

## Why hate speech should not be banned

Restrictions on hate speech are not a means of tackling bigotry but of rebranding often obnoxious ideas or arguments are immoral, argues writer Kenan Malik.



This interview was originally published in [The Context and Context of Hate Speech: Rethinking Regulations and Responses](#) edited by Peter Molnar.

*Peter Molnar: Would you characterise some speech as "hate speech", and do you think that it is possible to provide a reliable legal definition of "hate speech"?*

Kenan Malik: I am not sure that "hate speech" is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept.

In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and

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religious hatred. In Holland, it is a criminal offence deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way.

One response might be to say: Let us define hate speech much more tightly. I think, however, that the problem runs much deeper. Hate speech restriction is a means not of tackling bigotry but of rebranding certain, often obnoxious, ideas or arguments as immoral. It is a way of making certain ideas illegitimate without bothering politically to challenge them. And that is dangerous.

*PM: Setting aside legal restrictions, would you differentiate between claims (that target certain groups) that should be challenged in political debate and claims (that also target certain groups) that should be simply rejected as so immoral that they don't deserve an answer other than the strongest rejection and moral condemnation?*

KM: There are certainly claims that are so outrageous that one would not wish to waste one's time refuting them. If someone were to suggest that all Muslims should be tortured because they are potential terrorists, or that rape is acceptable, then clearly no rational argument will ever change their mind, or that of anyone who accepts such claims.

Much of what we call hate speech consists, however, of claims that may be contemptible but yet are accepted by many as morally defensible. Hence I am wary of the argument that some sentiments are so immoral they can simply be condemned without being contested. First, such blanket condemnations are often a cover for the inability or unwillingness politically to challenge obnoxious sentiments. Second, in challenging obnoxious sentiments, we are not simply challenging those who spout such views; we are also challenging the potential audience for such views. Dismissing obnoxious or hateful views as not worthy of response may not be the best way of engaging with such an audience. Whether or not an obnoxious claim requires a reply depends, therefore, not simply on the nature of the claim itself, but also on the potential audience for that claim.

*PM: What do you think about proposals for restricting defamation of religion?*

KM: It is as idiotic to imagine that one could defame religion as it is to imagine that one could defame politics or literature. Or that the Bible or the Qur'an should not be criticised or ridiculed in the same way as one might criticise or ridicule *The Communist Manifesto* or *On the Origin of Species* or *Dante's Inferno*.

A religion is, in part, a set of beliefs – about the world, its origins, and humanity's place in it – and a set of values that supposedly derive from those beliefs. Those beliefs and values should be treated no differently to any other sets of beliefs, and values that derive from them. I can be hateful of conservatism or communism. It should be open to me to be equally hateful of Islam and

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Christianity.

Proponents of religious defamation laws suggest that religion is not just a set of beliefs but an identity, and an exceptionally deeply felt one at that. It is true that religions often form deep-seated identities. But, then, so do many other beliefs. Communists were often wedded to their ideas even unto death. Many racists have an almost visceral attachment to their beliefs. Should I indulge them because their views are so deeply held? And while I do not see my humanism as an identity with a big "I", I would challenge any Christian or Muslim to demonstrate that my beliefs are less deeply held than theirs.

Freedom of worship – including the freedom of believers to believe as they wish and to preach as they wish – should be protected. Beyond that, religion should have no privileges. Freedom of worship is, in a sense, another form of freedom of expression – the freedom to believe as one likes about the divine and to assemble and enact rituals with respect to those beliefs. You cannot protect freedom of worship, in other words, without protecting freedom of expression. Take, for instance, [Geert Wilders' attempt to outlaw the Qur'an](#) in Holland because it "promotes hatred". Or the investigation by the British police a few years ago of Iqbal Sacranie, former head of the Muslim Council of Britain, for [derogatory comments he made about homosexuality](#). Both are examples of the way that defence of freedom of religion is inextricably linked with defence of freedom of speech. Or, to put it another way, in both cases, had the authorities been allowed to restrict freedom of expression, it would have had a devastating impact on freedom of worship. That is why the attempt to restrict defamation of religion is, ironically, an attack not just on freedom of speech but on freedom of worship too – and not least because one religion necessarily defames another. Islam denies the divinity of Christ, Christianity refuses to accept the Qur'an as the word of God. Each Holy Book blasphemes against the others.

