension, could not dig up anything improper.¹³⁷ Yaqzan's offense? Saying publicly that a woman who accepts a late-night invitation to stay at a young man's apartment is a promiscuous woman for whom date rape is an inconvenience rather than a moral outrage.¹³⁸

Excepting only Jewish victims of Muslim or progressive intolerance, ignorance is no excuse, and freedom of speech no safe defense, for those found promoting intolerance on Canadian campuses. If the moral cause is politically right, even criminal pursuit of speech offenders is not out of the

¹³⁴ Viviane Spiegelman, *Jews Don't Exercise Democratic Rights, Angry Grafstein Says*, *supra* note 112.

¹³⁵ *Id.*

¹³⁶ S. Martin, *When Free Speech and Equality Don't Mix*, TORONTO STAR, Oct. 6, 1994, at A25 (on file with author); ALAN BOROVOY, *THE NEW ANTI-LIBERALS* 103–04, 106 (Toronto, Canadian Scholars Press 1999).

¹³⁷ BOROVOY, *supra* note 136, at 103–04, 106.

¹³⁸ *Date Rape Comments Cause Campus Furor*, GLOBE AND MAIL, Nov. 23, 1993, at A6 (on file with author); BOROVOY, *supra* note 136, at 92.

question.¹³⁹ Philippe Rushton, a widely published psychology professor at the University of Western Ontario is case in point. Rushton penned a notorious study on the differences between the races that drew scathing public condemnation, particularly from Blacks and progressive groups.¹⁴⁰ He was academically ostracized, subjected to a paralyzing four-year racism investigation under the Ontario human rights code, and threatened with jail time under the hate propaganda provisions of the Canadian Criminal Code.¹⁴¹ As with Yaqzan, Rushton's offense was not with his teaching competence, classroom conduct, or with anything he did or said to his students. Rushton's offence was his scholarship.

Even speech offenders who intend no harm but seek to promote open debate about violence, hypocrisy, and hate are not beyond the selective reach of the progressive censor's knife. In February of 2006, Peter March, a philosophy professor at St. Mary's University in Halifax posted on his office door some offensive Danish political cartoons, which had been the subject of world wide Muslim violence for, *inter alia*, mocking the Muslim prophet as a terrorist, and suicide bombers as hypocrites.¹⁴² Citing Muslim sensibilities and the school's anti-harassment policies, the campus officials (with faculty union support) ordered March to remove the offending cartoons.¹⁴³ When March complied (after reportedly being threatened by a hostile group of angry Muslim students who showed up at his office door) but responded that he would submit the cartoons for classroom discussion, the administration warned him that he could only do so without showing the cartoons that were the subject of controversy.¹⁴⁴ When the student newspaper at the University of Prince Edward Island, the CADRE, published the cartoons, campus security

¹³⁹ For a discussion of the "chilling effect" concept developed in American jurisprudence, see *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965).

¹⁴⁰ *Informed of Hate Probe, Rushton Cancels Speech*, GLOBE AND MAIL, Mar. 13, 1989, at A1; BOROVOY, *supra* note 136, at 90–91.

¹⁴¹ *Id.*

¹⁴² The most controversial of which depicted Muhammad's headdress transformed into a bomb with a burning fuse. James Graff, *A Right To Offend?*, TIME (Canadian Edition), Feb. 13, 2006.

¹⁴³ Jane Armstrong, *Canadian Professor Fans Flames: Taping of Mohammed Cartoon on Door Leads to Tense Protests on Two Campuses*, GLOBE AND MAIL, Feb. 10, 2006, <http://www.theglobeandmail.com/servlet/story/RTGAM.20060210.wxcartoonside10/BNSStory/National/home>. March says he decided to post the cartoons only after his colleagues in the religious studies faculty refused his suggestion to hold a campus colloquium on the cartoon affair and the ensuing Islamic outrage; Richard Foot, *P.E.I. Student Publication Raided*, Feb. 9, 2006, GAZETTE, <http://www.canada.com/montrealgazette/news/story.html?id=7b7d851d-a9d9-49fd-8963-fbc665baa637&k=72181>.

¹⁴⁴ Kristen Lipscombe, *Prof Receives Threats over Muhammad Cartoons*, CHRONICLE HERALD, Feb. 24, 2006, <http://www.herald.ns.ca/Metro/482996.html>. March filed a report with the Halifax Regional Police saying that he was being personally threatened. *Id.*; Keith Doucette, *Halifax Professor Plans to Display Drawing of Prophet in Classroom*, CANADIAN PRESS, Feb. 08, 2006, http://news.yahoo.com/s/cpress/20060208/ca_pr_on_na/ns_prophet_drawings.

guards raided their offices and ordered all copies destroyed, citing Muslim sensibilities and administration fears for public safety on campus.¹⁴⁵

Third, as suggested above, silencing hate is a double-edged sword and a slippery political slope. Weapons that substitute enforced quiet for public debate to combat intolerance and quell discord may begin by serving the hated but over time end up serving the hateful more.

Silencing hate is a politically slippery slope and double-edged sword that can move in unintended and unexpected ways. The law's moral authority and legitimating language are politically infectious and socially seductive, subtly seeping in one form or another into otherwise ordinary discursive contexts. They can erode the tone and texture of honest debate, corrode the language of public discourse with the intolerance of their own, condition public meanings in chilling or opportunistic ways and give succor to parallel cultures of extralegal silencing.¹⁴⁶

Jonathan Rauch has presciently written, "the vocabulary of hate is potentially as rich as your dictionary, and all you do by banning language used by cretins [sic] is to let them decide what the rest of us may say."¹⁴⁷

Jews are already being hoisted on their own censorial petard. Ed Morgan, professor of law and chair of the Canadian Jewish Congress, has observed, "Jewish students on today's university campuses encounter not one but two kinds of racists; the racists and the anti-racists."¹⁴⁸ Anti-racists creatively cloak Jewish marginalization and de-legitimization in the moral authority and legitimating language of the struggle against hate and racism, to silence or chill the Jewish voice. The riot at Concordia, and the police warning to Daniel Pipes just before he spoke at York, are just two of the most brazen examples. But there are many more oblique ones. The student council at the University of Ottawa, for example, deployed the "Zionism equals racism" smokescreen to revoke campus recognition and official voice from the Jewish Students Union.¹⁴⁹ More creatively, at Concordia, the Student Union endeavoured to deactivate and de-legitimate an already degraded post-riot Hillel by withdrawing student council funding from them. The reason: Hillel was a racist organization for, *inter alia*, posting a display

¹⁴⁵ Richard Foot, *P.E.I. Student Publication Raided*, *supra* note 143.

¹⁴⁶ BRAUN, *supra* note 109, at 256–57.

¹⁴⁷ Jonathan Rauch, *In Defense of Prejudice: Why Incendiary Speech Must Be Protected*, HARPER'S MAGAZINE, May 1, 1995, http://www.jonathanrauch.com/jrauch_articles/in_defense_of_prejudice/.

