The Demise of Section 13 of the Canadian Human Rights Act: Reappraising the ‘Battle for Free Speech’

by

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Abstract

In 2013, Bill C-304 repealed Section 13 (s. 13) of the *Canadian Human Rights Act*. Although the law used broad language, it had not garnered much attention until a concerted campaign sought its repeal. This thesis argues that the key to understanding s. 13's demise is the way in which the hate speech backlash exploited the growing ideological belief that Islam is antagonistic to, if not incompatible with, democracy. This is evidenced by the fringe bloggers that coalesced around a conspiratorial theory of 'Eurabia' to turn s. 13 into a national debate. Yet, the debate changed significantly once in the mainstream to reflect a concern for free speech based upon manufactured and negative perceptions of Muslim hate speech complainants. Consensus among major Canadian newspapers is an indication of how Canadian identity was (re)constructed as essentially Western and against Muslim Others who were seen as parasitic upon the tolerant excesses of liberalism.

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INTRODUCTION: REASSESSING THE ‘BATTLE FOR FREE SPEECH’

On June 26th, 2013, Conservative MP Brian Storseth’s Private Member’s Bill C-304 repealed Section 13 (s. 13) of the *Canadian Human Rights Act (CHRA)*, the seemingly controversial piece of legislation that had attracted heightened public scrutiny in recent years. Section 13 was part of Canada’s non-penal human rights code that sought to curb the expression of hatred via telecommunications, and, although it used broad language – for example, to proscribe communication that was ‘likely to expose a person or persons to hatred or contempt’ – the law had not garnered much attention until a concerted campaign sought its repeal. This backlash arguably began in 2006, when two conservative Canadian pundits, Ezra Levant and Mark Steyn, published material that was allegedly Islamophobic. The former republished the infamous Danish cartoons of the Prophet Muhammad¹ in the *Western Standard* and the latter had excerpts of his book *America Alone* (which problematizes the birth rates of Muslims in the developed world) published in the pages of *Maclean’s* magazine. Both *Maclean’s* (Rogers Publishing) and Levant were then the subjects of formal human rights complaints.² Both cases became

¹ Originally published by the Danish newspaper *Jyllands-Posten* in September of 2005, the cartoons mockingly portrayed Muhammad in an attempt to critique the alleged insulation of Islam from public criticism. Aniconic thought is present in many Muslim traditions and thus the visual depiction of the Prophet Muhammad was seen as an affront. The incident led to riots in many Muslim majority countries and was considered an example of growing antagonism between the ‘West’ and ‘Islam’. For a detailed treatment, see: Klausen, Jytte. *The Cartoons That Shook the World* (New Haven, CT: Yale University Press, 2009). Flemming Rose, "Why I Published Those Cartoons", *Washington Post*, February 19, 2006, Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/17/AR2006021702499.html> and *The Tyranny of Silence: How One Cartoon Ignited A Global Debate on the Future of Free Speech* (Washington, DC: Cato Institute, 2014).

² Syed Soharwardy, Calgary Imam and leader of the Islamic Supreme Council of Canada filed a complaint with the Alberta Human Rights Commission. Mark *Maclean’s* (Rogers Publishing) was the focus of a total of three complaints filed by the Canadian Islamic Congress and three Osgoode Hall law students: at the Ontario Human Rights Commission, the Canadian Human Rights Commission, and the British Columbia Human Rights Tribunal. See: Richard Moon, "The Attack on Human Rights Commission and the Corruption of Public Discourse", *Saskatchewan Law Review*, Vol. 93: 1, 2010, pp. 93-129, p. 97 and Pearl

very public almost immediately, with sustained attention in the media partially due to the fact that a mainstream Canadian publication was being accused of peddling racism.

Further attention was garnered by the fact that both Steyn and Levant positioned themselves as victims of a human rights machinery with unjustifiable powers that were allegedly no longer concerned with 'real' issues of discrimination, but rather with policing speech arbitrarily based upon 'political correctness'.³

In the end, the backlash created by Steyn and Levant was successful in effecting the repeal of s. 13 with the support of the majority Conservative government. Although the period before the repeal was marked by intense debate and heated opinions, once s. 13 met its demise there was not much fanfare,⁴ let alone any sort of analysis attempting to explain how a piece of Canadian human rights legislation was repealed so swiftly when it had previously aroused little suspicion.⁵ Richard Moon, professor and expert on the constitutional protection of expression in Canada, found that between January 2001 and

Eliadis, *Speaking Out on Human Rights: Debating Canada's Human Rights System* (Montreal, QC: McGill-Queen's University Press, 2014), pp. 12-13.

³ Mark Steyn, "I hate to say I told you so. Actually, I don't. I love it", *Macleans*, June 19, 2012, Available at: <http://www.macleans.ca/news/canada/i-hate-to-say-i-told-you-so-actually-i-dont-i-love-it/>.

⁴ Charlie Gillis, "Section 13: How the battle for free speech was won", *Macleans*, June 19, 2012, Available at: <http://www.macleans.ca/news/canada/five-years-two-tribunals-a-raft-of-secret-hearings-a-supreme-court-challenge-how-the-battle-for-free-speech-was-won/>.

⁵ It would be fair to say that the majority of journalistic s. 13 post-mortems have framed the repeal simply as a 'battle for free speech'. Regarding scholarly treatment of the issue, Richard Moon and Pearl Eliadis offered some of the most sober and informed analyses. See above, and: Michael Woods, "Hate speech no longer part of Canada's Human Rights Act", *National Post*, June 27, 2013, Available at: <http://news.nationalpost.com/2013/06/27/hate-speech-no-longer-part-of-canadas-human-rights-act/>, "Good riddance, Section 13 of the Canadian Human Rights act", *Ottawa Citizen*, February 3, 2014, Available at: <http://ottawacitizen.com/news/national/editorial-good-riddance-section-13-of-the-canadian-human-rights-act>. "Canada's Parliament is right to repeal Section 13 of human rights act", *Toronto Star*, June 10, 2012, Available at: http://www.thestar.com/opinion/editorials/2012/06/10/canadas_parliament_is_right_to_repeal_section_13_of_human_rights_act.html.

2008, s. 13 complaints constituted a mere 2% of the total number of complaints brought to the Canadian Human Rights Commission (CHRC).⁶

Levant first appeared before the Alberta Human Rights Commission (AHRC) in an initial interview in January of 2008. That same day, he again republished the cartoons of the Prophet Muhammad on his personal website.⁷ In an unconventional move, Levant posted on *YouTube* his appearance at the Commission, where he was questioned regarding his intent in publishing them. He answered unambiguously: “[W]e published those cartoons for the intention and purpose of exercising our inalienable rights as free born Albertans to publish whatever the hell we want no matter what the hell you think”.⁸ Two months later, satirical comedian Rick Mercer, in one of his famous ‘rant’ segments, would declare Levant “one of the most aggravating men on this earth”, yet a “freedom fighter” for defending free speech so forcefully and at his own economic expense.⁹ Levant would go on to solidify his stature as one of Canada’s most vocal conservative pundits at the helm of a flagship daily primetime show on the *Sun News Network* when it

⁶ Moon, "The Attack on Human Rights Commission and the Corruption of Public Discourse", p. 100. Eliadis further notes: "Commissions dismiss more than 90 per cent of what comes through their doors, long before the matter ever reaches a hearing, and have no control over who files a complaint." Eliadis, "Media are getting all lathered up over nothing", *Montreal Gazette*, February 20, 2008, Available at: <http://www.canada.com/montrealgazette/news/editorial/story.html?id=919eb65e-d650-4517-b53e-3d5190b99214>. At the federal level, individuals are able to invoke the CHRA at the CHRC and the latter then refers cases to the Canadian Human Rights Tribunal for decisions. There are also provincial commissions and tribunals that extend non-penal human rights legislation. For example, in Ontario, individuals can invoke the *Ontario Human Rights Code* at the OHRC. For a detailed review of the various jurisdictions, see: Eliadis, *Speaking Out on Human Rights*, pp. 286-312.

⁷ Ezra Levant, "My visit to a kangaroo court", *Ezrrelevant.com*, January 11, 2008, Available at: http://www.ezrrelevant.com/my_visit_to_a_kangaroo_court/.

⁸ Levant, "What was your intent?", *Ezra Levant YouTube Channel*, January 12, 2008, Available at: <https://www.youtube.com/watch?v=3iMNM1tef7g>.

⁹ Rick Mercer, "Rick's Rant: Ezra Levant", *Rick Mercer Report YouTube Channel*, Originally Aired March 18, 2008, Available at: <https://www.youtube.com/watch?v=GiYVo86j0tA>. Although difficult to estimate precisely, Levant claims to have crowdsourced a significant amount of money to respond to legal actions against him, in addition to the approximately \$100,000 he claims to have incurred in response to the *Western Standard* complaint. He says, "[donors] responded, to the point where I was able to retain lawyers to respond to each and every action against me in the four cities in which I was sued." Levant, *Shakedown: How Our Government is Undermining Democracy in the Name of Human Rights* (Toronto, ON: McClelland & Stewart, 2009), p. 171.

was launched in April 2011.¹⁰ After more than half a decade of public debate, s. 13's post-mortem in *Maclean's* was described as 'How the battle for free speech was won'.¹¹

The trajectory of *Levant* throughout this ordeal is indicative of the way in which the hate speech debate in Canada was largely conceptualized as a battle involving a nebulous principle of 'free speech' that was supposedly jeopardized. The question then becomes: What and/or who exactly could jeopardize free speech? What do the hate speech complaints that began the backlash against s. 13 tell us about the ideological assumptions underpinning this opposition? Although the law drew some criticism when it was used previously (despite being upheld constitutionally in the definitive *Taylor* hate speech case¹²), why was it so effectively attacked and suddenly repealed when used in cases of alleged Islamophobia? Further, is it possible that hate speech complaints alleging other forms of discrimination (homophobia, for example) could elicit the same concerted backlash?

While the Supreme Court upheld the hate speech laws *Bill Whatcott*¹³ contravened while 'campaigning' against homosexuality,¹⁴ the bitterly disputed case had

¹⁰ Brynn Weese, "Sun New Network rises", *Toronto Sun*, April 18, 2011, Available at: <http://www.torontosun.com/2011/04/18/sun-news-network-rises>.

¹¹ Gillis "Section 13: How the battle for free speech was won".

¹² Eliadis, *Speaking Out on Human Rights*, pp. 83-84. *Taylor* is significant because it meant that the hate speech laws regarding discriminatory telephonic communication ('hate hotlines') were constitutional and, therefore, would remain in effect when the law was expanded to include the Internet after 9/11. For a brief background of important Canadian cases, see: *CBC News*, "When is it hate speech?: 7 significant Canadian cases", October 12, 2011, Available at: <http://www.cbc.ca/news/canada/when-is-it-hate-speech-7-significant-canadian-cases-1.1036731>.

¹³ *Whatcott* had also been the subject of a high profile hate speech complaint in Saskatchewan for distributing anti-gay pamphlets in response to Catholic schools teaching different sexual orientations. See: Emmett Macfarlane, "The *Whatcott* case: Drawing a line between free speech and hate speech", *Maclean's*, February 27, 2013, available at: <http://www.macleans.ca/news/canada/the-whatcott-case-drawing-a-line-between-free-speech-and-hate/>.

¹⁴ *Whatcott v. Saskatchewan (Human Rights Tribunal)* and Michael Plaxton, "Whatcott ruling is a very real burden on some speech", *The Globe and Mail*, February 28, 2013, Available at: <http://www.theglobeandmail.com/globe-debate/whatcott-ruling-is-a-very-real-burden-on-some-speech/article9133370/>.

not catalyzed a similar, organized backlash. While it is impossible to answer this last question without conjecture, what we can reasonably say is that the fact that the hate speech debate began with two cases of alleged Islamophobia is significant and deserves further examination. Particular attention should be paid to the specific ways in which Islamophobic discourse was brought into the mainstream and brandished as a necessary disinfectant for ‘censorship’. For example, why is it that the first human rights complaints brought by Muslims using non-penal hate speech provisions¹⁵ were able to catalyze such a backlash, solely created by relatively marginal figures, yet eventually finding the Canadian government’s support?

To simply frame s. 13’s repeal as a battle for free speech or the government’s response to a poorly crafted or even illegitimate law would be missing the real substance of the issue. The actual repeal of the law was one byproduct of the debate, but there were others that included vigorous ideological labour that was sometimes obscured by neutral or disingenuous appeals to ‘free speech’ and a need to counter ‘radicalism’. Section 13’s repeal should be understood as a proxy debate because the debate over its fate took place within a wider ideological terrain in Canada, one in which the place of Muslims and Islam in North America is an acute anxiety. This thesis will demonstrate that the growing ideological belief that Islam is antagonistic to, if not incompatible with, democracy is key to explaining the contours of the debate. Further, it explains how a debate ostensibly about protecting free speech became a front in a larger struggle to protect ‘Canadian values’ from those who would use them to undermine Canada itself. Free speech was discursively constructed in Canadian media (especially Canada’s biggest newspapers) as a core value that was integral to solidifying Canada’s identity as decidedly ‘Western’. In

¹⁵ Eliadis, *Speaking Out on Human Rights*, pp. 12-13.

many ways, the curtailing of certain forms of damaging speech via legislation can be tied to the liberal value of ‘tolerance’ in multicultural societies. Tolerance can entail reasonable limits on speech in order to allow full and equal participation. But, as will be demonstrated, tolerance is available only to those that are deemed worthy, and this is necessarily the result of politics. Therefore, the debate over s. 13 had the effect of testing the effective boundaries of tolerance in Canada.

Although this research was already well underway, some of the themes explored in detail here have again become central to political debates the world over.¹⁶ Current events re-intensify the search for explanations as to why Muslim-majority countries are disproportionately lacking in development on a number of fronts, although the most commonly lamented is the seeming perpetuity of authoritarian rule in the Middle East. Take, for example, Scott Gilmore of *Maclean's* when he claims that the militants who perpetrated the Paris attack on the Charlie Hebdo offices “might not be the reason the Islamic world has been left behind, but they are the reason it is staying there.”¹⁷ The attack in Copenhagen on a local gathering to discuss free speech and blasphemy (featuring controversial artist Lars Vilks¹⁸) and a synagogue has further ignited more questions about Islam and free speech, and, in particular, the antagonisms that linger

¹⁶ Julian Pecquet, “Paris attack rekindles debate over freedom of expression”, *Al-Monitor*, January 8, 2015, Available at: <http://www.al-monitor.com/pulse/originals/2015/01/charlie-hebdo-attack-debate-freedom-expression.html#>.

¹⁷ Gilmore also finds it relevant to inquire why no Islamic nations are part of the International Space Station. See: Scott Gilmore, “Paris shooting: Leaving Islam behind”, *Maclean's*, January 7, 2015, Available at: <http://www.macleans.ca/news/world/paris-shootings-leaving-islam-behind/>.

¹⁸ Vilks is a Swedish author who became infamous after he portrayed the Prophet Muhammad as a dog in one of his pieces. In 2010 he was physically accosted as he attempted to exhibit a film weaving Islamic imagery and homosexual themes. Since then, he has been the target of radical Islamists several times, including a failed assassination attempt and arson attack on his home. See: Peter Carty, “Copenhagen shooting: Who is the Swedish cartoonist Lars Vilks?”, *International Business Times UK*, February 14, 2015, Available at: <http://www.ibtimes.co.uk/copenhagen-shooting-who-swedish-cartoonist-lars-vilks-1488000>.

between countries in the West and their minority Muslim populations.¹⁹ ISIS/ISIL/IS has marauded through large tracts of Iraq and Syria, committing unspeakable acts of violence and filling international news sources with an endless stream of brutal images and tragic news, all ostensibly ‘in the name of Islam’.²⁰ Concern is further heightened by the fact that many civilians from Western countries have been killed, including a number of journalists taken hostage and beheaded for social media propaganda.²¹ In Africa, Islamist groups like Boko Haram²² and Al-Shabaab²³ have similarly brought sensational stories of religiously inspired violence to Western audiences. Closer to home, Michael Zehaf-Bibeau’s violent rampage at the heart of Canada’s capital shocked the country and prompted further questions regarding the threats posed by Islamic extremism.²⁴ If anything has been clear from the range of public discussions, it is that there is a problem and it has at least something to do with ‘Islam’.

The debate over s. 13 was very much a part of this wider discussion, even if not explicitly recognized. At least at the policy level, it appeared as though the trimming of hate speech legislation was more about an appeal to a nebulous ‘free speech’, where the fact that the complaints igniting the controversy alleged Islamophobia contributed

¹⁹ Angelique Chrisafis, “Copenhagen attacks: Danish police charge two men”, *The Guardian*, February 16, 2015, Available at: <http://www.theguardian.com/world/2015/feb/16/copenhagen-attacks-danish-police-charge-two-men>.

²⁰ Patrick Cockburn, *The Rise of Islamic State: ISIS and the New Sunni Revolution* (New York, NY: Verso, 2015).

²¹ Rukmini Callimachi, “Militant Group Says It Killed American Journalist in Syria”, *New York Times*, August 19, 2014, Available at: http://www.nytimes.com/2014/08/20/world/middleeast/isis-james-foley-syria-execution.html?_r=0.

²² Farouk Chothia, “Who are Nigeria’s Boko Haram Islamists?”, *BBC News*, January 21, 2015, Available at: <http://www.bbc.com/news/world-africa-13809501>.

²³ Murithi Mutiga, “Are the terrorists of al-Shabaab about to tear Kenya in two?”, *The Guardian*, April 4, 2015, Available at: <http://www.theguardian.com/world/2015/apr/04/kenya-university-massacre-shabaab-divisions>.

²⁴ Tonda MacCharles & Michelle Shephard, “Parliament Hill shooter calm in video shot minutes before attack”, *Toronto Star*, March 6, 2015, Available at: <http://www.thestar.com/news/canada/2015/03/06/parliament-hill-shooter-calm-in-video-shot-minutes-before-attack.html>.

relatively little to the government's response. In reality, the Muslim identities of the complainants and the vigorous efforts to portray them negatively contributed significantly to the policy response. Therefore, this analysis is an attempt to make sense of a specific issue at the Canadian level but also to contribute modestly to one of the most important political issues of our time that has only attracted more debate as time has progressed.

1.1: Theoretical Approach

This thesis is broadly situated within a postcolonial theoretical approach because it offers some of the most comprehensive examinations of Islamophobia in Western contexts. No specific author (or authors) is privileged. Rather, the focus has been upon authors who are broadly associated with postcolonial theory and have proffered invaluable insights regarding the place of Islam in the West, including but not limited to anti-Muslim sentiment in Western contexts, cultural or civilizational accounts of conflict, and how the 'Muslim question' intersects with post-Cold War and post-9/11 politics on a number of levels. Although a postcolonial theoretical lens is associated with immense diversity across disciplines, a number of common themes run through the work that follows.

First, the way that language is operationalized – in vocabularies and even simple forms of understanding or discussion – has immense material consequences. Thus, the way signifiers like 'Muslims' or 'Islam' are decoded in popular culture can function as ideological legitimations for the exercise of power; for example, interventionist military policy in Muslim-majority countries or domestic surveillance laws that disproportionately affect Muslim communities. Second, objects of discussion are often braided with multiple

meanings, interpretations, images, and imaginaries. Therefore, what might be mistakenly and broadly construed as ‘Islam’ in popular media representations²⁵ may not necessarily correspond to what exactly Islam *is*, in all its diverse contexts, histories, and experiences. Third, the construction of identity necessarily involves a relational process whereby coherence and meaning are solidified through comparison and distinction. In other words, identity is constituted in relation to something else, an Other. This element is particularly useful when unpacking what is meant by the constructions of identity into seeming monoliths, such as ‘the West’, the ‘Islamic world’, ‘us’, and ‘them’. Therefore, a postcolonial lens provides a robust investigative tool to examine the ‘battle for free speech’ in Canada.

1.2: Methodology

In addition to analyzing media and policy texts, a handful of interviews were conducted in the interest of digging a bit deeper than the information that can be gleaned from analyzing media and policy texts. Overall, relatively little has been written specifically about the repeal of s. 13, with the notable exceptions of Pearl Eliadis and Moon. Yet, both of their responses focus largely on correcting inaccuracies that were oft repeated during the hate speech debate, especially legal misconceptions regarding the operation of non-penal human rights legislation. While they briefly discussed how the identities of the complainants shaped the contours of the debate, this thesis attempts to complement these analyses with a more dedicated focus.

²⁵ For example, the popular television show *Homeland* routinely features Islamophobic themes and has garnered a wide audience. Media representations such as this can contribute to a discord between popular conceptions of ‘Islam’ that include stereotypes and the vast heterogeneity of Islam in all its varied contexts. See: Laila Al-Arian, “TV’s most Islamophobic show”, *Salon*, December 15, 2012, Available at: http://www.salon.com/2012/12/15/tvs_most_islamophobic_show/.

Eight interviews were conducted with individuals who were either integral to the debate or who wrote extensively about it, roughly between 2008 and 2012. The interviews lasted between 30 and 60 minutes and were semi-structured based upon a list of sample questions that were made available to participants prior to the interview.²⁶ Participants had the option of either being identified in the project or keeping their identities confidential; all eight chose to be identified. Potential weaknesses of this method include voluntary participation and the lack of wide generalizability of the data.²⁷ Although the interviewees represent a wide cross-section of opinions among major voices during the debate, there were some regrettable omissions due to scheduling conflicts and the lack of responses to participation requests.²⁸ Yet, overall these eight individuals presented an opportunity to gain intimate accounts and particularly helped to identify key elements of the debate. Crucially, the interviews served as a complementary method to content/textual analysis, in the sense that they were able to provide data that was otherwise unavailable and could contextualize the strategic elements of the debate that were oftentimes under the surface.

Levant and Syed Soharwardy were selected because they are the chief protagonists of the s. 13 hate speech debate, at least during its inception. Soharwardy filed the human rights complaint that would first ignite the debate and would remain a controversial public figure. Levant was the most influential personality fuelling the hate

²⁶ The interviews were conducted in person, via email and via phone depending on scheduling and availability.

²⁷ 'Elite interviews', as they are sometimes called, entail access to respondents who are considered the most proximate to the issue under scrutiny. Although they may speak with authority, a potential pitfall is the lack of applying the insights of this data further than the context in which it is derived. In the present case study, this concern is mitigated because each of the respondents has a thorough understanding of the issue and were forthright if they had modest knowledge regarding a particular aspect.

²⁸ Chief among these regrettable absences are: Liberal MP Irwin Cotler, Conservative MP Brian Storseth, author and pundit Mark Steyn, human rights lawyer Richard Warman, and *Maclean's* complainant (one of three) and lawyer Khurram Awan.

speech backlash. In a remarkable five-year period, he was able to go from a respondent in a hate speech complaint, to a ‘free speech warrior’, to a national primetime television host. Eliadis and Moon were selected because they furnished the two main ‘academic’ responses to the s. 13 debate. Moon was highly influential because he was commissioned by the CHRC to author a report addressing criticisms of s. 13 in 2008.²⁹ Eliadis was one of the sole public voices in support of s. 13 and had written multiple pieces outlining factual inaccuracies and misconceptions that were being circulated in the media. In 2014, she authored *Speaking Out On Human Rights*, which describes the hate speech debate in impressive detail and rigour.

Haroon Siddiqui and Rick Salutin were selected because they are among the few dedicated left-wing columnists in Canadian newspapers who took up the issue. Siddiqui was a rare voice, who, although agnostic on s. 13 itself, denounced the double standard and inconsistencies of those seeking the law’s repeal. Salutin, on the other hand, was indicative of the apprehension towards hate speech legislation, even among even those with left-wing politics who realized anti-Muslim prejudice was an all too acceptable phenomenon. Jonathan Kay and Joseph Brean were selected because they were both influential writers for the *National Post*, which largely staked out the mainstream ‘conservative’ opposition to s. 13. Brean has followed the story closely in his reporting and continues to write about issues involving hate speech legislation. Kay is a former editor at the *National Post*, frequently used his column to express opposition to s. 13, and was one of the law’s most vocal detractors.

²⁹ Richard Moon, *Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet*, Canadian Human Rights Commission, October 2008, Summary available at: <http://www.ohrc.on.ca/en/submission-canadian-human-rights-commission-concerning-section-13-canadian-human-rights-act-and>.

From a methodological point of view, this project suffers from a structural linguistic barrier in the sense that it is solely dealing with the s. 13 debate from Anglophone sources. The hate speech debate certainly took place in Quebec news media but the inability to accurately translate from French to English prevented any meaningful examination of these elements. However, these sources are ripe for a potentially fruitful comparative analysis, especially in light of the fact that the Quebec government's approach to multiculturalism has been less accommodating of religious identity. One might infer that this different approach – what is normally described as *Laïcité*, a distinctly French manifestation of contemporary secularism – would exhibit a natural predilection towards 'free speech' if it is conceptualized as the freedom to subject religion and religious values to intense scrutiny, mockery or even offence. Despite these interesting particularities and potentially fruitful academic examinations, due to a limited proficiency with the French language, what follows is exclusively the domain of English writing and press on the subject.

The thesis is broken up into three chapters and a conclusion. The first chapter lays the groundwork for the theoretical lens as it reviews the relevant academic literature pertaining to Islamophobia in the post-Cold War and post-9/11 era. It draws upon a number of authors associated with a postcolonial approach and traces some of the ideological developments in the West that have tended to construct a monolithic Islam as a post-Cold War enemy. Further, it briefly outlines some of the differences between Islamophobia in Europe and North America with a view to how its differences in the latter might come to influence the debate over s. 13.

The second chapter examines how the repeal of s. 13 was, to a large degree, aided by the growing ideological belief that Islam is antagonistic to, if not incompatible with, democracy. It looks at how the backlash was initially created, how it gained momentum, and how it eventually pushed itself into mainstream debate, in part by constructing an overwhelmingly negative perception of the hate speech complainants. In particular, it demonstrates how Levant and Steyn, with the help of a fringe group of bloggers, are part of a wider group that coalesces around a conspiratorial theory of ‘Eurabia’, and, further, how this alarmism is key to explaining how the debate was first ignited in the blogosphere.

The third chapter focuses on how the contours of the debate changed once it entered the mainstream, especially how the discourse largely morphed from alarmist rhetoric to more neutral invocations of free speech and expression. It establishes the main pillars of the debate, how each of these affected the debate, and then discusses the importance of the media in framing political issues in the context of appropriate policy responses. The final section of the chapter argues that the invocation of free speech was part a reiterative project of constructing Canadian identity as essentially ‘Western’ and against those portrayed as within a monolithic ‘Islam’. It looks at the liberal concept of ‘tolerance’ as explored by Wendy Brown, how it relates to prohibitions on hate speech in Canada, and how ‘tolerance’ is often unbecoming for those deemed ‘intolerant’ themselves. Thus, hate speech legislation became a test for tolerance’s outer limits when it was extended to the possibility of covering allegedly Islamophobic speech. The conclusion provides a brief recap including some of the consequences of s. 13’s repeal and the overall significance of the hate speech debate going forward.

CHAPTER 2: POSTCOLONIAL APPROACHES TO ISLAMOPHOBIA

Many people contest the term ‘Islamophobia’.³⁰ On the surface, its etymology seems suspect, and, in fact, there has been no shortage of pundits claiming that this supposed ‘Islamophobia’ is a disingenuous project created to insulate Muslims from criticism.³¹ In a more scholarly tone, some assert that those on the left of the political spectrum have made common cause with unsavoury Islamic elements in their joint opposition to either real or perceived Western dominance.³² Still others see it as simply incorrect nomenclature.³³ Islamophobia, they might contend, signals an irrational fear or confuses a phobia with actual animus.³⁴ But to say that Islamophobia is not the proper term does not mean that there is no pervasive negative sentiment directed at those associated with Islam. It means that those attempting to capture the essence of this sentiment must be diligent in their application of language.³⁵ The term Islamophobia is used in the pages that follow not because it is the most accurate term but because it has gained a certain amount of currency and thus has come to be generally accepted as the

³⁰ The term originates from the Runnymede Trust, an ‘independent race equality think tank’ in the UK, who authored a report first using it in 1997. John L. Esposito, *The Future of Islam* (New York, NY: Oxford University Press, 2010), pp. 12-13.

