

## Hate-crime convictions set bad precedent

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Brothers Nathan and Justin Rehberg terrorized a family in Hants County by burning a cross on their lawn. Both were convicted, in separate trials, of criminal harassment, and each now faces up to ten years in jail for their crime.

Both were also convicted, under Section 319 of the Criminal Code of Canada, of Public Incitement of Hatred.

Michael Boudreau, a professor of criminology at Saint Thomas University, in Fredericton, applauds these additional convictions ("Hate crime ruling legally 'significant,' criminologist says," *Herald*, 6 November), for, he says, they will encourage authorities to lay hate-crime charges more often, and they make it easier for authorities to get convictions. As the first hate-crime convictions in Canada that focus specifically on the symbolism of the act, they set a nation-wide precedent, Boudreau adds.

The trouble is they set a terrible precedent. The two hate-crime decisions alter what is a bad law, and they don't alter it for the better.

The judges (Claudine MacDonald in Justin Rehberg's trial, John Murphy in Nathan Rehberg's) erred egregiously in finding the Rehbergs guilty of inciting hatred. Their first error was to fail to realize that in order for one actually to have incited hatred, one's action has to move someone to hate someone they didn't hate before. There was no evidence that the cross burning caused anyone to hate anyone. It did not stir up racial antagonism in Nova Scotia.

Maybe this is just quibbling. Maybe the law is poorly expressed by the term "inciting." Perhaps each Rehberg tried to incite hate, and trying to incite hate is the crime legislators meant to capture.

But that the Rehbergs were trying to stir up hatred against blacks or mixed-race couples was not why the judges found they had broken the law. Instead, the judges found the Rehbergs guilty of inciting hatred because burning crosses has a long association with the violent racism of the Ku Klux Klan.

The Rehbergs, in burning a cross on the lawn of a mixed-race family, certainly exploited a symbol of violent racist hatred. But exploiting a symbol to terrorize a family isn't in itself to state, even by implication, hatred of a group of people. Yet Section 319 requires that an act be a statement of hatred toward a group for it to be a hate crime.

The cross-burning did not incite hatred, did not make likely any breach of the peace, and did not state a hatred of blacks or mixed-race couples generally—or at least, no evidence that it did any of these things entered into the judges' reasonings. For the judges, that the act exploited a symbol of violent racist hatred was enough for it to be hate crime.

The Rehbergs claimed to have burned the cross out of revenge. The judges say it doesn't matter why the Rehbergs did it. What matters is that they did it by exploiting a symbol of violent racist hatred. Therefore, the Rehbergs are guilty of publicly inciting hatred.

Judges sometimes misapply the law. It's unfortunate, but it happens, and, with luck, the mistake gets rectified down the line. One of the reasons that hate crime legislation is so bad, though, is that it invites exactly the sorts of errors Judge MacDonald and Justice Murphy made.

It invites these errors because the point of the law isn't to punish wrongdoers or get them off the streets, or even to deter would-be criminals. The point is to send a message to society at large, the message that racism appals the government and the court. It feels good to send this message, and so judges will be tempted to send it whether racial hatred motivated the accused actions or not.

That's only one of the reasons hate-crime legislation is vile, but it points us toward the deeper reason. Hate-crime laws enable governments and courts to use the people before them in order to make statements—not about what we shouldn't do but about how we should think. Hate-crime laws are bad laws, then, because they are at odds with justice.

A good law is a law that protects people from harm. Justice is served when those who break a good law are punished, the threat they present to us is removed, and others who are tempted to break that good law are deterred. Using criminal law or sentencing for any reason other than justice cannot but transform justice into a public relations exercise or a vendetta against those we revile.

Harassment, such as planting a burning cross on someone's lawn, harms people, and for that reason it's good to have laws against it. That the criminal harassed his victim for this reason or that is, from the point of view of justice, irrelevant. We need protection from harassment, not from the thoughts that drove the harassment. Hate-crime laws, though, don't protect us from harassment, but they do punish people for their thoughts, and that corrupts justice.