¹⁴⁸ Ed Morgan, *Anti-racists Cloud Campus Dialogue*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at B14 (on file with author).

¹⁴⁹ News Release, *Students' Federation of the University of Ottawa*, July 7, 1982 (on file with author); BOROVY, *supra* note 136, at 103.

advertising service in the Israeli National Defense Forces.¹⁵⁰ Even Canadian Customs has fallen for the captivating silencing call of the anti-racists. In October of 2002, a series of controversial scholarly articles critical of Islam put out by the Ayn Rand Institute, a pro-Israel think tank, destined for the University of Toronto's Objectivists Club, was seized and temporarily detained by Canadian Customs, apparently on suspicion of promoting hate propaganda contrary to the Canadian Criminal Code.¹⁵¹

Across Canadian campuses, the vocabulary, history, and symbols of the Jewish struggle against anti-Semitism, Nazism, and racism—Holocaust, genocide, war crimes, ethnic cleansing, swastika—have been appropriated by the haters. Orwellian newspeak is the new medium of anti-racist campus discourse. Original meanings are twisted, and historic symbols are turned on their heads, against Jews, to serve a well orchestrated agenda of Jewish marginalization and de-legitimization.¹⁵² Hate censorship, its moral authority and legitimating language, has been hijacked.¹⁵³ A shield against intolerance has been turned into a shelter, and a sword, for the intolerant. "Ironically," bemoans Morgan, "the hate propaganda laws that Canadian Jewish organizations have traditionally supported as a solution to racist and anti Semitic speech have surfaced as the primary vehicle for protecting the most prevalent and offensive forms of on-campus propaganda."¹⁵⁴ Self-contradictorily, by legitimating censorship in place of talk, Jewish censors have de-legitimated their own voice and armed that of their adversaries. Hate censorship has become a freedom of Jewish speech problem.

Thugs and bullies pleading Jewish racism, fascism, and genocide with fists and chairs can indefinitely banish democratically elected Israeli heads of state from one of Canada's largest multicultural campuses. A former Harvard professor, scheduled to speak to one of Canada's largest Jewish student bodies, at Canada's second largest university, can be

¹⁵⁰ Janice Arnold, *Concordia Hillel Sues Student Union for \$100,000*, CANADIAN JEWISH NEWS, Jan. 2, 2003, <http://cjnews.com/pastissues/03/jan2-03/front2.asp>.

¹⁵¹ Paul Lungen, *CCRA Releases Pro-Israeli Literature*, CANADIAN JEWISH NEWS, Oct. 10, 2002, <http://cjnews.com/viewarticle.asp?id=1193>; Editorial, CANADIAN JEWISH NEWS, Oct. 10, 2002, at 8 (on file with author).

¹⁵² Mordechai Ben-Dat, *Anti-Semitism in Academia*, CANADIAN JEWISH NEWS, Oct. 10, 2002, at 4 (on file with author); As Professor Howard Adelman points out, this misappropriation has international dimensions—citing the vilifying Holocaust mis-imaging and collective demonizing of the Jewish state at the world antiracism conference in Durban, South Africa. Howard Adelman, *Hate Speech and Terrorism*, CANADIAN JEWISH NEWS, Sept. 20, 2001, at 9 (on file with author); Lindsay Soberano, *Appropriation of Terms like Holocaust Reduces Their Effectiveness, Mock Says*, B'NAI BRITH CANADA, Nov. 11, 2004, <http://www.bnaibrith.ca/article.php?id=817>; Sheldon Kirshner, *A Sober Examination of Contemporary Anti-Semitism*, CANADIAN JEWISH NEWS, Aug. 19, 2004, at 44 (on file with author).

¹⁵³ On the language of anti-Semitism, generally, see Bryan Borzykowski, *Language is the Key to Fighting Anti-Semitism*, CANADIAN JEWISH NEWS, Nov. 11, 2004, at 32 (on file with author).

¹⁵⁴ Ed Morgan, *Campus Hate Laws are a Shield, not a Sword*, CANADIAN JEWISH CONGRESS, Mar. 3, 2004, <http://www.cjc.ca/template.php?action=oped&Rec=87>.

personally warned by police of possible criminal arrest should he misspeak. The voices of intimidated Jewish students, in and out of the classroom, can be browbeaten by anti-racists into silence, or officially diminished, degraded, and consigned to second-class status.

Clinging to traditional Jewish faith in hate censorship, Professor Morgan, nonetheless, suggests that the greater threat is not the threat to the Jewish voice but the voices against the Jews.¹⁵⁵ If Canada's hate laws have been misinterpreted and campus speech and equity codes twisted to promote Jewish hate and chill the Jewish voice, the problem lies not with the laws and codes, but with their misuse.¹⁵⁶ But this is no answer to the problem, but its illustration. Jews can no longer define the terms of the speaking debate for the same reason that they can no longer define the terms of the censorship enforcement. In a political culture where enforced silence can legitimately take the place of the obligation to speak, the less belligerent, and the more tolerant, never do. Over time, it is the law-abiders not the law-breakers, who lose their best weapon with which to defend themselves.

Censorship is about the deployment of force, not the free exchange of ideas. Censors substitute might for having to demonstrate right. Might is not an equal opportunity employer but a competitive food chain. Victory ultimately belongs to the more belligerent, or the more popular, not the more tolerant or the more civil. If Jewish history and Jewish tradition is any guide, it is not wise to make Jewish rights depend on superior belligerence or public popularity. Jews have been the proverbial crow in the mineshaft of exploding intolerance and imploding democracy for a reason. As history's perhaps most enduringly vulnerable community, they are often the last to be protected, but only the first to be violated. Jews, who gorge on hate censorship laws and silencing codes for self-protection at the expense of free speech, should beware of swallowing. Over time, they are more likely to find themselves at the bottom than at the top of the censorship food chain. They are unwitting accomplices in their own marginalization and delegitimization.

Fourth, victory in silencing produces a mixed message of Jewish tolerance and Jewish commitment to democratic values of discourse and dialogue, injuring Jewish credibility and diminishing the Jewish case against intolerance, intimidation, and violence. Rights to speak and to be heard on all the great and controversial issues of the day are politically indivisible. They can no more be credibly divided along the lines of message content than along the lines of messenger popularity. How can Jewish leaders

¹⁵⁵ Ed Morgan, *Anti-racists Cloud Campus Dialogue*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at B14 (on file with author).

¹⁵⁶ Ed Morgan, *Campus Hate Laws are a Shield, not a Sword*, *supra* note 123.

convincingly defend Jewish rights to speak, as Jews see the truth, when they are busy attacking their opponents' rights to speak, as their opponents' see the truth? The Jewish case against intolerance depends on not just the intrinsic merits of the Jewish message but equally on Jewish credibility conveying it—on demonstration of Jewish tolerance and respect for disagreement.