³¹ Tanya Basu, “What Does ‘Islamophobia’ Actually Mean?”, *The Atlantic*, October 15, 2014, Available at: <http://www.theatlantic.com/international/archive/2014/10/is-islamophobia-real-maher-harris-aslan/381411/>.

³² Robert S. Wistrich argues that in European countries like Britain and France, there has been a wedding between Islamic and leftist opposition to Western dominance and the project of liberal modernity itself: “In Britain, as in France, the anti-globalist Left and the Islamic fundamentalists also share a common rejection of liberal modernity and the entire Enlightenment project.” See: Robert S. Wistrich, *A Lethal Obsession: Anti-Semitism from Antiquity to the Global Jihad* (New York, NY: Random House, 2010), p. 416.

³³ For example, Fred Halliday prefers the term ‘anti-Muslimness’. Fred Halliday, *Islam & the Myth of Confrontation* (New York, NY: I.B. Tauris, 2003).

³⁴ In other words, fear of those who commit violence ‘in the name of Islam’ might be entirely rational.

³⁵ The qualifiers ‘radical’, ‘fundamentalist’, and ‘extremist’ have frequently been used to distinguish between those perpetuating religiously motivated violence and ordinary Muslims. Although some use these terms accurately, others use them merely as ‘disclaimers’ while explicitly making broad generalizations and inferences tying ordinary Muslims (especially in Western countries) to violence. These qualifiers are similar to the ‘disclaimers’ that Ruth Wodak mentions and are discussed a bit later. See: Ruth Wodak, “‘Us’ and ‘Them’: Inclusion and Exclusion – Discrimination via Discourse” in Gerald Delanty, Ruth Wodak & Paul Jones (Eds.), *Identity, Belonging and Migration* (Liverpool, UK: Liverpool University Press, 2008), p. 55, 65.

term to capture discriminatory beliefs and actions against Muslims. Further, this discussion is about a specific *type* of Islamophobia: the ways in which Muslims have come to be seen as a unique challenge to democracy itself and the principles that are often associated with it. It maps out at least one of the ways in which more fringe discourses about the supposed incompatibility of Muslims and democracy have come to inform, and, in some cases, act as an unspoken presupposition for broader debates about immigration, assimilation, free speech, cultural relativism, and globalization. Despite the often opaque nature of the term and its contested meanings, the following will make use of the term and avoid overgeneralization.³⁶

The integration of Muslims into the West has been one of the most pressing issues of recent political discourse.³⁷ Concerns about radicalization, terrorism, cultural differences, religious accommodation, and immigration all dot the landscape of this wide ranging discussion about the ‘proper’ place of Islam outside of Muslim majority countries. Anne Norton believes there are significant parallels between what was referred to as the ‘Jewish question’³⁸ in Europe and what we can contemporarily call the ‘Muslim question’.³⁹ Traditional forms of antisemitism, such as those experienced in pre-WWII Europe, constructed Jews as an ‘Other’ within the modern state. Judaism and its

³⁶ Akbar S. Ahmed has illustrated this paradox well: “We will therefore continue to color in gray, however great the compulsion to use black and white.” Ahmed was referring specifically to the terms ‘Islam’ and the ‘West’ but the point equally applies to other linguistic opacities and contested meanings. See: Akbar S. Ahmed, *Islam Under Siege* (Malden, MA: Polity Press, 2003), p. 17.

³⁷ See: Anne Norton, *On the Muslim Question* (Princeton, NJ: Princeton University Press, 2013). Doug Saunders, *The Myth of the Muslim Tide: Do Immigrants Threaten the West?* (Toronto, ON: Vintage Canada, 2013). John L. Esposito & Ibrahim Kalin (eds), *Islamophobia: The Challenge of Pluralism in the 21st Century* (New York, NY: Oxford University Press, 2011).

³⁸ With its roots in Christian Medieval Europe, the ‘Jewish question’ refers to the supposedly unassimilable Jewish populations who were considered ‘alien’, ‘rootless’, etc. in European society. These ideas significantly informed antisemitic attitudes and were the basis for wide ranging debates about the proper place for religious and ethnic minorities in European countries.

³⁹ Norton.

followers were depicted as “alien and inferior”.⁴⁰ In the same way that the Jewish question presented a profound challenge to Enlightenment values in coming to terms with integrating minorities in Europe, the Muslim question similarly intersects with many contemporary political debates that are challenging values considered hallmarks of modernity itself. According to Norton, the “figure of the Muslim stands like a sentinel”⁴¹ that demarcates various borders throughout Western thought:

In our time, the figure of the Muslim has become the axis where questions of political philosophy and political theology, politics and ethics meet. Islam is marked as the preeminent danger to politics; to Christians, Jews and secular humanists; to women, sex and sexuality; to the values and institutions of the Enlightenment.⁴²

In the post-9/11 climate, Muslims are constructed as a literal challenge to the vitality of European culture and coherence: “The figure of the Muslim has thus come to stand for the fear of violent death, the paranoia of Europe’s cultural demise, of European integrity. For the fear of the death of Europe itself.”⁴³ Although anti-Muslim sentiments are more acute in European contexts due to larger Muslim populations, the social and economic marginalization among some of these communities, and Europe’s history of colonialism in the Middle East and North Africa, these ideas are also present in North America, albeit in different forms.

⁴⁰ Wistrich, *Antisemitism: The Longest Hatred* (London, UK: Methuen London, 1991), p. 55. Some common themes of antisemitism during this time included: a) a supposed incompatibility with the state and/or modernity; b) dual or divided loyalties between religious/racial/ethnic identities and the state (as a citizen); and c) subversive and/or conspiratorial intentions.

⁴¹ Norton, p. 5.

⁴² Norton, pp. 2-3.

⁴³ David Theo Goldberg, “Racial Europeanization”, *Ethnic and Racial Studies*, Vol. 29: 2, March 2006, pp. 331-364, p. 346.

2.1: Islamophobia in the Post-Cold War and Post-9/11 Era

A significant faction of anti-Muslim rhetoric in North America is what can be termed the Islamophobia ‘industry’ or ‘network’.⁴⁴ It is a loose coalition of authors, activists, think tanks, academics, politicians and journalists who produce and disseminate information about ‘radical Islam’ (or, sometimes just ‘Islam’), and includes some common themes of demographic threats, incompatibility with democratic cultural values, and the need for hawkish foreign and domestic policy to adequately respond to these challenges.⁴⁵ In a 2011 study conducted by the Center for American Progress, it was revealed that a handful of individuals (mainly bloggers and security ‘experts’) were able to raise \$42.6 million of funding in a 10 year period (since 9/11) from “mainstream conservative foundations”.⁴⁶ Oftentimes, they have the imprimatur of ‘official’ journalism or scholarship, replete with footnotes and supposed evidence. In order to fully contextualize how the ‘hate speech debate’ can be understood as a proxy for the circulation of these ideas, we need to first begin with this movement’s ideological roots and history, and then move on to how its discourses fit into the context of s. 13’s demise in Canada.

⁴⁴ Nathan Lean, *The Islamophobia Industry: How the Right Manufactures Fear of Muslims* (New York, NY: Pluto Press, 2012). Wajahat, Ali, Eli Clifton, Matthew Duss, Lee Fang, Scott Keyes, & Faiz Shakir, *Fear Inc.: The Roots of the Islamophobia Network in America*, Center for American Progress, August 2011, Available at: <http://cdn.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf>.

⁴⁵ Derek Gregory speaks of a “tight-knit and interconnected confederation of right-wing fear merchants” (p. 10) and sees a “strange three-way alliance” (p. 11) of religious Zionists, evangelical Christians, and Tea Party affiliated activists and leaders as its constitution. David Gregory, *The Colonial Present* (Malden, MA: Blackwell Publishing, 2004). In the United States, some of the most cited voices include: Robert Spencer (Jihad Watch), Pamela Geller (Stop Islamization of America), Daniel Pipes (Campus Watch), David Horowitz (Freedom Center, *FrontPage*, Discover the Networks), Brigitte Gabriel (ACT! for America), and Nonie Darwish (Former Muslims United). Deepa Kumar counsels against overemphasizing the ‘fringe’ elements of the Islamophobia ‘industry’ or ‘network’ because this elides the fact that anti-Muslim prejudice is perhaps more deeply rooted in popular American culture. Deepa Kumar, *Islamophobia and the Politics of Empire* (Chicago, IL: Haymarket Books, 2012), pp. 175-176.

⁴⁶ Saunders, p. 31 and *Fear Inc.*

There are striking similarities between the American-led response to 9/11 (War on Terror) and its ideological counterpart of Islamophobia,⁴⁷ and the Cold War and its ideological counterpart of anti-communist ideology. Jonathan Lyons believes that the Cold War, in the context of a much longer world history, represents a mere “detour” in the Western world’s “millennium-long contestation with the world of Islam.”⁴⁸ And, similarly, Karim H. Karim asserts that “the identification of ‘Islam’ as an ideological and military rival” long predates the Cold War, in which the “Muslim threat” appeared “dormant” due to the bipolar world, along with the need to promulgate rhetoric to counter it.⁴⁹ In other words, the antagonism between Christian Europe and the Islamic world (to permit generalities) has a complex history, one that wasn’t necessarily reducible to religious factors.⁵⁰ What is more clear, however, is that during the Cold War, Muslim majority countries were not primarily conceptualized as threatening due to their Islamic character, but through their potential operationalization as proxies via bipolar contestation.

First and foremost, during the Cold War leftist political movements were the major impediment to American empire and its hegemony in international affairs.⁵¹ Likewise, a nebulous concept of what constitutes ‘terrorism’ and various assortments of radical religious/political movements are said to constitute the new threat to world

⁴⁷ Steven Sheehi, *Islamophobia: The Ideological Campaign Against Muslims* (Atlanta, GA: Clarity Press, 2011).

⁴⁸ Jonathan Lyons, *Islam Through Western Eyes: From the Crusades to the War on Terror* (New York, NY: Columbia University Press, 2012), p. 114. Halliday, p. 128.

⁴⁹ According to Karim H. Karim, “the cultural memory of the intermittent war with the Muslim Other from the seventh to the early twentieth centuries remained largely latent”. Karim H. Karim, *Islamic Peril: Media and Global Violence* (Montreal, QC: Black Rose Books, 2003), pp. 120-121.

⁵⁰ Although too lengthy a topic to explore here, the particularities of contemporary Islamophobia that are significant for the present case are related to the conceptualization of Islam *itself* as being inherently dangerous or threatening to world order, as opposed to one factor in broader civilizational divides.

⁵¹ For a very detailed account of American intervention in the context of suppressing alternative ideological projects, see: William Blum, *Killing Hope: U.S. Military and CIA Intervention Since WWII* (Montreal, QC: Black Rose Books, 2000).

order;⁵² partially a result of allegedly intractable cultural or civilizational divides. During the Cold War itself, political movements with an Islamic influence were viewed more as “an unqualified ally in the struggle against the Soviet Union” in American policy circles.⁵³ Aside from this shift in discourse and ideology came a more material reorientation in the vast overlapping industries of military, intelligence, security and technology that had worked in tandem with the foreign policy goals of Western countries during the Cold War. It is sometimes said this loss of such an overwhelming and singular threat created a vacuum in these industries, which then catalyzed the search for another enduring enemy.⁵⁴

The ‘clash of civilizations’ theses popularized by Francis Fukuyama (1989)⁵⁵ and Samuel P. Huntington (1993)⁵⁶ in the months and years following the end of the Cold War spoke of a new ‘civilizational’ rearrangement of global politics in which “Soviet communism yielded to Islamism as the West’s new nemesis.”⁵⁷ Beginning in the 1970s, an initial handful of scholars began to weave the intellectual arguments that would undergird civilizational explanations to social and political phenomena in the context of

⁵² Sheehi, p. 36. Edward W. Said also adds: “[I]t is only from within the Islamic world that signs of determined resistance [to America as the sole superpower] are still strong.” Edward W. Said, *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World* (New York, NY: Vintage Books, 1997), p. xxix.

⁵³ Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (New York, NY: Random House, 2005), p. 120. Mamadani provides the examples of Indonesia, Pakistan, Egypt and Afghanistan. See, also: Said, *Covering Islam*, p. lv. Although Islamist militants have struck ‘Western’ targets in the past, 9/11 was the pivotal moment in which ‘Islam’ was crystalized as a distinct and potentially destabilizing force in global affairs (both materially and ideologically).

⁵⁴ Karim, *Islamic Peril*, p. 3. Lyons, p. 130. For some examples in which private companies began to more fully overlap with military functions in the post-Cold War era, see: Solomon Hughes, *War on Terror, Inc.: Corporate Profiteering from the Politics of Fear* (New York, NY: Verso, 2007), pp. 57-70.

⁵⁵ Originally published as an essay in *The National Interest*, which was later expanded into a book: Francis Fukuyama, *The End of History and the Last Man* (New York, NY: Free Press, 2006).

⁵⁶ Originally published as an essay in *Foreign Affairs*, which was later expanded into a book: Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York, NY: Simon & Schuster, 2011).

⁵⁷ Hamid Dabashi, *Brown Skin, White Masks* (New York, NY: Pluto Press, 2011), p. 10.

Muslim-majority countries.⁵⁸ These explanations brought with them not just the imprimatur of respected scholarship, but also a correlative unfolding of international events in which diverse Islamist movements would replace the spectre of communism as the most noteworthy material impediment to the projection of American power abroad.

Second, the ideological frameworks that underpin American hegemony and empire – such as American exceptionalism, the innate goodness of liberal democracy, human rights (especially women’s rights⁵⁹, and sometimes GLBTQ rights⁶⁰), and the wisdom of free markets and trade – remain the same in the unipolar world but are now increasingly invoked not against the threat of the expanding influence of communism, but the expanding influence of radical Islamist politics. Stephen Sheehi situates Islamophobia as primarily an ideological function. According to him, anti-Muslim discourse does not originate from a sole source, but is woven by various elements who are “collectively responsible” for “justify[ing] and naturaliz[ing] US global, economic and political hegemony.”⁶¹ Hence, it does not simply draw its force from misunderstandings or misinformation regarding ‘Islam’ or ‘Muslims’, but is deployed strategically in the post-Cold War political terrain “to promote political and economic goals, both domestically

⁵⁸ Karim includes Bernard Lewis, Elie Kedourie, and Panyotidis Vatikiotis as integral components in constructing the “dominant discourses on ‘Islamic’ terrorism”. Karim, *Islamic Peril*, p. 73. Esposito notes that Huntington and Lewis were “seminal in defining the parameters of [the] debate” that also took place within journalism, diplomacy and the policy arena. Esposito, *The Islamic Threat: Myth or Reality?* (New York, NY: Oxford University Press, 1999), p. 219.

⁵⁹ Gayatri Chakravorty Spivak, “Can the Subaltern Speak?” in Cary Nelson & Lawrence Grossberg (Eds.), *Marxism and the Interpretation of Culture* (Urbana, IL: University of Illinois Press, 1988), pp. 271-313, p. 297. Sherene H. Razack, *Casting Out: The Eviction of Muslims from Western Law & Politics* (Toronto, ON: University of Toronto Press, 2008), p. 5. Dabashi, p. 36. Lyons argues that ‘Western discourse’ on Islam has for the past two centuries fixated on the “degradation” of women. See: Lyons, pp. 155-190. Sheehi, pp. 90-115. Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Cambridge, MA: Harvard University Press, 2013).

⁶⁰ Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC: Duke University Press, 2007).

⁶¹ Sheehi, pp. 31-32.

and abroad.”⁶² These include military incursions abroad, torture and other extreme forms of interrogation, and rafts of unprecedented domestic surveillance and policing protocols. Just as anticommunist rhetoric such as the ‘evil empire’ was “ideologically reassuring and emotionally satisfying”,⁶³ the alleged inferiority, violence and despotism of Muslim societies can be invoked as means of “deflection as much as justification” in obscuring the realities of America’s vast projection of global power (most explicitly evidenced in the Middle East⁶⁴), often to the detriment of indigenous populations with whom Americans and others may not be able to easily empathize.⁶⁵ Although crude stereotypes of Muslims existed during the period of America’s initial investment in the Middle East to secure the constant flow of oil resources – roughly beginning around the end of the Second World War – resistance to American foreign policy in Muslim-majority countries would sharpen these ideas considerably.⁶⁶ This resistance would cement the perception that Islam in its overtly political manifestation was inherently antagonistic to American foreign policy.

Bernard Lewis, in his widely-read *Atlantic* article, located the ‘roots of Muslim rage’ in a civilizational inferiority complex: the proponents of secularism and modernism are the target of “the otherwise aimless and formless resentment and anger of the Muslim masses” who feel devalued by their relative developmental stagnation and the erosion of

⁶² Sheehi, p. 32.

⁶³ Esposito, *The Islamic Threat*, p. 214.

⁶⁴ Sheehi, p. 43. See, also: Rashid Khalidi, *Resurrecting Empire: Western Footprints and America’s Perilous Path in the Middle East* (New York, NY: I.B. Taurus, 2004).

⁶⁵ Sheehi, p. 38.

⁶⁶ The event that is most frequently cited as evidencing staunch resistance to American foreign policy is the Iranian Revolution (discussed below).

tradition in their societies.⁶⁷ According to him, it is a movement of ‘anti-modern’ values, spurred by the adamant rejection of supposed hallmarks of modernity, such as free markets, representative democracy and universal human rights. Muslims, then, are seen as “opposed to the entire project of modernity.”⁶⁸ John L. Esposito believes this particular work of Lewis was emblematic of “selective presentation” that framed the differences between the ‘Muslim world’ and the ‘West’ stereotypically as the former's rejection of the latter, including the now common tropes of “rage, violence, hatred and irrationality.”⁶⁹ Lewis’ writing would assume a much wider and even mainstream reading when *What Went Wrong?* was released in 2002, amid a particularly inquisitive American public looking for answers to ‘why they hate us’.⁷⁰

Citing Marshall Hodgson's work rebutting ‘West-centred’ scholarly treatments of Islam, Mahmood Mamdani crucially mentions that the concept of the ‘West’ as a coherent conceptual entity is difficult to maintain.⁷¹ In its conceptual evolution throughout history, it had indeed progressed “from a geographical location to a racialized notion referring to all peoples of European origin, no matter where they lived and for how long.”⁷² Stuart Hall also underscores the discursive contours of the ‘West’, because it “is as much an idea as a fact of geography.”⁷³ Necessarily an ‘*historical*’ concept, it has

⁶⁷ Bernard Lewis, “The Roots of Muslim Rage”, *The Atlantic*, September 1, 1990, Available at: <http://www.theatlantic.com/magazine/archive/1990/09/the-roots-of-muslim-rage/30>. Esposito, *The Islamic Threat*, p. 219.

⁶⁸ Karim, *Islamic Peril*, p. 141.

⁶⁹ Esposito, *The Islamic Threat*, pp. 219-220. Mamdani uses the term ‘Culture Talk’ to describe the popularity of ‘civilizational’ explanations for global conflicts and credits Lewis as the ‘founding father’ in its contemporary form. Mamdani, p. 21.

⁷⁰ Lyons, pp. 114-115. Lewis, *What Went Wrong? The Clash Between Islam and Modernity in the Middle East* (New York, NY: Oxford University Press, 2002).

⁷¹ Said makes a similar point. Said, *Covering Islam*, p. 9.

⁷² Mamdani, pp. 29-30.

⁷³ Stuart Hall, “The West and the Rest: Discourse and Power” in Stuart Hall & Bram Gieben, *Formations of Modernity* (Cambridge, UK: Polity Press, 1992), p. 276.

come to represent “a society that is developed, industrialized, urbanized, capitalist, secular, and modern.”⁷⁴

Sherene Razack believes that ‘three allegorical figures’ have inhabited the ideological terrain of the War on Terror: “the dangerous Muslim man, the imperilled Muslim woman, and the civilized European, the latter a figure who is seldom explicitly named but who nevertheless anchors the first two figures.”⁷⁵ According to Hamid Dabashi, these ideological developments in the United States (but by no means residing solely there) were partially aided by a series of international events that became emblematic of the wider problems of the Middle East and North Africa: Iran’s Islamic revolution (1979), Hezbollah’s formation during the First Lebanon War (1982), Hamas’ formation during the First Intifada (1988), and the activities of Groupe Islamique Armé in Algeria during the Civil War.⁷⁶ Liz Fekete similarly locates “crude and virulent anti-Arab racism” in the mainstream reporting of the United Kingdom during the oil shocks of the 1970s, the death of WPC Yvonne Fletcher in front of the Libyan embassy of London (1984), Ayatollah Ruhollah Khomeini’s fatwa ordering the killing of Salman Rushdie (1989), and the Iraqi invasion of Kuwait (1990).⁷⁷ In the North American context, the OPEC oil crisis in the 1970s alerted consumers to the “intransigence” from the Middle East and Persian Gulf,⁷⁸ and the first bombing of the World Trade Center in 1993 brought the spectre of a “global ‘fundamentalist’ holy war” to American soil for the first time.⁷⁹ Reporting of these incidents has tended to frame the events in the context of a

⁷⁴ Stuart Hall, “The West and the Rest”, p. 277.

⁷⁵ Razack, *Casting Out*, p. 5.

⁷⁶ Dabashi, p. 11.

⁷⁷ Liz Fekete, “The Muslim conspiracy theory and the Oslo massacre”, *Race & Class*, Vol. 53: 3, 2011, pp. 30-47, p. 39.

⁷⁸ Said, *Covering Islam*, p. 36.

⁷⁹ Esposito, *The Islamic Threat*, p. 213.

“monolithic Islam”, as opposed to the historical particularities that are needed to contextualize acts of political violence.⁸⁰

However, no single event would solidify the ideological consensus that Muslims might threaten the West more than the catastrophic events of 9/11 and the resulting War on Terror.⁸¹ It led to a veritable global media saturation that was largely filtered from the perspective of the United States.⁸² 9/11 would also allow previously more obscure writings to trickle into popular discourse and lead to “‘new’ frameworks that essentialise Islam and demonise Muslims.”⁸³ Yet, it is important not to imply that more accurate representations of Muslims are an antidote to discriminatory beliefs. Yes, incorrect and sensationalized information about Islam and Muslims contributes greatly to Islamophobic discourse. But to frame Islamophobia as necessarily a problem of imperfect information⁸⁴ would seem to ignore the labour that discriminatory belief can facilitate.⁸⁵ In other words, popularly held beliefs that denigrate or ostracize others can influence the relative acceptability of specific policies. Focusing on disinformation also has a tendency to underestimate the level in which mainstream political debate has imbibed more fringe discourses.⁸⁶

⁸⁰ Karim, *Islamic Peril*, p. 11.

⁸¹ In the year following 9/11, there were more than 20 books published purporting to expose the 'Muslim menace', two of which were bestsellers on Amazon (by Steven Emerson and Daniel Pipes). Lori Peek, *Behind the Backlash: Muslim Americans after 9/11* (Philadelphia, PA: Temple University Press, 2011), p. 6.

⁸² Gilbert Achcar, *The Clash of Barbarisms: The Making of the New World Disorder* (Boulder, CO: Paradigm Publishers, 2006), p. 27, pp. 36-38.

⁸³ Fekete, “The Muslim conspiracy theory and the Oslo massacre”, p. 40.

⁸⁴ Esposito, *The Islamic Threat*, p. 219. Esposito & Dalia Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think* (New York, NY: Gallup Press, 2007), pp. 135-166.

⁸⁵ In a similar vein, it would belie the complexity of s. 13’s repeal to simply frame it as a misunderstanding based upon flawed or purposefully misconstrued information, as will be demonstrated in the following chapter.

⁸⁶ Kumar, p. 176.

In an examination of Islamophobia in Norwegian popular discourse – which can at least partially help explain the ideological terrain creating Anders Breivik⁸⁷ – Sindre Bangstad conceptually grounds Islamophobia, despite its contested meanings, in essentialism that is present in many different types of racism: “Muslims are believed to act and think in certain ways by virtue of their religious adherence.”⁸⁸ Matt Carr speaks of “reductionist stereotypes” that “evoke a generalised image of ‘Islam’ as a hermetically sealed monolithic cultural bloc”.⁸⁹ These essentialist notions are also present in postcolonial literature, perhaps most movingly captured by Frantz Fanon’s experience as an ‘inferior’ minority in White society. Fanon spoke of the inescapability of his visual appearance and its attendant processes of predetermining his identity and creating cultural associations:

I was responsible at the same time for my body, for my race, for my ancestors. I subjected myself to an objective examination, I discovered my blackness, my ethnic characteristics; and I was battered down by tom-toms, cannibalism, intellectual deficiency, fetichism, racial defects, slave-ships...⁹⁰

Compared to the realities of antisemitism in France, Fanon noticed that unlike him, Jews were able to ‘pass’ as the majority due to their appearance. He, however, is “given no chance” because he is “overdetermined”, a “slave not to the ‘idea’ others have of [him] but of [his] appearance.”⁹¹ Likewise, Islamophobia is informed by this same overdetermination but is also semiotically mediated. The signifiers ‘Arab’ and ‘Muslim’,

⁸⁷ On July 22, 2011, Anders Breivik perpetrated the Oslo Massacre that killed 77 people and injured more than 300. Before the attack he released a more than 1,500 page manifesto laden with Islamophobic material, including references to a host of writers alleging a Muslim infiltration of the West.

⁸⁸ Sindre Bangstad, *Anders Breivik and the Rise of Islamophobia* (London, UK: Zed Books, 2014), pp. 18-19.

⁸⁹ Matt Carr, “You are now entering Eurabia”, *Race & Class*, Vol. 48: 1, 2006, pp. 1-22, p. 12.

⁹⁰ Frantz Fanon, *Black Skin, White Masks* (London, UK: Pluto Press, 2008), pp. 84-85.

⁹¹ *Ibid*, p. 87.

according to Edward W. Said, are “[s]o saturated with meanings” that their use cannot avoid “the formidable polemical mediations” that filter their transmission and reception.⁹² Because racism moves much beyond biology and inhabits notions of cultural superiority – so clearly evidenced by the ‘clash of civilizations’ – even banal cultural comparisons can catalyze “an instant chain of associations (the veil, female genital mutilation, arranged marriages) that ends with the declared superiority of European culture.”⁹³

There is also no shortage of mimetic images emanating from the news cycle that can likewise engender these associations. Images of “‘Islamic’ militancy” have the capability of “activat[ing] cognitive models of latent information.”⁹⁴ Popular images that come to represent ‘Islam’ – facial hair, clothing, headscarves and religious symbols, for example – can evoke a wider plane of meaning that is tied to “intellectual and moral regression.”⁹⁵ Further, even for those Muslims who could conceivably ‘pass’ in Western contexts like Canada, conspiratorial views of Muslims complicate acceptance in the political community. For those who are identifiably Muslim, they might become a representation of a monolithic Islam that is inherently inferior and expected to prove their ‘Western’ bona fides. For those who are not identifiably Muslim, they might simply be masquerading as an enlightened subject while perhaps harbouring dual loyalties.⁹⁶ Razack characterizes the creation of an informal legal and political hierarchy as a ‘casting out’ for Muslims in Canada, whereby the “eviction of Muslims from political community is a racial *process* that begins with Muslims being marked as a different level of

⁹² Said, “Orientalism Reconsidered”, *Cultural Critique*, Vol. 1, Autumn 1985, pp. 89-107, p. 93.

⁹³ Razack, *Casting Out*, p. 88.

⁹⁴ Karim, *Islamic Peril*, p. 68.

⁹⁵ Ibid.

⁹⁶ Liz Fekete, “The Muslim conspiracy theory and the Oslo massacre”, p. 35.

humanity and being assigned a separate and unequal place in the law.”⁹⁷ Although this inequality in the application of the law has been most apparent in the context of security and terrorism, hate speech laws have no less exhibited a similar experience.

