

Hate Speech Should Be Criminalized

Civil Liberties, 2013

From *Opposing Viewpoints in Context* Research Database

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"Proscribing hate speech more broadly would, I believe, foster a more inclusive, tolerant, and safer society."

The popular catchphrase of free speech defenders is a quote attributed to [French writer] Voltaire: "*I disapprove of what you say, but I will defend to the death your right to say it.*" Civil libertarians often defend and support the notion that the right to freely express offensive opinions is a bedrock human right that should not be abridged except under very narrow circumstances—typically for hate speech that directly incites violence against a person or group of persons. However, I support broader prosecution of hate speech—defined here as speech that disparages a person or class of persons based on an immutable characteristic (colour, race, origin, gender, sexual orientation, disability, and age), or their occupation, family or marital status, and religion or lack of religion. Proscribing hate speech more broadly would, I believe, foster a more inclusive, tolerant, and safer society.

The Criminalization of Hate Speech

Many western countries already do criminalize hate speech in a more encompassing way, although enforcement is often weak and spotty. A typical example is Canada, where it is illegal to "expose a person or persons to hatred or contempt ... on the basis of a prohibited ground of discrimination" (Canadian [Human Rights Act](#)) and to "wilfully promote hatred against any identifiable group" (Criminal Code of Canada). The United States, however, stands almost alone in its veneration of free speech at almost any cost. The U.S. Supreme Court insists that the First Amendment protects hate speech unless it constitutes a "true threat" or will incite imminent lawless action.

But societies should take action against hate speech without requiring that a few specific words by themselves must directly and immediately incite violence, or be likely to. That sets a very high bar and is difficult to prove. It also allows purveyors of hate to evade responsibility simply by not making explicit calls for violence. Further, our new digital world raises the stakes—the Internet has spawned a proliferation of hate speech along with useful information such as bomb-making instructions or the home addresses of abortion providers. This has enabled others to commit violence long after the words were first published.

Violent acts of hate are generally preceded by hate speech that is expressed publicly and repeatedly for years, including by public figures, journalists, leading activists, and even the state. Some examples include Anders Behring Breivik's terrorist acts in Norway (June 2011), the assassination of Kansas abortion provider Dr. George Tiller (May 2009) and other abortion providers in the 1990s, the Rwandan genocide against the Tutsis (1994), the ethnic cleansing of Bosnian Muslims in Bosnia-Herzegovina (1992-1995), and the Nazi Holocaust.

Culpability for Violent Crimes

Courts of law should be able to look at broader patterns of hate speech in the culture to determine whether a hateful atmosphere inspired or contributed to violence, or would likely lead to future violence. When hate speech is relatively widespread and acceptable (such as against Muslims), it's not difficult to see the main precursor to violence—an escalation of negative behaviour or rhetoric against the person or group. Dr. George Tiller endured a previous assassination attempt and a decades-long campaign of persecution waged by the anti-abortion movement, which worsened over time, especially in the last year or two of the doctor's life. Anders Behring Breivik had actively opposed multiculturalism for years and had immersed himself in Christian Right propaganda about the supposed threat of Muslim immigration to Europe, a view popularized only in recent years by a growing army of anti-Muslim bloggers and right-wing journalists.

As these examples illustrate, we can often pinpoint the main purveyors of hate speech that lead to [violent crimes](#). In the Norway shootings, the killer Breivik relied heavily on writings from Peder Jensen ("Fjordman"), Pamela Geller, Robert Spencer, Mark Steyn, [the websites] *Jihad Watch*, *Islam Watch*, *FrontPage Magazine*, and others. Such individuals and groups should be charged with incitement to hatred and violence. Similar culpability for the assassination of Dr. George Tiller should rest on the shoulders of the extremist anti-abortion group [Operation Rescue](#) and Fox News commentator Bill O'Reilly.

In general, anyone spewing hate to an audience, especially on a repeated basis, could be held criminally responsible. This would include politicians, journalists, organizational leaders and speakers, celebrities, bloggers and hosts of online forums, and radical groups that target certain categories of people. We also need to hold people in accountable positions to a higher standard, such as government employees and contractors, ordained religious leaders, CEOs [chief executive officers], and the like.