Jews need to distance themselves more, not less, from the campus ideologues, and serial bullies, who substitute might for right to make their case. This point was brought home harshly by a GPC International poll which found that most Canadians felt they had no shared values with Israel, and many didn't know Israel had universities and high tech industries.¹⁵⁷ 42% were unaware that that the Jewish state is a pluralistic multi-party western democracy, with an independent judiciary, the rule of law, and freedom of speech, religion and the press.¹⁵⁸ Jewish censors speak of hypocrisy, not democracy. Silencing popular political opponents invites public suspicion, skepticism, and cynicism, even when there are no secrets to hide or hidden agendas to promote. In short, Jewish censors undermine the most important part of the Jewish message—its public credibility and political democracy.

Fifth, hate censors indirectly promote the message and the messengers of hate, often in more subtle and insidious ways. Silencing controversy gives unearned publicity to intolerant messengers and buttresses their hidden meanings. It diverts public minds from the demerits of hateful messages to questions of public censorship and Jewish abridgement of legitimate rights to speak. It feeds conspiracy theorists' age-old canards of boundless Jewish power, media control, and world domination, and undeservedly conflates the intolerant, the belligerent and the popular with the underdog, the voiceless, and the disadvantaged.¹⁵⁹ It suggests to cynics that Jews wish to silence intolerance not for legitimate fear of injury but because they cannot defend their own cause. Ultimately, it gives campus bullies and their like-minded progressive allies more cause, and cover, to substitute force

¹⁵⁷ Janice Arnold, *Survey Show Canadian Know Little about Israel*, CANADIAN JEWISH NEWS, May 28, 2004, <http://www.cjnews.com/viewarticle.asp?id=3468&s=1>.

¹⁵⁸ *Id.*; Paul Lungen, *New Approach to Israel Advocacy*, CANADIAN JEWISH NEWS, Dec. 2, 2004, <http://www.cjnews.com/viewarticle.asp?id=4996>.

¹⁵⁹ Jews in Canada (as most everywhere else, worldwide) are a comparatively dwindling minority in a veritable sea of rapidly growing Muslim majorities. The community grew from 318,075 in 1991 to only 330,000 a decade later, in 2001. During the same period, the Canadian Muslim population more than doubled from 253,275 to 579,650 and stands close to 1,000,000 at time of writing. By 2017 Canadian Muslims are expected to number 1.42 million and Jews only 375,100; Leo David, *Jews and Muslims in Canada Today*, CANADIAN JEWISH NEWS, Feb. 26, 2004, at 9 (on file with author); Janice Arnold, *Moderate Growth Projected for Canadian Jewry*, CANADIAN JEWISH NEWS, Apr. 7, 2005, at 54 (on file with author).

for talk, as an acceptable counter-weapon to Jewish frustration of their legitimate rights to speak and convince.

Finally, Jewish faith in hate censorship has promoted a self-debilitating community dependence on public silencing. Trust in silencing has been bought at the cost of developing and honing the Jewish voice to better make the Jewish case. Following Israel Apartheid Week at the University of Toronto, Tilly Shames, Hillel's Israel affairs director, publicly acknowledged: "[the event] highlighted the need for Zionist educational training for Jewish students. [Hillel had been planning two such programs] and now we see an even more pressing need."¹⁶⁰ Jewish students can learn much not only from their Arab and Muslim rivals but also from blacks, gays, natives, and feminists in their early fights for inclusion, equality, dignity, and justice.¹⁶¹ Those communities did not extol public quiet at the cost of public advocacy. They did not put faith in self or opponent censorship to do their civil rights work for them. They were not self-conscious to boldly assert their case and demand their rights. Their leaders did not fear success.

Jewish faith in hate censorship reflects, in part, a Jewish tradition that prefers quiet diplomacy to open conflict. But it is also a function of the nature of the beast of hate silencing. The right to muzzle the disagreeable is a seductive calling, which few can resist. If successful, censorship promises victory without having to boldly and openly defend the merits of one's case. Why struggle to persuade skeptical publics and risk one's point, or even one's cause, if one can club disagreeable opponents into submission by silencing and be assured of success?¹⁶² Early Jewish censorship victories against detested white supremacists like Taylor,¹⁶³ neo-Nazis like Zundel,¹⁶⁴ and reactionary anti-Semitic teachers like Keegstra,¹⁶⁵ Ross,¹⁶⁶ and Fromm,¹⁶⁷ seemed to bear out the soundness of this approach—symbiotically validating and necessitating Jewish dependence on silencing and Jewish aversion to open discursive conflict. These victories, however, have been bought at a hidden and haunting cost—dereliction of Jewish duty to develop and hone those complex skills of public advocacy that would be required to

¹⁶⁰ Frances Kraft, *Jewish Students Kept Tabs on Anti-Israel Event*, CANADIAN JEWISH NEWS, Feb. 10, 2005, at 3, 45 (on file with author).

¹⁶¹ I say "early" because, flush with victory, many of these groups are now also falling captive to the seductive call of censorship to make their case.

¹⁶² See generally BRAUN, *supra* note 109, at ch. 5.

¹⁶³ Canada (Human Rights Commission) v. Taylor [1990] 3 S.C.R. 892.

¹⁶⁴ Citron v. Zundel (2002), 41 C.H.R.R. D/274.

¹⁶⁵ R. v. Keegstra [1990] 3 S.C.R. 697.

¹⁶⁶ Ross v. New Brunswick Teachers' Ass'n. 199 N.B.R. (2d) 245 (1998).

¹⁶⁷ Paul Lungen, *Fromm Tries to Keep Teaching License*, CANADIAN JEWISH NEWS, Feb. 3, 2005, at 14 (on file with author).

answer the more popular messengers, and fight the more formidable inter-minority battles, of intolerance of the future.

Over time, the elixir of enforced public quiet can become too soothing to relinquish, even in the face of growing failure. Self-contradictory strategies—silencing and advocating, censoring and educating, dialoguing and dictating—have become conflated as one, and mistaken as complementary activities in a common cause. Even today, Jewish community leaders cannot see the light and shake the dependency. Major Jewish organizations, including B'nai Brith Canada and the Canadian Jewish Congress are all backing amendments to the criminal code proposed by Justice Minister Irwin Cotler that would strengthen existing legislation addressing hate speech disseminated on the web.¹⁶⁸ While strengthening criminal laws against hate acts, also part of the proposal, makes good sense, doing so against hate speech is increasingly self-defeating.