In both of his books on the subject (1979 and 1994),⁹⁸ Said demonstrated that “cultural imperialism went hand in hand with colonization... Orientalism was the cultural companion to imperialist designs”.⁹⁹ Therefore, one cannot analytically separate the discursive practices of Orientalism that “justify militarization of predominantly Muslim countries” from their material consequences on the ground.¹⁰⁰ Fred Halliday attributes three basic components to Orientalist discourse: a) the ability to understand a region, people or country solely through its language and writings (‘reading’ culture); b) an overemphasis on religion as an independent variable of explanation;¹⁰¹ and c) viewing culture as immutable and resistant to change.¹⁰² Contemporarily, this necessarily involves a mapping of power as it is exercised and the justifications or legitimation that it requires. While Britain and France had earlier carved up the Middle East following the breakup of the Ottoman Empire,¹⁰³ it was the United States in the post-World War II era that “began

⁹⁷ Razack, *Casting Out*, p. 176.

⁹⁸ Said, *Orientalism* (New York, NY: Vintage Books, 1994) and *Culture and Imperialism* (New York, NY: Vintage Books, 1994). Maxime Rodinson has also written extensively on the subject. Halliday (p. 199) believes this to be the most ‘the most measured and erudite’ scholarship of the field. See, for example: Maxime Rodinson, *Europe and the Mystique of Islam* (Seattle, WA: University of Washington Press, 1987).

⁹⁹ Jacqueline O’Rourke, *Representing Jihad: The Appearing and Disappearing Radical* (New York, NY: Zed Books, 2012), p. 49.

¹⁰⁰ Ibid. Said, *Covering Islam*, pp. 27-28.

¹⁰¹ Lyons also speaks of ‘Islam’ as a supposed ‘independent variable’ that can be used to explain events in Muslim-majority countries or the behaviour of Muslims in general. Lyons, p. 24.

¹⁰² Halliday, pp. 202-205.

¹⁰³ The Sykes-Picot Agreement of 1916 saw the creation of ‘spheres of influence’ split between Britain and France following World War I. It led to the creation of the ‘mandate’ system in which colonial powers would hold the territory in trust until their indigenous inhabitants could realize ‘self-government’.

to take over the reins from the old colonial overlords.”¹⁰⁴ Building upon the work of Said, Lyons extends the discursive analysis temporally to illuminate the long(er) range in which anti-Muslim discourses have occupied ‘Western thought’. But, he differs in the sense that he believes the ‘imagined geographies’ that Said tied, albeit loosely, to an objective reality in ‘the Orient’ are actually more divorced from material conditions than we might think:

In contrast, I see the crucial formation of the broader anti-Islam discourse as taking place outside the confines of any such 'corresponding reality.' In other words, it is virtually untethered from any corresponding conditions of Muslim religious, social, or political life, none of which was known in the West at the time of the discourse's formation. This quality is central to the anti-Islam discourse's unwavering form, power, and tenacious hold on the Western imagination over the course of a millennium.¹⁰⁵

This is not to say that there is an uncomplicated continuity between a millennial history of civilizational conflict and antipathy and anti-Muslim sentiment in contemporary Western contexts, but that the knowledge created about ‘Islam’ in Western contexts going back in time can be said to be, in general, largely divorced from an objective reality experienced in the ‘Islamic world.’ This further alludes to the fact that this significant divorce of objective conditions and conjured imaginaries carries into the present with no less significance.

¹⁰⁴ Kumar, p. 27, 33. Karim, “Self and Other in a time of terror” in Tareq Y. Ismael & Andrew Rippin, *Islam in the Eyes of the West: Images and Realities in an Age of Terror* (New York, NY: Routledge, 2010), p. 170. Ismael and Rippin outline some of the American policies during the Cold War that have come to shape the region dramatically, including the Saudi ‘oil for protection’ pact, the recognition of Israel and continuing stalwart support, the overthrow of Mosaddeq in Iran, and the long and sordid history with Iraq (comprising initial support, backing in the Iran-Iraq war, repelling from Kuwait, and sanctions regime). Ismael & Rippin, pp. 8-9.

¹⁰⁵ Lyons, pp. 34-35.

Key to mainstreaming Islamophobic discourses is what Dabashi, among others,¹⁰⁶ call ‘native informers’. These are individuals whose hybrid identities in the West allow them to speak authoritatively about objects of the ‘Western gaze’. They are some of the most influential authors and activists in the Islamophobia industry/network; among them we might include Tarek Fatah and Salim Mansur in Canada and Ayaan Hirsi Ali, Brigitte Gabriel, Nonie Darwish, Ibn Warraq, and Walid Shoebat in the United States. They often derive their authenticity from being either Muslims or ex-Muslims and their singular views of Islam and Muslims (as a problematic monolith) are taken to be representative much beyond themselves. In the context of the War on Terror, they come to symbolize “‘voices of dissent’ against the innate and enduring barbarity of Islam.”¹⁰⁷ Again, these native informers provide credibility and authenticity to reductionism and essentialization, allowing previously marginalized discourses to more readily inform the mainstream.¹⁰⁸ Most importantly, those who renounce the ‘backwardness’ of Islamic societies and fully embrace the emancipatory exceptionalism of America and other Western countries help to cement the cultural superiority of Western identity. Their association with the West is also bound up in national identity (Canada is no exception) as it is becoming increasingly difficult to neatly separate a distinct nationalism or culture from the War on Terror.¹⁰⁹

In the North American context, this is evident in the constant invocation of “‘Canadian values’ or ‘American values,’” casually invoked by politicians when explaining what exactly is so direly at stake.¹¹⁰ Canada can also see ‘civilizational’

¹⁰⁶ See also: Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Cambridge, MA: Harvard University Press, 1999).

¹⁰⁷ Dabashi, p. 17.

¹⁰⁸ Ibid, p. 13.

¹⁰⁹ Razack, *Casting Out*, p. 167, and Fekete, “Anti-Muslim Racism and the European Security State”, *Race & Class*, Vol. 46: 1, 2006, pp. 3-29, p. 4.

¹¹⁰ Razack, *Casting Out*, p. 5.

discourses play out in domestic political issues, such as the legitimacy of security certificates,¹¹¹ concern over ‘honour killings’,¹¹² high profile terrorism cases and anti-terror legislation,¹¹³ ‘sharia law’,¹¹⁴ Muslim women veiling,¹¹⁵ and, of course, the ‘hate speech debate’. In Prime Minister Stephen Harper’s exclusive interview with the *CBC* in 2011, he famously stated that the foremost threat to Canada’s security “is still Islamism.”¹¹⁶ There has also been a recent spate of legislation that seems at first glance to be directed towards Muslims in Canada.¹¹⁷ The most obvious is the proposed Bill S-7, the not so subtly titled *Zero Tolerance for Barbaric Cultural Practices Act*.¹¹⁸ According to the government, the legislation “demonstrates that Canada’s openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices.”¹¹⁹

¹¹¹ Temitope Oriola, “Counter-terrorism and alien justice: the case of security certificates in Canada”, *Critical Studies on Terrorism*, Vol. 2: 2, August 2009, pp. 257-274. Colleen Bell, “Subject to Exception: Security Certificates, National Security and Canada's Role in the 'War on Terror'”, *Canadian Journal of Law and Society*, Vol. 21: 1, 2006, pp. 63-83. Christiane Wilke & Paula Willis, “Exploitation of Vulnerability: Dimensions of Citizenship and Rightlessness in Canada's Security Certificate Legislation”, *Windsor Yearbook of Access to Justice*, Vol. 26: 1, 2008, pp. 27-53.

¹¹² Phyllis Chesler, “Worldwide Trends in Honor Killings” *Middle East Quarterly*, Vol. 17: 2, Spring 2010, pp. 3-11. Jasmin Zine, “Unsettling the Nation: Gender, Race, and Muslim Cultural Politics in Canada” in Jasmin Zine (Ed.), *Islam in the Hinterlands: Muslim Cultural Politics in Canada* (Vancouver, BC: University of British Columbia Press, 2012), pp. 49-50.

¹¹³ Razack, *Casting Out*. Shaista Patel, “The Anti-terrorism Act and national Security: Safeguarding the Nation against Uncivilized Muslims” in Zine, pp. 272-298.

¹¹⁴ Itrath Syed, “The Great Canadian ‘Shari’a’ Debate” in Zine, pp. 61-91. Razack, “The ‘sharia law debate’ in Ontario: The modernity/premodernity distinction in legal efforts to protect women from culture”, *Feminist Legal Studies*, Vol. 15: 1, 2007, pp. 3-32.

¹¹⁵ Les Whittington, “Stephen Harper says Ottawa to appeal ruling allowing veil during citizenship oath”, *Toronto Star*, February 12, 2015, Available at: <http://www.thestar.com/news/canada/2015/02/12/stephen-harper-says-ottawa-to-appeal-ruling-allowing-veil-during-citizenship-oath.html>.

¹¹⁶ *CBC News*, “Harper says ‘Islamicism’ biggest threat to Canada”, September 6, 2011, Available at: <http://www.cbc.ca/news/politics/harper-says-islamicism-biggest-threat-to-canada-1.1048280>.

¹¹⁷ Mark Gollom, “Niqab controversy: Judge struck down ban without referring to charter”, *CBC News*, March 16, 2015, Available at: <http://www.cbc.ca/news/politics/niqab-controversy-judge-struck-down-ban-without-referring-to-charter-1.2994954>.

¹¹⁸ Laura Payton, “‘Barbaric cultural practices’ bill debate limited by Conservatives”, *CBC News*, Available at: <http://www.cbc.ca/news/politics/barbaric-cultural-practices-bill-debate-limited-by-conservatives-1.2992181>.

¹¹⁹ *Government of Canada*, “Zero Tolerance for Barbaric Cultural Practices Act: An Overview”, November 5, 2014, Available at: <http://news.gc.ca/web/article-en.do?nid=900339>.

2.2: Comparing North America and Europe

It is certainly not possible to assert universals regarding Islamophobia in North America and Europe, considering the fact that its attendant discourses are manifested in a variety of different contexts whose particularities come to shape specific contours. There are, however, some commonalities or themes that, from merely an analytical perspective, can allow us some generalizations, and, further, help demonstrate the cross-pollination of discourse among a variety of countries considered to make up the West. Yet, what is important here are the particularities of anti-Muslim prejudice in Canada as opposed to those in France or the United States. In some European countries, there are significant Muslim populations due to a longer history of immigration,¹²⁰ sheer proximity to Muslim-majority countries, and an even longer history of colonialism and imperialism in the Middle East, North Africa, and Asia. Cities such as Bradford in the UK and Marseilles in France have some of the highest numbers of Muslim residents in Europe, even while they are simultaneously flashpoints for contestation regarding integration and citizenship.¹²¹ Another crucial difference is that Muslim populations in Europe tend to be more socio-economically disadvantaged, as opposed to the relatively more affluent and educated Muslim immigrants in North America.¹²²

¹²⁰ In many cases, European countries allowed sizable amounts of immigrants after the Second World War. A perfect example of this is the German incorporation of large numbers of Turks during the rebuilding of the country, which can be seen as a major factor in the anti-Muslim (sometimes explicitly anti-Turk) discourse of the country. Halliday (p. 180) uses other examples, such as Italy and Libya, France and Algeria, and Britain and Egypt (although this last one was more complicated than simply establishing colonies). See, also: Jocelyne Cesari, "Islamophobia in the West: A Comparison between Europe and the United States" in Esposito & Kalin (Eds.), pp. 24-25.

¹²¹ Esposito, *The Islamic Threat*, p. 234.

¹²² France is an instructive example of a relatively more marginalized population. See: Mustafa Dikec, *Badlands of the Republic: Space, Politics and Urban Policy* (Malden, MA: Blackwell Publishing, 2007).

Comparatively, the North American experience has been much more limited with immigration from Muslim-majority countries. Though, this is not to say that Muslims have not been a part of North America before more recent influxes. Halliday contends that the sole representations of Muslims in the United States before the 1960s were in film format.¹²³ Indeed, there was relatively little information regarding the 'Muslim world' (to permit a generalization) within the United States before the 19th century, as the latter was preoccupied (like pre-Confederation Canada) with expanding its territory continentally and waging a war of dispossession against its indigenous inhabitants.¹²⁴ Therefore, one can conceptually distinguish between the general anti-Muslim rhetoric experienced in Europe, which tends to focus on the themes of demography and a dilution of 'European values', and the United States, which experiences rhetoric much more focused on issues of terrorism and security, both foreign and domestic.¹²⁵ While the proximity of the United States to Canada and its sometimes mirror-like cultural and political similarities mean that it is the most obvious relative comparison for Islamophobic discourse, there are some crucial differences.

It can be argued that the ideological support system – in other words, the implicit or explicit domestic consent that is often expressed as 'American exceptionalism' – for American foreign policy has a more direct relationship to Islamophobic discourse. The United States operates a wide-reaching hegemony throughout the world that goes much further than merely establishing international legal, political, social, or economic norms;

¹²³ Halliday, p. 181. For a penetrating analysis of the representations of Arabs and Muslims in popular American film, see: Jack G. Shaheen, *Reel Bad Arabs: How Hollywood Vilifies a People* (Northampton, MA: Interlink Publishing, 2014).

¹²⁴ Kumar, pp. 33-34.

¹²⁵ The United States has a qualitatively and quantitatively different history of domestic political violence compared to Europe (Irish Republican Army, Red Army Faction, or Basque nationalists, for example) and Hispanics have largely reserved the role as principal 'demographic threat'. Halliday, pp. 183-184. For a more detailed comparison of the United States and Europe in this context, see: Cesari in Esposito & Kalin.

it is very much a *material* reality complete with aircraft carriers, foreign military bases, and vast intelligence and surveillance capabilities. Canada, in comparison, lacks this global projection, aside from the relatively less exuberant military contributions abroad such as Afghanistan, Haiti and Libya.¹²⁶ Although Canada's global identity is far from the crass and more overtly militaristic American conception of 'exceptionalism', it still shares some key themes even if less acute: moral and cultural superiority, a sense of international purpose, and a sublimated but nevertheless present history of (settler) colonialism.

Therefore, the particularities of Islamophobia in Canada can at least be partially attributed to two factors: the sense of European cultural superiority that is so integral to colonization in Canada¹²⁷ and the obsessive 'securitization' agenda that has aggressively ascended since 9/11 in the United States and elsewhere. The former allows pundits, policy makers, academics and others to speak in general terms of 'Canadian' or 'Western' values that are normally defined in contradistinction to the supposed barbarism and savagery of other cultures, civilizations, peoples, and nations.¹²⁸ The latter is animated by state and policy sectors that construct a concept of 'terrorism' as the greatest threat to Canada and Canadians, with violence committed by Muslims reserved as the most significant.¹²⁹

¹²⁶ Despite Canada largely retaining 'middle power' status in international affairs, some argue that Canada is undergoing a cultural transition to more readily embrace armed conflict and romanticize its previous violent engagements. See: Ian McKay & Jamie Swift, *Warrior Nation: Rebranding Canada in an Age of Anxiety* (Toronto, ON: Between the Lines, 2012).

¹²⁷ Patel, pp. 274-275. Razack, "When Place Becomes Race" in Razack (Ed.), *Race, Space and the Law: Unmapping a White Settler Society* (Toronto, ON: Between the Lines, 2002).

¹²⁸ This is an historical phenomenon that came to associate the 'West' with democratic principles and the 'East' with 'despotism'. Further, as Kumar notes, notions of European superiority began in the 19th century to shed its 'Enlightenment universalism' and increasingly imbibed the language of competing peoples, cultures and civilizations. Kumar, pp. 29-30.

¹²⁹ Patel, p. 273.

CHAPTER 3: THE BACKLASH BEGINS

As noted above, non-penal human rights legislation, including s. 13, had more or less operated without widespread controversy or intensive legislative review until the hate speech debate. Of course, civil libertarians of different persuasions have always been innately opposed to the concept of hate speech, even in more clear-cut forms of bigotry such as Holocaust denial. The 1990 *Taylor* hate speech case was decided on a narrow 4-3 margin, but it nonetheless vindicated s. 13 in the realm of judicial review.¹³⁰ More contemporary arguments made in media outlets against s. 13 included: suspicion of government bureaucracy, a lack of procedural justice norms associated with criminal law, huge costs unilaterally incurred by respondents, and the potential for political abuse, just to name a few.¹³¹ But all of these legitimate criticisms could have stood on their own at any time during s. 13's decades long history. What, then, makes these complaints so different that they could eventually lead to the repeal of a relatively obscure and uncontroversial law?

This chapter argues that the key to understanding this question lies with the way in which the backlash framed the debate, and more specifically, how a careful strategy of constructing a negative perception of the complainants could take full advantage of their

¹³⁰ Julian Walker, "Canadian Anti-hate Laws and Freedom of Expression", *Library of Parliament Research Publications*, March 27, 2013, Available at: <http://www.parl.gc.ca/content/lop/researchpublications/2010-31-e.htm>.

¹³¹ Jonathan Kay, "How to turn a neo-Nazi into a free-speech martyr", *National Post*, March 25, 2008, Available at: <http://www.nationalpost.com/scripts/story.html?id=327a3a0f-3031-4ae3-9deb-e1a2e12c2ac1&k=97808>. Keith Martin, "Preserving our freedom to speak", *Keithmartin.org*, February 15, 2008. A. Alan Borovoy, "Ban discriminatory actions, not inflammatory words", *Toronto Star*, April 16, 2008, Available at: http://www.thestar.com/opinion/columnists/2008/04/16/ban_discriminatory_actions_not_inflammatory_words.html. Lorne Gunter, "Alberta's gauntlet of bias", *National Post*, January 14, 2008. Don Butler, "Leave internet hate probes to the police", *Ottawa Citizen*, November 25, 2008. Joseph Breen, "Canadians 'misinformed' on hate speech; Human Rights", *National Post*, June 22, 2009. *Globe and Mail*, "Too wide a net for hate", June 23, 2008, Available at: <http://www.theglobeandmail.com/globe-debate/too-wide-a-net-for-hate/article720553/>.

Muslim identity. In other words, the fact that the complainants were Muslim contributed to the backlash's ability to portray them as radicals, censors, abusers of the law, religious extremists, liars, and, most importantly, part of a wider campaign supposedly intent on 'Islamizing' the West. As far as political strategy is concerned, Levant and Steyn could not have asked for better nemeses to tackle in the public sphere and they certainly seized upon the opportunity. Soharwardy was an inelegant Calgary imam whose inconsistency and piety would make it easy to brand him as a radical abusing the legal system. When he eventually withdrew his complaint, it confirmed to many that it had more to do with politics than professed principles of religious tolerance. The *Maclean's* complainants were all Muslim law students who had assiduous documentation, but they perhaps naively thought the media could digest their lengthy arguments. They were on the defensive immediately and ended up being portrayed as censors as opposed to debaters, even though they were essentially asking for a right of reply as opposed to curtailing speech.

Mohamed Elmasry and the Canadian Islamic Congress (CIC) were the greatest strategic gifts to the s. 13 backlash strategy. The *Maclean's* complainants had unfortunately enlisted the support of the CIC to file similar complaints within British Columbia and with the federal Commission.¹³² Elmasry, then head of the organization, had earlier courted controversy when he justified (amid several opportunities to clarify) Palestinian attacks on Israeli civilians of 18 years and older in view of the fact that military service is, in most instances, compulsory in the country.¹³³ Eliadis believes this

¹³² Eliadis, *Speaking Out on Human Rights*, p. 12.

¹³³ Marine Jiménez, "Israelis legitimate targets, Canadian Muslim Says", *Globe and Mail*, October 23, 2004, Available at: <http://www.theglobeandmail.com/news/national/israelis-legitimate-targets-canadian->

drastically altered the public's perception of the complaints and their legitimacy: "Most observers, including those who were sympathetic to the human rights complaints, agreed that asking the CIC to front the case was a mistake. [Elmasry's] notoriety stole the show."¹³⁴ When Levant began publishing op-eds in response to the *Maclean's* complaint, he referred to the "CIC's reputation as a group of radicals who don't understand Canadian values."¹³⁵ In the same article he called Elmasry "an apologist for Islamofascism".¹³⁶

The following outlines how the backlash initially began. What might be unclear to those who casually followed the debate as it played out in the national media is that it had actually been brewing (ideologically, that is) in the fringe blogosphere for quite some time before it erupted.¹³⁷ The backlash exploited prejudicial undercurrents to associate the complainants with a host of negative connotations that are easily conjured through polemical discussions of 'Islam', such as manufactured concerns about an alleged 'Eurabia'. These claims were rhetorically significant because they touched at the core of negative sentiments regarding Muslims in Canada,¹³⁸ and, in that sense, allowed the backlash to achieve a level of urgency that probably would not have been possible if the complainants *were not* Muslims. In particular, it highlights how the complainants were

muslim-says/article1142917/. There is another side to this story as well: Don Sellar, "Arab group got the rest of the story", *Toronto Star*, November 6, 2004.

¹³⁴ Eliadis, *Speaking Out on Human Rights*, p. 223.

¹³⁵ Levant, "Censorship In The Name Of 'Human Rights'", *National Post*, December 18, 2007.

¹³⁶ Ibid.

¹³⁷ Brean described the debate over s. 13 "as the first online culture war for Canada", containing "all of the elements of a great ideological outrage". Joseph Brean, Personal Interview, February 3, 2015.

¹³⁸ More recent polling has illustrated the consistent trend, including both overall negative perceptions of Islam and 'irreconcilable' differences between Islam and the West. See: Douglas Todd, "Canadians feel rift growing between Western and Muslim societies: poll", *Maclean's*, March 24, 2015, Available at: <http://www.vancouversun.com/life/Canadians+feel+rift+growing+between+Western+Muslim+societies/10916682/story.html>. John Geddes, "Canadian anti-Muslim sentiment is rising, disturbing new poll reveals", *Maclean's*, October 3, 2013, Available at: <http://www.macleans.ca/politics/land-of-intolerance/>.

constructed in the public sphere in order to gain momentum for the backlash; in books, op-eds, news articles, television appearances, blogs, and public statements.

3.1: Trajectory of the Complaints

Despite the furor over the complaints involving Levant, Steyn, and *Maclean's*, each one of them was eventually dismissed or withdrawn. The Ontario Human Rights Commission (OHRC) dismissed the Rogers/*Maclean's* complaint, citing a lack of jurisdiction.¹³⁹ It did, however, issue a press release in which it expressed concern regarding the way Muslims were being unfairly singled out for scrutiny in the Canadian media.¹⁴⁰ In response, Steyn called it a “drive by verdict” that lacked any basis in law and the editors of *Maclean's* called it “an unofficial smear”.¹⁴¹ The complaint to the CHRC was similarly dismissed at its preliminary stage.¹⁴² The complaint in British Columbia was slightly more complicated because the province had earlier done away with its Human Rights Commission, leaving no preliminary body to screen complaints before they proceeded to its Human Rights Tribunal.¹⁴³

As Eliadis points out, this was an extreme irony that was largely ignored in the mainstream reporting: although Steyn et al. had been advocating for the abolition of the Human Rights Commission system, its absence was precisely the reason his case proceeded without impediment to the Tribunal stage. And, further, *Maclean's* did not

¹³⁹ Eliadis, *Speaking out on Human Rights*, p. 17, pp. 224-225. The Commission's mandate established by the Ontario Human Rights Code does not include ‘published opinion and statements.’

¹⁴⁰ Ontario Human Rights Commission, “Commission statement concerning issues raised by complaints against *Maclean's* Magazine”, April 9, 2008, Available at: http://www.ohrc.on.ca/en/news_centre/commission-statement-concerning-issues-raised-complaints-against-macleans-magazine.

¹⁴¹ The Agenda with Steve Paikin, “Mark Steyn and Islamophobia 4/5”, *The Agenda with Steve Paikin YouTube Channel*, May 8, 2008, Available at: <https://www.youtube.com/watch?v=BZlGTv63QM0>.

¹⁴² Eliadis, *Speaking out on Human Rights*, p. 17, p. 225.

¹⁴³ Ibid, p. 17.

take advantage of a provision in the law that would have allowed the magazine to present a motion for dismissal before the formal hearing if they believed the complaint could not reasonably succeed.¹⁴⁴ Although he is not sure that the move for dismissal would have necessarily been successful, Moon finds it “striking that they chose not even to pursue that particular avenue” and instead “wanted to embrace the full process”.¹⁴⁵ Interestingly, Eliadis believes that *Maclean’s* altered its stance towards the complaint once it fully assessed the strategic situation.¹⁴⁶ She points to their website initially posting a response when the complaint had been filed that exhibited a calm and matter of fact tone. According to her, this “restrained professional approach disappeared immediately” when *Maclean’s* realized they could use the incident to amplify their presence.¹⁴⁷ In the end, this complaint was also dismissed in *Elmasry and Habib v. Roger’s Publishing and MacQueen*.¹⁴⁸ The tribunal decided that while Steyn’s writings included “inaccuracies and hyperbole”, it did not exceed the level of severity to warrant a breach of the human rights code.¹⁴⁹ The decision read: “The Article [‘The Future Belongs to Islam’] may attempt to rally public opinion by exaggeration and causing the reader to fear Muslims, but fear is not synonymous with hatred and contempt.”¹⁵⁰

Likewise, the complaint regarding the *Western Standard*/Ezra Levant at the AHRC did not move forward. Although the AHRC dismissed the complaint, the Alberta

¹⁴⁴ Moon, "The Attack on Human Rights Commission and the Corruption of Public Discourse", p. 103.

¹⁴⁵ Moon, Personal Interview, January 29, 2015.

¹⁴⁶ As noted earlier by Moon (and repeated in his personal interview), *Maclean’s* did not make use of an available motion for preliminary dismissal, although he did not speculate as to why.

¹⁴⁷ Although Eliadis does not have a screen capture of the original posting, she was able to describe it with accuracy. She then explained that *Maclean’s* led the charge in the media and other institutions were quick to lend their solidarity. Eliadis, Personal Interview, January 28, 2015.

¹⁴⁸ *Elmasry and Habib v. Roger’s Publishing and MacQueen* (No. 4), 2008 BCHRT 378.

¹⁴⁹ Ibid, para. 159. Eliadis, p. 225. Moon, p. 103.

¹⁵⁰ *Elmasry and Habib v. Roger’s Publishing and MacQueen* (No. 4), 2008 BCHRT 378, para. 157.

Human Rights Tribunal (AHRT) investigated the publishing of the Danish cartoons.¹⁵¹ Levant, using the opportunity to his full advantage, would film his initial encounter with the Commission and arguably begin the public crusade against Human Rights Commissions.¹⁵² However, the *Western Standard* eventually apologized for the episode, including racist (and one could argue genocidal) comments that were posted on its website, and Soharwardy ended up withdrawing the complaint.¹⁵³ Soharwardy would later clarify his position in a *Globe and Mail* op-ed, explaining that he was unaware that Canadians might not believe that Human Rights Commissions were an appropriate arbiter to examine issues of free speech and expression.¹⁵⁴

It is also important to note that the decision to file human rights complaints was at the end of an initial process of engagement among the *Maclean's* complainants.¹⁵⁵ Meeting with the magazine's editors in March of 2007, the three Osgoode Hall law students - Naseem Mithoowani, Khurram Awan, and Muneeza Sheikh - were stunned by the "hostile reception" they had received.¹⁵⁶ Their initial request was for a 5,000 word response by an author of mutual selection, something they deemed reasonable in light of dozens of articles published by *Maclean's* that they thought painted a disparaging image of Muslims and Islam. The dismissive tone of their meeting, and the additional presence

¹⁵¹ Richard Moon, "The Attack on Human Rights Commission and the Corruption of Public Discourse", pp. 93-129, pp. 97-98.

¹⁵² Gillis called this the "watershed moment". Gillis "Section 13: How the battle for free speech was won".

¹⁵³ "Western Standard's apology averts Islamic protest", *Calgary Herald*, December 22, 2007, Available at: <http://www.canada.com/story.html?id=7c580a19-a704-474e-b812-30585a72e46b>. Graeme Morton, "Muslim Leader drops Ezra Levant cartoon complaint", *Calgary Herald*, February 12, 2008, Available at: <http://www.nationalpost.com/news/canada/story.html?id=303895>.