Criteria by which to assign culpability could include a speaker's past record of prior hate speech against a particular person or group, how widely and frequently the views were disseminated, and the specific content and framing of their views. In cases where violence has already occurred, judges could determine how likely it was that the violent perpetrators had been exposed to someone's specific hate speech, and hand down harsher sentences accordingly.

The Harms of Hate Speech

The apparent assumption of free speech defenders is that offensive speech is essentially harmless—that is, just words with no demonstrable link to consequences. But questioning whether speech can really incite someone to bad behaviour seems irresponsibly obtuse. Obviously, words have consequences and frequently inspire actions. A primary purpose of language is to communicate with others in order to influence them. If that weren't so, there

would be no multi-billion dollar advertising industry, no campaigns for political office, no motivational speakers or books, no citizen-led petitions, no public service announcements, and no church sermons, along with a myriad of other proven examples where speech leads others to act.

The majority of hate speech is targeted towards gays, women, ethnic groups, and religious [minorities](#). It's no coincidence that straight white men are generally the most ardent defenders of near-absolute free speech, because it's very easy to defend hate speech when it doesn't hurt you personally. But hate speech is destructive to the community at large because it is divisive and promotes intolerance and discrimination. It sets the stage for violence by those who take the speaker's message to heart, because it creates an atmosphere of perceived acceptance and impunity for their actions. Left unchecked, it can lead to war and genocide, especially when the state engages in hate speech, such as in Nazi Germany. Hate speech also has serious effects on its targets. Enduring hatred over many years or a lifetime will take a toll on most people. It can limit their opportunities, push them into poverty, isolate them socially, lead to depression or dysfunction, increase the risk of conflict with authority or police, and endanger their physical health or safety. In 1990, the Canadian Supreme Court stated that hate speech can cause "loss of self-esteem, feelings of anger and outrage and strong pressure to renounce cultural differences that mark them as distinct." The court agreed that "hate propaganda can operate to convince listeners ... that members of certain racial or religious groups are inferior," which can increase "acts of discrimination, including the denial of equal opportunity in the provision of goods, services and facilities, and even incidents of violence."

In democratic societies that stand for [equality](#) and freedom—often with taxpayer-funded programs that promote those values by assisting vulnerable groups—it makes no sense to tolerate hate speech that actively works to oppose those values. Further, hate speech violates the spirit of human rights codes and laws, diminishing their purpose and effect. A society that allows hate speech is a society that tolerates prejudice at every level—politically, economically, and socially—and pays the consequences through increased discrimination and violence.

Objections from Hate Speech Defenders

The most popular solution to the problem of hate speech is "more free speech." This seems to make sense on the surface, and sometimes works well in practice. For example, there are many outspoken atheists who do a good job of publicly defending themselves and their fellow atheists from the prejudice and hatred too often expressed by religious people. But even if the targets of hatred can ably defend themselves from verbal violence, why should they have to? Why should a democratic society privilege the right to free speech over the well-being and privacy of those with less privilege?

Most vulnerable groups, however, do not have a level playing field on which to respond to hate speech against them. They are often outnumbered, out-resourced, and out-funded by the haters, simply because of their disadvantaged position in society. Sexism and [racism](#) are still

thriving in the 21st century, which means women and most minority groups have a harder time getting published and heard and taken seriously in mainstream society. Which brings us full circle—perhaps one of the reasons sexism and racism are still so prevalent in modern society is because free speech is exercised largely by the privileged at the expense of the unprivileged.

A common objection to prosecuting hate speech is that it might endanger speech that *counters* hate speech. For example, a critique may repeat the offending words and discuss their import, or it may subvert the hate message in a subtle or creative way that could be misunderstood by some. But context is everything when determining whether speech is actually hateful or not, so this objection seems nonsensical. Any reasonable judge should be able to discern the difference in intent or effect behind a hateful message and the speech that critiques it.