Censorship may temporarily paper over community divisions and camouflage unpleasant discord. It may impose a superficial harmony and a seductive surface calm. But enforced silence cannot truly enlighten publics and prepare them for the challenges of demagogues.¹⁶⁹ It cannot expose bigots, refute falsehoods, or vent festering grievances. Censored publics tend to be less, not more self-knowing and thoughtful publics.¹⁷⁰ Nor can censors forge the deeper bonds of intercommunity trust that truly bridge community divides—the kind that do not come apart at the seams in times of social crises or political change. Ultimately, Jewish censors debilitate their political selves and arm their intolerant enemies. Most importantly, they undercut the democratic process of public discourse, in place of force, on which they, not their more belligerent and intolerant opponents, most depend. In short, Jews who profess respect for freedom of speech for public validation but then embrace hate silencing for group shelter work at cross-purposes with themselves, and with democracy, at all levels.

Hate censorship laws and campus speech codes were enacted in Canada to protect all, not just Jewish, minorities. All historic minorities have experienced intolerance, and all are, potentially, vulnerable to future

¹⁶⁸ Paul Lungan, *Cotler's Proposals on Hate Web Sites Welcomed*, CANADIAN JEWISH NEWS, Oct. 21, 2004, <http://www.cjnews.com/viewarticle.asp?id=4589&s=1>; *Hate Speech not Charter Right in Canada: Court*, JEWISH TRIBUNE, Sept. 29, 2005, <http://www.jewishtribune.ca/tribune/jt-050929-03.html>; Lynne Cohen, *Preachers of Hate Under Investigation*, JEWISH TRIBUNE, Aug. 4, 2005, <http://www.jewishtribune.ca/tribune/jt-050804-07.html>.

¹⁶⁹ *Canadians Underestimate anti-Semitism Levels, Ipsos Reid Poll Shows*, JEWISH TRIBUNE, Mar. 24, 2005, <http://jewishtribune.ca/tribune/jt-050324-03.html>.

¹⁷⁰ For recent surveys that seem to bear this out, see *Canadians in Denial about anti-Semitism*, JEWISH TRIBUNE, July 8, 2004, at 1, 10 (on file with author); *Anti-Semitism Not Rising Poll*, CANADIAN JEWISH CONGRESS, May 6, 2004, <http://www.cjc.ca/ptemplate.php?action=itn&Story=804>. The article cites an Environics poll showing that despite the dramatic rise in anti-Semitic incidents in Canada, the majority of Canadians do not think that anti-Jewish feelings are on the rise.

intolerance. But, historically, it was easier for Canadian minorities to find common cause in the right to silence hate than to risk mutual conflict by a right to speak it. Villains and victims were clear. Dominant white societies oppressed the rest. Minority justice before the age of clash of civilizations was hard, but unambiguous. Eventually, even the dominant and the White came to accept the need for hate censorship. After all, a horrific World War had been fought against the forces of fascism, racism and genocide. Jews could count on the likes of Zundel, Keegstra, Taylor, Fromm, and Ross to make the case for silencing for them. Political careers had much to gain and nothing to lose quieting fringe right-wing fanatics and marginal neo-Nazis. To be against Jewish hate silencing was not simply to be at odds with Canadian values of multiculturalism, justice, and equality. It was to be for Fascism, and Nazism, racial violence and possible social conflagration.¹⁷¹ Who could support that?

Times have changed. Incidents of hate directed against Jews by people who identified themselves as Arab almost doubled in Canada in 2004 over 2003.¹⁷² Popular Muslim clerics, however, are not universally detested fringe neo-Nazis. Inter-minority conflict is not dominant White prejudice. Clash of civilizations is not Cold War ideologies. Palestinian suicide bombers are not invading national armies. Jewish hate censorship is a more complicated game now. It is now a political contest, if not in silencing theory, certainly in silencing practice. Identifying and distinguishing the victim from the victimizer has become more difficult for conflicted and pressured officials. There is now a new minority in town, a different and more vocal kind of ethnic constituency to answer to. Justice, by silencing, has become far more ambiguous.

V. *New Directions: Alternatives to Censorship*

History does not stand still for the convenience of Jewish censors. Combating intolerance of Jews today, to borrow, *mutatis mutandis*, the words of Amanda Ripley, "demand an especially crafty and determined breed of activist" because the new adversaries "refuse to dress the part."¹⁷³ To be sure, messengers of hate were always slippery villains—chameleons, forever shedding their old colors for new ones to adapt to changing climates,

¹⁷¹ See generally BRAUN, *supra* note 109, at 12–13.

¹⁷² Diane Koven, *Anti-Semitism up Across Canada, Audit Finds*, CANADIAN JEWISH NEWS, Mar. 24, 2005, <http://www.cjnews.com/viewarticle.asp?id=5912> (quoting Ruth Klein, director of B'nai Brith's League for Human Rights); *Anti-Semitism Report: Muslims Carried Out Most Attacks*, CANADIAN JEWISH NEWS, Mar. 20, 2003, at 33 (on file with author).

¹⁷³ Amanda Ripley, *New Agents of Change*, TIME, June 18, 2000, <http://www.time.com/time/archive/preview/0,10987,1000121,00.html>.

escape the censors' knife, and suit the times. But today, intolerance of Jews comes clothed in the seductive vocabulary of minority social justice and hides behind an Orwellian curtain of popular progressive double-speak. Hate is a moving target, moved, ironically enough, *by threat of censorship itself* into more ambiguous or hidden, and therefore less easily challengeable, social and political contexts.

Canadian Jewry has been slow to recognize and respond to new realities. Hate censorship is part of the problem, not part of the solution. It has been an albatross around the neck of timely Jewish adaptation to change.¹⁷⁴ Jewish censors would rather arrest than adapt to unpleasant change, conceal rather than expose it, and deny rather than confront it. Hate censorship is all about permanence not change. Enforced public quiet assumes found truths, final meanings, fixed victims, and final triumphs. However, the human journey is not a final event but a work in progress. History, society, and politics, cannot be forever frozen in time. Communist dictators tried, but even they, in the end, failed. Silencing hate is a fossilized response to an incorrigibly mutating foe. It is a blunt, stratified, weapon of force from the past, ill suited to answer the complex multicultural challenges and nuanced inter-minority conflicts of the present and the future. It is negative and reactive where Jewish inclusion depends on being flexible and proactive. Jewish hate censorship will always be one step behind the challenges of change—old vaccine for new strains of a forever-mutating virus, a fixed cure for a fluid malady, a deceptive guarantee against future political uncertainty. Its victories are proving to be more pyrrhic than profound.

Relinquishing Jewish dependence on hate silencing, therefore, is not to leave Jews, or Canadian democracy, undefended as feared by many in the Jewish community but, rather, better prepared and more intelligently defended. There are numerous speech-friendly democratic alternatives to hate silencing without the self-defeating and democracy-debilitating disadvantages of censorship. Broadly, they may be classified into four categories: 1) bridge building; 2) political activism; 3) cultural activism; and 4) democratic legal action.

