

## Is dangerous speech free speech?

**Expression can be dangerous, but that should not necessarily make it a crime. Jeffrey Howard evaluates the best argument for banning hate speech.**

Speech can be dangerous. Homophobic rhetoric stirs up anti-gay attitudes, leading to increased bullying in schools. Xenophobic smears in tabloid op-eds exacerbate animosity toward migrants, prompting discrimination and abuse. White supremacist websites enjoin readers to “take back” their country from racial minorities, implicitly inciting violence. In the extreme, aspiring *génocidaires* employ dehumanising language to characterise a widely despised group, loosening listeners’ inhibitions against slaughter.

The most powerful argument for banning [hate speech](#) is not that it causes offence, nor that it makes citizens feel alienated from their own society. The most powerful argument for banning hate speech is that it increases the incidence of violence and discrimination against targeted groups.

As others have [suggested](#), this is the most plausible rationale for Britain’s own legislation against hate speech, which [emphasises](#) not merely the “abusive” and “insulting” dimensions of hateful expression, but also the fact that it is “threatening”: it reasonably makes targets fear for their safety, both from the speakers themselves and by impressionable bystanders who might be incited by it.

Banning hate speech on this basis seems, at first, compelling. The argument is strikingly simple. The state has a responsibility to protect its citizens from criminal attacks. Preventing speech that induces others to commit crimes furthers this aim. So the state should ban it.

But without further qualification, the argument proves too much. If we believe in the right to free speech, we should not be prepared to chip away at it every time we learn that some instance of expression could potentially inspire others to do wrong. Otherwise the right to free speech as we know it — and value it — would swiftly disappear. So the question becomes: when should dangerous

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speech constitute a crime, and when should it not?

### Killer movies

Consider the case of Sarah Edmonson and Benjamin Darras. In 1995, the two lovers watched *Natural Born Killers*, which tells the disturbing tale of a couple on a homicidal spree. Enthused by the movie, they shot two strangers: William Savage, a cotton-mill manager, and Patsy Byers, the clerk at a corner store. Savage died, but Byers survived, albeit as a quadriplegic. Beyond pressing criminal charges, Byers sued Edmonson and Darras. But she did not stop there: she sued Oliver Stone, the director of *Natural Born Killers*, and Time Warner, the film's production company. Their crime? Inspiring her attempted murder.

The lawsuit [alleged](#) that the filmmakers, by “distributing a film they knew, or should have known would cause and inspire people to commit crimes,” bore part of the moral and legal responsibility for the attacks. John Grisham, a famous fiction writer and a friend of Savage's, [concurred](#), insisting that there was a clear “causal link”. The production company balked at the suggestion, which they [insisted](#) could “pose a grave danger” to free expression. Who was right?

Disturbingly, cases like this abound. After watching the cinematic blockbuster *The Dark Knight Rises* in 2012, a graduate student in neuroscience named James Holmes dressed up as the movie's villainous “Joker” and went on a rampage through a cinema in Aurora, Colorado, [killing](#) 24 people. Does it follow that creating and distributing *The Dark Knight Rises* ought to have been a crime? Should the low-budget flick *Suffocator of Sins*, which also [motivated](#) Holmes, be criminalised, too?

If so, what about *Scream*, *A Clockwork Orange*, *Queen of the Damned*, *Child's Play 3*, *American Psycho*, *Nightmare on Elm Street*, and *Saw*? All of these films [allegedly inspired](#) heinous crimes. For all we know, had the perpetrators not watched these films, they would not have become killers. For all we know, their filmmakers are tantamount to those who sell firearms to murderers, making possible evil that would otherwise not occur.

### The puzzle

In the 1990s there was a lively debate on whether violent movies should be banned due to their potential to inspire violence. One survey at the time suggested that more than half of Britain [supported](#) such a ban. In America, Byers [lost](#) her suit against Oliver Stone and Time Warner, but many supposed that the Batman-inspired killings in Aurora would [reignite](#) the debate.

Instructively, they did not. There is no longer any serious public conversation about whether action movies that contain violent scenes ought to be prohibited by criminal law. This may be because people doubt that violent movies actually inspire much violence. But I suspect something deeper is at work.

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I suspect most people are now convinced that works of artistic expression, as a general category, are at the heart of what the right to free expression properly protects. The mere fact that such expression could inspire crime in certain wayward citizens is not sufficient, in the minds of most, to justify suppression.

Yet this raises a philosophical puzzle for those who seek to ban speech that spreads hate. If we want to ban hate speech on the grounds that it inspires crime, should we not be prepared to ban *all* expression that could potentially do the same? Is there any salient difference between hate speech that inspires crime, and art that inspires crime, that could justify differential treatment under law?