¹⁵⁴ Syed Soharwardy, "Why I'm withdrawing my human rights complaint against Ezra Levant", *The Globe and Mail*, February 15, 2008, Available at: <http://www.theglobeandmail.com/news/national/why-im-withdrawing-my-human-rights-complaint-against-ezra-levant/article18444701/>.

¹⁵⁵ Comparatively, the complaints against *Maclean's* were much more public because they involved a mainstream Canadian publication and the affair both lasted longer and attracted more media attention. Haroon Siddiqui, "Muslims and the Rule of Law" in Natasha Bakht (ed), *Belonging and Banishment: Being Muslim in Canada* (Toronto, ON: TSAR Publications, 2008), pp. 8-9.

¹⁵⁶ Eliadis, *Speaking out on Human Rights*, p. 222.

of Julian Porter (a well recognized libel lawyer), led the three to investigate alternative options, but only after contacting Brian Segal (former CEO of Rogers Publishing), who intimated in May 2007 that they should utilize letters to the editor to express their dismay.¹⁵⁷ They then turned to the non-penal human rights system in the hopes of “launch[ing] a national campaign” with coordinated assistance from other social justice movements.¹⁵⁸ This begs the question of how the ordeal might have unfolded differently if *Macleans*’ had from the beginning been more interested in presenting the ‘other side of the story’.

3.2: Levant’s ‘Army’ and the Blogosphere

If the attack on [democratic] values were to come through a military jihad, we’d know to fight back and rally to our national principles of freedom. But when those who challenge our way of life come not with a suicide bomber’s vest but with letterhead marked “Human Rights Commission,” we let down our guard.¹⁵⁹
Ezra Levant, “Shakedown”

Before the outrage directed against s. 13 made its way into Canada’s mainstream media outlets, it began with Levant’s response to the first complaint filed against the *Western Standard*, followed by a handful of ideologically sympathetic bloggers who helped publicize the complaint, the personal details of the complainant (Soharwardy), and the threat to ‘Canadian values’ posed by the complaint. The most concrete evidence that the backlash took advantage of the alleged incompatibility of Islam and democracy is the coterie of bloggers who took up Levant’s fight and, to a significant degree, helped shape the narrative that would then become dominant in the mainstream. Asked how the

¹⁵⁷ Eliadis, *Speaking out on Human Rights*, p. 223.

¹⁵⁸ Ibid.

¹⁵⁹ Levant, *Shakedown*, p. 128.

complainants themselves in the two cases came to shape these contours, Brean believes their Muslim identities allowed them to be more easily situated into a “growing conversation on the right-wing blogs”, which he characterized as “a subculture that was exploding at the time.”¹⁶⁰ Although the allegations found on many blogs were “outrageously unfair and false”, they still managed to find a “network through which to spread and dominate the broader impressions.”¹⁶¹ Eliadis refers to this network as an ‘ecosystem of e-hate’ and observes that many racist views have become more palatable when framed in civilizational terms as opposed to the explicit denigration of a minority.¹⁶²

Levant recounted that when he first met with the AHRC – in the now infamous video mentioned earlier – he was “lightly employed” in the wake of shuttering the *Western Standard*.¹⁶³ He said he used this added spare time to blog in 2008 and 2009, encouraging visitors of his website to contact their elected representatives. The plan was not to conduct political lobbying directly¹⁶⁴ but “to get a little online army to pester politicians.”¹⁶⁵ In an attempt to “smoke them out... one by one” he would update his blog

¹⁶⁰ Brean, Personal Interview.

¹⁶¹ Ibid.

¹⁶² Eliadis, Personal Interview.

¹⁶³ Levant, Personal Interview, December 16, 2014.

¹⁶⁴ Although Levant did not lobby in the traditional sense of knocking on doors, he did blog about an event on Parliament Hill in which a slew of MPs of both the Liberals and Conservatives were present. He says he signed copies of his book for six Cabinet Ministers (and three others were in attendance). Afterwards, Laureen Harper hosted some of the attendees at 24 Sussex. See: Levant, “Bi-partisan human rights event on Parliament Hill a success”, *Ezrlevant.com*, May 6, 2009, Available at:

http://www.ezrlevant.com/bipartisan_human_rights_event/. Levant, “Vancouver Island and 24 Sussex Drive”, *Ezrlevant.com*, May 23, 2009, Available at:

http://www.ezrlevant.com/vancouver_island_and_24_sussex/. Soharwardy claims that the proximity between Steyn and Levant and the Conservative government can at least partially explain the support behind Bill C-304. Soharwardy, Personal Interview, February 10, 2015. In another blog post, Levant recounts ‘hand-delivering’ a copy of *Shakedown* to Laureen Harper and enjoying dinner at 24 Sussex: Levant, “Shakedown book tour, week two”, *Ezrlevant.com*, March 31, 2009, Available at: http://www.ezrlevant.com/shakedown_book_tour_week_two/.

¹⁶⁵ Levant, Personal Interview.

with politicians who adopted sympathetic views and “try and build some momentum.”¹⁶⁶ The “full year” that he made blogging his main priority certainly paid off, despite initially thinking the issue “was going to be a one-month wonder.”¹⁶⁷ His plan was to first ‘denormalize’ the Human Rights Commissions and then to exert pressure upon politicians to take advantage of this public sentiment. Liberal Keith Martin was the first MP to make a public statement, although he introduced a non-binding Private Member’s Motion in the House of Commons that would be unsuccessful. Levant claims he did not know Storseth other than perhaps hearing his name before C-304 was introduced.¹⁶⁸ When the bill was unveiled, Levant further publicized the cause, inviting him multiple times to provide *The Source* viewers with an update regarding its status.

One of the major themes of the repeal of s. 13 is that the media came to the story late or was negligent in its duty to report until bloggers conducted the prerequisite publicity that could push the story into the mainstream. However, this framing necessarily assumes that there was some outrageous story that was simply being ignored by ignorance, lack of will, or deception. It is true that bloggers undertook what we might call ‘investigative reporting’, whether or not we agree with their methods, rhetorical style or ideological motivations. Therefore, a better way to frame the way social media was integral to repealing s. 13 is by emphasizing how momentum was *initially* created in the blogosphere and then eventually spilled into the mainstream. In other words, it wasn’t

¹⁶⁶ Levant, Personal Interview.

¹⁶⁷ Levant, Personal Interview. One of the more explicit examples is Licia Corbella of the *Calgary Herald*. Decrying the lackluster response from then Alberta Premier Ed Stelmach when questioned about the AHRC, she urged readers to make it an ‘election issue and included the full coordinates of Stelmach for those wishing to press him on the matter. See: Licia Corbella, “It’s time our most basic right became an election issue”, *Calgary Herald*, February 23, 2008, Available at: <http://www.canada.com/calgaryherald/news/theeditorialpage/story.html?id=b46a3661-7f67-4c9d-9919-3f34578a5203>.

¹⁶⁸ Levant, Personal Interview.

that the mainstream media missed the story; it was that the blogosphere literally *created* the story.

Levant thinks the backlash against s. 13 began when “Human Rights Commissions stopped going after obscure White pride types and started going after more mainstream journalists” such as Steyn and himself.¹⁶⁹ They differed from the more marginal figures that had earlier become targets of hate speech legislation because they “had more access to the media and political levers” that could be used to publicly respond to allegations.¹⁷⁰ He noted that although they might be “stubborn”, they certainly did not have the requisite access to lawyers and media and the lack of “a culture of free speech” in Canada meant that “unlikely allies” were out of the question.¹⁷¹ He also noted the “grassroots people [that] got involved on the Internet” within a crucial blogosphere and the wide spectrum of sympathetic media coverage that then followed.¹⁷² As he explained, “other media made it their fight in a way that they had not made other defendants their fight.”¹⁷³

Eliadis discounts the effect of these bloggers, claiming that they “were playing on the tails of legitimate journalism.”¹⁷⁴ From a distance this is certainly true. Compared to the level of seriousness and exposure, a handful of blogs pale in comparison to Canada’s mainstream media. But for those that followed the story from its infancy, it was difficult to miss how the alarmist rhetoric that began in the blogosphere came to inhabit the most respected op-ed pages of the country. Jennifer Lynch, the former head of the CHRC,

¹⁶⁹ Levant, Personal Interview.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Eliadis, Personal Interview.

specifically cited “Ezra Levant and his blogging allies” for the ‘misinformation’ that was circulating regarding the organization.¹⁷⁵ She even claimed during the controversy that there was hesitancy among supporters of the legislation to make public statements “because they know they’re going to be attacked.”¹⁷⁶ This “full frontal assault” she described even led the CHRC to enlist the support of an international public relations firm to combat the personal attacks, lies and distortions.¹⁷⁷ Moon would describe it as a “ruthlessly successful ‘propaganda campaign’” before testifying at a House of Commons Committee examining s. 13.¹⁷⁸

Kay does not see the debate bringing more fringe discourses into the mainstream but does think the “issue did provide a concrete rallying point for about a half dozen of the country's most strident right-wing bloggers.”¹⁷⁹ Columnist for the *Ottawa Citizen*, David Warren, said the “issue is proving too complex for conventional media reporting” and suggested readers of his column should consult the blogs of Steyn, Levant and Kate McMillan (*Small Dead Animals*) for “essential sources of information” regarding the issue (he did also mention that the *National Post* had made a valiant effort trying to stay up to date).¹⁸⁰ Brean noted that opposition to hate speech laws and s. 13 in particular

¹⁷⁵ Brean, “Canadians ‘misinformed on hate speech; Human Rights’.”

¹⁷⁶ Ibid. Brean also cites an anonymous source who said that the hesitancy to speak up among human rights supporters was partially animated by the fact that the *Taylor* case was decided by a narrow majority and they didn’t want to further jeopardize the existing protections of hate speech. See: Brean, “Scrutinizing the human rights machine”, *National Post*, March 22, 2008.

¹⁷⁷ Brean, “Former human rights chief dies months after commission stripped of mandate to fight hate speech”, *National Post*, November 18, 2013, Available at: <http://news.nationalpost.com/news/canada/former-human-rights-chief-dies-months-after-commission-stripped-of-mandate-to-fight-hate-speech>.

¹⁷⁸ Brean, “A serious debate on hate speech laws; Richard Moon; Critic of Section 13 set to testify before Commons committee”, *National Post*, October 24, 2009.

¹⁷⁹ Kay, Personal Interview, December 17/18, 2014.

¹⁸⁰ David Warren, “Standing up to the ‘human rights’ harassers”, *Ottawa Citizen*, May 3, 2008, Available at: <http://www.canada.com/ottawacitizen/news/story.html?id=bd8f09d-06f7-4738-a2f0-f725fe7ad55b>.

migrated over time, originally beginning as a fight among assorted neo-Nazis, skinheads and White nationalists since they had earlier been the consistent target:

It went from the fringe, the extreme fringe, to the ideological fringe on the Internet, to the mainstream, in the papers and the Commons, and it just got a life of its own. That's what I mean when I say it's accidental. No one really thought ahead on any aspect of this.¹⁸¹

These individuals were not your average bloggers.¹⁸² As Doug Saunders mentions, the post-9/11 hysteria that reinvigorated the shrieks of 'Eurabia' "inspire[d] a set of extremist blogs", some of which are distinctly Canadian (although he doesn't mention these in his book).¹⁸³ Levant described two of these leading sites, the ones run by Pamela Geller and Robert Spencer, as "prolific", but argued that these American figures had little to do with debate in Canada.¹⁸⁴ You might get the sense from Levant's explanation of how the backlash began that this 'online army' that he encouraged was quite banal. In reality, the half-dozen or so bloggers who were the most influential during the debate, and kept feeding the story, were deeply problematic, to put it mildly.¹⁸⁵ Ken Whyte, Editor of *Maclean's* since 2005, once said:

We spent a good part of 2008 defending ourselves against a campaign by a handful of Muslim activists to have our journalism branded hateful and racist... These

¹⁸¹ Brean, Personal Interview.

¹⁸² There is a difference, however, between the handful of bloggers that were influential during the s. 13 debate and the much less influential assortment of Mark Lemire supporters, some of which are certainly what Brean calls the 'extreme fringe'.

¹⁸³ He explicitly mentions Ned May (Gates of Vienna), Pamela Geller (Atlas Shrugs) and Robert Spencer (Jihad Watch). Saunders, p. 19. Geller is likely the most recognized name, earlier garnering much media coverage in her campaign opposing the proposed Islamic community centre in New York ('Ground Zero Mosque'). See: Kumar, pp. 165-169. Gregory refers to her as the "ruler of a fiefdom". Gregory, p. 51.

¹⁸⁴ Levant, Personal Interview. There is, however, certainly a cross-pollination effect between American and European blogs within the 'Eurabian genre' and their Canadian counterparts. A basic perusal of any one of the latter will yield a number of sources and links to more popular sites.

¹⁸⁵ They loosely include: *Blazing Cat Fur*, *Five Feet of Fury*, *Small Dead Animals*, *Eye On A Crazy Planet*, *Pointe de Bascule*, and *Scaramouche*. Levant mentions the first three explicitly in *Shakedown* (p. 158).

bloggers, long before the mainstream media, recognized the complaints as a politically-motivated threat to free expression and open journalistic inquiry.¹⁸⁶

When you take into consideration their writings in their full context, it is startling to look back and see Whyte, the editor of one of Canada's oldest and most respected publications, publicly lauding bloggers whose discriminatory beliefs are easy to ascertain from a brief perusal of their websites.¹⁸⁷ Further, Whyte specifically mentions Kathy Shaidle, whose site, *Five Feet of Fury*, has repeatedly featured racist content.¹⁸⁸ Nonetheless, to characterize the migration of the issue from the ideological fringe of cyberspace to the mainstream was not simply an 'accident', as Brean states. White nationalist groups, for example, would surely not be able to find the political capital to move their opposition of s. 13 into the mainstream, but a potent critique framed in the language of an alleged Islamic infiltration would give the story its initial spark. Kay explains how the issue unfolded and how media technology was so critical:

[Levant] and [Steyn] both know a good issue when they see one, and both of them publicized their cases using columns and social media. I think this was something new, too: The existence of blogs and social media meant that people who were being investigated by human-rights tribunals had an instant network and audience for their views. Back in the 1990s, on the other hand, the sort of people the human-

¹⁸⁶ John Intini, "Macleans.ca Interview: Kenneth Whyte", *Maclean's*, January 9, 2009, Available at: <http://www.macleans.ca/culture/the-interview-kenneth-whyte-2/>.

¹⁸⁷ Intini. "Kenneth Whyte". In the same interview, he said: "I'm deeply grateful for their support—it was shaping up as a lonely fight until the bloggers got involved."

¹⁸⁸ Liberal Party strategist Warren Kinsella had famously aggregated some of Shaidle's most egregious (and racist) statements from her blog and has since made them public in multiple venues, including his personal website. He also unsuccessfully attempted to get her appearance on Steve Paikin's *The Agenda* (TVO) cancelled. Paikin later blogged about the incident and included the list supplied by Kinsella and published elsewhere. See: Steve Paikin, "Shaidle, Kinsella, and More", *The Inside Agenda Blog*, February 20, 2009, Available at: <http://theagenda.tvo.org/blog/agenda-blog/shaidle-kinsella-and-more>. Although many of the links to Shaidle's blog have been severed (along with others that were prompted by legal troubles), this is another example of her rhetorical style: "What we're saying about radical Muslims is true. To pretend otherwise is to perform the intellectual equivalent of hiding Nazis in your attic during World War II." See: Kathy Shaidle, "Dear Mr. Siddiqui", *Five Feet of Fury*, June 15, 2008, Available at: <http://www.fivefeetoffury.com/2008/06/15/192/>. Also, see: Randy Richmond, "Controversial right-wing blogger invited to speak at London event", *London Free Press*, April 11, 2009.

rights tribunals tended to go after were isolated oddballs and anti-Semites who communicated with each other through amateurish pamphlets and 1-800 numbers... And so they used technology to totally turn the tables on human rights commissions.¹⁸⁹

Kay is right on this point but he overemphasizes the power of social media relative to the potency of the message itself. Had White nationalists had more Twitter and Facebook followers and solid connections in the media world, it is doubtful they could have orchestrated a public revolt against hate speech legislation. Similarly, on the other side of the equation, Aboriginals, Jews, gays and lesbians or other identifiable groups who have utilized hate speech legislation were not subject to an inquisition in which their mere invocation of existing law was misconstrued as political warfare. Asked how the fact that the complainants in the hate speech cases were Muslims contributed to the controversy itself, Levant “give[s] an ounce of credit” to those that trouble the sharp criticism of the law once Muslims utilized it.¹⁹⁰ But he frames s. 13 as something possibly brandished against “political enemies”, arguing that the CIC saw themselves as using the law in the same way that Jewish groups had earlier fought antisemitism.¹⁹¹ Bernie Farber, former head of the Canadian Jewish Congress, told Siddiqui that the controversy had very much to do with the fact that the complainants were Muslims. “When non-Muslims were using it, nobody really cared”, he said.¹⁹² Therefore, focusing on how social media was able to change the political environment belies the fact that the actual messages themselves (that were no doubt calculated in a strategic manner) found an incredibly receptive audience

¹⁸⁹ Kay, Personal Interview.

¹⁹⁰ Levant, Personal Interview.

¹⁹¹ Ibid. There is a conflation here between what Levant considered ‘political enemies’ and those that have been the subjects of hate speech complaints.

¹⁹² Siddiqui, “Free speech cannot be an excuse for hate”, *Toronto Star*, June 15, 2008, Available at: http://www.thestar.com/opinion/2008/06/15/free_speech_cannot_be_an_excuse_for_hate.html.

for reasons other than sound and factual argumentation. The natural question, then, is why was this audience so receptive? Here, the public perception of the complainants that was constructed by the backlash's protagonists was crucial.

3.3: Soharwardy Opens Pandora's Box

It is important to note that, technically, the complaint filed against the *Western Standard* by Soharwardy did not engage the issue of s. 13 because it dealt with published material as opposed to telephonic communications (or the Internet). It is telling that despite this fact, Soharwardy and his complaint were so influential in developing opposition to s. 13, a law that actually had nothing do with his complaint. According to Eliadis, had the *Western Standard* complaint been the sole focus, the entire hate speech debate would have dissipated quite rapidly. In her view, the debate often witnessed a "bait and switch tactic" by funnelling outrage from a largely frivolous complaint into the more serious *Maclean's* complaint.¹⁹³ Likewise, Brean also thought Soharwardy's complaint had little chance of success: "There was nothing at stake in that. That complaint was never going to pass."¹⁹⁴ Yet, the perceived impropriety of the imam and his serious inability to counter his negative media perception contributed to a general sentiment that something needed to be done regarding hate speech laws in Canada.

Asked why he decided to file the complaint in the first place, Soharwardy explained his motivation by referring explicitly to one specific cartoon republished by the *Western Standard* that depicted the Prophet Muhammad with a bomb in his turban:

¹⁹³ Eliadis, Personal Interview.

¹⁹⁴ Brean, Personal Interview.

You [Levant] are presenting me as a terrorist and I am not a terrorist. One billion Muslims are not terrorists. You are inciting hate towards Muslims [...]. I believe strongly, I still believe, that Ezra Levant tried to incite violence, tried to incite hate against Muslims, while publishing the cartoons. It was not an offence. It was hate.¹⁹⁵

Whether or not his complaint contained the necessary merit to be successful is a different question than whether or not he has a right to invoke existing Canadian laws. Human Rights Commissions receive numerous vexatious complaints every year but their mandate is to seriously examine each of these before determining whether they should proceed. Moon questions why the public should brand these attempts as “illegitimate or improper”, because a “commit[ment] to the rule of law [means] people have [that] right”.¹⁹⁶

Within weeks of Levant posting his video and it going viral, Soharwardy would withdraw his complaint.¹⁹⁷ Levant thinks this decision was disingenuous and had more to do with the poor optics of complaint. He withdrew it because he “realized he was losing the political battle there and he was looking like a real asshole, which he is”.¹⁹⁸

Soharwardy said three factors led to his decision to withdraw the complaint. First, he noted that the complaint filed by the CIC against *Maclean's* was dismissed by the BC Human Rights Tribunal.¹⁹⁹ Second, he says that he “consulted with some of [his] Christian and Jewish friends” who advised him that he had already achieved his goal of “creat[ing] awareness in the minds and hearts of Canadians” and, further, that there was strong public doubt regarding the appropriateness of human rights legislation to impinge

¹⁹⁵ Soharwardy, Personal Interview.

¹⁹⁶ Moon, Personal Interview.

¹⁹⁷ Andrew Coyne, “Human rights racket”, *Maclean's*, April 2, 2009, Available at: <http://www.macleans.ca/news/canada/human-rights-racket/>.

¹⁹⁸ Levant, Personal Interview.

¹⁹⁹ Soharwardy, Personal Interview.

upon speech.²⁰⁰ Lastly, in response to many Muslims worldwide perpetrating violence, he “wanted to show the Muslims that the path they have taken was wrong and my path was a peaceful path, a legal path.... Why don’t you use the legal system to protest?”²⁰¹ He says the utilization of hate speech laws “backfired on Muslims” because of wider social, political, and cultural environment that was still largely uninformed if not suspicious of Muslims.²⁰² Overall, Levant and Steyn were successful in turning the tide of public opinion because of, in Soharwardy’s view, the timing that took advantage of this lack of “confidence” and “trust” in the Canadian Muslim community.²⁰³ He thinks that if a similar controversy had erupted before 9/11, for example, the movement to repeal s. 13 would have had many more obstacles.²⁰⁴

In *Shakedown*, Levant illustrates vividly that he was not interested in mediating the complaint whatsoever, even somewhat bragging that he refused to shake the hand of the AHRC employee who had the unfortunate experience of enduring the tirade that would later become a *YouTube* sensation.²⁰⁵ Instead, he wanted to spin the opportunity to his maximum political benefit by painting Soharwardy as a radical Islamist with antithetical values that were unwelcome in Canada:

The HRC offered to set up a ‘conciliation meeting’ in which I would sit down with Soharwardy and the Edmonton radicals and try to hash things out. I told the commission that there could be only one form of ‘conciliation’ that I would accept:

²⁰⁰ Soharwardy, Personal Interview.

²⁰¹ Ibid.

²⁰² Soharwardy, Personal Interview.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ It is also telling that Shirlene McGovern, who conducted the initial interview, “asked to be reassigned” within a mere 10 days. Coyne. Levant also said of the encounter: “When the state comes to you and asks if you’re reasonable that answer is: ‘No, I’m not reasonable. I’m actually as unreasonable as I want to be.” Levant, Personal Interview.

that these complainants reconcile themselves to Canadian values, and leave their fascist, Saudi-style approach to free speech overseas.²⁰⁶

Levant says Soharwardy “is a censor.”²⁰⁷ Yet, unbeknownst to him, he would unwittingly catalyze a wide-ranging debate in Canada in which he was “the demon”, and Levant thinks this is clear by looking at news coverage across the country.²⁰⁸ Soharwardy was not free of controversy himself, as Levant²⁰⁹ and others have pointed out, including allegations that women were discriminated against in his mosque.²¹⁰ There is no question that he has made public statements, some ranging on the bizarre,²¹¹ that should attract legitimate criticism. He has also not been the most forthright when prompted for explanations, giving the impression that he lacks the good faith that would be expected of someone seriously engaged in a public debate. However, insinuating that he is part of a global Islamic conspiracy to squelch criticism of Islam (with or without its ‘radical’ qualifier) is simply incorrect.

But more important than this factual inaccuracy is the rhetorical significance of tying Soharwardy to a supposedly concerted campaign of Islamic deception in the West. Before the complaint had been filed, Levant made it clear that Muslims who took issue with the *Western Standard’s* decision to republish the cartoons “don’t ‘understand

²⁰⁶ Levant, *Shakedown*, p. 141.

²⁰⁷ Levant, Personal Interview.

²⁰⁸ Ibid.

²⁰⁹ Levant, *Shakedown*, pp. 151-152.

²¹⁰ Interestingly, Soharwardy says that he “felt like a victim of the human rights process”. Gillis, “Human rights commissions are for questions of housing and employment – not for disputes about freedom of speech”, *Maclean’s*, July 28, 2008. Corbella, “Imam undercuts himself by twisting his own words”, *Calgary Herald*, February 16, 2008, Available at: <http://www.canada.com/story.html?id=5162d29c-ffe4-4f4a-8d25-fe5e097c0963>.

²¹¹ The most incredible is a press release sent out by the Islamic Supreme Council of Canada (which was founded by Soharwardy) alleging that Christian humanitarian workers were proselytizing and kidnapping Muslim children in tsunami wrecked Indonesia in 2005. In 2000, he also compared the treatment of Palestinians by Israel to the Nazis.

Canadian values”²¹² Looking back, Levant said Soharwardy was “just some boob” that assisted the movement by “set[ting] in motion a chain of events.”²¹³ But there is something of an inconsistency here. Although he and others were largely successful in branding Soharwardy as an extremist, radical, fundamentalist and overall threat to Canadian values, Levant doesn’t think he’s particularly intelligent or savvy. How can we reconcile the overwhelmingly negative²¹⁴ public perception of Soharwardy with Levant’s dim assessment? On the one hand, it appears as though one would be wasting one’s time in taking him seriously, but on the other hand, he is characterized as a threatening extremist who deserves closer scrutiny. Levant describes Soharwardy’s complaint as such:

... a mishmash of personal braggadocio, Islamic supremacism, and plain old whining – all handwritten in a surprisingly broken English for someone who had been living in Canada for twenty years. It was riddled with spelling errors, including in my name and the name of my magazine. But the Islamofascist nature of his thinking shone through anyway.²¹⁵

Soharwardy said that he was not surprised by the reactions to the complaint because of the lingering effects of 9/11 and the ever-looming spectre of terrorism. He understood that Canadians have “sensitive sentiments against Muslims” due to many acts of violence ostensibly carried out in the name of Islam.²¹⁶ He noted that the “media campaign against Islam” was at its peak around 2005 and 2006 because of the ongoing digestion of 9/11’s significance and then the London and Madrid bombings.²¹⁷ Although

²¹² Emma Poole, “Muslims may sue over cartoons: Images creating stress; publisher undeterred”, *Calgary Herald*, February 13, 2006.

²¹³ Levant, Personal Interview.

²¹⁴ Corbella, “Imam undercuts himself by twisting his own words”.

²¹⁵ Levant, *Shakedown*, p. 136.

²¹⁶ Soharwardy, Personal Interview.

²¹⁷ Ibid.

he thought that secular groups might not stake out a firm position, Soharwardy was disappointed that other religious groups and organizations didn't publicly weigh in on the debate. Especially frustrating for him was the tepid response from Canadian Muslims. While he noted that many Muslims privately lent their support through personal statements and good will, in the public sphere there was a noticeable silence.²¹⁸ Most importantly, he says that "[Levant] projected [him] as somebody who's against free speech" and points to the history of hate speech cases where other minorities including Jews, Aboriginals, and gays and lesbians were not similarly castigated as challenging fundamental principles of free speech and expression.²¹⁹

The s. 13 affair was also an instructive example of how hate speech legislation risks the 'martyr effect'. This made freedom of speech (and hate speech) a particularly potent medium for Islamophobic discourse because it is already mediated by heavily contested politics and almost guarantees a political spectacle if the subject of the matter informs popular discourse or touches upon wider societal anxieties.²²⁰ Even more interesting is the fact that Soharwardy reconsidered his position after the backlash against s. 13 seemed insurmountable, withdrawing his complaint at the AHRC and saying: "I now am of the view that this matter should have been handled in the court of public opinion."²²¹ Steyn and Levant ironically positioned themselves as victims of a variety of insidious governmental overreaches. Levant's conservative publication, the *Western Standard*, was actually ailing in the period preceding his decision to republish the Danish

²¹⁸ Soharwardy, Personal Interview.

²¹⁹ Ibid.

²²⁰ Although this is a topic too lengthy to explore here, hate speech prosecutions and perhaps even non-penal legislation can increase the visibility and influence of previously marginalized discourses and imbue defendants with an undeserved victim status.