Another objection is that prosecuting hate speech removes accountability from those who actually commit the violence, turning violent perpetrators into victims of hate speech. But no-one is suggesting that hate speech causes people to act against their will or takes away their personal responsibility. Typically, hate speech creates an environment in which a person who is already sympathetic to the views of the speaker feels validated and encouraged to take action, with a reduced fear of punitive consequences and even anticipation of praise and support from the in-group that shares their views. Nothing prevents a hate-inspired murderer from being prosecuted in the same way as any other violent murderer—in fact, many countries mete out harsher penalties for hate-motivated crimes. But those who inspired the murderer should also be prosecuted separately under hate speech laws.

Existing Restrictions on Free Speech

Many people seem to treat freedom of expression as an almost sacred, inviolable right, but this is far from the reality. In constitutional democracies, free speech is already justifiably restricted in a multitude of ways by law or policy, even in the United States. The quintessential example of prohibited speech is falsely shouting "Fire!" in a crowded theatre. Besides hate speech itself, some other generally accepted prohibitions of speech include:

- Sedition (advocating [force](#) as a way to change the government)
- Threats
- Defamation (libel and slander)
- False or misleading advertising
- Buffer zones around abortion clinics that prevent anti-abortion protesters from harassing patients and staff
- Quiet zones near hospitals or schools
- Municipal bylaws restricting the location, size, type, content, and display of signs, posters, objects, ads, etc.
- Profanity on public airwaves

- Publication refusal, [censorship](#), and the right to edit enforced by news websites, online forums and blogs, newspapers, magazines, radio, and other media
- Company confidentiality policies (such as employees being prohibited from sharing trade secrets or talking to the media)
- Gag orders or publication bans in contracts, court cases, and settlements

In practice, courts will look at circumstances on a case-by-case basis to see where a balance should be struck between freedom of expression and some other value or right. No single right trumps another in all circumstances, not even the [right to life](#). For example, Canada's constitution allows a fundamental right, such as freedom of expression to be limited to protect someone else's fundamental rights, such as the right to life or liberty—or in the case of abortion, women's right to safely access a necessary medical service, which courts have determined outweighs the protesters' right to protest outside clinics.

Some current legal restrictions on free speech are not on the above list because they are clearly illegitimate. One of those is insulting your country's head of state, currently illegal in at least eight countries, mostly in western Europe. This offence is called "lese-majesty," a holdover from the days when kings were divine. But if political leaders are immune to criticism or ridicule, they have far too much power over the people and the country cannot be a true [democracy](#). In general, the public must be allowed to pass judgment on public figures, because the latter owe their position to public support in the first place, which should not be coerced or bought. For example, public figures in the U.S. are not protected from defamation unless it was done with malice—knowledge of falsehood or reckless disregard for the truth.

Many countries also criminalize blasphemy—the criticism of religious doctrines or practices. But the desire to protect religion from criticism is simply a reflection of the insecurity of believers who doubt their own beliefs. Blasphemy laws have more in common with hate speech actually, because they often result in hateful rhetoric and violent acts against the "blasphemers." Further, many religious people have a tendency to confuse hate speech with dissent, such as Catholics who hurl accusations of "bigotry" when someone criticizes Church policies or dogma. But hate speech is personal—it is directed against *people* based on their identifiable characteristics. Dissent on the other hand is speech against other *opinions, beliefs, or positions*. Dissent is an essential component of a free democracy, and it includes blasphemy. In other words, you should be free to attack Catholic policies that protect abusive priests, but it would be hateful to say that all Catholic priests are pedophiles.

Weighing Free Speech Against Other Rights

When people and courts defend hate speech against minorities or other often targeted groups as "protected speech," it must be asked: Why are targeted groups required to risk their lives so their persecutors can have free speech rights? Why does the right to free speech allow vulnerable minorities to be openly defamed and targeted for decades until they're finally assassinated? And why do the families of the slain victims have to suffer in their grief and loss, because free speech was deemed more important than the lives of their loved ones?

The idea that vulnerable persons and groups should have to tolerate hate speech against them in the name of freedom of expression—often over decades or a lifetime—is offensive. We're talking about peoples' lives after all—this is not just a philosophical debate. The right to free speech is a fundamental value, but it should not be allowed to outweigh the basic human rights of other people, especially their right to life.