Building bridges of trust across community divides should always be the weapon of first resort for democrats. Narrowing the chasms that separate hostile communities requires confidence-building—replacing suspicion, cynicism and distrust with mutual respect, empathy, and understanding. Successful bridges require open discourse and honest dialogue, the kind that does not come apart at the first signs of crises. Bridges of this sort cannot be constructed by muzzling opponents but by opening up communication, still

¹⁷⁴ See generally BRAUN, *supra* note 109, at 57–59.

more. At York University, two students, one a self-proclaimed pro-Israeli Jew, the other an equally proud pro-Palestinian Muslim, formed Shalom-Salam (meaning peace in Hebrew and Arabic), a student peace group that now has 200 members.¹⁷⁵ A similar group, Muslim-Arab-Jewish Dialogue (MAJD) was formed at the University of Toronto.¹⁷⁶ Commenting on such a meeting of minds, Conrad Winn writes, "Some people may be surprised that there is a persistent minority of Muslims—approximately one-fifth—who think that Israel is right on just about everything."¹⁷⁷

Reaching out, however, is more complicated than this suggests. First, there are serious cultural and religious, not just philosophical and political, differences that can stand in the way of effective Jewish-Muslim dialogue. Hillel withdrew from a planned multi-faith conference organized by the Muslim Students' Association at the University of British Columbia to protest the Association's withdrawal of its earlier invitation to a city councilor to moderate the discussion after the Association learned that the councilor was gay and an advocate for homosexual marriage.¹⁷⁸ Moreover, successful bridge-builders need not only reach out across community divides. They need stand down strong opposition from within. Moderate Jews, however, do not face the same kind of extremist threats from within their own ranks that moderate Muslims face from within theirs.¹⁷⁹

As argued by Manji in her book, *The Trouble With Islam*, many moderate Muslims feel unable or are unwilling to pay the daunting price of ignoring these threats.¹⁸⁰ At progressive Canadian campuses with large and vocal Muslim groups, where acceptance of visible Jews is the exception and intolerance of them the rule, standing down the voices of anti-Zionist extremism from within is a *non sequitur*. Bridge building on campus has been more Jewish-led than mutually consensually forged, to the comparative detriment of Jewish students, and a more deep-rooted campus peace. Zac Kaye, executive director of Jewish campus Services of Greater Toronto

¹⁷⁵ Martha Tancock, "The Peacemakers," *York U: The Magazine Of York University*, Summer 2005, 18 (on file with author); Anna Morgan, *Shalom-Salam: A Calm in the Campus Storm*, CANADIAN JEWISH NEWS, Jan. 8, 2004, <http://www.cjnews.com/viewarticle.asp?id=2284>.

¹⁷⁶ Natalie Ruskin, *Reading Circle Brings Together Jews and Muslims*, CANADIAN JEWISH NEWS, Apr. 8, 2004, at 14 (on file with author).

¹⁷⁷ Marshall Shapiro, *20% of Local Muslims Believe Israel's Side of Story, Pollster Says*, JEWISH TRIBUNE, Aug. 26, 2004, at 1, 2 (on file with author).

¹⁷⁸ Ariel Zellman, *Vancouver Hillel Withdraws from Multi-faith Conference*, CANADIAN JEWISH NEWS, Oct. 23, 2003, at 33 (on file with author).

¹⁷⁹ Elysse Zarek & Lauren Krugel, *Pakistani Man Gets Death Threats for Articles Against Islam*, CANADIAN JEWISH NEWS, Aug. 28, 2003, <http://www.cjnews.com/viewarticle.asp?id=1425>. Reporting that Hamilton police were called in to investigate death threats against exiled Pakistani writer and publisher Aslam Gora. *Id.*

¹⁸⁰ IRSHAD MANJI, *THE TROUBLE WITH ISLAM: A MUSLIM'S CALL FOR REFORM IN HER FAITH*, (St. Martin's 2004).

(JCS) points out that Jewish peacemaking lulled Jewish students into a false sense of security: "The message until now had always been peace, reaching out to other groups and building relationships. Now we're playing catch-up."¹⁸¹ Successful bridge building is an activity between two equal communities, not between a triumphant and a marginalized one.

To boldly and publicly combat Jewish marginalization is therefore not an alternative to successful bridge building and Jewish inclusivity, but a requirement of it. Precious Jewish resources, skill, and energy frittered away in a self-defeating exercise undercutting the democratic process of public discourse, and arming intolerant opponents with hate silencing, would be far better expended by the Jewish community in learning and honing the skills of effective civil rights advocacy, instead. Hillel exhorts Jewish students to "fight the 'new anti-Semitism,'" and Kaye writes, "the biggest single challenge to Jewish students and those about to enter university is to be able to confront those who would deny them the right to express themselves as Jews."¹⁸² A controversial new program to teach high school students the skills of Israeli advocacy and prepare them for the shock of anti-Zionism at Canadian universities was recently launched at Jewish day schools.¹⁸³

Procuring, and securing, Jewish inclusion on campus, however, requires more than just Jewish courage, and Jewish knowledge. It also requires institutional foundations, material resources, a unified community voice, and a socially vigilant and politically conscious community support network. Compared to the myriad self-support networks of homosexuals, Blacks, natives, Asians, women,¹⁸⁴ and others, community support for Jewish students has been woefully wanting and late in coming, leaving Jewish students intimidated, their message diminished or distorted, and their civil rights behind. B'nai Brith's nation-wide bill-board campaign encouraging Jewish students to call their toll-free 24 hour hotline to report campus anti-Semitism, is a bold move, but only the first step. More training lectures and seminars on Jewish advocacy conducted by qualified experts are also needed.¹⁸⁵ A national Jewish registry of anti-Semitic incidents on

¹⁸¹ Blackman & Kraft, *supra* note 60.

¹⁸² Natalie Ruskin, *Fight the "New anti-Semitism," Journalist Tells Students*, CANADIAN JEWISH NEWS, Nov. 20, 2003, at 29 (on file with author); Zac Kaye, *Jewish Students Face Tough Campus Environment*, CANADIAN JEWISH NEWS, Mar. 6, 2003, at B20 (on file with author).

¹⁸³ Many question the efficacy of the programs, which teach mostly facts rather than skills of debate, rhetoric, and public relations. Shira Honig, *Will High Schoolers be Ready for Anti-Zionism on Campus*, CANADIAN JEWISH NEWS, Mar. 4, 2004, <http://www.cjnews.com/viewarticle.asp?id=2685&s=1>; Phyllis Shragge, *Students Learn to Fight Bigotry*, CANADIAN JEWISH NEWS, Feb. 13, 2003, <http://cjnews.com/pastissues/03/feb20-03/kidsandteens/teens.htm>.

¹⁸⁴ Susan D. Phillips, *Meaning and structure in Social Movements: Mapping the Network of National Canadian Women's Organizations*, 24 CANADIAN J. OF POL. SCI., 781-82 (1991).