²²¹ Soharwardy, "Why I'm withdrawing my human rights complaint against Ezra Levant". Keith Bonnell, "War of Words over hate speech heating up", *Canada.com*, December 7, 2008, Available at: <http://www.canada.com/words+over+hate+speech+heating/1044629/story.html>.

cartoons and eventually shut down in the fall of 2007, despite the added exposure and subscribers derived from the affair.²²² Jonathan Gatehouse believes that had it not been for the cartoons and the AHRC complaint, Levant's trajectory as a public figure might have receded into obscurity. Levant's confrontational style and dedicated agitating would turn a formal human rights complaint first into a conservative political spectacle and then into a new career.²²³ For someone ideologically committed to attacking the presumed excesses of government bureaucracy, what better target than the low hanging fruit of already "vulnerable" Human Rights Commissions due to their "'reputational deficit'"?²²⁴ The publicity throughout the ordeal would allow him to become a 'brand' in his own right, with no shortage of journalistic imprimatur, however tenuous, bestowed by primetime status at the newly launched *Sun News Network* and the commercial success of his books.²²⁵

3.4: Eurabia Meets Canuckistan

The lesson from the Cold War is: If you give in to totalitarian impulses once, new demands follow. The West prevailed in the Cold War because we stood by our fundamental values and did not appease totalitarian tyrants.²²⁶

Fleming Rose, Editor, Jyllands-Posten

The quote above is from the editor of the newspaper that in 2005 first published the Danish cartoons of Muhammad that have since sent ripples throughout the world. The

²²² Jonathan Gatehouse, "Ezra Levant: The right-wing gadfly who loves to offend", *Maclean's*, January 12, 2013, Available at: <http://www.macleans.ca/news/canada/going-on-the-offensive/>.

²²³ Kay said the ordeal "turbocharged" Levant's career. Kay, Personal Interview. Eliadis thought Levant's book *Ethical Oil* did more for his career but nonetheless his response to the hate speech complaint "gave him the traction" to acquire "credibility". Eliadis, Personal Interview. Moon thinks it "really boosted [Levant's] career dramatically. He was really not a kind of public figure at that point and he made the most of it for sure." Moon, Personal Interview.

²²⁴ Eliadis, *Speaking out on Human Rights*, p. 11.

²²⁵ Gatehouse.

²²⁶ Rose, "Why I Published Those Cartoons".

limits of free speech and expression in the West have not just been operationalized as one front in the War on Terror, but a much broader civilizational struggle, one that has played itself out discursively across the media spectrum. Towards the end of Said's *Covering Islam* he laments the recurrent personalities, largely unqualified yet amplified, that make up the bulk of current affairs discussions of 'Islam' in the United States.²²⁷ Unfortunately, the same problem presents itself over three decades later north of the border, and it only seems to have been intensified by recent events. At times it appears as though the wind is at the back of those who have been arguing, some for decades, that the West must reassert its civilizational confidence in order to overcome the new totalitarian threat posed by 'Islam'.

Shortly after the Charlie Hebdo massacre, one of *CBC*'s main political affairs programs – *Power & Politics* with Evan Solomon – hosted Steyn to discuss the tragedy and its wider implications. In the interview Steyn is confronted by Solomon who suggests that in the past he has unjustifiably raised concerns of disproportionately high birth rates among Muslims in Europe and elsewhere. Steyn counters: "once you get an Islamic population up to a certain size it poses certain cultural challenges on things like freedom of speech."²²⁸ Solomon takes him to task for overly broad generalizations but he is nonetheless strident, claiming that, "until moderate Muslims actually are willing to do something about [extremist violence] we are right to put a big question mark over Islam's ability to function in pluralistic advanced society."²²⁹ He then states that the 'Muslim world' lacks "the same acceptance of intellectual inquiry" and that those who use

²²⁷ Said, *Covering Islam*, p. 152.

²²⁸ Power & Politics with Evan Solomon, "Mark Steyn, Mohamed El Rashidy on religious sensitivity and freedom of expression", *CBC News YouTube Channel*, January 8, 2015, Available at: <https://www.youtube.com/watch?v=HUq-Ikb65bw>.

²²⁹ Ibid.

violence as opposed to debate are the products of “an intellectually defective culture.”²³⁰

How does one of Canada’s most widely viewed current affairs shows deem Steyn an authoritative figure to discuss one of the most important contemporary issues of our time?²³¹ Does the mere controversy of an author’s arguments connote automatic trustworthiness?

Citing the work of Christopher Bail, Bangstad notes that Islamophobic discourse in America – that portrays Muslims as ‘enemies’ after 9/11 – shifted from the periphery of acceptable debate into the mainstream.²³² Fuad Shaban has also assiduously taken note of the deterioration of American political discourse regarding Muslims and Islam post-9/11.²³³ Take, for example, an editorial from *The Economist* that replicates the supposed ‘demographic threat’ posed by Muslims in Western countries. It opens with the question: “Are Muslims taking over the world, or at a minimum, transforming Europe into Eurabia?”²³⁴ The editorial cites a Pew Research Centre report that projects that by the year 2030, the world’s Muslim population is set to increase from 1.6 billion (2010) to 2.2 billion, including a European increase from 6% to 8% of the total population. While the latter is described as “hardly the stuff of nightmares” it casts the issue in civilizational

²³⁰ Power & Politics with Evan Solomon, “Mark Steyn, Mohamed El Rashidy on religious sensitivity and freedom of expression”, *CBC News YouTube Channel*, January 8, 2015, Available at: <https://www.youtube.com/watch?v=HUq-Ikb65bw>.

²³¹ Mohamed El Rashidy from the Canadian Arab Federation spoke during the same segment but after Steyn. Regardless, the juxtaposition of two opposing voices does not necessarily entail ‘balance’, especially when a finite time period is allotted to respond to generalizations that require context and complication.

²³² Bangstad, p. 29. Christopher A. Bail, “The Fringe Effect: Civil Society Organizations and the Evolution of Media Discourses about Islam since the September 11th Attacks”, *American Sociological Review*, Vol. 77: 6, 2012, pp. 855-879.

²³³ Fuad Shaban, “Islam in the US: The contemporary scene” in Tareq Y. Ismael and Andrew Rippin, *Islam in the Eyes of the West: Images and realities in an age of terror* (New York, NY: Routledge, 2010), pp. 76-100.

²³⁴ *The Economist*, “Islam and demography: A waxing crescent”, January 27, 2011, Available at: <http://www.economist.com/node/18008022>.

terms by problematizing the “articulate and effective political bargainers” that Western Muslims may become in the future, thus creating difficulties for accommodation.²³⁵

Bangstad laments that a similar process has likely taken place in Europe and we can say, to a certain extent, that the same can be said for Canada. Although Canada’s proximity to American cultural and political discourse regarding Muslims and Islam has meant a steady flow of American Islamophobic authors and pundits, the former features its own distinct voices critical of ‘militant Islam’, including a handful who went on to head their own daily primetime shows (like Levant’s *The Source*) when the *Sun News Network* was launched.²³⁶ There is also a small yet crucial coterie of bloggers whose stories are taken up by *Sun* newspapers and television hosts and then often echoed through more mainstream journalistic outlets if controversy ensues.²³⁷

Perhaps the most noteworthy example of the demographic threat thesis emanating from Canada is Steyn’s book excerpt that appeared in *Maclean’s* magazine and prompted the human rights complaints detailed above. This event was significant because it both brought a previously fringe argument into a mainstream Canadian publication and was successful in igniting a wide ranging debate that went much further than the substantive

²³⁵ *The Economist*, “Islam and demography: A waxing crescent”, January 27, 2011, Available at: <http://www.economist.com/node/18008022>.

²³⁶ Michael Coren, Ezra Levant and Brian Lilley hosted daily primetime shows on the *Sun News Network*; *The Arena*, *The Source*, and *Byline*, respectively. Each show routinely featured segments and guest speakers dealing with Muslims and Islam in Canada and other Western countries. Coren, for example, featured a weekly ‘Jihad Watch’ segment in which Robert Spencer was a regular guest.

²³⁷ *Sun News Network* especially generated some of their stories from ideological counterparts in the Canadian blogosphere, some of which contains racist and discriminatory content too lengthy to detail here. A prominent example of a story beginning in the Islamophobic blogosphere and making its way into mainstream publications is the Toronto District School Board’s alleged ‘Mosqueteria’, in which a school used its cafeteria to accommodate Muslim prayers during Friday afternoons in an attempt to limit students not returning after leaving to pray elsewhere. See: Emma Teitel, “Opposing prayer in Toronto public schools, with dignity”, *Maclean’s*, July 27, 2011, Available at: <http://www.macleans.ca/news/canada/opposing-prayer-in-toronto-public-schools-with-dignity/>. Shaidle, “Menstruating at the Mosqueteria”, *Taki’s Magazine*, July 18, 2011, Available at: http://takimag.com/article/menstruating_at_the_mosqueteria/print#axzz3OjRxUFuT.

claims of the excerpt. Steyn writes that Europe is undergoing a “remorseless transformation into Eurabia”, a product of the “serious global ambitions” of Islam.²³⁸ He also quotes Muammar Gaddafi and Mullah Krekar who both approvingly cite the disproportionately higher birthrates of Muslims in the West, the latter describing European Muslims as breeding like mosquitos.²³⁹ The subtext of his argument is that Europe provides an instructive example²⁴⁰ for other Western countries that share the same cultural values. Because the penetration of ‘Islamic values’ into Canada is relatively low compared to European countries, there is still an opportunity to curtail immigration from countries deemed antithetical to liberal values and dismantle the tolerant excesses and moral relativism of Canadian multiculturalism. His caveat²⁴¹ is, predictably, that surely *not all* Muslims embody a threat to Western civilization, but ‘enough’ to warrant concern:

Time for the obligatory ‘of courses’: *of course*, not all Muslims are terrorists — though enough are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle. *Of course*, not all Muslims support terrorists — though enough of them share their basic objectives (the wish to live under Islamic law in Europe and North America) to function wittingly or otherwise as the “good cop” end of an Islamic good cop/bad cop routine. But, at the very minimum, this fast-moving demographic transformation provides a huge comfort zone for the jihad to move around in.²⁴²

²³⁸ Steyn, “The Future Belongs to Islam”, *Maclean’s*, October 20, 2006, Available at: <http://www.macleans.ca/culture/the-future-belongs-to-islam/>.

²³⁹ Unknown to most North Americans, Krekar is a radical Sunni Kurdish scholar who settled in Norway as a refugee in the early 1990s. He has gained much attention in Scandinavia due to his implication in the militant group Ansar al-Islam and high profile arrests and trials.

²⁴⁰ For example, France, due to its colonial legacy in North Africa, has historically had a much longer history of immigration from Muslim majority countries.

²⁴¹ Scholars who have examined discriminatory discourse have sometimes called this a ‘disclaimer’, which precedes speech by political figures “by first presenting [them] in a positive way, for example as liberals, as tolerant and as democratic”. See: Wodak in Wodak & Jones (Eds.), p. 55, 65.

²⁴² Steyn, “The Future Belongs to Islam”.

The ‘Eurabia genre’, as Bangstad calls it, is “profoundly conspiratorial and apocalyptic”, alleging that Europe is experiencing a Trojan horse in the form of Islamic immigration that will eventually dilute both the demography and culture of White countries with increasing calls for ‘Islamic rule’ or ‘sharia law’.²⁴³ Saunders sees Eurabia as an idea that, by the time Breivik committed his atrocity, “had become mainstream – a set of arguments that had been playing out on the bestseller charts, blog sites, opinion pages and 24-hour news networks of Europe and North America for a decade at least.”²⁴⁴ In its faux academic veneer, the narrative was arguably created by Bat Ye’or (Gisele Littman), who argued that a Euro-Arab axis was solidified after the 1973 Oil Crisis.²⁴⁵ In her writings, the Euro-Arab axis is represented as a “consciously designed political project”, not a mere consequence of immigrant flows.²⁴⁶ Saunders has somewhat amusingly pointed out that the vaunted Euro-Arab Dialogue initiative that Littman decries as Arabian colonialism is, after all, functionally irrelevant. He writes:

In 1979, after only four meetings, the Dialogue was suspended. Attempts to relaunch it in 1990 and 2008 were widely regarded as failures. It has never had any policy power and wields no political influence. In fact, it is so universally regarded as an irrelevance that it was overshadowed by two later efforts to improve relations between Europe and its Middle Eastern and North African neighbours, the EU’s 1995 Barcelona Process and French president Nicolas Sarkozy’s 2008 Union for the Mediterranean.²⁴⁷

²⁴³ Bangstad, p. 144.

²⁴⁴ Saunders, p. 12.

²⁴⁵ Bat Ye’or, *Eurabia: The Euro-Arab Axis* (Madison, NJ: Fairleigh Dickinson University Press, 2005). Saunders, pp. 15-19.

²⁴⁶ Carr, p. 6.

²⁴⁷ Saunders, p. 16.

Although eerily reminiscent of historical antisemitic conspiracy theories,²⁴⁸ Eurabia would eventually be embraced by a much wider audience following 9/11, especially when it satiated a particular desire to battle ‘Islamic radicals’ on home turf.²⁴⁹ Although the ‘Eurabia genre’ speaks of a specific European context, its general theme is present in much of the conspiratorial writings on supposed Western Islamic infiltration.²⁵⁰ Radical Muslims are parasitic on the undeserved freedoms and technologies of a liberal democratic society, “feeding off Western ingenuity while plotting to destroy it”.²⁵¹ If one were attempting to dilute and eventually destroy Western civilization, why not surreptitiously attack one of its most cherished principles – free speech – by abusing the naïve tolerance of Canadian multiculturalism? Recounting a speech Levant had given dealing with free speech in Canada, Gatehouse mentions the ‘soft jihad’ Levant refers to; a threat to free speech emanating from intolerant newcomers to Canada potentially abusing non-penal human rights legislation to silence and intimidate critics.²⁵²

When asked if concerns about Muslim integration or immigration affected the hate speech debate, Kay thought it did. According to him, “[t]here were a lot of conservatives (including some now) who believed that Canada and other Western nations are at risk of being Islamized — or taken over by shariah.”²⁵³ He referenced his previous writings in which he refers to these concerns as “overblown” and attributes this as “one

²⁴⁸ *The Protocols of the Elders of Zion* was a Tsarist forgery alleging a Jewish cabal aiming for world domination. First published in the early 20th century, it came to inform antisemitic tropes and is still a common theme among neo-Nazis, Holocaust deniers, and Zionism conspiracy theorists.

²⁴⁹ Bangstad, p. 146. Carr, p. 9.

²⁵⁰ Kumar believes that after 9/11 the language of Islamophobia shifted to highlighting the ‘enemy within’, a discourse more concordant with the European experience. Kumar, p. 159.

²⁵¹ O’Rourke, p. 51.

²⁵² Gatehouse.

²⁵³ Kay, Personal Interview.

of the reasons why [he] is persona non grata among many red-meat conservatives”.²⁵⁴ Believing that “[i]t’s a problem”, he thinks that in its “worst” manifestations, it mirrors the hysteria of the Red Scare, in which perceived supporters of socialism and/or communism were stigmatized.²⁵⁵ Eliadis refers to these conspiratorial groups of authors as ‘controversy entrepreneurs’.²⁵⁶ She explains that both Steyn and Levant “decided to get on to the bandwagon of characterizing Muslims as a whole as dangerous”.²⁵⁷ She situates them in a wider international group of authors who were taking advantage of a genre that included Niall Ferguson, Ayaan Hirsi Ali and Oriana Fallaci. Levant and Steyn were attempting to import into Canada discourses about Muslims that have been popular elsewhere: “This is the new communism. This is the new threat. This is the new social demographic time bomb for so-called Western civilization.”²⁵⁸

The *National Post*, in particular, was assiduous in echoing many of these themes, sometimes explicitly weaving the fact that the complainants were Muslims into the story, and other times making more nuanced arguments about the progressive waning of the West’s once stoic veneer. The supposed erosion of Western legal norms was cemented in a number of op-eds and articles. Take, for example, Lorne Gunter’s argument regarding Levant’s *YouTube* sensation:

What [Ezra] was reminded of [at the AHRC], almost immediately, is that Canada is no longer an Anglo-Saxon nation. Gone is the robust belief held by our ancestors for 800 years that the citizen is sovereign, that he is free to do as he wishes unless the state can show unambiguously that there is an overriding need to limit his liberty temporarily.²⁵⁹

²⁵⁴ Kay, Personal Interview.

²⁵⁵ Ibid.

²⁵⁶ Eliadis, “The Controversy Entrepreneurs”, *Maisonneuve Magazine*, August 20, 2009, Available at: <http://maisonneuve.org/article/2009/08/20/controversy-entrepreneurs/>.

²⁵⁷ Eliadis, Personal Interview.

²⁵⁸ Ibid.

²⁵⁹ Gunter, “Alberta’s gauntlet of bias”.

Moon also sees Levant and Steyn playing upon stereotypes of Muslims. Levant, he says, argues with a “background idea that Muslims in the West, particularly in Europe, are seeking to impose sharia law upon European nations”.²⁶⁰ Although there is a range of violent initiatives that draw legitimacy from religious interpretation, Levant warns that there are non-violent, more subversive elements of what he calls ‘soft jihad’.²⁶¹ Similarly Steyn also takes advantage of “an all too widely held view that connects Islam with violence.”²⁶² His “vague assertions” regarding Muslims as a whole “reinforce” these misconceptions and “push it along a bit.”²⁶³ In general, Moon thinks that authors such as these are granted a wide margin of appreciation simply because they engage with “ambiguity about... extremist elements in Islam, painting the whole of the community with it.”²⁶⁴

Siddiqui illustrated the particularities of anti-Muslim sentiment between Europe and North America by referencing the relatively higher educations and incomes of American Muslims. Therefore, he sees the rhetoric there less focused around anti-immigrant themes such as the ones more common in Europe. Instead, the United States exhibits “different tactics”, evidenced by the “total hysteria” about the impending takeover via sharia law.²⁶⁵ He calls this “paranoia of the worst kind.”²⁶⁶ It is more sublimated in Canadian society, Siddiqui claims, with the exception of Steyn, Levant and others, but it sometimes emerges in the form of political issues like the proposed Quebec

²⁶⁰ Moon, Personal Interview.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Siddiqui, Personal Interview, January 19, 2015

²⁶⁶ Ibid.

Charter of Values.²⁶⁷ Other North American examples include the Quebec town of Hérouxville that in 2007 “passed a resolution detailing a code of conduct and instructing new immigrants that women were allowed to drive and that the public stoning or dowsing of women in acid was prohibited”,²⁶⁸ and the over two-dozen states that have discussed ‘sharia bans’ in the United States.²⁶⁹

In 2009, both Steyn and Levant wrote books about their battles. Levant’s book, *Shakedown*, lays out his indictment against the human rights commissions, including his two-step plan of ‘denormalizing’ the commissions and then building sufficient pressure politically to get elected officials to act.²⁷⁰ While much of the book focuses on legal and procedural criticisms on non-penal human rights legislation, its overarching theme is portraying s. 13 as an instrument prone to political abuse, and particularly problematic because it could be utilized by a specific group: “[The complaints are] part of an international strategy by Muslim radicals to use liberal, Western laws to make lawfare a form of what I call ‘soft jihad’.”²⁷¹

Muslims in Canada might not use violence, but according to Levant they’re still part of a larger campaign against the West with the aim of ‘Islamization’. His only evidence tying these complaints to a wider campaign comes in the form of international efforts in multilateral organizations by the Organization of the Islamic Conference (OIC). Levant argues that “[t]he hijacking of Canadian law to promote radical Islam is actually

²⁶⁷ Siddiqui, Personal Interview.

²⁶⁸ Siobhan Byrne, “Framing Post-9/11 Security: Tales of State Securitization and the Experiences of Muslim Communities” in Bruno Charbonneau and Wayne S. Cox, *Locating Global Order: American Power and Canadian Security after 9/11* (Vancouver, BC: University of British Columbia Press, 2010), p. 178.

²⁶⁹ Andrea Elliot, “The Man Behind the Anti-Shariah Movement”, *New York Times*, July 30, 2011.

²⁷⁰ Levant, *Shakedown*, p. 157.

²⁷¹ *Ibid*, p. 112.

part of an international strategy proposed by the [OIC]”.²⁷² He refers to efforts by the OIC to address what it sees as rabid Islamophobia in Western societies, including the mocking of religious symbols and figures. Is it a cynical ploy to distract the world’s attention from the abysmal human rights records of some countries with Muslim majorities? Perhaps. But, to assert that the OIC’s initiative has bred vigorous Islamic activists dedicated globally to censoring Western criticism of Islam borders on conspiracy theory.²⁷³ Although Levant doesn’t exactly explain who pulls the strings and how – it is all very nebulous in its operation – it is clear that there is a coherent ‘Islam’ and that its practitioners are attempting to foist its intolerance upon unsuspecting and/or tolerant societies as some sort of uniform strategy.²⁷⁴ Levant also uses the imagery of the War on Terror to make his point, literally constructing the hate speech complaints as one small front in a larger war:

One of George W. Bush’s more persuasive rationales for fighting terrorism in Iraq and Afghanistan was that it took the battle to the bad guys – overseas, away from America itself. The OIC is doing exactly the same thing, but in reverse... It’s a good strategy – keep the West on the defensive, use the West’s legal systems, and prey on the West’s post-colonial guilt and cultural self-doubt.²⁷⁵

This language and framing was reinforced by B’nai Brith Canada, one of the more influential non-governmental voices during the debate. For years the

²⁷² Levant, *Shakedown*, p. 121.

²⁷³ This particular argument bears a striking resemblance to Bat Ye’or’s ‘Eurabia’ thesis that was explored earlier. Further, the ‘soft jihad’ that Levant speaks of sharply overlaps with many of the writings of Eurabia bloggers and activists (especially Geller and Spencer). Other Canadian writers, such as Barbara Kay of the *National Post*, use the same term. She refers to “the relentless push of the soft jihadists in our midst to Islamicize society”. See: Barbara Kay, “The Islamist elephant in the room”, *National Post*, October 2, 2008.

²⁷⁴ Karim makes the point that not only is the ‘diversity’ of Islam ignored, but even the representations of the most intransigent Islamist movements tend to reflect an inaccurate ‘consensus’ among them (regarding the ethics of violence, for example). Karim, “Covering Muslims: Journalism as cultural practice” in Barbie Zelizer & Stuart Allan (Eds), *Journalism After September 11* (New York, NY: Routledge, 2011), p. 138.

²⁷⁵ Levant, *Shakedown*, p. 121.

organization had been one of the driving forces behind enshrining hate speech laws and have been consistent interveners in major hate speech cases.²⁷⁶ In 2008, they revealed that they were themselves the respondent in a human rights complaint in Manitoba that alleged that a conference sponsored by the organization contained Islamophobic hate speech.²⁷⁷ Although eventually dismissed due to a lack of evidence, the complaint was a contributing factor to the sudden reversal in B'nai Brith's approach to non-penal hate speech laws.²⁷⁸ In September of 2008, B'nai Brith submitted a brief to the CHRC titled 'Hate Jurisdiction of Human Rights Commissions: A System in Need of Reform'. The document reflected some of the same language and argumentation of Levant. David Matas, senior legal counsel, said:

On the international scene, we have witnessed again and again the hijacking of United Nations institutions by groups such as the Organization of Islamic Conference (OIC) that embody the principles of political Islam. This group has used its regional voting power to advance a radical agenda that undermines fundamental rights and freedoms and democratic values.²⁷⁹

Steyn's written offering in response to the hate speech complaints is decidedly less technical and sophisticated compared to Levant's.²⁸⁰ It oozes with crude jokes and disparate examples of Western 'tolerance' gone awry, some of which are genuine stories meriting examination if we erase the fact that their sole reproduction here is to trouble the

²⁷⁶ The vast majority of s. 13 complaints, for example, have involved antisemitism. Marvin Kurz and David Matas of B'nai Brith, both lawyers with the organization, have also been influential voices.

²⁷⁷ Brean, "B'nai Brith accused to hate speech", *National Post*, August 29, 2008.

²⁷⁸ Brean, "No basis for B'nai Brith hate charge", *National Post*, March 12, 2009.

²⁷⁹ *Jewish Tribune*, "Canada's institutions 'vulnerable to threat of political Islam': B'nai Brith", September 3, 2008, Available at: <http://www.jewishtribune.ca/uncategorized/2008/09/03/Canada>. Brean adds: "[T]here's an ironic aspect to a group that's been keen in the establishment of these laws to be seen as critical but they were critical because they paid attention." He noted that these allegedly political abuses cast aspersions over the entire non-penal system and that this had led to organization's opposition of this particular aspect for fear of delegitimizing the entire process itself. Brean, Personal Interview.

²⁸⁰ Steyn, *Lights Out: Islam, free speech and the twilight of the west* (Montreal, QC: Stockade Books, 2009).

supposed infiltration of the West by a monolithic Islam. Important claims and assertions that would normally warrant a citation or link are curiously lacking any documentation. Mostly a collection of past articles grouped by theme, it contains little new information except for selected rebuttals of the claims made by the CIC in their dossier submitted during the *Maclean's* case.²⁸¹ An example will suffice to demonstrate some of the rhetorical strategies employed by Steyn in his argumentation. Responding to the section of the CIC document dealing with what the authors believed were gross misrepresentations and innuendos in his review of the Canadian sitcom *Little Mosque on the Prairie*, he claims that around the same time this critique of his work was being publicized, the creator of the show made allegedly offensive remarks. He writes:

Shortly after the above analysis was made public [from the CIC alleging Islamophobia], the creator of the taxpayer-funded “*Little Mosque on the Prairie*” criticized the American sitcom “*Seinfeld*” for “failing to deal with the contentious issue of Jewish settlements in Palestinian territory”. Were they still on the air, I doubt “*Seinfeld*”’s writers would have risen to the bait and done a show about Jewish settlements. However, they might have done a show about being accused of not doing a show about Jewish Settlements. After all, it’s pretty funny when a famous “show about nothing” gets accused of not dealing with geopolitical issues.²⁸²

Steyn is referring to public statements that are widely available and were made during a public address. Here is the same statement attributed to the creator of the show but from a *Vancouver Sun* article written by Douglas Todd:

[Zarqa] Nawaz said her CBC show, which is gently humorous, has been criticized in the media for not dealing more directly with Muslims who are terrorists or

²⁸¹ Khurram Awan, Muneeza Sheikh, Naseem Mithoowani, Ali Ahmed & Daniel Simard, *Maclean's Magazine: A Case Study of Media-Propagated Islamophobia*. See: “Human Rights Complaints Launched Against Maclean's Magazine”, December 4, 2007, *NewsWire.ca*, Available at: <http://www.newswire.ca/en/story/170609/human-rights-complaints-launched-against-maclean-s-magazine>.

²⁸² Steyn, *Lights Out*, 65.

engaging in international armed conflict. In response, Nawaz wondered why commentators never criticized the TV show, *Seinfeld*, which is about a New York Jewish comedian, for failing to deal with the contentious issue of Jewish settlements in Palestinian territory.²⁸³

Ironically, Nawaz was cleverly responding to critics like Steyn who argued that the show is not an accurate depiction of what 'Islam' is actually like.²⁸⁴ He writes of the show:

"That is the point, of course: the Muslims on the show are scaled down, from a global security threat to warm low-key domesticity".²⁸⁵ Steyn's false assertion is calculated to conjure a number of assumptions when the crucial context is missing (ignore for a moment the 'taxpayer-funded' criticism of the show): a) Generally speaking, Muslims dislike Jews; b) Muslims think Jews are collectively responsible for Israeli policy; and c) Nawaz was attempting to 'bait' the creators of *Seinfeld* because they're Jewish. It is also strategic in another sense because it conjures discourses about the Israel-Palestine conflict that are already heavily politicized. In the post 9/11-world, the question of Palestine has been associated with violence, religious extremism and terrorism, often making it a litmus test for acceptable debate and opinions.²⁸⁶

This is overall a shrewd strategy. Let us ignore for a moment whether or not Levant, Steyn, or others actually believe that the *Maclean's* complainants or the CIC think of themselves as part of a global Islamic crusade to insidiously infiltrate the West. But the fact that all of these individuals can be lumped into some uniform international

²⁸³ Douglas Todd, "'Little Mosque' creator talks racism", *Vancouver Sun*, January 14, 2008, Available at: <http://www.canada.com/vancouver/news/westcoastnews/story.html?id=18047276-6e0b-4122-ac30-8543d6c0e797>.