One of the ironies of the current Muslim campaign for a law against religious defamation is that had such a law existed in the seventh century, Islam itself would never have been born. The creation of the faith was shocking and offensive to the adherents of the pagan religions out of which it grew, and equally so to the two other monotheistic religions of the age, Judaism and Christianity. Had seventh-century versions of today's religious censors had their way, the twenty-first-century versions may still have been fulminating against offensive speech, but it certainly would not have been Islam that was being offended.

At the heart of the debate about defamation of religion are actually not questions of faith or hatred, but of political power. Demanding that certain things cannot be said, whether in the name of respecting faith or of not offending cultures, is a means of defending the power of those who claim legitimacy in the name of that faith or that culture. It is a means of suppressing dissent, not from outside, but from within. What is often called offence to a community or a faith is actually a debate within that community or faith. In accepting that certain things cannot be said because they are offensive or hateful, those who wish to restrict free speech are simply siding with one side in such debates – and usually the more conservative, reactionary side.

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*PM: Do you support content-based bans of "hate speech" through the criminal law, or do you instead agree with the American and Hungarian approach, which permits prohibition only of speech that creates imminent danger?*

KM: I believe that no speech should be banned solely because of its content; I would distinguish "content-based" regulation from "effects-based" regulation and permit the prohibition only of speech that creates imminent danger. I oppose content-based bans both as a matter of principle and with a mind to the practical impact of such bans. Such laws are wrong in principle because free speech for everyone except bigots is not free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree.

And in practice, you cannot reduce or eliminate bigotry simply by banning it. You simply let the sentiments fester underground. As Milton once put it, to keep out "evil doctrine" by licensing is "like the exploit of that gallant man who thought to pound up the crows by shutting his Park-gate".

Take Britain. In 1965, Britain prohibited incitement to racial hatred as part of its Race Relations Act. The following decade was probably the most racist in British history. It was the decade of "Paki-bashing", when racist thugs would seek out Asians to beat up. It was a decade of firebombings, stabbings, and murders. In the early 1980s, I was organising street patrols in East London to protect Asian families from racist attacks.

Nor were thugs the only problem. Racism was woven into the fabric of public institutions. The police, immigration officials – all were openly racist. In the twenty years between 1969 and 1989, no fewer than thirty-seven blacks and Asians were killed in police custody – almost one every six months. The same number again died in prisons or in hospital custody. When in 1982, cadets at the national police academy were asked to write essays about immigrants, one wrote, "Wogs, nignogs and Pakis come into Britain take up our homes, our jobs and our resources and contribute relatively less to our once glorious country. They are, by nature, unintelligent. And can't at all be educated sufficiently to live in a civilised society of the Western world". Another wrote that "all blacks are pains and should be ejected from society". So much for incitement laws helping create a more tolerant society.

Today, Britain is a very different place. Racism has not disappeared, nor have racist attacks, but the open, vicious, visceral bigotry that disfigured the Britain when I was growing up has largely ebbed away. It has done so not because of laws banning racial hatred but because of broader social changes and because minorities themselves stood up to the bigotry and fought back.

Of course, as the British experience shows, hatred exists not just in speech but also has physical consequences. Is it not important, critics of my view ask, to limit the fomenting of hatred to protect the lives of those who may be attacked? In asking this very question, they are revealing the distinction between speech and action. Saying something is not the same as doing it. But, in these

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post-ideological, postmodern times, it has become very unfashionable to insist on such a distinction.

In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and of moral responsibility. Because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act on their thoughts and reasoning. Words certainly have an impact on the real world, but that impact is mediated through human agency.

Racists are, of course, influenced by racist talk. It is they, however, who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actions.