Perhaps our judgments diverge because of concerns about causation and predictability. Hate speech, by its nature, stirs up hateful *attitudes*—of repulsion, disgust, animosity, and anger—which in turn can lead listeners to pursue hateful *actions*. The causal chain is clear, and in some cases, predictable.

To preach hate is to encourage the adoption of such attitudes; one can hardly be surprised when listeners are moved to act upon them. In certain contexts, hate speech may be *overwhelmingly* likely lead to listeners to act hatefully.

In contrast, we can say nothing of this sort about action movies. Surely, most violent films have never inspired a specific act of violence. And because no filmmakers could reasonably be expected to know, in advance, whether their movies would move some viewers to be violent, it would be wrong to prosecute them for it.

I am not convinced that this concern about predictability is what drives our differing attitudes toward banning hate speech, on the one hand, and banning potentially inflammatory art, on the other. After all, what makes a given instance of hate speech objectionable is not that it clearly leads to a particular criminal act, but rather that it contributes to an atmosphere in which crime is more likely. As Lord Parekh [puts the point](#):

A vicious and widespread hatred of a group does not spring up overnight. It builds up slowly through isolated utterances and actions, each individually perhaps trivial but all cumulatively capable of coarsening the community's sensibility, poisoning the minds of the young, weakening the norms of civility and decency, and creating a situation in which it becomes a common practice to ridicule, mock, malign, and show hostility to the target group and over time to others.

It is at least plausible that the emergence of a "culture of violence" works in largely the same way. We need not justify a ban on movies like *Natural Born Killers* on the grounds that they are likely to lead to some definite number of murders that would otherwise not have occurred. That would be implausible. Rather, the justification for the ban would simply be that such films contribute to the creation and maintenance of a poisonous atmosphere in which people are encouraged to solve

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their problems, and vent their anger, through violence.

Note, too, that the difference is not helpfully explained by the possibility that those engaged in hate speech *intend* for their speech to inspire violence, whereas those making movies do not. Bad intentions, to be sure, exacerbate the blameworthiness of actors. That why we're apt to punish a person more harshly if he intentionally kills someone, rather than kills someone through recklessness or negligence. But recklessness and negligence matter as categories precisely because one need not be *intending* to do wrong in order to do wrong.

What matters centrally in determining whether an action is right or wrong is how that action affects the rights and interests of others, not what the actor happens to be thinking. In any case, it's plausible that even some of those who preach hate do not *intend* for their hate to lead to heinous violence. They may simply be seeking to make their society inhospitable to the targeted groups, encouraging them to leave home. But that fact about their aims should not make little difference to our appraisal of the harm their speech causes.

### The grounds of free speech

Those who seek to ban hate speech to prevent crime need a containment strategy. They need to show that banning hate speech on this basis does not open a jurisprudential black hole that swallows large swaths of non-hateful expression, too. Focusing on issues of causation and predictability won't will not solve this problem. Nor will focusing on issues of intentionality. So what will?

We need to go deeper and ask a fundamental question: Why do we value free expression in the first place? Once we identify a plausible answer to this question, we will see that different "[categories of expression](#)" have markedly differing degrees of moral importance.

Here is one common answer to our question that I believe is broadly right: The value to free expression is explained by the *interests* that all individuals have in expressing themselves, and in being exposed to the expression of others. Foremost among these interests, [according to John Rawls](#), are the interests we have in developing and exercising our basic human capacities of rationality and moral judgment.

In a nutshell, we cannot rationally pursue our own good without opportunities to express ourselves to, and learn from, other human beings. Nor can we develop an understanding of our moral obligations, including our obligations as democratic citizens, without opportunities to deliberate openly with others.

The right to freedom of expression, then, is important because it enables the development and exercise of our basic human capacities. But when we think about freedom of expression in this light, different sorts of speech strike us as differentially important.

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Imagine I were to start a smear campaign against a professional nemesis of mine, spreading lies about her that lead others to mistreat her. It is not at all plausible to think that such expression is tightly connected to my interests in developing and exercising my basic human capacities. In the jargon of U.S. constitutional law, it is “[low-value speech](#)”. Thus it is not surprising that most democracies committed to freedom of expression nevertheless ban libel and slander without any apparent cognitive dissonance; the interests that justify the former are simply not closely connected to the latter.

Contrast this with artistic expression. Such expression develops and engages our distinctively human capacities of rationality, imagination, and moral judgment — capacities central both to living well and living ethically. By making art, we creatively explore themes of central importance to human life. By consuming art, we place ourselves in the shoes of others, we develop empathy, and we are moved to reckon with profound moral and spiritual questions that we would otherwise be less likely to confront.