²⁸⁴ Originally printed in *Maclean's* (February 5, 2007). Steyn, *Lights Out*, pp. 59-63.

²⁸⁵ Ibid, p. 62.

²⁸⁶ In this context it also contributes to the essentializing of Muslims. For example, if a Muslim were a critic of Israeli policy (say, settlements in the West Bank) it could be assumed that this opinion is catalyzed by a natural affinity for other Muslims as opposed to a sound judgement based upon the facts. Regarding the construction of Palestine as a litmus test, see: Said, *The Question of Palestine* (New York, NY: Times Books, 1979), p. 50.

conspiracy illustrates the sheer power of this narrative, and the degree to which it can easily trickle into mainstream discourse. Eliadis thinks that civilizational discourses find a receptive environment because they're relatively uncomplicated and unreflexive:

It's 'us' against 'them'. [...] It's barbarians at the gates. It's facile. It's easy. It's appealing to people who are uneducated, who don't know Muslims. It's easy for people to make the jump between what they see on television in terms of extremist, fundamentalist Islam and moderate Muslims in their own communities. It's easy and it's dangerous, and, in my view, it's cowardly.²⁸⁷

Further, it taps into *genuine* fears. There is no shortage of heinous acts all committed ostensibly 'in the name of Islam', ranging from calculated and planned terrorism with the assistance of well-financed extremist groups to lone wolves with acute mental health issues. The lack of an explanation as to who exactly constitutes this global campaign of 'soft jihad' and what their common motivations might be allows these discourses to exploit a general environment in which the ignorant and uninformed fail to make nuanced distinctions. A handful of extremists might connect the dots in the same manner Anders Breivik did, but most will simply imbibe the stereotypical correlation between all things Islam and all things violent and extremist. Levant even goes a step further by invoking religious justifications for Muslims apparently deceiving Westerners:

The use of lawfare against the West isn't a new idea. The Koran itself describes various tactics used by Mohammed that could be seen as a form of 'soft jihad' – tactical moves that promoted his conquests when military means were temporarily impractical. Islamic concepts such as *taqiyya* (strategic deception) and *hudna* (a short-term truce to be observed until the balance of power favours the Muslims) are part of this approach.²⁸⁸

²⁸⁷ Eliadis, Personal Interview.

²⁸⁸ Levant, *Shakedown*, p. 125.

David Tyrer notes that those who deploy Islamophobic rhetoric are relatively more immunized from public critique because Islamophobia fails to conform to typical conceptions of race. In other words, Islamophobia can be uniquely insulated from charges of racism because its proponents can pass it “simply as a critique of abstract religious beliefs and a defence against them.”²⁸⁹ Another variation of this paradigm is the critique of multiculturalism. According to John R. Bowen, “[c]riticizing multiculturalism is attractive because it is more widely acceptable than is directly criticizing Islam.”²⁹⁰ The high profile statements of political leaders in the West who lament the failed integration of sizable Muslim minority populations have further bolstered the acceptability of these proxy critiques. Examples include statements from British Prime Minister David Cameron, German Chancellor Angela Merkel, and French President Nicolas Sarkozy regarding the pitfalls of multiculturalism.²⁹¹ In Canada, politicians have not focused exclusively on a ‘multicultural’ critique as such, but there have been focuses on ‘culture’ as a harbour of antithetical values. This has been theorized as a general trend as ‘biological’ and ‘racial’ criticism has significantly waned in public acceptability. It is what Teun A. van Dijk (and others) refers to as ‘cultural racism’, which tends to exalt “white, Western cultural and civilizational hegemony” while seeking to explain relatively disproportionate social, political and economic power through the ‘cultural’ elements of minority groups.²⁹²

²⁸⁹ David Tyrer, *The Politics of Islamophobia: Race, Power and Fantasy* (New York, NY: Pluto Press, 2013), p. 29.

²⁹⁰ John R. Bowen, *Blaming Islam* (Cambridge, MA: MIT Press, 2012), p. 9.

²⁹¹ “Nicolas Sarkozy joins David Cameron and Angela Merkel view that multiculturalism has failed”, *Daily Mail UK*, February 11, 2011, Available at: <http://www.dailymail.co.uk/news/article-1355961/Nicolas-Sarkozy-joins-David-Cameron-Angela-Merkel-view-multiculturalism-failed.html#ixzz3Wsf5HMwP>.

²⁹² Teun A. van Dijk, *Ideology: A Multidisciplinary Approach* (London, UK: SAGE, 1998), p. 278.

There is also the complicated issue of simply reproducing the most reactionary and inflammatory statements of leaders and movements that frame their politics within a collective Muslim identity. Some leaders within Muslim-majority countries, themselves fearful of populist domestic opposition framed in religious terminology,²⁹³ can exploit the anxiety about ‘Islamic militancy’ among Western countries in order to justify their own repressive regimes and more closely align themselves with Western countries, potentially attracting both foreign aid and a wider margin of appreciation in the context of appalling human rights records.²⁹⁴ Put simply, “[t]hey fan the fears of a monolithic Islamic radicalism both at home and in the West.”²⁹⁵ Likewise, some Islamist movements themselves have explicitly eschewed nationalistic identities in favour of pan-Islamism, seemingly confirming earlier colonial and Orientalist theories of the Middle East and North Africa that assigned stability only to the ‘Muslim’ identifier and therefore questioned realistic possibilities for national consciousness.²⁹⁶ Take, for instance, the bold pronouncement of President Bush following 9/11, that the fight against terror was ‘between good and evil’. In response, Lawrence Pintak humourously observes, “Bin Laden could not have agreed more.”²⁹⁷ The Iranian revolution also provides a useful example:

The opponents and proponents of the Islamic movement [in Iran] were in agreement that 'Islam' itself was a total, unchanging, system, that its precepts

²⁹³ In order to placate this opposition, governments may attempt to introduce more overt religious influences into their discourse and politics. See: Graham E. Fuller, “The Future of Political Islam”, *Foreign Affairs*, March/April 2002, Available at: <http://www.foreignaffairs.com/articles/57806/graham-e-fuller/the-future-of-political-islam>.

²⁹⁴ Esposito & Mogahed, p. 145.

²⁹⁵ Esposito, p. 218.

²⁹⁶ Halliday, p. 110.

²⁹⁷ Lawrence Pintak, “Framing the Other: Worldview, Rhetoric, and Media Dissonance since 9/11” in Elizabeth Poole & John E. Richardson (Eds.), *Muslims and the News Media* (New York, NY: I.B. Taurus, 2006), p. 189.

operated over centuries, in all kinds of societies, and determined the attitudes of diverse people towards politics, sexuality and society. Both sides shared the view of a historically determined, essential 'Islam', which is supposedly able to account for all that Muslims say, do, and should say and should do.²⁹⁸

While we can certainly complicate the construction of simply 'opponents' and 'proponents' of a specific political movement or party with all the necessary contextual and historical contingencies, suffice it to say that *ad infinitum* repetitions of those who allegedly represent 'Islam' (and at face value confirm stereotypes) gives Islamophobia a particular character in relative comparison to other forms of ethnic prejudice. Islamist movements can exploit a number of legitimate grievances: disproportionate support for Israel in Western countries, foreign military intervention (directly such as Iraq, Afghanistan and Libya, or drone strikes), support for repressive dictatorships, and resentment towards individualistic and consumerist culture.²⁹⁹ Therefore, "Islamist propaganda often compounds anti-Muslimism".³⁰⁰ After all, in defence of his excerpt in *Maclean's*, Steyn claimed that he was only accurately representing Gaddafi and Krekar's views.

While this section detailed how the backlash against s. 13 initially began including the ideological arguments underpinning it, a more pressing question is how this discourse found a warm reception within the mainstream. Obviously, op-eds and articles, on the whole, were not repeating verbatim the alarmist rhetoric of Steyn, Levant and their ideological fellow travelers in the blogosphere. But the debate surrounding s. 13 shifted

²⁹⁸ Halliday, p. 111.

²⁹⁹ Aaron Tyler, *Islam, the West, and Tolerance: Conceiving Coexistence* (New York, NY: Palgrave Macmillan, 2008), pp. 2-3, 26-29.

³⁰⁰ Halliday, p. 163. For a more in depth exploration of this topic, what Dietrich Jung calls 'Orientalism in reverse', see: Dietrich Young, "Edward Said, Michel Foucault and the modern image of Islam" in Ismael & Rippin, pp. 15-31.

its contours significantly once journalistic outlets picked up the torch. The Eurabia thesis gave way to a more sophisticated and nuanced argument regarding the need to insulate Canada's cherished values of free speech and expression from politically motivated abuse. The next section examines how the debate changed once it entered the mainstream. Of particular interest is how the discourse largely eschewed crude anti-Muslim rhetoric but nonetheless maintained a principle of free speech as a fundamental element of Western identity in contradistinction to those who were supposedly keen to abuse its benevolence.

CHAPTER 4: IN DEFENCE OF FREE SPEECH

4.1: Pillars of the Debate and the Importance of Media

Figure 1: Pillars of the S. 13 Debate

A fruitful way to understand the various elements of the discourse surrounding s. 13 is by outlining the various pillars that shaped, in one way or another, the contours of the debate. As was previously discussed, the debate certainly privileged certain voices over others, creating a severe imbalance regarding access to popular discourse in the media. For example, the Human Rights Commissions themselves remained mostly on the defensive and in some cases it seemed as though they needed to justify their basic existence. Likewise, the complainants (*Maclean's* three and Soharwardy) received nowhere near the amount of space or time within the media compared to Levant or Steyn. Conversely, both Levant and Steyn had ample opportunity to inhabit the public sphere to present their arguments and push back against the complaints. Salutin argued that, “it’s never been a serious problem making a living as a right-winger in the Canadian or

American media”.³⁰¹ Therefore, he sees pundits such as Levant and Steyn being granted a much larger audience by nature of the fact that the media landscape is structurally predisposed to receive more conservative opinions. To illustrate the point he wondered if it were at all possible for a left-wing version of Levant in Canada, arguing that this is unlikely to be the case because this individual couldn’t sustain him or herself financially.³⁰² Further, while Levant and Steyn were positioning themselves as censored victims of the Canadian human rights bureaucracy, it went unsaid that the two of them “have unusually large access to mainstream media platforms and that was never threatened.”³⁰³

The blogosphere was relatively small in scope and reach, but more mainstream media outlets heavily amplified its impact. NGOs also contributed to the debate but their impact depended upon their status, importance, and, most importantly, their proximity to the government. For example, B’nai Brith was arguably the most influential of all NGOs for a number of reasons. First, the organization has been integral to the creation of hate speech laws in Canada, in general, and has served as an intervener on every major case. Therefore, their status as an organization deeply invested in hate speech laws meant that their change of heart regarding the appropriateness of s. 13 was seen as highly significant.³⁰⁴ Second, B’nai Brith is very closely aligned to the Harper government and could use this proximity to advocate repeal. Other organizations, such as PEN Canada or

³⁰¹ Salutin, Personal Interview, February 4, 2015.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Kay explained the potential strategy behind the scenes of those who had previously been stalwart supporters of hate speech laws: “By the time the government finally got around to getting rid of [s. 13], it had become so discredited that it was in danger of bringing down the whole edifice of human rights tribunals more generally. I think folks like Bernie Farber [of the now defunct Canadian Jewish Congress] realized that if you wanted to prevent human rights commissions from going the way of the dodo bird, you had to get rid of the most unpopular part of their mandate.” Kay, Personal Interview.

the Canadian Civil Liberties Association, exerted a smaller level of influence by demonstrating that there was a diverse set of representative organizations in favour of legislative action.³⁰⁵

Canadian politicians were the final dominos to fall, so to speak, in that they were the ultimate manifestation of a political consensus in Canada. Although momentum built slowly after the two hate speech complaints, the backlash, and especially Levant, publicized politicians who coalesced with the opposition and used this to build further momentum. Similarly, the backlash was also effective in its attempts to create a political environment and discussion where opposing the backlash publicly would have real negative consequences. The self-interest in the media wanting “to extricate the media itself from the application of [hate speech] law in Canada” partially created an environment in which Canadian politicians would see little value in publicly defending s. 13.³⁰⁶ Asked who specifically wasn’t heard from in the debate, Brean thought it was “lawmakers, the people who eventually repealed it.”³⁰⁷ In fact, he thought that for the majority, the issue simply became a “red meat thing” in which the Conservatives who voted for Bill C-304 likely had not “engaged the questions” and instead had merely heard about Levant’s ordeal or *Shakedown*.³⁰⁸

³⁰⁵ These groups argued that s. 13 “is too easily exploited by agenda mongers and is enforced by a quasi-judicial system that desperately needs revision.” Brean, “Scrutinizing the human rights machine”.

³⁰⁶ Eliadis, Personal Interview.

³⁰⁷ Brean, Personal Interview.

³⁰⁸ Ibid. Bill C-304 passed Third Reading in the House of Commons on June 6, 2012 with 153 votes for (all Conservative MPs except one Liberal – Scott Simms) and 136 against (Liberals, NDP and Green). See: <https://openparliament.ca/votes/41-1/269/>. Although difficult to speculate without further scrutiny, the unanimity among Conservatives voting for the Bill and Liberals and NDP voting against appears to demonstrate that the votes were whipped. Since the Conservatives acquired a majority government in 2011 that could pass such a bill virtually unimpeded, the vote among the Liberals and NDP was largely symbolic. It is likely that many Liberals followed the lead of Irwin Cotler, who presented the most cogent arguments against the bill. During debate in the House of Commons (and Committee), he suggested a more restrained approach: “None of this is intended to suggest that section 13 of the Canadian Human Rights Act is ideal, appropriate or effective in its present form. Indeed, I and others have identified numerous flaws

In a similar fashion, Siddiqui situated the government's support within a wider strategy of vote hunting, mentioning that if politicians "think they can capture some votes by consolidating the anti-Islamic base, that's where they go."³⁰⁹ On the other side of the aisle, Brean thinks that the "Liberals were so afraid of appearing to side with hate mongers such as Mark Lemire that they wouldn't talk about it."³¹⁰ Eliadis pointed to the intense scrutiny of both Jennifer Lynch³¹¹ and Liberal MP Irwin Cotler. The latter, she says, was "harassed in the media", specifically by Levant who resorted to ad hominem condemnations. As Gatehouse and Kay mention, Levant pursued perceived enemies during the debate with unmatched vigour, often with colourful (and sometimes defamatory) language.³¹²

However, ad hominem criticism throughout the media was only one factor of a "genuine sense that if you were for this legislation you were against freedom."³¹³ This is

with it and have made suggestions for its improvement, including amendments I tabled at committee. However, the issue is that the government refuses to even consider any reform or amendment. Indeed, it asserts that repeal is the only option, ignoring why the section was enacted to begin with, why it is still necessary today and in what ways it might be reformed and improved through principled amendment." Irwin Cotler, May 30, 2012, Available at: <https://openparliament.ca/debates/2012/5/30/brian-storseth-1/?page=16>.

³⁰⁹ Siddiqui, Personal Interview. Gregory sees Islamophobia in the (post 9/11) United States context as a potent wedge issue that is used to paint political opponents as insufficiently tough on terror. Gregory, p. 12.

³¹⁰ Brean, Personal Interview.

³¹¹ Eliadis said: "Jennifer Lynch's career almost ended over this, granted there were other reasons, but she came under a lot of flak for this." Eliadis, Personal Interview. Levant berated Lynch in numerous blog postings, including one in which he says, "Jennifer Lynch, the chief commissar of the Canadian Human Rights Commission is a lot of things — a liar; an employer of corrupt staff; a wastrel of public monies; an anti-Alberta bigot." See: Levant, "Is the CHRC's Jennifer Lynch an anti-Semite?", *Ezrelevant.com*, June 20, 2010, Available at: http://www.ezrelevant.com/is_the_chrcs_jennifer_lynch_an/.

³¹² Awan won his lawsuit and consequently Levant has removed the blog posts defaming him, including titles such as 'Awan the liar'. Other posts remain public discussing the alleged misdeeds of other participants of the debate, such as Moon and Eliadis. See, for example: Ezra Levant, "Richard Moon: liar for hire", *Ezrelevant.com*, October 23, 2009, Available at: http://www.ezrelevant.com/richard_moon_liar_for_hire/ and Ezra Levant, "An angry woman named Pearl Eliadis", *Ezrelevant.com*, June 25, 2008, Available at: http://www.ezrelevant.com/an_angry_woman_named_pearl_eli/. Kay, Personal Interview. Kay, "The weirdest thing about Ezra Levant is he still thinks he's right", *National Post*, November 28, 2014, Available at: <http://news.nationalpost.com/full-comment/jonathan-kay-the-weirdest-thing-about-ezra-levant-is-he-still-thinks-hes-right>.

³¹³ Eliadis, Personal Interview.

apparent in, for example, Warren's strident rhetoric from the *Ottawa Citizen*: "The basic strategy of the enemies of freedom in Canada has been to tie freedom's defenders up in courts – kangaroo courts by preference... This is a battle that absolutely must be won, if Canada is to remain a free country."³¹⁴ Brean tried several times to get Michael Ignatieff, the then leader of the Liberal Party, to comment during crucial moments of the debate to no avail. He saw one particular event as indicative of the relative disinterest among Canadian MPs. Cotler, who Brean described as "the leading Liberal human rights icon" of the party, had not read the Moon Report (s. 13's "death warrant"³¹⁵) months after it had been released.³¹⁶ Brean had asked him about it at a conference and was astounded that someone of Cotler's stature had not ventured into the issue considering it was an important "justification for repealing the only non-criminal sanction against hate in [Canada]".³¹⁷

Finally, 'official' media outlets are especially crucial in this analysis because they are the barometers with which the *movement* of specific (fringe) discourses can be measured. Language itself is only as powerful as the entity producing it and language's power is amplified when the powerful assist in building political consensus.³¹⁸ For example, the fact that mainstream Canadian media might portray Muslims as presenting a unique challenge to principles of free speech is an example of exercising power through language and consensus building. The ability to frame issues – a discursive function partially consisting of assigning more fixed meanings to nebulous terms such as 'free

³¹⁴ Warren, "Standing up to the 'human rights' harassers".

³¹⁵ Brean, Personal Interview.

³¹⁶ Ibid. Brean also noted that Moon had become, in Levant's words, "an 'unlikely hero'" after his report was released (despite Levant's brunt criticism of Moon in *Shakedown* and elsewhere). Brean, "A serious debate on hate speech laws".

³¹⁷ Brean, Personal Interview.

³¹⁸ Gilbert Weiss & Ruth Wodak (Eds.). *Critical Discourse Analysis: Theory and Interdisciplinarity* (New York, NY: Palgrave Macmillan, 2003), p. 14.

speech’ – is often regarded as a parallel process of political debate or strategy. Norman Fairclough contends that these contestations over the meaning and signification of linguistic terms – like ‘terrorism’, ‘freedom’ or ‘free speech’ – “*are* politics.”³¹⁹

For example, had the backlash seeking the repeal of s. 13 been grounded in an explicit argument regarding an innate incompatibility between Canadian Muslims and democratic principles, it is hard to imagine a similar consensus within the media and government coalescing around a supposed need to re-examine non-penal hate speech laws. Instead, the appeal to a broader principle of ‘free speech’, in addition to the critique of more abstract religious beliefs (as opposed to racial or ethnic identity), tended to obscure the ideological subtexts of the backlash. Figure 2 (below) illustrates the basic movement of what we can call the ‘backlash discourse’. It is marked by gradual movement, beginning first with the respondents of hate speech complaints, and eventually becoming a subject of intense political debate, both within the media and policy sphere.³²⁰

Figure 2: The Basic Movement of the Backlash Discourse

³¹⁹ Norman Fairclough, *Language and Power* (Essex, UK: Longman Group, 1989), p. 23.

³²⁰ As noted previously, Liberal MP Keith Martin tried unsuccessfully to introduce a similar Private Member's Motion in 2008 to repeal s. 13. See: *CBC News*, “Liberal MP lauded by white supremacists”, February 1, 2008, Available at: <http://www.cbc.ca/news/canada/liberal-mp-lauded-by-white-supremacists-1.761700>. *Parliament of Canada*, “Notice Paper No. 41 (M-446)”, January 31, 2008, Available at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3227597&File=11&Language=E&Mode=1&Parl=39&Ses=2>. *Parliament of Canada*, “Private Members’ Business (M-153 & M-156)”, November 21, 2008, Available at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3613493&Language=E&Mode=2&Parl=40&Ses=1&File=7>.

However, this is not a simple causal relationship and should not be misconstrued as such. The more fringe discourses of Eurabia that were integral to igniting opposition to s. 13 initially did not, for the most part, simply carry into the mainstream. Journalistic outlets adopted the issue but spoke of it in much different terms. Although many arguments certainly took advantage of the overwhelmingly negative perceptions of the complainants (and their Muslim identities), this element somewhat yielded to a more broad concern for ‘free speech’. Further, media consensus alone is not sufficient to explain successful legislation. The policy process is much more complicated and necessarily involves an examination of all of the contributing factors.³²¹ The important point, however, is that the consensus created in the media led to an environment in which legislation repealing s. 13 was not only a possibility, but could be more easily framed as an unproblematic public policy response on behalf of the Conservative majority in Parliament. In other words, the repeal of s. 13 was less daunting politically when Canada’s major newspapers were decidedly in favour of this particular policy. Further, the overwhelmingly negative perceptions of the complainants contributed to a sense that s. 13 could indeed be abused politically, even if misconceptions of the law’s utility and practice were characteristic of the most influential public commentary.

The role of the media in creating a consensus regarding s. 13 cannot be understated. Remarkably, s. 13 moved from a relatively obscure non-penal human rights law to the focus of a cross-country journalistic inquisition in about a year’s time, largely thanks to Levant, Steyn, and a small coterie of fringe bloggers who stumbled upon the

³²¹ Party affiliation, for example, can likely explain many MPs voting to (not) repeal s. 13. As Brean mentioned earlier, many voted along party lines without sufficiently grappling with the legal intricacies or repercussions flowing from potentially repealing hate speech legislation.

perfect issue to complement their Eurabia hysteria. Brean illustrated the point by showing the drastic reversal³²² in the Conservative government's approach to the issue:

I've been to a tribunal proceeding where Rob Nicholson sent a lawyer to argue in support of s. 13 and why it should stay as is and how a bit of chill on discourse is acceptable in a free society. And then a few months later he's up in the House saying that we as a party are going to vote this way [to repeal].³²³

Justice Minister Nicholson rose in the House of Commons to say:

We believe the Criminal Code is the best vehicle to prosecute these crimes, therefore I urge all members to support [Mr. Storseth's bill] and our government's forthcoming amendments to strengthen the hate provisions of the Criminal Code. I say to the opposition, get onside with the media. *Maclean's* magazine, *National Post*, and even the *Toronto Star* says this section should go.³²⁴

It is clear in the world of political optics why a party might not necessarily be keen to publicly oppose a part of government that heretofore aroused little suspicion and is named the *Human Rights* Commission. Further, it would not be speculative to assume that the Conservatives would want to avoid any culture war associations, such as the appearance of retreating human rights culture or multiculturalism as a whole.³²⁵

Nonetheless, the stark reversal is surely premised on the crucial prerequisite of public support. The Conservatives could have certainly foreseen congratulatory remarks from

³²² Levant, "Justice Minister Rob Nicholson finally weighs in on section 13", *Ezrlevant.com*, May 12, 2008, Available at: http://www.ezrlevant.com/justice_minister_rob_nicholson/.

³²³ Brean, Personal Interview.

³²⁴ Brean, "Repeal controversial hate speech law, Minister urges", *National Post*, November 18, 2011, Available at: <http://news.nationalpost.com/news/canada/repeal-controversial-hate-speech-law-minister-urges>.

³²⁵ Although the optics of endorsing repeal might have been problematic before the tide of public opinion had turned, there were high ranking Conservatives, including the Prime Minister and Cabinet Minister Jason Kenney who had made disparaging remarks regarding the HRCs: Eliadis, *Speaking Out on Human Rights*, p. 10. Levant, "Another cabinet minister criticizes Canadian Islamic Congress, CHRC", *Ezrlevant.com*, May 7, 2008, Available at: http://www.ezrlevant.com/another_cabinet_minister_criti/. Levant, "Stephen Harper: "everyone has concerns" about HRCs violating freedom of speech", *Ezrlevant.com*, October 31, 2008, Available at: http://www.ezrlevant.com/stephen_harper_everyone_has_co/.

the journalistic class as is evidenced by diverse post-mortems that defied ideological approaches to the issue. This highlights the fact that notwithstanding the communications revolution heralded by social media, politicians are still dependent upon the media and their ability to frame issues for their legislative agendas.³²⁶

Although the strategic element of the backlash discourse in general might be sublimated or even completely unconscious, the backlash seeking s. 13's repeal was *explicitly* strategic. The key element here is that discourses are not simply a manifestation of a social reality, either real or perceived, but also “projective, imaginaries, representing possible worlds which are different from the actual world, and tied in to projects to change the world in particular directions.”³²⁷ This is especially important for the present case because in large part its focus is mainstream reporting on the debate over s. 13. Although certainly contested,³²⁸ the media can *appear* as a neutral arbiter of political reporting, “in that they provide space for public discourse, reflect states of affairs disinterestedly, and give the perceptions and arguments of the newsmakers.”³²⁹ Therefore, mainstream media reporting also serves as an excellent barometer for gauging the incorporation of more fringe discourses into general public opinion.

Van Dijk makes a crucial related point that media is especially influential in perpetuating discriminatory ethnic or racial narratives because of the general lack of proximity between Whites in White-majority countries and racialized minorities and/or

³²⁶ Eliadis, Personal Interview.

³²⁷ Fairclough, *Analysing Discourse: Textual Analysis for Social Research* (New York, NY: Routledge, 2003), p. 124.

³²⁸ Among the most widely cited critiques of mass media production is: Edward S. Herman & Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (New York, NY: Pantheon Books, 2002).

³²⁹ Ruth Wodak & Michael Meyer, *Methods of Critical Discourse Analysis* (London, UK: SAGE, 2009), p. 12, Carmen Rosa Caldas-Couthard, “Cross Cultural Representation of ‘Otherness’ in Media Discourse” in Weiss & Wodak, p. 275. van Dijk, *Discourse & Power* (New York, NY: Palgrave Macmillan, 2008), p. 10.

immigrants.³³⁰ In the context of anti-Muslim sentiment, he argues that it is primarily “an elite phenomenon” as opposed to a “popular movement”, whereby “cultural issues, such as habits, religion, language, education and values” become the foci of elites who have access to influential public discourse.³³¹ Similarly, Janice J. Terry argues that the media is one of the principal sources in perpetuating “false images” and “distorted language” as it applies to Muslims and Islam.³³² Imagine, for example, the average person’s outlook on ‘Islam’ if they had never spoken with a Muslim during their entire life and their sole source of information (mainstream current affairs news) constantly discussed ‘Islam’ in the context of violence, extremism, threats to national security and terrorism?³³³

This is not to say that media should not cover stories of immense international importance³³⁴ – this would be an abdication of their responsibility to inform – but this demonstrates how media can unwittingly contribute to negative perceptions merely by reporting events if their audience is unable to make crucial differentiations and distinctions (such as the vast heterogeneity of Islam despite the frequent monolithic representations discussed previously).³³⁵ It also demonstrates the degree to which clever

³³⁰ van Dijk, *Elite Discourse and Racism* (Newbury Park, CA: SAGE, 1993), p. 243.

³³¹ van Dijk, *Ideology*, p. 176.

³³² Janice J. Terry, “U.S. politics, media and Muslims in the post-9/11 era” in Ismael & Rippin, pp. 148-159.