Having said that, there are clearly circumstances in which there is a direct connection between speech and action, where someone's words have directly led to someone else taking action. Such incitement should be illegal, but it has to be tightly defined. There has to be both a direct link between speech and action and intent on the part of the speaker for that particular act of violence to be carried out. Incitement to violence in the context of hate speech should be as tightly defined as in ordinary criminal cases. In ordinary criminal cases, incitement is, rightly, difficult legally to prove. The threshold for liability should not be lowered just because hate speech is involved.

*PM: How tightly should we define the connection between incitement and the imminent danger of action? What about racist slogans in a soccer stadium, and imminent danger of violence on the crowded streets after the end of the game?*

KM: Racist slogans, like any racist speech, should be a moral issue, not a legal one. If supporters are clearly set to attack others, or are directly inciting others to do so, then, of course, it becomes a matter for the law.

*PM: What about this example: At the gay pride parade in Budapest, peaceful marchers were attacked. Some onlookers merely shouted homophobic statements; others, no doubt encouraged by the taunting, threw eggs and rocks at the marchers. If the hecklers later stated that they had not intended to incite violence, should they be subject to punishment or liability?*

KM: Such questions cannot be answered in the abstract; it depends on the context. I would need to know more factual details than you have provided. If the two groups you mention were independent of each other and happened to turn up at the gay march at the same time, and if the perpetrators of violence would have attacked the marchers anyway, then I don't see that the non-violent homophobes have a legal case to answer. The non-violent homophobes are no more responsible for the violence of the violent homophobes in those circumstances than peaceful anti-globalisation protestors are responsible for the actions of fellow-protestors who trash Starbucks or set cars

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alight.

If, on the other hand, there was a relationship between the two groups, or if the one was clearly egging on the other, and if without such encouragement the violent protestors would not have been violent, then, yes, there may well be a case to answer.

*PM: What if the two groups of anti-globalisation protestors are not independent from each other, if they belong to the same group, just some/most of them are peacefully shouting slogans, while others are acting violently? Would you draw a line between slogans – uttered without violence – that are hateful and slogans that might be angry but do not incite hatred?*

KM: People should have the legal right to shout slogans, even hateful ones, and even though we might morally despise them for doing so. The law should deal with people acting violently, or those that directly incite others to violence. To "incite hatred", as you put it, should not, of itself, be a criminal offence; the distinction is again between a particular attitude and a particular action.

*PM: In that case, suppose the action is not violence but discrimination. That is, should it be only the imminent danger of violence that can justify restriction to speech, or does the imminent danger of discrimination suffice?*

KM: I support laws against discrimination in the public sphere. But I absolutely oppose laws against the advocacy of discrimination. Equality is a political concept, and one to which I subscribe. But many people don't. It is clearly a highly contested concept. Should there be continued Muslim immigration into Europe? Should indigenous workers get priority in social housing? Should gays be allowed to adopt? These are all questions being keenly debated at the moment. I have strong views on all these issues, based on my belief in equality. But it would be absurd to suggest that only people who hold my kind of views should be able to advocate them. I find arguments against Muslim immigration, against equal access to housing, against gay adoptions unpalatable. But I accept that these are legitimate political arguments. A society that outlawed such arguments would, in my mind, be as reactionary as one that banned Muslim immigration or denied gays rights.

*PM: But what about advocacy of discrimination that creates imminent danger of discrimination? For example, when members of a minority group would like to enter a restaurant or a bar and someone vehemently tells the security guard at the door that those people should not be allowed in.*

KM: An individual who advocates such discrimination may be morally despicable but should not be held to have committed a legal offence. The security guard, however, and the establishment that so discriminates should be answerable to the law.

*PM: Do you think that we can find a universal approach to criminal law restriction to incitement to hatred? Or should the regulation depend on the cultural context, and if so, in what way regulation could be different?*

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KM: I believe that free speech is a universal good and that all human societies best flourish with the greatest extension of free speech. It is often said, for example, even by free-speech advocates, that there is a case for Germany banning Holocaust denial. I don't accept that. Even in Germany – especially in Germany – what is needed is an open and robust debate on this issue.