¹⁸⁵ Lindsay Soberano, *The Many Faces of Israel Advocacy*, B'NAI BRITH CANADA, Oct. 21, 2004, <http://www.bnaibrith.ca/article.php?id=774>.

campus, compiling patterns and showing trends, along the lines of the annual B'nai Brith Audit of anti-Semitic incidents in Canada, would also be helpful.

To effectively meet the national and international character of the threat to Jewish identity, safety, and security on campus, also requires cross-campus linkage, and coast-to-coast, and international, networking. Pro-Palestinian political campus organizations like SPHR have long communicated nationally and internationally, and have been setting up branch plants at ever more Canadian universities.¹⁸⁶ Muslim student associations in Canada, as Davies notes, "are already linked under the North American-wide Muslim Student Associations of the United States and Canada, an organization created in 1963 to help students establish Muslim groups and Islamic programs on campus."¹⁸⁷ On January 11, 2004, the Canadian Federation of Jewish Students (CFJS) was created to share ideas and learn about difficulties across Canada, to plan programs nationally, and "to create one voice that represents Jewish Canadian students."¹⁸⁸ Writes Davis, "It [CFJS] will have more strength than any Hillel ever had."¹⁸⁹ The year before, National Jewish Campus Life (NJCL) was created as "a resource to more than two dozen campuses across the country."¹⁹⁰

Jewish political advocacy, well resourced, institutionally anchored, and nationally and internationally networked, has become ever more important to promote Jewish security and protect the Jewish identity on campus. However, bold political advocacy is not synonymous with bald confrontation. The problem with unregulated free-for-alls is not simply that they elicit undeserved publicity for messengers of hate, more than they could garner on their own strength, as happened with Israel Apartheid Week at the University of Toronto.¹⁹¹ It is also that such confrontations tend to serve best the negative tactics and divisive interests of the more intolerant side. Lance Davis, director of National Jewish Campus Life (NJCL) advises, "Our strategy . . . is not to engage our adversaries in heated argument and ugly confrontation. That's the last thing we want to do."¹⁹² Invariably, mutually

¹⁸⁶ University of Western Ontario, a traditional Jewish stronghold, is one of the most recent examples.

¹⁸⁷ Adam Grachnik, *New Organization Links Jewish Campus Groups*, CANADIAN JEWISH NEWS, Jan. 22, 2004, <http://www.cjnews.com/viewarticle.asp?id=2364>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Frances Kraft, *National Jewish Campus Body Begins its Second Year*, CANADIAN JEWISH NEWS, Sept. 15, 2004, <http://www.cjnews.com/viewarticle.asp?id=4331&s=1>.

¹⁹¹ Frances Kraft, *McMaster Students Express Grievances Over SPHR Event*, CANADIAN JEWISH NEWS, Apr. 21, 2005, <http://www.cjnews.com/viewarticle.asp?id=6168&s=1>. Reporting, that a past Jewish student president said students have learned from Israeli Apartheid Week at the University of Toronto earlier this year that a public outcry over anti-Semitic events can provide unwanted advertising.

¹⁹² Frances Kraft, *National Jewish Campus Body Begins Second Year*, CANADIAN JEWISH NEWS, Mar. 15, 2004, <http://www.cjnews.com/viewarticle.asp?id=4331>.

uncivil exchanges debase the more tolerant side, dragging them down to the level of their belligerent opponents as happened at the York University checkpoints. This promotes outside contempt for both groups, and a pox on both your houses public sentiment on the conflict, irrespective of the comparative democratic merits or tolerance of the combatant's respective messages. Uncivil confrontations also serve to validate officialdoms' moral equivalencies and their majestic policies of paper equality, which plays directly into the hands of the instigating bullies.

Refutation without direct confrontation may therefore sometimes be the better alternative. The University of Toronto's "Love Israel" event, which ran alongside but not directly up against "Israel Apartheid Week" is illustrative. Taking the high-ground and standing on its own strength, the event showcased the oft-ignored, democratic political character and positive social accomplishments of the Jewish state, presenting a sharp, moral contrast to the negative, demonizing, tear-down and destroy messages of opponents.

This is not to suggest that Jews should avoid all confrontation. Jews can no longer afford to lose the public by fearing to directly engage and refute their opponents. But they need do so on their own, not their belligerent opponents,' autocratic terrain. This means steering disagreement into speaker-regulated contexts that respect fundamental rules of civil debate and democratic discourse—where antagonists' mutual rights to dignity, identity, and legitimacy are assumed, not put in question. Whether in opponent acceptance or opponent declination, the challenge of a well prepared, well argued, democratically conducted verbal joust can be a win-win proposition for the forces of tolerance and democracy. On occasion, such exchanges may even perform an outreach or bridge-building function, clearing the air, narrowing divides, and promoting mutual understanding. Over time, the habits of robust but civil exchanges engender an ethos of mutual respect for dialogue and discussion in place of force and intimidation, elevating both the quality of the debate and the culture of public discourse. This can only be good for tolerance, understanding, and democracy—and that is good for Jewish inclusivity.

This strategy for Jewish advocacy requires not so much an audacious as a more nuanced and sophisticated Jewish understanding of the democratic process on which they, not their belligerent opponents, most depend for protection of their rights. Jews need to re-energize, rather than fear or unwittingly subvert freedom of communicative exchange to more effectively message their case. This requires training Jewish advocates in complex rhetorical skills, so well honed by their opponents, to more effectively

answer their demonizing charges.¹⁹³ Neil Lazarus, is a specialist in Israel advocacy and an expert in navigating the labyrinth of linguistic smokescreens, manipulated meanings, and twisted vocabulary of Middle-East debate.¹⁹⁴ He advises Jewish advocates to frame discussion, as do their opponents, in language that resonates with simple truths and public convictions, and gets the required "yes" answers.¹⁹⁵ He tells his Jewish audiences that when speaking to the politically correct to "speak their language...always be offended," and reminds them that good advocacy isn't just about facts or engaging in dialogue but also about "marketing, being proactive, creating positive images of Israel—that is not just politics."¹⁹⁶

Cultural activism is a third, speech-friendly, democratic, alternative to hate censorship. Utilizing neither argument nor, strictly speaking, reason to advance the cause, cultural activism is a non-confrontational, or indirect, form of social communication whose subtle political impact can be easily under-estimated. Those aspiring to immediate and tangible public victory for their message would do best to look elsewhere for satisfaction. Yet, cultural activism's rhetorical or rational weakness is also its profound strength. Its emotive, communicative forms can be especially important when, as is true today, Jews find themselves increasingly out-numbered, out-shouted, and out-popularized to effectively make their case directly and intellectually. Marcel Cohen, a self-styled Jewish cultural activist describes its advantages, citing as example a recent concert by the Israeli band Shemesh Ve Kochavim held at Concordia:

The arts are effective because they have a powerful way of affecting people in a visceral way that no speech ever can. They are apolitical and therefore, how can the Arabs confront a non-confrontational program? It takes the wind out of their sails. They come for a fight and walk away frustrated. When the Jews and non-Jews got up to dance, the head of the Palestinian Student's Association—the man who started the riots at Concordia when Benjamin Netanyahu came to speak—attended the concert to spy on us. When he saw the outpouring of love for Israeli music, he got up and left. . . . That's why this method is so powerful. The Arabs can't complain about it. . . . We can overwhelm them with positive and accurate cultural content about Israel. Also, since

¹⁹³ It has been suggested that debate-helpful books, like Alan Dershowitz's, *The Case For Israel*, be made available via e-mail to all Jewish students. Rick Kardonne, *Activist Ambassador Critical of U of T for Offensive Series of Lectures*, JEWISH TRIBUNE, Feb. 10, 2005, <http://jewishtribune.ca/tribune/jt-050210-15.html>.