³³³ Said asserts that, “Islam has entered the consciousness of most Americans... principally if not exclusively because it has been connected to newsworthy issues like oil, Iran and Afghanistan, or terrorism.” Said, *Covering Islam*, p. 16, 47, 144. Robert W. McChesney makes a related point when he says the “paranoid and hysterical response” to 9/11 in the United States should not come as a surprise. He attributes this to a public sphere “[a]lmost entirely ignorant of global politics, devoid of any understanding of the Islamic world, [and] educated primarily by Hollywood movies”. Robert W. McChesney, “September 11 and the Structural Limitations of US Journalism” in Zelizer & Allan, p. 104.

³³⁴ Van Dijk makes a similar point regarding media coverage and provides a helpful litmus test that includes reporting that frames events in ‘racial’ or ‘ethnic’ terms unnecessarily or if the events are negative and exclude relevant contextual information as partial explanations (such as riots or other violence interpreted as a result of inherent characteristics as opposed to circumstance). See: van Dijk, *Discourse & Power*, pp. 20-21.

³³⁵ Arguably, mass media is the most significant deliverance mechanism for ‘social knowledge’. As Hall argues, “[t]hey have progressively *colonized* the cultural and ideological sphere.” Stuart Hall, “Culture, the

political strategy can take advantage of these latent associations and in fact exploit them to buttress positions that might otherwise seem extreme.³³⁶ Further, if this strategy is already premised upon some basic understandings of who ‘the enemy’ might be (ideologically speaking), the media (and especially newspapers) have a unique ability to formulate potential policy responses that can appear reasonable (‘common sense’).³³⁷ Hall speaks of a different paradigm no less relevant. ‘Inferential racism’, as he describes it, appears in the media as “apparently naturalised representations of events and situations relating to race, whether ‘factual’ or ‘fictional’, which have racist premises and propositions inscribed in them as a set of *unquestioned assumptions*.”³³⁸ In other words, racist or discriminatory sentiments do not appear on the surface but are made up by the unspoken assumptions that a reader or viewer brings to their decoding of messages into coherence; they are able to connect the dots, so to speak. This immunizes discriminatory premises from being unearthed in the communication itself.³³⁹

After reviewing previous research into racial and ethnic media representations van Dijk concludes that the press in North America and Europe had repeatedly engaged in the construction of stereotypical narratives and associations: “minorities or immigrants are seen as a problem or a threat, and are portrayed preferably in association with crime, violence, conflict, unacceptable cultural differences, or other forms of deviance.”³⁴⁰ Yet,

Media and the ‘Ideological Effect’ in James Curran, Michael Gurevitch & Janet Woollacott (Eds.), *Mass Communication and Society* (London, UK: Edward Arnold, 1977), p. 340.

³³⁶ This can be thought of as co-opting what Stuart Hall calls the “ideological labour” of the media. It is able to “construct for us a definition of what *race* is, what meaning the imagery of race carries, and what the ‘problem of race’ is understood to be.” Hall, “The Whites of their Eyes”, p. 11.

³³⁷ Yasmin Jiwani, “Colluding Hegemonies: Constructing the Muslim Other Post-9/11” in Jasmin Zine (ed), *Islam in the Hinterlands: Muslim Cultural Politics in Canada* (Vancouver, BC: University of British Columbia Press, 2012), p. 116.

³³⁸ Hall, “The Whites of their Eyes”, p. 13.

³³⁹ Ibid.

³⁴⁰ van Dijk, *Racism and the Press* (London, UK: Routledge, 1991), p. 21.

he is careful not to assert that stereotypes in the press simply contribute to racism in a society. He specifies that previous research pointed to what is termed ‘elite racism’, or the ability of elites to use their privileged positions to “‘preformulate’ [opinions] of the population at large, and thus to produce and reproduce the white ethnic consensus.”³⁴¹ Similar to this discussion, the point is not that the media or political class in Canada are unabashed racists intent on fomenting hatred but that the implicit framing of issues can contribute to the construction of a collective ‘us’, as opposed to a ‘them’ that “tend[s] to be represented as essentially different or deviant if not threatening”.³⁴²

4.2: The Media (Re)Frames The ‘Battle for Free Speech’

It would not be an exaggeration to say that the media exhibited a near universal consensus regarding s. 13. At the very least, the vast majority of major newspapers gave legitimacy to the idea that something needed to be done regarding Human Rights Commissions. When the OHRC released its ‘drive by’ verdict against *Maclean’s* and Steyn, Kay took the ‘spooky thought police’ to task for suggesting that journalistic outlets had any obligation “to engage in fair and unbiased journalism.”³⁴³ According to him, the much-vaunted ‘marketplace of ideas’ should regulate unpopular (perhaps even racist) speech via a loss in readers and those interested in advertising, since every publication is interested in respect and its attendant commercial viability. George Jonas (also at the *National Post*) deployed some colourful language in response to those advocating more restrained approaches to the Commissions, such as reform as opposed to repeal or

³⁴¹ van Dijk, *Racism and the Press*, p. 43.

³⁴² van Dijk, *Elite Discourse and Racism*, p. 247.

³⁴³ Kay, “Ontario’s spooky thought police”, *National Post*, April 10, 2008, Available at: <http://www.nationalpost.com/story.html?id=57a03d41-5871-4bb9-9a9c-71c84eac36ca&k=73906>.

shuttering: “Cut them off [at the knees], I say, preferably with a submachine gun, followed by a stake through the heart.”³⁴⁴ The *National Post*, in general, was the most strident in its criticism (within mainstream publications) and didn’t venture far from the language of Levant and Steyn:

But a tool originally created to mitigate economic injustice has now become a weapon against the freedom of news-gathering and opinion. Aggrieved Muslims have been using it to vex high-profile conservative targets such as Ezra Levant, Maclean’s magazine and Mark Steyn for daring to inform and pronounce on the relationship between Islam and terrorism.³⁴⁵

Warren of the *Ottawa Citizen* went so far as to say Levant should top the list of individuals “who actually deserve the Order of Canada.”³⁴⁶ Much later, the *Ottawa Citizen* itself would opine “good riddance” to s. 13 when the Federal Court of Appeal complicated things by ruling s. 13 was, in effect, constitutional.³⁴⁷ The *Globe and Mail* also took a swipe at the *Maclean’s* complainants, arguing that the flimsy hate speech law under British Columbia’s hate speech code should be amended to reflect criminal law where “incidental responses to a person’s words” are not a concern.³⁴⁸ Overall, they said it “is not compatible with freedom of speech and expression in Canada”.³⁴⁹ Rebecca Walberg of the *Calgary Herald* (who was generally very critical of Soharwardy as well) seems to have summed up the dangers posed by the *Maclean’s* complaint concisely for those that recoiled after hearing of the CIC’s involvement:

³⁴⁴ George Jonas, “Crunch time for Canada’s human-rights marsupials”, *National Post*, August 9, 2008.

³⁴⁵ *National Post*, “Keith Martin’s good fight”, February 6, 2008.

³⁴⁶ Warren, “Standing up to the ‘human rights’ harassers”.

³⁴⁷ “Good riddance, Section 13 of the Canadian Human Rights act”, *Ottawa Citizen*.

³⁴⁸ *Globe and Mail*, “B.C. hate provision should be excised”, June 7, 2008, Available at: <http://www.theglobeandmail.com/globe-debate/bc-hate-provision-should-be-excised/article720133/>.

³⁴⁹ Ibid.

The CIC's real goal seems to be not justice or the pursuit of truth, but the abolition of public discourse that is critical of Islam... Where this particular interest group parts company with other Canadians with bizarre ideas in its attempt to force a new speech code into de facto law by using a human rights commission... That they can be exploited by a narrow lobby seeking to impose its doctrine upon other Canadians is a serious problem.³⁵⁰

Rex Murphy had a glowing review of *Shakedown* in the *Globe and Mail*: "Ezra Levant is the No. 1 advocate for, and defender of, freedom of speech, freedom of the press and freedom of thought in modern Canada."³⁵¹ He also advocated for a government response, asking: "Where has Conservative Prime Minister Stephen Harper been on this issue? It is a cause of deepest principle. It isn't just a Tory thing. But Harper has been craven on the subject."³⁵² On *CBC News*' flagship *The National*, Murphy scoffed at the notion that the Commissions dealt with 'real' human rights. He said "real human rights advocacy" was reflected by the contemporary case of a Saudi woman who was gang raped and then convicted of a crime herself.³⁵³ Conversely, human rights is not about being 'offended' by something you read in *Maclean's* "and then scampering off to [HRCs] seeking to score off the magazine"³⁵⁴ He then not so subtly talks about other "real human rights violations" with examples all involving violence perpetrated by Muslims,³⁵⁵ which in his view don't receive legitimate human rights investigations.

Rory Leishman of the *London Free Press* was unambiguous and clearly invoked the complainants' Muslim identity and allegedly illiberal motivations: "By using rights

³⁵⁰ Rebecca Walberg, "Shut down the human rights commissions", *Calgary Herald*, December 19, 2007.

³⁵¹ Rex Murphy, "The right to offend the easily offended", *Globe and Mail*, March 28, 2009, Available at: <http://www.theglobeandmail.com/arts/the-right-to-offend-the-easily-offended/article1343748/>.

³⁵² Ibid.

³⁵³ Murphy, "Rex Murphy P.O.V. Human Rights Gone Awry", *CBC The National YouTube Channel*, January 9, 2008, Available at: <https://www.youtube.com/watch?v=tOQAheSQXs0>.

³⁵⁴ Ibid.

³⁵⁵ He mentions the Rushdie Affair, the threats against Ayaan Hirsi Ali and the Danish Muhammad cartoonists, and the assassination of Benazir Bhutto.

tribunals to intimidate and silence critics, these authoritarian Muslims [like Elmasry and the CIC] are undermining the fundamental freedoms of all Canadians, Muslim and non-Muslim alike.”³⁵⁶ Terry Glavin framed the issue more broadly for freedom of expression but nonetheless underscored the inherent dangers: “This entire escapade is not just a threat to *Maclean's* and Steyn specifically but to journalists generally, and also to pamphleteers, bloggers and just about anyone who might occasionally express a public opinion on a subject of public interest.”³⁵⁷ Andrew Coyne referred to the human rights ‘racket’ that ignited the topic.³⁵⁸ The *Toronto Star*, which housed one of the only columnists to publicly criticize the backlash (Siddiqui),³⁵⁹ also piled onto the heap of criticism, asking: “Does society need to cast more of a chill on press freedom in order to combat discrimination? Polemicists such as Steyn are better countered in the marketplace of ideas. Readers who feel ill-served are free to go elsewhere.”³⁶⁰ After it was repealed, the *Toronto Star* also said “good riddance” and lauded the new legal approach that was “more consistent with the notion that an open, democratic society should impose the fewest restrictions possible on free speech”.³⁶¹

In May of 2008, the ‘*Maclean's* three’, as they’ve been called, and Steyn appeared jointly on the TVO current affairs show *The Agenda* with Steve Paikin. Not

³⁵⁶ Rory Leishman, “Beware of censorship”, *The London Free Press*, July 5, 2008.

³⁵⁷ Terry Glavin, “Mark Steyn, Last Straw?”, *The Tyee*, December 13, 2007, Available at: <http://thetyee.ca/Views/2007/12/13/MarkSteyn/>.

³⁵⁸ Coyne.

³⁵⁹ The only other prominently featured defence of hate speech legislation in mainstream media (aside from the complainants) was Naomi Lakritz of the *Calgary Herald*. Naomi Lakritz, “Human rights commission ensures balance of freedoms”, *Calgary Herald*, August 8, 2008, Available at: <http://www.canada.com/story.html?id=0003d21a-5d9b-439e-b7db-64a5917e2a1b>. In response to her column, Levant blogged, “What a pair: an atheist Jewish feminist dhimmi [Lakritz], and an apologist for radical Islam [Siddiqui]. Meet your new leftist coalition.” Levant, “A journalist who loves censorship is like a chicken who loves Col. Sanders”, *Ezrlevant.com*, August 9, 2008, Available at: http://www.ezrlevant.com/a_journalist_who_loves_censors/.

³⁶⁰ *Toronto Star*, “Curb bigoted acts not free speech”, June 16, 2008, Available at: http://www.thestar.com/opinion/2008/06/16/curb_bigoted_acts_not_free_speech.html.

³⁶¹ “Canada’s Parliament is right to repeal Section 13 of human rights act”, *Toronto Star*.

only was it an incredible improvised political cinema playing out for the viewers, but a crucial example of the framing of the hate speech debate.³⁶² Although not originally scheduled to appear together,³⁶³ both sides eventually agreed to have 15 minutes each to discuss their views, followed by a joint debate in which they met in person for the first time. When the section featuring Mithoowani, Sheikh and Awan begins, Paikin launches into his questions: “We know who [Steyn] is. I don’t know if anybody knows who you are so I would like to take the first of the 15 minutes, give 20 seconds to each of you. Tell us who you guys are. Who are you?” Sheikh explains that she’s currently a law student and Paikin follows up with a casual, ‘Where are you from?’, and seems surprised to find out that she was born in Canada despite her Pakistani background. Although a charitable interpretation might posit that Paikin was asking out of banal curiosity, this portion of the introduction is indicative of the way in which the *Maclean’s* complainants were seen as outsiders, and even perhaps naïve of ‘the way things are done’ in Canada.

Despite the short time to cover such a comprehensive topic laden with necessary context³⁶⁴ – not to mention rebut the claims that were already circulating heavily through the media – they explain their general argument: “The premise, the way that we see it,

³⁶² All four appeared on The Agenda with Steve Paikin on the TVO Channel in May of 2008. Although the initial plan was for Paikin to interview the *Maclean’s* three and Steyn individually, they eventually negotiated a joint discussion on live television. See: The Agenda with Steve Paikin, “Mark Steyn and Islamophobia 1/5”, *The Agenda with Steve Paikin YouTube Channel*, May 8, 2008, Available at: <https://www.youtube.com/watch?v=ApcnpFCYd7E>.

³⁶³ Steyn claims that he did not realize that the ‘Sock Puppets’ (Elmasry is ‘Elmo’ who apparently directs the ‘Socks’) were to appear on the show until he had arrived in the studio. Steyn, *Lights Out*, p. 255. Paikin created a blog entry afterwards in which he explained exactly how the appearances were scheduled. The *Maclean’s* three had originally declined to debate Steyn directly citing a lack of time to prepare and the fact that Steyn was booked first and would already have a dedicated time to speak about *America Alone* and the hate speech controversy. See: Paikin, “Oh My, What a Show”, *The Inside Agenda Blog*, May 7, 2008, Available at: <http://theagenda.tv.org/blog/agenda-blog/oh-my-what-show>.

³⁶⁴ Moon highlighted the innate difficulties of answering inaccuracies and misconceptions once they’ve circulated widely: “[I]f you’re going to make a subtle, factually grounded argument that’s clearly referenced and so forth, that’s just not the same impact as making outrageous claims”. Moon, Personal Interview.

and the way that Mark Steyn has just described it, is that there's going to be an essential Muslim takeover of the West..." Paikin then asks if Steyn had in fact written this and Steyn, within proximity but in an adjacent set, asks "where?"³⁶⁵ The law students are certainly well-versed in the legal particularities of non-penal hate speech legislation but it is clear that they were on the defensive and it is incredibly difficult to debate the merits of restricting the speech of journalistic mediums through the media itself. Of course, Steyn doesn't explicitly make this argument in any of his writings, but he attempts to build a solid case for the reader concluding this on their own terms. The three problematize the fact that in Steyn's writing he asserts that Islam has a 'global objective'.

Paikin also argues an illustrative point: the *Maclean's* three aren't being censored in any way because they're on live television unencumbered. Steyn makes the same argument regarding the bulk of op-eds the three have had published during the affair.³⁶⁶ Although this is a gross oversimplification, in the context of speaking on a live public affairs television channel that is widely available, it is difficult to argue that you are being suppressed while engaging in a public debate with the object of your criticism. But the broader issue of access to media was not fully interrogated. Instead, the *Maclean's* three were constructed as petulant abusers of free speech at best, and part of a broad Muslim conspiracy to take down the West at worst. Although Salutin confessed that he wasn't well versed in the legal intricacies of the hate speech debate, he did raise an important point regarding the broader issues at stake. In his estimation, "[w]hat's really lurking behind all this is access to public discourse."³⁶⁷ As he explained:

³⁶⁵ The Agenda with Steve Paikin, "Mark Steyn and Islamophobia 1/5".

³⁶⁶ Steyn, *Lights Out*, p. 237.

³⁶⁷ Salutin, Personal Interview.

[T]he fact that they don't have ready access to mass media platforms because they're minorities is extremely frustrating and I think leads to this kind of activism. If, for instance, Muslims or minorities had equal access to mass media platforms that Mark Steyn and Ezra Levant do, I bet they wouldn't be nearly as inclined to go to court on these relatively obscure tribunals and hate speech provisions.³⁶⁸

Salutin mentioned that those that have had their speech threatened or suppressed are most likely to have strong opinions on the topic, but, as he argues, Steyn and Levant didn't face widespread suppression. Rather, you might argue that they "were threatened with being suppressed".³⁶⁹ Eliadis makes a similar point in her first public writings on the topic stating, "there has been no suppression of speech" since Steyn, who didn't receive the complaint personally, was able to freely communicate in a variety of mediums.³⁷⁰ More importantly, to frame the issue as necessarily censorship belies the facts of the complaint:

The complaints against Maclean's magazine ask for the right to more, not less, information by demanding publication of the 'other side' of the story. There might or might not be such a right in Canada, but the issue is about whether free speech works both ways.³⁷¹

The three made this point explicitly, saying that if a venue is going to engage a topic of great contemporary importance "our community wants to be part of that discussion" if they themselves are the object of debate.³⁷² Regardless, Paikin's most pointed question involves the optics of the complaint while noting that individuals are entitled to make sure journalistic outlets abide by their profession's accepted practices. "I don't think anybody gives over their magazine without the right to edit to anybody", he says

³⁶⁸ Salutin, Personal Interview.

³⁶⁹ Ibid.

³⁷⁰ Eliadis, "Media are getting all lathered up over nothing".

³⁷¹ Ibid.

³⁷² The Agenda with Steve Paikin, "Mark Steyn and Islamophobia 2/5", *The Agenda with Steve Paikin YouTube Channel*, May 8, 2008, Available at: <https://www.youtube.com/watch?v=PcUz1FD8ks>.

regarding the possibility for a ‘right of reply’ within the pages of *Maclean’s*.³⁷³ Further, he asks, “Are you not concerned that the approach that you’ve taken looks like you’re trying to inhibit free speech in the country?”³⁷⁴

Another important point is made at the very end in which they discuss the associations of Canadian Muslims with the most extremist of fringe elements of Muslims elsewhere (Krekar, Gaddafi, etc.). The three also claim that Steyn glorifies those who, in his estimation, have bravely criticized the negative effects of Islam in Western contexts:

What Mr. Steyn has very commonly done in his writings is... he’s taken individuals who have been recognized broadly as promoting hatred against European Muslims and representing them as heroic figures whose views need to be paid attention to by the majority of Canadian opinion...³⁷⁵

It is undeniable that Steyn possesses some rhetorical potency, especially when he can appear to be immune from criticism simply because his facts are in order. His detractors aren’t interested in debating facts when they can instead focus on the “criminalizing of opinion”, according to him.³⁷⁶ As he puts it towards the end of the encounter, “They have not disputed a single fact. All they’re saying is we object to this because it offends us, because it hurts us. That’s emotion and that should not be part of the law of Canada criminalizing your fluffy feelings.”³⁷⁷

³⁷³ The Agenda with Steve Paikin, “Mark Steyn and Islamophobia 2/5”.

³⁷⁴ Ibid.

³⁷⁵ The Agenda with Steve Paikin, “Mark Steyn and Islamophobia 3/5”, *The Agenda with Steve Paikin YouTube Channel*, May 8, 2008, Available at: <https://www.youtube.com/watch?v=wa2T0nBBfWY>

³⁷⁶ The Agenda with Steve Paikin, “Mark Steyn and Islamophobia 5/5”, *The Agenda with Steve Paikin YouTube Channel*, May 8, 2008, Available at: <https://www.youtube.com/watch?v=Ka7mePjPoFg>.

³⁷⁷ The Agenda with Steve Paikin, “Mark Steyn and Islamophobia 4/5”, *The Agenda with Steve Paikin YouTube Channel*, May 8, 2008, Available at: <https://www.youtube.com/watch?v=BZlGTv63QM0>.

4.3: Tolerance, Free Speech and Western Identity Construction

Although the alarmism regarding Islam in the West and the more conspiratorial discourses of Eurabia were fundamental to the hate speech debate making its way into the mainstream, these same fringe discourses did not primarily animate opposition to s. 13 to the same degree once it became a national debate. Instead, the debate took a different turn, emphasizing the principles of free speech and expression with the ostensibly unique threat of Islam to this principle at least partially sublimated. Eliadis believes the debate was particularly ignited when journalists “realized for the first time that anti-hate speech provisions actually could apply to the media.”³⁷⁸ The various articles and editorials in mainstream reporting on the topic convey the distinct sense that many writers have principled opposition to elements of hate speech legislation (non-penal or otherwise). In many cases, it is reasonable to assume that this was the most important element comprising the opposition. While the civilizational discourses that originally animated the story were sufficient to push it into mainstream debate, the language and decorum changed sharply once the issue inhabited the editorials of the country.³⁷⁹ Brean thinks that, “[t]here was, in many cases, a wilful misunderstanding because that was a catchy and attractive concept”.³⁸⁰ Media outlets did not do their due diligence in examining the cases that Human Rights Tribunals were tasked to work through. He observed that the actual rulings of these tribunals do not reflect the work

³⁷⁸ Eliadis, Personal Interview.

³⁷⁹ Kay had this to say: “Moreover, [the backlash] had a cause (opposition to radical Islam) that really did resonate as a huge principled cause — which was not true of the oddballs and Jew-haters who previously had been the most prominent targets of Canadian speech laws.” Kay, Personal Interview.

³⁸⁰ Brean, Personal Interview.

of a “biased adjudicator”, but rather “well thought out and well argued” decisions.³⁸¹

He sees the sheer repetition of a consistent narrative contributing to inaccuracies or mischaracterizations. “That is what happens when a story gets retold a thousand times”, he said.³⁸²

There were certainly procedural and legal critiques of s. 13, many of which were rife with inaccuracies, speculation, and hyperbole, but the majority appealed to an endangered principle of free speech that needed to be insulated from abuse. Levant and Steyn’s persistence, their rhetorical strategies, and the natural and expected criticism of a human rights system with perceived procedural flaws³⁸³ can only explain so much. There are other, deeper questions to ask regarding why the media lapped up the story and made it their fight, and these remain largely unexamined. It would be an oversimplification to argue that the media supported s. 13’s repeal – and in some ways allied themselves with those with unsavoury views – simply because they believed in unadulterated free speech. Had the identity and arguments of the defendants in hate speech cases not impacted the ‘principled’ opposition to elements of non-penal human rights legislation (like s. 13), then we must ponder why no such backlash was created in response to other cases that could have been interpreted uncharitably as a fundamental violation of free speech.

A good example is the case of Reverend Stephen Boisson, who was fined \$5,000, ordered to apologize, and to refrain from engaging in similar behaviour

³⁸¹ Brean, Personal Interview.

³⁸² Ibid.

³⁸³ Two of the most widely voiced criticisms are: a) the fact that complainants are not at all burdened financially, whereas respondents (increasing the likelihood of abuse); and b) the tribunals and commissions depart from traditional criminal law principles such as the use of truth as a defence and the necessity of proving injury.

(public statements regarding homosexuality).³⁸⁴ He was found to have violated a section of the *Alberta Human Rights, Citizenship, and Multiculturalism Act* that echoes the language of s. 13 ('likely to expose'). In 2002, Boisson had a letter to the editor published in the *Red Deer Advocate* disparaging the 'homosexual agenda', claiming "[h]omosexual rights activists and those that defend them, are just as immoral as the pedophiles, drug dealers and pimps that plague our communities."³⁸⁵ Why did the media not make Boisson their fight like they made Steyn and Levant? Is it because their speech wasn't as offensive? Was it was more palatable to the liberal sensibilities of journalists who have genuine concerns regarding Islamic fundamentalism? If this is the case, wouldn't this discredit the principled aspect of the opposition, in the sense that the focus should be on the censorship and not the content of the speech itself?

This section posits that the warm reception the backlash was given in the media, and (eventually) in the Parliament and Senate, is indicative of the ways in which Canadian identity is (re)created as a fundamentally Western conception. It is a process of separation, demarcation, and distinction, whereby free speech is operationalized as a quality demonstrating relative superiority. Further, when free speech was appealed to as a fundamental value of Canadian society that was somehow endangered, we need to ask, 'Who or what exactly was endangering it?' Free speech is seen as an integral part of the civilizational deficit of the 'Muslim world'. Thus, when Muslims allegedly 'abuse' free speech it is not because they have reasonable (in this case perfectly legal) demands, but because their beliefs are assumed to be antithetical

³⁸⁴ *Boissoin v. Lund*, 2009 ABQB 592, Available at: <http://www.canlii.org/en/ab/abqb/doc/2009/2009abqb592/2009abqb592.html>.

³⁸⁵ Ibid.

to pluralistic society. Just as it was no coincidence that the particularities of the hate speech complaints involving Steyn and Levant ignited a firestorm in the fringe blogosphere, it is also no coincidence that these same particularities (primarily the Muslim identities of the complainants) led to such a warm reception once the criticism moved into the mainstream. After all, with principled debate regarding the necessity or appropriateness of hate speech legislation aside, it was Muslim complainants who were seen to be abusing the system, pushing it beyond its usefulness, and, to some, vitiating the entire process itself. Therefore, it was much easier to invoke principles of free speech against s. 13 when the spectre of Muslims potentially abusing the law materialized. The goal here is to explain why this might be the case.

Brean attributes the near unanimity in the media to a “decision of ignorance” in many cases.³⁸⁶ He thinks that newspapers made their decision by imbibing “caricatured accounts” of the *Western Standard* complaint, which compounded the standard “scepticism of censorship” expected within the media. Further, he emphasizes the fact that “it eventually became clear who was winning”, suggesting that this momentum was key to formulating opinions.³⁸⁷ Eliadis sees the uniformity of opinion as evidence that more fringe discourses came to inhabit the mainstream. She “cannot think of a single significant or medium sized paper in the country that did not run an editorial against hate speech [legislation] in Canada. Not one.”³⁸⁸ Not only was there a uniformity of opinion,³⁸⁹ but it also appeared as though one side of the political spectrum was

³⁸⁶ Brean, Personal Interview.

³⁸⁷ Ibid. Levant, “Toronto literati: 100% against section 13 ‘hate speech’ law”, *Ezrlevant.com*, June 5, 2008, Available at: http://www.ezrlevant.com/toronto_literati_100_against_s/.

³⁸⁸ Eliadis, Personal Interview.

³⁸⁹ Levant, “More anti-Section 13 voices in the media”, *Ezrlevant.com*, December 29, 2008, Available at: http://www.ezrlevant.com/more_antisection_13_voices_in/.

overrepresented. Brean also thinks that the left, broadly construed, didn't put up much a fight over s. 13. "There are certainly exceptions", he said, but "[w]hat you would call the right" had the benefit both of the Conservative majority in Parliament and a relatively "unobstructed" environment in general.³⁹⁰

Of course, journalists and the media have an innate interest in securing and defending an environment in which speech is maximized to its fullest potential. Rightfully so, the fourth estate is lauded as a necessary check on power, whether it be government, corporate, or otherwise.³⁹¹ Even if this is the case, why did media outlets not contextualize Steyn's writings? Why did they instead exhibit a reflexive defence of free speech without subjecting his alarmism to verification? Curiously, while many articles and editorials proclaimed that Steyn/*Macleans*'s and Levant/*Western Standard* had the *right* to publish incorrect or offensive material, very few actually said the content was wrong, inaccurate, or discriminatory. Regardless, as theories of hate speech demonstrate, speech in and of itself is not simply a social good in all circumstances.³⁹² And, further, policing the borders of acceptable debate then requires politics to draw and redraw these constantly shifting lines.

