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***“Prohibiting Propaganda: Pointless or Pernicious”***

War propaganda is as old as the pleas made by Athenians and Spartans to justify killing each other in the Peloponnesian War over two millennia ago. But our own era has been plagued as never before by war propaganda, amplified first by newspapers, then by radio, later by television and now by the internet.

Propaganda in its most cynical sense was celebrated by Hitler in his tract, *Mein Kampf*. “With the help of a skilful and continuous application of propaganda,” chuckled the future Fuehrer, “it is possible to make the people conceive even of heaven as hell ....”

At the Nuremberg trial Hitler’s Field Marshall Hermann Goering testified that three factors are essential to success in modern war: military operations, economic warfare and propaganda.

Even so, the Nuremberg Tribunal found Hans Fritzsche, chief of radio in the Reich Ministry of Propaganda, not guilty of war crimes and crimes against humanity. “Fritzsche sometimes made strong statements of a propagandistic nature in his broadcasts,” explained the Tribunal. But these statements were not “intended to incite the German people to commit atrocities.... His aim was rather to arouse popular sentiment in support of Hitler and the German war effort.”

The Soviet judge – no stranger to Stalinist propaganda – dissented. Propaganda campaigns preceded each of Germany’s attacks on its European neighbors. Fritzsche’s propaganda “was invariably a factor in preparing and conducting acts of aggression and in training the German populace to accept obediently the criminal enterprises of German fascism.”

Moscow lost the case but won the international law war. Not long after Fritzsche walked free at Nuremberg, the Human Rights Commission of the United Nations began drafting what eventually became the International Covenant on Civil and Political Rights, now joined by 160 countries, including the United States.

The Covenant guarantees freedom of expression. However, as it was being drafted in 1961, the Soviet Union, together with Brazil and India, moved to include a ban on war propaganda. After diplomatic maneuvering the ban was approved by a vote of 53 to 21, with nine abstentions. Socialist countries and nearly all Third World nations voted in favor, while most western nations were opposed. In Western Europe, only the Spain of Generalissimo Francisco Franco – who had come to power by war -- supported the ban.

The result is article 20.1 of the Covenant. It sounds clear enough: “Any propaganda for war shall be prohibited by law.”

But this simple statement is beset by two fatal ambiguities. First, what is “propaganda”? Where is the line between unlawful propaganda and lawful advocacy?

There is no uniform definition of propaganda in national or international law. The elusiveness of any effort to draw the line is exemplified by a leading writer on the Covenant, the eminent Austrian jurist Manfred Nowak. Propaganda, he proposes, means “intentional, well-aimed influencing of individuals by employing various channels of communication to disseminate, above all, incorrect or exaggerated allegations of fact.” It also includes “negative or simplistic value judgments whose intensity is at least comparable to that of provocation, instigation or incitement.”

No wonder, as Nowak himself notes, that a committee of experts of the Council of Europe warns that the term “propaganda” is “extraordinarily vague and entails a danger of abuse.” If factual exaggerations and simplistic value judgments are to be banned, American politicians might as well close up shop.

The second ambiguity is, What is “war”? Must we ban propaganda even for a war of self-defense?

The answer given by the Human Rights Committee of the UN is that the Covenant bans only propaganda for “an act of aggression or breach of the peace contrary to the Charter of the United Nations.” But what does that mean? For six years the States Parties to the International Criminal Court have been trying to define “aggression,” with no agreement in sight.

When the United States ratified the Covenant, we prudently added a formal reservation, stating that “article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.”

Thirteen western European nations, as well as Australia and New Zealand, also adopted reservations to the ban on war propaganda. They typically reserve the right not to introduce any new laws on the subject.

But most nations remain formally committed to the ban. Since war propaganda often comes from governments themselves, in practice the ban may often be a dead letter. But it can also be pernicious. The government of Saddam Hussein boasted to the UN Human Rights Committee that Iraqi laws clearly banned war propaganda. Woe unto any Iraqi who might have spoken up in support of the UN military defense of Kuwait against Iraqi aggression in the first Gulf War.

When propaganda -- whatever that means -- reaches the level of deliberate incitement to commit imminent and likely crimes, its dissemination should be made criminal. Otherwise the best remedy for ugly words is to denounce them, not to indict them.

**Doug Cassel’s commentaries are broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.**