¹⁹⁴ Lindsay Soberano, *The Many Faces of Israel Advocacy*, *supra* note 80

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

culture is what universities are supposed to promote, there can be no legitimate opposition to booking these Israeli acts. . . . We will organize whole programs with Israeli musicians, dancers, artists—even Israeli food—and send them to every campus possible...to spread a message of light and hope.¹⁹⁷

The dividing line between politics and culture, and between politics and religion, has become more ambiguous in the post-Cold war era of clash of civilizations, and political conflation is becoming ever more common in cultural battles between rival minority groups vying for public ascendancy.¹⁹⁸ Jewish cultural activists need, therefore, be wary, not welcoming, of hate censorship. The Arab campaign to have best-selling author Leon Uris's novel, *The Haj*, banned as hate propaganda from Canadian public libraries,¹⁹⁹ Canadian Customs detention of Salmon Rushdie's novel the *Satanic Verses*, and attempts to outlaw Irshad Manji's cultural and religious critique *The Trouble With Islam*, illustrates how hate censorship can be enlisted into political service to chill even cultural discourse and social critique.

Negative cultural depictions, whether from within or without, can be expected to provoke political hostility from the offended, without the aid of censorship. However, in a political culture that legitimates hate censorship, even self-uplifting cultural and religious expression, one that does not seek to not put others down but raise oneself up, can provoke calls for silencing by the offended. The chilling Arab campaign of Jewish de-legitimization, conflating even the legitimate Jewish historical quest for a *Jewish* homeland with South African racism and genocidal German National Socialism, is illustrative. It has made many positive, self-uplifting, cultural and religious depictions of the historic Jewish national identity increasingly difficult to voice. By legitimizing hate censorship—to be turned back on racists who positively depict the Jewish state—Jewish censors unwittingly work in the service of that conflation.

Finally, if Jewish identity on Canadian campuses is to be equally respected and Jewish inclusion secured, the legal option must be actively enlisted. Jewish self-doubt, indecision, and disunity in defending their rights, in contrast to the boldness of their opponents, has been self-debilitating and publicly stigmatizing. The message to conflicted officials, the larger campus community, and Jews themselves is that Jews are

¹⁹⁷ Doris Strub Epstein, *YONA [Your Outreach Network of the Arts] Using Music to Promote Israel on Campus*, JEWISH TRIBUNE, Feb. 17, 2005, <http://www.jewishtribune.ca/tribune/jt-050217-12.html>.

¹⁹⁸ On the implications of this for censorship, see BRAUN, *supra* note 109, at 101–02, 123–24, 262.

¹⁹⁹ *Libraries Won't Ban Uris Book*, GLOBE AND MAIL, Oct. 11, 1984, at 20 (on file with author); BOROVVOY, *supra* note 133, at 41.

somehow not equally deserving of the respect, consideration, and sensitivity enjoyed by all other historically vulnerable campus minorities.²⁰⁰ This only encourages the bullies, vindicates the ideologues, and gives succor to parallel or parasitic cultures of anti-Semitic demagoguery, like those of the white supremacists. Ultimately, it has made dereliction of official duty to uphold cherished Canadian values of multiculturalism, tolerance, and mutual respect—where that duty is best tested and therefore counts most—too easy.

The very threat of legal action may help ease some of the more brazen symptoms of intolerance and intimidation of visible Jews prevailing at particular campuses. But threat alone is unlikely to fundamentally alter the embedded cross-campus conditions sustaining and nurturing them. More is needed than a disjointed patchwork of discretionary campus-specific administrative palliatives symptomatically plugging the ebb and flow of event driven campus crises of the moment. Cross-campus legal relief, obligatory and precedent setting, is needed if volatile campus politics and shifting international events are not to decide campus codes of equity and future Jewish rights. A judicial or quasi-judicial precedent, placing particular campus incidents in the larger context of a cross-campus pattern of violation of Jewish human and educational rights is needed, and should be boldly pursued. Such relief can help do for the campus today and the country tomorrow what disparate university administrations cannot or are unwilling to do individually, or collectively, for themselves—put the separate pieces of the puzzle of intolerance of Jews together and see the whole picture of Jewish exclusion and marginalization for the violation of human rights that it is.

Legal relief must, centrally, denounce the illicit conduct of serial protestors who subvert the campus democratic process to disenfranchise Jews and include swift disciplinary remedies against the thugs and bullies who taunt, harass, intimidate and even assault Jews to make their point. In pursuing inclusion and equality, however, Jews need be vigilant against entrapment in democratically self-contradictory approaches and politically self-defeating responses that subvert freedom of public discourse. The need to fortify campus democratic processes under perpetual attack, and strategic prudence, requires Jewish recognition that freedom of peaceable expression on public matters is politically indivisible. For the tolerant, freedom of speech and inclusion are, ultimately, complementary, not contradictory. Jewish energy, therefore, should be directed to correcting discriminatory

²⁰⁰ Query whether Jewish strategy may be changing. Frances Kraft, *B'nai Brith Canada Campus Allegations Denied*, B'NAI BRITH CANADA, Nov. 18, 2004, <http://www.cjnews.com/viewarticle.asp?id=4847>. Reporting that Jewish leaders are denying that B'nai Brith's legal action against Concordia may be the start of a nationwide campaign that could include other universities—possibly, York, McMaster, Western Ontario and even Ryerson—if changes are not made. *Id.*

institutional conditions of discourse and intercourse, and abuses of faculty authority involving personally intimating or professionally inappropriate conduct—not to silencing general discourse on public matters of public import for Jewish offense.²⁰¹

Censorial self-restraint like this may be a difficult pill for many Jewish leaders to swallow given, as we have seen, the corrosive effects of demonizing anti-Zionist tracts and treatises on Canadian campuses. However, Jewish students want justice, not special privilege, inclusion, not favoritism. Moreover, Jewish hate censors have nowhere effectively deterred determined haters from making their point, nor prevented clever chameleons of intolerance from insidiously camouflaging theirs, but only armed them with more cause, cover, and legitimacy to set the speaking and hearing agenda for Jews. By asking the courts to reaffirm democratic discourse, civil debate, and inclusion against those who would subvert them by threat, coercion, intimidation, or physical force, the Jewish community will be sending a clear, consistent, and compelling democratic message against intolerance and intimidation that will be difficult for campus administrators to continue to ignore.

