

Against laws against the public incitement of hatred

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Accused of uttering threats, burning a cross, and leaving a noose on the property of a mixed-race family in Hants County, Nova Scotia, Nathan Rehberg and Justin Rehberg have been charged with criminal harassment, uttering threats, mischief, and public incitement of hatred.

Whoever planted that cross issued a creditable threat of violence, certainly against the family and probably against blacks and others as well, and people who threaten violence have committed a serious crime and should be punished appropriately.

What, though, are we to make of that last charge, public incitement of hatred?

It’s hard to imagine that whoever left the burning cross managed to incite hatred. The culprit expressed hatred, certainly, but he didn’t incite any. Those in our midst who already hate blacks or revile miscegenation need no incitement (sadly), and news of a burning cross isn’t going to turn anyone indifferent to skin colour into a racist. Should the police seek evidence that this crime changed people’s attitudes for the worse, they’d come up empty handed.

Most likely, whoever lit the cross didn’t even intend to incite hatred. His or her goal was to harass and threaten a family and a community.

It’s hardly cynicism to note that whether the cross burning in fact incited anyone to hatred is neither here nor there. Rather, laying the charge of public incitement to hatred is all about making a statement. Its point is to say to the world that we in Nova Scotia are not racists. Laying the charge is meant to tell the world that we take racially-motivated crime seriously.

The problem is that using criminal law to make a statement is to corrupt the rule of law. It’s to push impartial justice aside in favour of social policy. That, I think, is sufficient reason to remove public incitement of hatred from the law. But I would add, for those who don’t mind pursuing policy by means of criminal law, that there’s no reason to think this law will serve the cause of anti-racism, as well as some reason to think it won’t.

From the point of view of justice, it doesn’t matter why a felon sought to assault someone. It matters just that he intended to assault his victim and knew assault is a crime. To ask whether his assault expressed racism rather than some other attitude, and to increase his sentence if it did express racism, is both to trade justice for vendetta and to infringe upon the felon’s right to thought and conscience.

One might suppose, though, despite the corruption hate crime legislation introduces into justice, that much good can come from such laws. By charging and punishing people under them, we, as a society, say strongly and clearly that we value equality and diversity and abhor racism. Making this statement cannot but have good consequences for people disadvantaged or marginalized because of their race.

But where is the evidence of these good consequences? How does making this statement improve the lives of blacks or First Nations Canadians or any other group in Canada? Does it increase their opportunities for education or employment? Does it make anyone any safer?

More likely, it galvanizes the racists, reinforcing in them their sense of being unjustly persecuted for speaking the truth as they see it.

Let us stand with those toward whom hateful gestures are directed, as many people in Nova Scotia and beyond have done in the last week. But we can stand against racism without betraying justice.

Burning a cross on a family's lawn is a gesture laden with symbolism that, nevertheless, clearly speaks a real threat of violence. Legislating against expressing racist hate, on the other hand, is an exercise in feel-good symbolism that promotes nothing real at all.