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“Us vs. Them”: American Democracy Threatened by Hate Speech

Hate Crimes, 2001

From *Opposing Viewpoints in Context* Research Database

Sanford Cloud, Jr., President and Chief Executive Officer of the National Conference for Community and Justice, formerly known as the National Conference of Christians and Jews, an organization dedicated to fighting prejudice and racism.

Appealing to hate, especially in times of economic insecurity, is a time-tested insidious tactic increasingly being mainstreamed in modern American dialogue. Joe McCarthy did it, to serious effect. The Neo-Nazis and white supremacists do it—witness the Montana Freeman. Certain religious leaders do it, and gain media attention. And, recently, some of our politicians have done it. This effective technique drives wedges between fellow workers and neighbors, and alienates us from people we do not even know. At worst, it inspires hatred and violence.

The Modus Operandi

The modus operandi involves a leader appealing to segments of the population whose sense of self is shaky, often due to tough economic times. Corporate downsizing, restructuring, re-engineering, rising costs, diminishing quality of life and the threat of lost jobs stir anxieties. People fear that they won't be able to care for their families.

Recognizing this as a fertile breeding ground, a leader steps to the podium and rallies the fearful and angry by blaming their troubles squarely or implicitly on some "other" ethnic, racial, socioeconomic or religious group. The leader then positions himself as the brave spokesperson of "truth," who will challenge the enemy—the "other"—who has caused the problem. With someone to look down upon, the fearful feel empowered and define themselves as members of a superior group, more valuable than those "others."

Historically, specific ethnic, racial, political and religious groups have been targeted as the threat. For Hitler, it was Jews, Catholics, gypsies and homosexuals. Joe McCarthy's enemies were liberals and communists, in particular, members of the Hollywood community. Today, some members of that same entertainment community are maligning the Jews, while films stereotype people of color as violent youths.

The Klan burns its crosses and Moslems are attacked as the purveyors of [terrorism](#), while some African American leaders rail against white America. The Montana Freeman defrauded the financial community as a statement against our government and in furtherance of their view that white male Christians are the sole intended beneficiaries of the U.S. Constitution. For each, the message is the same: silence, stop or eliminate the "other" and you—the unfairly victimized—will triumph.

Wedge Issues

It is relatively easy to recognize the appeal-to-hate tactic in its extreme forms. But today, the tactic is becoming ever more subtle, as leaders begin to use wedge issues that are silent synonyms for targeted groups. Through insinuation, allusion and even clear statements, certain leaders, a number of elected officials and some who would have been president, have fanned the flames of hate, by using wedge issues—such as immigration, welfare and affirmative action—to divide. Creating a "them" versus "us," either/or mentality through appeals to fear, these leaders have offered simple, palatable explanations to the complex social, economic and political changes rocking Americans today.

Regarding immigration, for example, we've recently heard talk about constructing walls at our borders and, alternatively, about a new branch of the armed forces to keep out illegal immigrants. Here, the wedge argument is simple: The real Americans must stop the immigrants who are taking the jobs of U.S. citizens, adding to crime, destroying our communities or, when they are not working, living off welfare. Forget that immigrants take low-paying jobs that others will not accept, that some clean the hotel rooms where presidential candidates stay and that they pay taxes. Forget that they enrich our culture. Forget that America is, after all, a country of immigrants save for Native Americans. And forget to differentiate between illegal immigrants and those who legally come with special skills or to join family members. But, most of all, forget that the current arguments are not new. Almost 100 years ago they were hurled at Irish, Jewish and other Central European emigres.

With welfare, those who breed division play on the commonly held assumptions that most welfare recipients are African American or Hispanic, have a large number of children to increase their checks, regularly double their benefits through fraud, and readily stay on welfare for the long haul because they do not want to work. Each of these beliefs is untrue. But many hardworking, taxpaying Americans believe them and are angry at those in need of help. To many, welfare reform now means eliminating support totally, rather than seeking a creative and considered response toward those who can achieve self-support and those who might starve without our help.

Insidious and Dangerous

While people of good will may recognize and condemn overt appeals to hate, they too often dismiss the use of the more subtle wedge arguments. But this method of gaining public attention, relying as it does on fear and hatred, is insidious and dangerous. It dehumanizes whole groups and, in so doing, obfuscates complex issues so that realistic but humane solutions are left outside of the national debate.