The conventional Jewish (and Canadian) wisdom is that hate censorship is not just an indispensable shield in the battle against intolerance, ignorance, and prejudice. It is also a complementary sword of democracy, working together with speech-friendly measures to promote tolerance, diversity, and inclusion. As the above analysis of speech-friendly alternatives to censorship suggests, this thinking is fundamentally flawed. Muzzling opponents with whom one must live is not a rational way to build bridges of community trust. Forcing disagreement underground is not a sound way to denounce force, correct misinformation, educate the public, and enlighten the ignorant. Promoting dependence on silencing to make one's case is not a wise way to overcome fears to speak, or to develop the more complex skills of political advocacy and democratic debate needed to pierce, expose and counter the linguistic smokescreens and sophisticated chameleons of intolerance of tomorrow. Censoring political rivals is not a prudent way to de-politicize prejudice, disarm determined opponents, or defend the Jewish voice. Concealing intolerant criminals, or shrouding their message of hate, and shielding their insidious meanings from effective prosecution with the threat of hate censorship, is not a good way to detect and prevent hate crime or to expose, counter, and correct, prejudice.

²⁰¹ John J. Furedy, *Academic Freedom, Opinions and Acts: The Voltaire-Mill Perspective Applied to Current Canadian Cases*, 44 U.N.B.L.J. 131–34 (1995). Furedy's fourfold classification of permissible speech captures well these points of distinction, illustrating in a philosophical coherent and concrete way where the censorship line should be drawn and the reasons why. *Id.*

Deploying the courts to silence political rivals is not an astute way for Jews to procure legal relief to freely speak.

Speech abridging and speech-friendly ways of protecting Jewish human rights and promoting Jewish inclusion are mutually self-contradictory and self-defeating, not complementary, activities. Hate censorship works at cross-purposes with speech-friendly tools, undercutting and undermining their work, to the detriment of Canadian democracy and the Jewish case against intolerance. Censoring *and* speaking, silencing *and* educating, quieting *and* bridge building, concealing *and* exposing, cannot be made complementary.

Unlike Jewish exercise of hate censorship, Jewish exercise of democratic voice, in the myriad of alternatives forms suggested above, depends on Jewish resolve, not opponent weakness. It is not contingent on the fortuitous unpopularity of Jewish opponents, the benefaction of politically exposed politicians, the courage of publicly conflicted campus officials, the support of yesterday's progressive allies, or on the correct enforcement decision of immigration, customs and policing officials. Rather, it depends on the resolve of the Jewish community itself, and on its promotion, not subversion, of a culture of mutual respect for the democratic process and the values of civil discourse and peaceable debate.

VI. Conclusion

The campaign to marginalize the Jewish voice and de-legitimize the historic Jewish identity, across progressive Canadian campuses with large and vocal Muslim voices, is not just a Jewish problem. It is a mushrooming public danger. First, the university does not simply mirror society, but is a mirror *unto* society. It is a legitimating public beacon on the hill of Canadian values, shining by example its authoritative light of official indifference to Jewish human rights unto the rest of the nation. Second, Jewish victimization occupies a unique, and ignoble, legacy in the annals of human progress. Jews are the historic crow in the mineshaft of exploding intolerance and imploding democracy. To be indifferent to their plight is, ultimately, to put Canadian multiculturalism at risk and Canadian democracy in jeopardy. But while the growing threat to Jewish human rights ultimately threatens every Canadian's human rights, the obligation to defend against it remains, first and foremost, Jewish. If Jews hesitate to fight for their identity and dignity, who will?

First class citizens do not seek inclusion by silencing their opponents, but by refuting them. They boldly assert their rights with speech, not fearfully mandate them with censorship. First class citizens are publicly

visible and visibly political. They do not choose between self-identity and societal inclusion, between self-acceptance and public acceptance. First class citizens want public recognition, not public tolerance. They seek inclusion, not escape. Tolerated citizens are put up with, endured, and suffered. First class citizens know that over time, public tolerance, official censorship, community invisibility, self-denial, and self-deception, are thin shields and false shelters against ignorance, prejudice, and hate.²⁰² For, in periods of economic stress, and in times of social crises or political change, as we are witnessing, public acceptance is the test of public tolerance. Those who cling to hate censorship agree to mere tolerance, to marginalization. They make Jewish dignity and Jewish identity contingent on opponent weakness, public sufferance, and official good will. They arm their opponents, and let others decide who they are and how they speak. They are complicit in their own marginalization.

Canadian Jewry can no longer afford to bury their heads in the quicksand of self- and opponent censorship for fear of the challenges of freedom of speech and the demands of unprotected public advocacy. There is now a more skeptical public, and a more formidable and popular contender for their hearts and minds who will not be silenced into submission. No community can procure equal respect by unequally swallowing their indignities, nor garner true inclusion by compromising who they are and giving up their voice to censors. Jews need reclaim responsibility for Jewish dignity and the Jewish identity with speech, for they can no longer mandate even tolerance, much less acceptance, with hate silencing. Those who would substitute public compliance for public comprehension with enforced quiet speak with fear—fear not only of alternative voices but also fear of their own voices. The fearful are poor public educators, and feeble public advocates. Bullies and bigots thrive on victims' fear, and survive on the public ignorance and official indifference that it breeds. Fear is self-effacing, and self-encasing, the hallmark of victims, the prison of the marginalized, the alienated, and the tolerated, not the turret of the respected, the accepted, and the welcomed. Silencing, betrays fear. Voice, exudes confidence. Both together, show confusion.

Successful civil rights movements teach that first class citizens cannot act like second-class citizens. They cannot fear to speak or speak with fear. They cannot be confused. They cannot agree to be guests in their own house, foreigners in their own land, visitors on their own campuses – there at the tolerance of their opponents or the benevolence of their generous hosts. They need to protect, and exercise, freedom of public speech, not

²⁰² Naomi Lakritz, *Tolerance Can't be Tolerated Anymore*, JEWISH TRIBUNE, Feb. 24, 2005, <http://jewishtribune.ca/tribune/jt-050224-07.html>.

subvert it with hate censorship. Doing so is not just a *right* of first class citizenship. In a democracy, it is a *duty* of first class citizens. This is not to the exclusion of reaching out across community divides—listening, learning, and building bridges of mutual trust wherever and whenever possible. Building durable bridges to inclusion, ones that stand the test of time, is an activity between two equal communities, not between the triumphant and the marginalized, or speech confused.