The policing of speech that is deeply offensive, and perhaps even harmful, is intimately tied to the liberal principle of 'tolerance'. 'We', understood as Canadians, are willing to proscribe forms of speech that are far beyond the realm of acceptable

³⁹⁰ Brean, Personal Interview.

³⁹¹ Likening the media's approach to earlier efforts against libel legislation in the 19th century, Eliadis sees the contemporary exaltation of free speech as a new front where hate speech laws could be a bothersome intrusion. Eliadis, Personal Interview.

³⁹² As a journalist, Siddiqui understands why his colleagues are innately suspicious of possible restrictions of speech, but he also believes that "what's in the media's interest is not necessarily in the interest of the wider public." Siddiqui, Personal Interview. For a detailed introduction to theories of hate speech, see: Richard Delgado & Jean Stefancic, *Understanding Words That Wound* (Cambridge, MA: Westview Press, 2004).

discourse and even criminalize the most extreme manifestations of linguistic prejudice. These borders were expanded in the wake of s. 13's repeal and were unmistakably tied to the 'Muslim question'. If Canadian Muslims are able to invoke existing law to counter real or perceived prejudice in public expression or the press, this is considered a political abuse of the law because tolerance should not extend to the intolerant. This is perhaps why Muslims are often conceptualized as threats to the liberal legal order. Tolerance meant proscribing hateful communication but the Muslim invocation of tolerance short-circuits the system because it conjures in the popular imaginary what is seen as the monolithic Other incapable of tolerance itself.

When groups and individuals attempt to stoke fear of a creeping 'Islamic influence', they can do so through multiple mediums in which the population may already experience collective anxieties: multiculturalism, immigration, assimilation, crime, and, most importantly, free speech.³⁹³ In fact, Muslims and/or Islam need not be the primary focus or issue, as they could very well be a natural corollary that very much depends upon the acuteness of some wider issue or conflict.³⁹⁴ Therefore, when Levant and Steyn argued that free speech was being abused by Canadian Muslims, their critique was interpreted and defended primarily as a troubling of the endangered principle of free speech. Yet, freedom of speech was just the stage for a wider ideological attack upon diversity in its Islamic form and a reiteration of Western cultural superiority.

Conservative MP Brad Trost made a statement in 2008 regarding the debate over s. 13 that accurately captures how public discourse ties freedom of speech and the construction of a superior Western identity:

³⁹³ Tyrer, p. 29. Halliday, p. 160.

³⁹⁴ Halliday, pp. 193-194.

I am a believer in inalienable human rights. I believe that inalienable rights like freedom of speech and freedom of religion, along with the rule of law, are fundamental to western democracies. These basic rights, combined with the principles of representative and responsible government, have allowed Canada and the entire Western world to have the best system of governance known in the history of man.³⁹⁵

These invocations, however, are not simply the manifestation of a particularist liberal character of the country, but the reiteration of Canada as part of a Western bloc, understood properly as a stalwart ally against a new form of totalitarianism. In other words, the reiterative project of (re)creating what constitutes ‘free speech’ “also figures a dark Other against which it obtains its own identity.”³⁹⁶ Sunera Thobani demonstrates how constructing this identity is both particular and collective, with the latter solidifying Canada’s civilizational superiority in the reorganization of politics post 9/11:

Although the Canadian nation-state continues to represent itself on the global stage as a model multicultural society, the 9/11 attacks on the United States exposed the limits of this particular aspect of the nation’s self-exaltation. In the era of the global ‘war on terror,’ the Canadian nation-state is being unabashedly reconstituted as essentially ‘western’ in nature, its national security and civilizational values (along with those of its American ally) threatened by a fanatical and medieval non-western Other.³⁹⁷

It is no surprise that the supposed incompatibility of Islam and Muslims with democracy in the West manifests itself potently in questions regarding free speech. Ghassan Hage argues that the “practices of tolerance” are ultimately “nationalist practices

³⁹⁵ Brad Trost, “Brad’s Extended Column on Free Speech”, June 25, 2008, Available at: <http://www.bradtrost.ca/commentary/2008/06/25/brads-extended-column-on-free-speech/>.

³⁹⁶ Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton, NJ: Princeton University Press, 2006), p. 172.

³⁹⁷ Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto, ON: University of Toronto Press, 2007), p. 27.

aimed at the management of national space.”³⁹⁸ They thus need a classificatory scheme in which to assign differing values upon those in the hierarchy. According to Norton, “Muslims are portrayed as presenting special challenges to the exercise of freedom of speech”.³⁹⁹ High profile events such as the reaction to the Danish cartoons of Muhammad abroad⁴⁰⁰ and the assassination of Theo Van Gogh in Amsterdam⁴⁰¹ have created a perception that Muslims (sometimes with an ‘extremist’ or ‘fundamentalist’ qualifier) are “enemies of free speech”.⁴⁰² Norton sees this as a trend: free speech maintains its cherished status when it is used to stigmatize Muslims and Islam but when it becomes part of the Muslim question, “its principle fails and its practice narrows.”⁴⁰³ In a curious twist, the exigencies of a supposed civilizational struggle have provided disproportionate adjustments to rights protections in liberal democracies. Although civil liberties have arguably become more flexible, free speech is accorded no flexibility; a fundamentalist conceptualization of speech is said to constitute the sole strategy to keep it ‘free’ and immune from abuse.

Brown has articulately expressed some of the inconsistencies of tolerance as it is practiced and theorized within legal liberalism. Culture, she writes, “has become a

³⁹⁸ Ghassan Hage, *White Nation: Fantasies of White supremacy in a multicultural society* (Annandale, NSW: Pluto Australia, 1998), p. 94.

³⁹⁹ Norton, p. 6.

⁴⁰⁰ Klausen.

⁴⁰¹ Theo Van Gogh was a Dutch film director and artist who was assassinated on November 2, 2004. He and Ayaan Hirsi Ali had previously released *Submission*, a controversial 10 minute short film criticizing the treatment of women in Islamic societies. See: Ian Buruma, *Murder in Amsterdam: Liberal Europe, Islam, and the Limits of Tolerance* (New York, NY: Penguin, 2006).

⁴⁰² Norton, p. 15.

⁴⁰³ *Ibid*, p. 43. This does not mean that extremists inspired by their interpretation of Islamic texts have not assaulted principles of free speech; this is unquestionable. But, Norton is attentive to the ways in which free speech is deceptively exalted as a ‘universal’ principle. For example, there is a double standard regarding free speech, dependent upon the object of offensive speech. When Muslims are besieged by what appears to be cultural warfare, it is often assumed that they have equal opportunities and obligations to respond.

cardinal object of tolerance and intolerance.”⁴⁰⁴ She cites Mamdani and the ‘Culture Talk’ introduced in the first chapter to explain how civilizational explanations of politics have entered the mainstream lexicon at the hands of authors like Lewis and Huntington. Her analysis is extraordinarily helpful in unravelling the conjured images of what constitutes ‘Islam’ when principles of free speech and expression are evoked. Those who attempted to invoke hate speech laws, due to their Muslim identities and opposition to what they perceived as Islamophobic material, were constructed as “premodern or at least [those that] have not been thoroughly bathed in modernity”.⁴⁰⁵ She captures well the implicit civilizational hierarchy that is created between the liberal legal order and the objects of tolerance:

[W]ithin contemporary civilizational discourse, the liberal individual is uniquely identified with the capacity for tolerance and tolerance itself is identified with civilization. Nonliberal societies and practices, especially those designated as fundamentalist, are depicted not only as relentlessly and inherently intolerant but as potentially intolerable for their putative rule by culture or religion and concomitant devaluation of the autonomous individual – in short, their thwarting of individual autonomy with religious or cultural commandments. Out of this equation liberalism emerges as the only political rationality that can produce the individual, societal, and governmental practice of tolerance, and, at the same time, liberal societies become the broker of what is tolerable and intolerable.⁴⁰⁶

In the context of the hate speech complainants, the *Maclean’s* three and Soharwardy were publicly associated with a number of unsavoury characteristics all intimately tied to their identity. They became one part of an assumedly homogenous Islam that deserves no tolerance because it is parasitic on the body of liberalism, attempting to exploit tolerance

⁴⁰⁴ Brown, p. 150.

⁴⁰⁵ Ibid, p. 184.

⁴⁰⁶ Ibid, p. 172.

itself in order to incorporate for itself a worldview that is intolerant.⁴⁰⁷ Brown also crucially ties the extension of tolerance to the exercise of power and the broader perceptions of relative strength and vulnerability. This rings true as we have seen in the alarmist rhetoric of the Eurabia genre and other various (new) Cold Warriors that would have little if any legitimacy if not for two elements. First, there are genuine and understandable fears among the population when they are horrified by the violent acts ostensibly committed in the name of Islam. These atrocities go a long way in creating a general perception of vulnerability among the population. Second, there is the capitalization on these fears by pundits, policy makers and media figures. They can disingenuously portray these threats as an inherent justification for dismantling any previous restrictions or inhibitions regarding the use of force, the turn towards demonology in language, the erosions of privacy and other civil liberties, and the chauvinist exaltation of superior religious and cultural mores.

Politically, then, the capacity for tolerance is itself an expression of power and of a certain security in that power. At the collective and individual levels, the strong and secure can afford to be tolerant; the marginal and insecure cannot. A polity or culture certain of itself and its hegemony, one that does not feel vulnerable, can relax its borders and absorb otherness without fear.⁴⁰⁸

The clash of civilizations has shattered this safety and manifested itself in a real material inability to absorb the Muslim Other. This is why, according to Kay, the ‘battle for free speech’ was framed in broad civilizational terms in a post-9/11 environment.⁴⁰⁹ It is also why Barbara Amiel can lament the Charlie Hebdo murders (in *Maclean’s*, no less) and

⁴⁰⁷ For Thobani, the “civilizational narratives” utilize a “racial coding” in order to depict the enemy as distinctly non-Western. In this sense, it goes a step further by not merely encoding inferiority, but by also legitimizing legal exclusion based upon the potential for ‘abuse’. Thobani, pp. 234-235.

⁴⁰⁸ Brown, pp. 187-188.

⁴⁰⁹ Kay, Personal Interview.

casually claim that ‘we’ will kill free speech in the West, not the violent Islamists.⁴¹⁰

‘Our’ civilizational self-doubt, second-guessing, appeasement, and the tolerant excesses of liberalism, human rights and multiculturalism pose a great risk to the West’s ability to fully and forcefully confront ‘Islam’ in the new Cold War. Levant also spoke of the civilizational deficit in confidence he sees at play in the discussions of human rights, free speech and Islam:

I think a lot of Canadians don’t remember what we stand for. It’s not exactly taught and it’s not exactly the discourse of our daily politics. And if we don’t know what we stand for well the other side certainly knows what it stands for, the Islamic State certainly knows what it stands for. That’s one of the reasons they appeal to passionate, adventurous young men. Come, we know exactly what we stand for. We’ll fight for it. We’ll die for it. A lot of young men find that appealing. [...] We have taken it for granted that people that come to Canada want to be Canadian, and historically that’s been the case.⁴¹¹

As Brown aptly points out, when ‘a tolerant civilization’ seems to approach its outer boundaries, it does not express itself in terms of experiencing and working through social, political or cultural diversity, but by explaining how it has suddenly reached “the limits of civilization itself.”⁴¹² It is at this departure that those who have benevolently practiced tolerance are legitimated in their denial of expanding its borders and treating those who might otherwise be the objects of tolerance as threatening, oppressive, and destabilizing.⁴¹³ The *Maclean’s* complainants were caricatured as Islamic radicals, which obviously lends itself to a vivid imaginary that conjures violence, extremism and terrorism. Yet, their non-violent attempt to meaningfully contribute to an ongoing

⁴¹⁰ Barbara Amiel, “Islamists won’t kill free speech – we will”, *Maclean’s*, January 9, 2015, Available at: <http://www.macleans.ca/news/world/amiel-column-on-charlie-hebdo/>.

⁴¹¹ Levant, Personal Interview.

⁴¹² Brown, p. 203.

⁴¹³ Mamdani alerts us to how these subjects might be seen as part of ‘antimodernity’: “What constitutes ‘Islam’ can be conceived not just as immune to modernity, but its active antimodern antithesis.” Mamdani, pp. 18-19.

political conversation in which they were the disparaged subjects unleashed a torrent of criticism unparalleled in the history of hate speech laws in Canada. Put simply, they were denied the right to speak back.

Like an unguarded gate of Canadian liberalism and tolerance, almost completely unknown to most Canadians, s. 13 would become an opening for the impending Islamic Trojan horse. Speaking with American conservative personality Glenn Beck just weeks after the complaint against the *Western Standard* was filed, Levant highlighted the potential for abuse and the relative obscurity of s. 13: “I think that most Canadians didn’t even know [Human Rights Commissions] existed until I videotaped it... you have a radical fundamentalist imam who’s using the secular, tax-funded bureaucracy of the government to enforce his fatwa.”⁴¹⁴ When appearing on TVO, he claimed: “...a secular government agency essentially prosecuted me for almost three years for blasphemy”.⁴¹⁵ Likewise, Steyn problematized the susceptibility of the West’s generous excesses in his *Maclean’s* excerpt: “In a few years... [European countries] will have reached an accommodation with their radicalized Islamic compatriots, who like many intolerant types are expert at exploiting the ‘tolerance’ of pluralist societies.”⁴¹⁶ Because freedom of speech is seen as a fundamental precursor to cherished ‘Canadian values’, insulating its abuse from those deemed antithetical to its spirit takes on a particular urgency that might not otherwise be experienced. We can view this in a wider context in which Western

⁴¹⁴ Western Standard, “Ezra Levant on Glenn Beck”, *Western Standard YouTube Channel*, January 23, 2008, Available at: <https://www.youtube.com/watch?v=5E0wuJvFolk>.

⁴¹⁵ The Agenda with Steve Paikin, “Ezra Levant”, *The Agenda with Steve Paikin YouTube Channel*, June 9, 2009, Available at: <https://www.youtube.com/watch?v=2uActEOsy50>.

⁴¹⁶ Steyn. “The future belongs to Islam”.

countries have "often denied the benefits of modernity to those it considers to be outside of it."⁴¹⁷

The banner of free speech also helps obscure the discriminatory aspect of Islamophobic speech. Individuals can invoke a 'critique of religion' that undergirds secular liberal thought and legal systems.⁴¹⁸ This reformulation allows us to see how the backlash against s. 13 – conceptualized by conservative culture warriors as a single front in a larger battle against Islamic encroachment – could be cast in innocent, perhaps even progressive language. Tyrer cogently captures this shifting of political discourse, noting that the invocation of abstract principles can gradually move discredited ideas from the periphery of debate (such as the hate speech debate) towards the center:

As a result, the far right has mobilised through the rearticulation of recognisable mainstream narratives of the failure of integration and multiculturalism articulated in the popular media and by politicians... By rearticulating progressive political metaphors – democracy, rights, freedom of speech – far-right groups have sought to overcome their exceptionalisation as extremist and anti-democratic, and in so doing have attempted to refigure Islamophobia as a fundamentally progressive cause in defence against Islamisation.⁴¹⁹

The polarization of ideology and culture attendant to the 'clash of civilizations' theses has often meant that Muslims in the West are subjected to a litmus test in public discourse. The 'good' Muslims are those who celebrate liberal democratic freedoms, human rights, capitalism, and, above all, check their religious and cultural baggage at the West's door. The 'bad' Muslims are those who oppose imperialism, empire, colonialism, cultural superiority, and resent patronizing justifications for military interventions in the

⁴¹⁷ Razack, *Casting Out*, p. 10.

⁴¹⁸ Bangstad, p. 30.

⁴¹⁹ Tyrer, p. 93.

Arab and Muslim world.⁴²⁰ In a way, certain 'values' that are often more political⁴²¹ than sociocultural become a litmus test for immigrants “because they are not regarded as possessing the necessary prerequisites for becoming citizens”.⁴²² On his primetime show on the *Sun News Network* Levant referred to Soharwardy as a “medieval style bully” and a “little fascist censor”.⁴²³ Levant had earlier confronted Soharwardy on air when the latter was invited to appear to discuss an entirely different subject (radicalization of Canadian Muslims). During the heated discussion Levant attempts to associate Soharwardy with radical Islamic political movements. Towards the end of the discussion Levant poses a final question: “You came to Canada from a medieval backwater called Pakistan but you brought your ideas of censorship... do you accept that trying to drag your Pakistani medieval sharia law into Canada was the wrong thing to do?”⁴²⁴

When Soharwardy withdrew his complaint at the Alberta Human Rights Commission, Levant vowed to continue engaging with him, invoking his distance from ‘Canadian values’: “I put in at least 100 hours fighting this guy. He may want to run away from this issue, but I’m not going to. His values are out of sync with Canadian society.”⁴²⁵ In response to losing a libel case brought by Awan (one of the *Maclean’s* three), Levant has particularly focused on one section of the ruling. In paragraph 166,

⁴²⁰ As Mamdani observes: “Judgements of 'good' and 'bad' refer to Muslim political identities, not to cultural or religious ones.” Mamdani, p. 15. O’Rourke, p. 22.

⁴²¹ This becomes even more complicated when we consider what polling throughout Muslim-majority countries *actually* reflects. For example, Steven Kull finds that opposition to the United States was reflected in a “dominant, overt theme that the United States oppresses the Muslim people in a variety of ways.” Further, a more nuanced but indirect theme included the view that “the United States has betrayed the Muslim people by violating its own principles of relations based on respect, tolerance, and the constraints of international law.” For detailed polling with analysis, see: Steven Kull, *Feeling Betrayed: The Roots of Muslim Anger at America* (Washington, DC: Brookings Institution, 2011), p. 24.

⁴²² Zine, “Unsettling the Nation”, p. 55.

⁴²³ Levant, “Confronting Soharwardy”, *Sun News Network*, June 6, 2014, Available at: <http://www.sunnewsnetwork.ca/video/3610014337001>.

⁴²⁴ Ibid.

⁴²⁵ Morton.

Judge Wendy Matheson determines that Levant stated Awan was an ‘anti-Semite’ as a matter of fact, something not supported by the evidence.⁴²⁶ While this is only one of the reasons Awan’s suit was successful, Levant focuses almost solely on this aspect in his defence and fundraising campaign. As he claims, “This should concern anyone who is worried about radical Islam, the right to criticize it, and the right to call out anti-Semitism in the public square.”⁴²⁷ By attempting to cast Soharwardy and Awan as ‘bad Muslims’, they become supposedly antagonistic to Canadian society and its cherished freedoms. Soharwardy, Awan and others who may not conform to these ‘prerequisites’ become targets of suspicion worthy of “cultural rehabilitation”.⁴²⁸ Although Awan’s libel case was decided upon particular factual inaccuracies, it is clear how convenient political capital can be extracted by characterizing it as a threat to free speech, especially in the context of societal anxieties regarding Islam and Muslims in Canada. As Jasmin Zine aptly explains:

[Muslim] identities are encrypted with meanings that are imposed by others and over which we often have no control. Our acceptability for nationhood is decided by fellow citizens who regard themselves as more entitled than we to imagining the nation and deciding who has a right to belong to it.⁴²⁹

Finally, although s. 13 has been repealed, its trajectory is by no means finalized or even predictable. When the Federal Court ruled that s. 13 was not unconstitutional, it opened the door to a possible reintroduction of the same or similar law. Brean described it as a “quirk”, explaining that currently “one of these laws federally for the Internet is on

⁴²⁶ Levant, “I’ve lost my lawsuit. But I’m going to appeal. Here’s why.”, *Standwiththezra.ca*, November 28, 2014, Available at: <http://www.standwiththezra.ca/>.

⁴²⁷ Ibid.

⁴²⁸ Zine, “Unsettling the Nation”, p. 55.

⁴²⁹ Ibid, p. 45.

solid legal footing and the provincial laws are good.”⁴³⁰ Since a similar law would essentially be relatively insulated from judicial review,⁴³¹ the question is whether or not a future government might want to reanimate the debate by proposing legislation. Brean is sceptical that if there is a Liberal government on the horizon they would see any benefit in reintroducing a law: “I don’t think they [Liberals] engaged with the question then and I find it highly unlikely that they would engage with it now... There’s too many downsides and not enough benefits.”⁴³² Moon echoed this sentiment but also focused on the practical aspect of regulating hate speech: “It was not used very often. It would make more sense to use the Criminal Code provisions that permit the deletion of hate speech on websites.”⁴³³

Additionally, Awan’s lawsuit against Levant was arguably just part of the wake of a much more heated debate, but it did raise some interesting questions going forward. First, Levant plans to appeal the ruling. Although it is likely to be upheld – especially considering some of the argumentation put forward by his counsel⁴³⁴ – it remains to be seen how the public feud between Levant and others involved will end. Second, if Awan was successful in his lawsuit, this means that others could potentially introduce similar proceedings. Although Levant’s blogs honed in on a number of personalities involved, the most vicious comments were reserved for Soharwardy. In response to Awan’s success in court, Soharwardy claimed the only reason he had not pursued a similar legal avenue is a lack of available time: “Believe me, I have so much material with me I can go to court

⁴³⁰ Brean, Personal Interview.

⁴³¹ Brean, “The power of hate: A legal primer on this week’s Supreme Court ruling against William Whatcott”, *National Post*, March 1, 2013, Available at: <http://news.nationalpost.com/news/canada/the-power-of-hate-a-legal-primer-on-this-weeks-supreme-court-ruling-against-william-whatcott>.

⁴³² Brean, Personal Interview.

⁴³³ Moon, Personal Interview.

⁴³⁴ Ishmael N. Daro, “Ezra Levant’s lawyer: Don’t take what he says seriously”, *Canada.com*, November 28, 2014.

and I can file a lawsuit against Ezra Levant and I'm 100% sure I can win. The reason I'm not going is because I don't have time."⁴³⁵

⁴³⁵ Soharwardy, Personal Interview.

CHAPTER 5: CONCLUSION

In conclusion, it would be a fallacy to assume that s. 13's repeal was principally the product of the Canadian public's discontent, the Conservative government's reflection of this popular opinion, or a 'battle for free speech' in which 'Canadian values' were defended from relatively illiberal newcomers with thin skins. Instead, the repeal should be viewed in the context of a wider ideological terrain in Canada, one in which Islam is increasingly conceptualized as antagonistic to, if not incompatible with, democracy. Protagonists of the backlash harnessed these developments by creating unwarranted alarmism regarding the Muslim identities and motivations of the hate speech complainants. Thus, the conception that Muslims pose a unique challenge to free speech in Western contexts led to non-penal hate speech laws forming a front against the alleged 'creeping' Islamic influence in the country. Through a dedicated campaign to push the manufactured controversy of s. 13 into the mainstream, a small group of bloggers, partially aided by Levant's vigour, were able to bring credibility to a policy response that originated on the fringes of the Canadian blogosphere. Due to the malleable nature of Islamophobia and the inability of anti-Muslim prejudice to conform to typical notions of racism, critiques of 'radical Islam' (or just 'Islam') can be housed in what seems on the surface to be liberal, even progressive initiatives. Key to this process is distilling a wider political agenda into easily digestible abstract principles recognized as universal goods in society: freedom of speech, countering 'radicalism', human rights, etc.

Once taken up by the mainstream media in Canada, the debate took a different turn and was markedly less occasioned by overt concerns regarding Eurabia. Journalistic outlets, by and large, reflexively sought to defend a nebulous principle of free speech that

was constructed in stark contradistinction to the Muslim identities of the complainants, and the wider Islamic imaginary that these identities conjured in popular discourse.

Overall, Muslims tested the limits of tolerance through a debate about free speech.

Although principled opposition to restrictions on speech were present, even ones based on caricatured and erroneous accounts, it was the potentiality of Muslims invoking non-penal hate speech legislation that led to the cautious limiting of tolerance's outer boundary.

It must be noted that the problem is not critiques of those who have extremist interpretations and are willing to use violence to see their religiously inspired edicts come to fruition. Nor is the problem those critics of all political persuasions that are innately suspicious of any effort to stifle secular critiques of religious values. The problem is the explicit or inferential arguments attempting to portray Canadian Muslims as somehow suspicious or threatening due to the ideology and actions of a fringe of their co-religionists. Therefore, it is understandable why Muslims would feel aggrieved by Canadian media coverage during the time period of the complaints. Oftentimes, it appears that what is said about Muslims – that they are unassimilable, form a global hive mindset, and are potentially part of a global movement to undermine the West– would not be acceptable to say about any other minority group in Canada. In fact, some of these themes have substantially contributed to bigoted tropes targeting other minorities, most noticeably the conspiracy theories about Jews that were once common but now limited to the extreme fringe.

The repeal of s. 13 had numerous consequences, the most obvious being the repeal of the only legislation applying to hate speech on the Internet, arguably the most

important medium due to its depth and breadth. Although the *Whatcott* decision seriously blunted the criticism of those that were in favour of less restriction on even questionable speech, one could argue that a crucial absence in the law remains. One of the advantages of non-penal hate speech legislation is that it is focused on reconciliation as opposed to punishment. Complainants and respondents are able to meet on agreeable terms without the inherently antagonistic and public forum that criminal proceedings create. Therefore, it is telling that *Maclean's*, Levant, and Steyn all eschewed any modicum of reconciliation and instead adopted a strategy designed to portray themselves as free speech victims while simultaneously enjoying a broad and unencumbered transmission of their narrative. Despite the *Maclean's* complainants asking for a relatively reasonable right of reply considering the gravity and longevity of the magazine's one-sided (and arguably prejudiced) appraisals of the topic, their Muslim identities (and association with the controversial CIC) would allow them to be associated with an alleged worldwide attempt to insulate Islam from any criticism in the West. The same was true with Soharwardy, whose credibility as an honest critic was largely destroyed when he realized his approach had backfired and was subsequently unprepared to furnish a convincing defence of his actions.

The repeal would also have significant impacts for some of the main protagonists of the debate. Levant especially used the ordeal to his maximum benefit, moving further into the mainstream with successive book launches after *Shakedown*. When the *Sun News Network* was launched, Levant would use his new platform to publicize his cause and other network personalities would routinely host some of the same Eurabia pundits, including Spencer, Geller, Steyn, and Pipes. Occasionally, some of the fringe Canadian

bloggers were lauded on the network for filling in the holes of Canadian journalism by embarking on their own Islam-centred research too ‘controversial’ for the mainstream. In fact, the cottage industry that was initially carved out in the United States and Europe examining all things ‘Islam’ seemed to reach its apex in Canada with the advent of the now defunct *Sun News Network*.

A final consequence is something more difficult to measure accurately, but no less significant. When Brean noted that the ‘battle for free speech’ was Canada’s first online ‘culture war’, he could not have described it more accurately. Not only did it have the effect of shining a light on a handful of previously known fringe figures, but also, albeit slightly, modified the Canadian approach to hate speech legislation and issues of free speech in general. It was certainly a win for those who have long since advocated a more libertarian or American approach to issues of free speech and hate speech. They seemed to ever so gently chip away at the edifice of Canada’s tolerant consensus that had henceforth aroused little concentrated opposition.

Moving forward, the debate regarding the intersection of Islam and free speech in Western contexts is far from over. In line with Said’s media malaise mentioned earlier, there is no shortage of ill-informed partisans masquerading as ‘experts’. Readers and viewers in North America can frequently find them extolling the virtues of Western civilization in relative comparison to the barbarity of the current Middle East. Moreover, the differing views on the meanings of the term ‘Islamophobia’ itself is a testament to the heavy political contestation involved. One might say that the hate speech debate had the effect of widening the boundaries of acceptable debate in Canada regarding the place of Islam in the West, situating previously more marginal figures more firmly in the

mainstream and cementing some discourses that when applied to other minorities would be cause for legal (even if non-penal) address. Although it is difficult to predict whether or not Canadian policy will again adopt a more robust approach to hate speech, one thing is clear: any movement advocating reform will face an uphill battle, having to contend with an enduring consensus among the press and a lingering sense of hesitation among policy makers given the intensity of the ‘battle for free speech’.

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