It is time for us to take stock and call upon leaders in all walks of life and, in particular, the presidential candidates who will receive so much media attention, to meet their obligation to

sharply, openly and honestly debate issues and avoid taking America down the path toward division and suspicion.

We must remain mindful that, while the U.S. Constitution properly protects free speech, history shows that the rhetoric that preys on insecurities breeds a milieu receptive to hatred of some "other." Americans can and should tolerate all points of view, even when distasteful. What we must not tolerate is the silence of people of good will, who by their passivity allow the noxious use of wedge issues to be mainstreamed, creating a vacuum into which the venom of hate is welcome. We must join our voices, speak loudly, clearly and in a civil manner against this tactic. We must respond with facts to those who would appeal to the worst in us. And we must expressly condemn the conduct of those who would use direct or implied scapegoating as a tool for gaining public attention, power or election. If we do not, we will have endorsed through silence a climate that sanctions the language of hate, permits bias crimes and perhaps, ultimately, craves random acts of group violence throughout our nation.

Source Citation

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Hate Speech and Hate Crimes: What is the Relationship?

Civil Liberties, 2004

From Opposing Viewpoints in Context Research Database

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There's been a groundswell in the past several years to increase diversity in journalism, both in news coverage and in newsroom staffing. The goal of several diversity initiatives is to increase the number of voices that regularly appear in our newspapers, magazines, broadcasts and Web sites.

It's important to seek different perspectives and ideas, and the goal of such initiatives is an admirable and productive one. There are some voices, however, that have demonstrably adverse effects. So while the journalism community, judicial system and American public generally support tolerance of diverse viewpoints, some perspectives and types of speech still warrant concern.

The Rising Incidence of Hate Crimes

One problematic voice is that of hate. Whether it is the dragging death of an African-American behind a pick-up truck in Texas, a gay student's murder in Wyoming, a racially motivated shooting spree at a Los Angeles Jewish community center or a bloody rampage by two high school students enamored of Hitler's fascism, the rising incidence of hate crimes and the groups who appear to encourage them is attracting public interest (1). In particular, the World Wide Web has provided marginalized extremist groups a more notable and accessible public platform. The Internet has put the problem of incendiary hate into sharp relief.

In several research studies where I have focused on short-term message effects of hate speech, it is difficult to demonstrate with certainty the linkage between hate expression and violence or harm (deterministic causality). In a recent study, I asked 266 participants (both university and non-university students recruited online) to read and evaluate one of 11 white supremacist Web pages that I had randomly sampled from the Internet. Similar to previous studies, the data showed that the content of the hate Web pages was perceived to be in keeping with the Court bounds for First Amendment protection. Yet the participants acknowledged an indirect effect that, on the other hand, may suggest hate speech effects are more slow-acting—and thus imperceptible in the short term (probabilistic causality).

Specifically, participants in the cyberhate study rated the indirect threats from the World Church of the Creator (WCOTC) [a white supremacist organization] Web page as very high (Mean=6, on a seven-point scale where seven represented the highest score). Is it coincidental that a former WCOTC member ... shot 11 Asian Americans, African-Americans and Jews, killing two, before committing suicide? Or that two brothers associated with WCOTC were charged with murdering a gay couple and fire-bombing three Sacramento synagogues? While WCOTC leader Matthew Hale does not endorse this lawlessness, neither does he condemn it. Part of their ideology is that all nonwhites are "mud people," people without souls, like animals eligible for harm.

The Real Harm

Current legal remedies may be missing the real harm of racist indoctrination, which may not be immediately apparent or verifiable. For instance, hate expressions tend to encourage a set of beliefs that develop gradually and that often can lie dormant until conditions are ripe for a climate of moral exclusion and subsequent crimes against humanity. Moral exclusion is defined by Susan Opatow, an independent scholar affiliated with Teachers College at Columbia University, as the psychosocial orientation toward individuals or groups for whom justice principles or considerations of fairness are not applicable. People who are morally excluded are perceived as nonentities, and harming them appears acceptable and just (e.g., slavery, holocaust).