*PM: Would you suggest the same for Rwanda?*

KM: Yes I would. What Rwanda requires is not the suppression of the deep-seated animosities but the ability of people openly to debate their differences. It's worth adding, given the argument for state regulation of hate speech, that in Rwanda it was the state that promoted the hatred that led to such devastating consequences.

*PM: What would imminent danger caused by incitement to hatred mean in such an environment? In other words: Do you think that the legal concept of this imminence of danger can be contextual?*

KM: The meaning of "imminent danger" clearly depends upon circumstances. What constitutes imminent danger in, say, London or New York, where there exists a relatively stable, relatively liberal society, and a fairly robust framework of law and order, may be different from what constitutes imminent danger in Kigali or even in Moscow. And the meaning of imminent danger for a Jew in Berlin in 1936 was clearly different from that for a Jew – or a Muslim – in Berlin 2011. At the same time, in those times and in those societies in which particular groups are being made targets of intense hostility, this debate becomes almost irrelevant. In a climate of extreme hatred, as in Rwanda in 1994, or in Germany in the 1930s, it may be easier to incite people into harming others. But in such a climate, the niceties of what legally constitutes "imminent harm" would, and should, be the least of our worries. What would matter would be to confront such hatred and prejudice head on, both politically and physically.

What I am wary of is that in accepting the commonsense view that what constitutes danger is dependent on circumstances, we should not make the concept so elastic as to render it meaningless. Whether in London, New York, Berlin, or Kigali, speech should only be curtailed if such speech directly incites an act that causes or could cause physical harm to others and if individuals are in imminent danger of such harm because of those words. What is contextual is that in different circumstances, different kinds of speech could potentially place individuals in the way of such harm.

*PM: Do you think that violent acts committed by hateful motivation deserve stricter punishments?*

KM: I accept that intentions are not just morally but also legally relevant, and that different intentions can result in the imposition of different sentences. But when we make a distinction between, say, murder and manslaughter, we are making a distinction based on the kind or degree of harm the perpetrator intended. When it is suggested, however, that a racist murderer should receive a greater punishment than a non-racist murderer, a different kind of distinction is being

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drawn. The distinction here is not between the degrees of harm intended – in both cases the killer intended to kill – but between the thoughts that were in the minds of the respective killers. The distinction is between someone who might be thinking, "I am going to kill you because I hate you because you looked at me the wrong way" and someone who might be thinking "I am going to kill you because I hate you because you are black". What is being criminalised here is simply a thought. And I am opposed to the category of thought crimes. Racist thoughts are morally offensive. But they should not be made a criminal offence.

Proponents argue that raising the punishment for hate crimes will (1) protect those who are abused or attacked simply because they belong to a particular group, and (2) send a message about the kind of society we wish to promote. But that is not fundamentally different from the argument for the criminalisation of hate speech. And I am opposed to it for the same reason that I am opposed to the criminalisation of hate speech.

*PM: But does it not make a substantial difference that one might be able to avoid being attacked by not looking at her/his potential attackers the wrong way, while one cannot change her/his skin colour?*

KM: To the victim, such a distinction is, of course, of little comfort. There is also an implication here that some victims cannot help being victims, while others could, by having behaved differently, have avoided their misfortune. While this is not the same as suggesting that some victims ask to be victims, it is moving in that direction, and we should be careful about how far down this road we go.

The real issue remains the same: Should murderers with racist intent be punished to a greater degree than those with other kinds of malicious intent? I accept that racism is a pernicious social evil that needs specifically to be combated. But I reject the idea that we can, and should, combat racism by outlawing racist thoughts. If you accept, as I do, that thoughts in themselves – even racist thoughts – should not be legally prohibited, then you have to accept that a racist thought that leads to murder should not be seen as legally different from a nonracist thought that leads to murder.