Some will no doubt find it laughable to put violent action movies in this category. But that is a mistake. Consider, to name just one example, the aforementioned *Dark Knight Rises*, which tells the tale of a madman aimed at subverting social order through terrorism, and a hero who resorts to vigilantism and brutality to stop him. Beyond providing entertainment — something valuable in its own right — it explores deep themes of good and evil, probes the ethics of vigilante justice and calls attention to the fragility of social order. Arguably its use of violence is necessary to address these themes with subtlety and depth. Thus the interests that justify free expression are actively engaged even with a work of art as seemingly crude as a Batman movie.

So what about hate speech? Is *it* connected to the fundamental interests that justify the right to free speech? Some people believe it is. Hate speech, after all, is often overtly political in character. When the Ku Klux Klan [champions](#) “white power” and accuses the mainstream political establishment of perpetrating “cultural genocide”, it is expressing a substantive message about political morality. Many in the American tradition [argue](#) that political speech is the paradigmatic category of speech worthy of protection; so insofar as hate speech is political, it merits strong protection.

But there is a powerful case for thinking it is not. The right to free speech, after all, is justified by the interests citizens have as members of a liberal democracy. How could hate speech — which glorifies or advocates the destruction of such a society — be closely connected to those interests? Are we really developing our capacities for rationality and responsible moral judgment when we parade through the streets [shouting](#) “Hitler should have finished the job” or [proclaiming](#) that members of a despised minority group are “cockroaches”?

### Banning hate speech

I am sympathetic with the position that hate speech is, in fact, “low-value”. It is simply not closely

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connected to the interests that justify the right to freedom of expression in the first place. And if that is right, it explains why hate speech is, *in principle*, a potential candidate for criminalisation. To use terminology from my own work, it is simply not [morally protected](#).

But the mere fact that hate speech is a candidate, in principle, for criminalisation, does not mean we ought to criminalise it. Suppose it were that banning drugs were, in principle, morally permissible. That alone would not make it a good idea, since bans could have (indeed, do have) the disastrous effects of creating a highly dangerous black market.

Similarly, those who seek to ban hate speech cannot simply rest on the fact that the speech is low value and potentially inspires violence. There are at least two further questions that a proponent of such an argument needs to answer before she should embrace a ban on hate speech

First, *do we trust the government to identify hate speech accurately?* The process of designating speech as “hateful” is bound to be politicised, at least in part. Is it likely that government officials will get it right, or will they only criminalise the speech of groups they politically oppose, hateful or not?

[Some respond](#) to this criticism by wondering why our faith in the successful operation of liberal democracy should be suspended in the case of hate speech, but not in other areas. If we think the government is untrustworthy with respect to hate speech policy, why do we not think it is untrustworthy with respect to tax policy, environmental policy or foreign policy?

A plausible response is this: Government may well be untrustworthy in other areas, too, but at least a culture of robust free speech will enable citizens to condemn objectionable tax policies. In contrast, suppose a socialist government were to criminalise advocacy of libertarian economic policies, deeming it “hate speech” against the poor. I take it that this would be seriously objectionable. A citizen under such an arrangement who simply objected to the ban in a passionate way could be liable to prosecution for endorsing a hateful viewpoint.

Second, even if hate speech, strictly speaking, has low value, *might its free expression lead to speech of high value?* Even if someone endorses some hateful creed today, it may simply be a step along a longer process of experimentation with ideas. By permitting her to air her rage today, she may, in the long run, be more likely to make a journey to other ideas, tomorrow. Suppressing her speech may make matters worse. It may even serve to make hateful ideas more appealing, more subversive, and to ossify her identity as a member of some hateful group.

It is difficult to say, in advance, whether this is plausible. But even if it is not — even if hateful speech cannot plausibly be said to further the interests of the speaker — it may be in the *listeners'* interest to hear it. As J.S. Mill [famously notes](#):

But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race;

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posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

I have serious doubts about whether this argument is valid in all contexts. Clearly, in 1994 Rwanda, as the public environment was turned toxic by hate speech, culminating in genocide, no one could credibly claim that hate speech enriched citizens' democratic deliberations. But what about contemporary Britain and the United States? Who knows: it may be that a pinch of hate speech here and there is salutary for the workings of deliberative democracy.

So even if we establish that hateful speech is low in value, this does not automatically lead to the conclusion that it ought to be banned. We need to engage in context-sensitive analysis of whether criminalisation is likely to do more harm than good. This leads me to a closing plea. Debates over hate speech should be like debates over all other policies. We should debate it the same way we debate tax policy, housing policy, immigration policy, or defence policy. We should, that is, debate it *democratically* — as equal citizens who weigh the arguments on both sides, and thoughtfully take our case to the polls. Rather than outsource the question to courts, we need to take responsibility for answering it ourselves.

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