It is not the abstract viewpoints that are problematic. Rather, it is the expressions intending to elicit persecution or oppression that often begin with dehumanizing rhetoric. In my research, I argue that communication is the primary means by which psychological distancing occurs. Arguably, it may be the long-term, not short-term, effects of hate expression that are potentially more far reaching.

Examining the Internet

Even though prevailing First Amendment dogma maintains that speech may not be penalized merely because its content is racist, sexist or basically abhorrent, Internet law is a dynamic area and as such is not completely integrated into our regulatory and legal system. Consequently, many questions remain about how traditional laws should apply to this new and unique medium. The Internet can combine elements of print (newspapers and magazines), broadcast (television and radio) and face-to-face interaction. Moreover, unlike users of previous media, those on the Internet have the power to reach a mass audience, but in this case the audience must be more active in seeking information, as cyberspace is less intrusive than other mass media.

It is unclear whether content-based restrictions found in other technological media may be permissible for the Internet. For example, the FCC [Federal Communications Commission] ruled that indecency was unsuitable for broadcast media because of ease of access, invasiveness and spectrum scarcity, yet cable and print media are not subjected to this form of content regulation.

In 1996, the United States Congress passed the Telecommunications Bill, which included the Communications Decency Act (CDA). The CDA regulated indecent or obscene material for adults on the Internet, applying First Amendment jurisprudence from broadcast and obscenity cases. Later that year, the Supreme Court declared two provisions unconstitutional in *Reno vs. ACLU*. Congress and the Court disagreed on the medium-specific constitutional speech standard suitable for the World Wide Web. Congress argued that the Internet should be regulated in the same manner as television or radio, but the Court decided not to apply that doctrinal framework. Instead, the Court viewed the Internet as face-to-face communication, deserving full protection.

Is Regulation Possible?

Issues of Internet regulation naturally lead to the question of whether such regulation is even possible. Cyberspace doesn't have geographical boundaries, so it is difficult to determine where violations of the law should be prosecuted. There are enforcement conflicts, not only between different countries' legal jurisdictions, but also among federal, state and local levels in the United

States. Although Americans place a high premium on free expression, without much effort most people can find Internet material that they would want to censor.

Some argue that cyberhate oversteps this idea of "mere insult" and warrants liability. The Internet is a powerful forum of communication with its broad (world-wide) reach, interactivity and multi-media capability to disseminate information. These features inevitably result in concerns about impact, especially when viewed as empowering racists and other extremists. It is common for people to wonder whether white supremacist Web pages cause hate crime. This question is similar to people's concerns regarding whether TV violence causes aggression in viewers. The issue of causation (claim: x causes y) is an important one to address.

It is important to differentiate between language determining (or causing) an effect and language influencing the probability of an effect. In terms of a strict social science approach (deterministic causation) we can't say language has an effect unless three conditions are met: (a) there must be a relationship between the hypothesized cause and the observed effect, (b) the cause must always precede the effect in time (x must come before y), and (c) all alternative explanations for the effect must be eliminated. The problem with making a strong case for a causal effect lies with the second and third conditions. For example, most media (television, Internet etc.) effects are probabilistic, not deterministic. It is almost impossible to make a clear case for television or cyberhate effects because the relationship is almost never a simple causal one. Instead, there are many factors in the influence process. Each factor increases the probability of an effect occurring. The effects process is complex.

The U.S. Supreme Court has traditionally viewed speech effects in terms of short-term, deterministic consequences, and has not considered more far-reaching effects.

While more research is needed on the long-term effects of hate speech, it may be worth considering some very limited restrictions on some hate expression. American jurisprudence has not fully realized the harmful nature and effects stemming from hate speech, which has the ability both to directly elicit immediate behavior (short term) and to cultivate an oppressive climate (long term).

Footnotes

1. In 1998 African-American James Byrd was chained to a pick-up truck and dragged to death. Gay college student Matthew Shepard was beaten and then tied to a post and left to die in Wyoming in 1998. In 1999 Buford O'Neal Furrow entered a Jewish Community Center in Los Angeles and opened fire, wounding five people, including three young children. At Columbine High School in Colorado in 1999, students Eric Harris and Dylan Klebold went on a shooting rampage, killing fifteen and wounding twenty-three others.

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