*PM: How, in your view, could we improve the social (non-legal) responses to "hate speech"?*

KM: The whole point of free speech is to create the conditions for robust debate, to be able to challenge obnoxious views. To argue for free speech but not to utilise it to challenge obnoxious, odious, and hateful views seems to me immoral. It is morally incumbent on those who argue for free speech to stand up to racism and bigotry.

At the same time, however, we should be clear that what often legitimises bigotry are the arguments not of the bigots but of mainstream politicians and intellectuals who denounce bigotry and yet accept bigoted claims. Throughout Europe, mainstream politicians have denounced the rise of the far right. And throughout Europe, mainstream politicians have adapted to far-right

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arguments, clamping down on immigration, pursuing anti-Muslim measures, and so on. They have sometimes even adopted the language. In his first speech at the Labour Party conference after gaining the top office, former British Prime Minister Gordon Brown talked of ensuring "British jobs for British workers", a slogan first popularised by the neofascist National Front. The National Front had twinned it with a second slogan: "Three million blacks. Three million unemployed. Kick the blacks out". Gordon Brown was, of course, not guilty of hate speech. But his use of that phrase probably did far more to promote xenophobic sentiment than any amount of "hate speech" by far-right bigots. Challenging bigotry requires us to challenge the mainstream ideas that give it sustenance, and to campaign against those discriminatory social practices and laws that help make the arguments of the racists, the sexists, and the homophobes more acceptable.

*PM: Do you think that banning "hate speech" undermines, or at least weakens, the legitimacy of a democracy?*

KM: Free speech and democracy are intimately linked. Without free speech there is no democracy. That is why any restriction on speech must be kept to the absolute minimum.

There are two ways in which banning hate speech undermines democracy. First, democracy can only work if every citizen believes that their voice counts. That however outlandish, outrageous, or obnoxious one's belief may be, they nevertheless have the right to express it and to try to win support for it. When people feel they no longer possess that right, then democracy itself suffers, as does the legitimacy of those in power.

Not just the banning of hate speech but the very categorization of an argument or a sentiment as "hate speech" can be problematic for the democratic process. I am in no doubt that some speech is designed to promote hatred. And I accept that certain arguments – like the direct incitement of violence – should indeed be unlawful. But the category "hate speech" has come to function quite differently from prohibitions on incitement to violence. It has become a means of rebranding obnoxious political arguments as immoral and so beyond the boundaries of accepted reasonable debate. It makes certain sentiments illegitimate, thereby disenfranchising those who hold such views.

And this brings me to the second point as to why the banning of hate speech undermines democracy. Branding an opinion as "hate speech" does not simply disenfranchise those holding such a view; it also absolves the rest of us of the responsibility of politically challenging it. Where once we might have challenged obnoxious or hateful sentiments politically, today we are more likely simply to seek to outlaw them.

In 2007, James Watson, the codiscoverer of the structure of DNA, claimed of Africans that their "intelligence is not the same as ours" and that blacks are genetically intellectually inferior. He was rightly condemned for his arguments. But most of those who condemned him did not bother challenging the arguments, empirically or politically. They simply insisted that it is morally

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unacceptable to imagine that blacks are intellectually inferior. Britain's Equality and Human Rights Commission studied the remarks to see if it could bring any legal action. London's Science Museum, at which Watson was to have delivered a lecture, canceled his appearance, claiming that the Nobel Laureate had "gone beyond the point of acceptable debate". New York's Cold Spring Harbor Laboratory, of which Watson was director, not only disowned Watson's remarks but forced him eventually to resign.

I fundamentally disagree with Watson. Indeed I have written more than one book challenging such ideas, and have many times publicly debated their supporters. But I also think that it was as legitimate for Watson to have expressed his opinion as it is for me to express mine, even if I believe his assertion was factually wrong, morally suspect, and politically offensive. Simply to dismiss Watson's claim as beyond the bounds of reasonable debate is to refuse to confront the actual arguments, to decline to engage with an idea that clearly has considerable purchase, and therefore to do disservice to democracy.

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