

A National Dilemma: Hate Speech Censorship

Defining hate speech is difficult. The government is reluctant to draw the line between offensive and hate. The argument over whether or not to create a strict, defining law of hate speech derives from a fear of infringing on United States citizens' first amendment rights. The first line of the United States Constitution reads "We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility..." stating one of the most important aspects of the constitution: "insuring domestic tranquility" or the well-being and safety of U.S citizens ("The Constitution..." Preamble). While safety is essential, respecting granted freedoms plays a major role in whether or not to censor hate speech. Due to the Constitution, the United States is bound by the thought of freedom, defined by the Oxford Dictionary as, "the power or right to act, speak, or think as one wants" and I testify part of freedom is the right to personal safety ("Freedom..."). Hate speech creates a hostile environment, creating the notion that the U.S. tolerates this behavior, contradicting the original statement and view of our founding fathers. As a threat to personal safety, hate speech automatically becomes a physical threat. Thus, hate speech and symbols should not be protected under the first amendment because they insinuate physical threats to groups or singular individuals.

My definition of hate speech is any verbal expression or non-verbal symbol directed to attack a group of people or an individual based on a portion their identity they are unable to change such as race, religion, sexual identity, disability, or other characteristics essential to a person's identity. My broad definition allows for interpretation when determining if an action should be considered hate speech. Both in *R.A.V. v. St. Paul* and *Virginia v. Black*, *St. Paul* and

Virginia attempted to write a law defining the consequences of hate speech that the U.S. Supreme Court ruled unconstitutional for separate reasons. Some supreme court justices found St. Paul's law "objectionable because it singled out 'cross burning' and 'swastikas' for punishment" while other justices expressed the law was "'viewpoint based' because it mentioned right-wing expression of hatred and no others," however these explicit examples of punishable offenses were not why the supreme court overturned the case (Huhn). The justices stated the "overbroad" language 'arouses anger, alarm or resentment' that "could be applied to any person" caused R.A.V.'s release so people residing in St. Paul would "not be discouraged from engaging in free debate" (Huhn). Similarly, Virginia's law was deemed unconstitutional because it concluded the act of burning a cross must be a threat (Huhn). During the decision argument session, Justice Clarence Thomas said, "a burning cross is unlike any symbol in our society. There's no other purpose to the cross, no communication, no particular message. It was intended to cause fear and terrorize a population" adding to the argument that hate speech, when most dangerous, is easily identifiable (Greenhouse). From these two cases, I believe the laws that both the city of St. Paul and the state of Virginia attempted to create validate the first amendment rights of U.S. Citizens while promoting a safe respectful community.

It is critical, at the federal level, to write a universal definition of hate speech because the line between hate and offense must be explicitly drawn. Creating a hate speech law does not diminish the right of free speech. The 14th Amendment of the Constitution reads "nor shall any State deprive any person of life, liberty, or property, without due process of law" clearly stating life as one of the major values of the U.S. ("The Constitution...," Art. 1, Amend. XIV, Sec. 1). Since hate speech suggests physical threats, whether delivered verbally or as a symbol, under the

14th amendment of the constitution, hate speech should not be protected because it potentially puts a person's life deliberately in danger.

The first amendment has greatly impacted the world we live in today. I agree with Jonathan Peters, an attorney and teacher of media law at the University of Kansas, that free speech has played a large role in policy change over the course of history, but passing a law against hate speech does not impact important movements because as we have seen through history, successful movements do not employ hate speech to create change (Cho). Instead, these movements present opinions that some people may find offensive, or differing from their own.

From previous movements and judicial cases, it is clear to me that hate speech should be regulated, and as a country a single law must be formed outlining a clear, concise definition of hate speech and why the first amendment can be overlooked. To create a law regulating hate speech, I would appoint two state supreme court justices along with the state governor to collaborate with all necessary branches of the United States government to create this legislation. This array of people includes elected officials from every state and knowledge of the law, including similar cases to those of *R.A.V. v. St. Paul* and *Virginia v. Black*. In this process, making a distinction between hate crimes and hate speech is crucial. Hate crimes are intolerable and are aggressively prosecuted by the United States Department of Justice, DOJ ("Hate Crimes"). Hate crimes defined by the DOJ "include acts of physical harm and specific criminal threats motivated by animus based on race, color, national origin, religion, gender, sexual orientation, gender identity, or disability" (Hate Crimes"). Similar to other crimes ranging in severity, hate speech crimes should have a range of punishments with the highest consequence

being a federal indictment which would employ the approach used by the juvenile court system to educate and rehabilitate.

Regulating hate speech is a far more complicated issue than just writing a law because there are an inordinate number of platforms for people to express themselves. The internet is vast and almost impossible to monitor, and verbal evidence is hard to present in court unless there is a witness. The U.S. should look to The Council of Europe for examples of hate speech regulations. Following Europe's hate speech restrictions, to attempt to regulate hate speech, the Council of Europe established the No Hate Speech Movement platform as an anonymous way to report instances of harassment online ("No Hate..."). This is a small step towards fixing a larger problem. In an educational context, I believe all schools have the responsibility to teach their students the varying forms of speech from disrespectful to hate. Discussing different forms of speech could easily be added to the curriculum of a history or english class and would educate students. Regulating hate speech is daunting, but through enforcing education in schools and creating platforms similar to the No Hate Speech Movement platform, monitoring hate speech will create a healthier, safer country.

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