Hate Speech Law and Policy

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There is no standard definition of hate speech, but the term is normally used to cover forms of expression aimed at persecuting people by vilifying their racial, ethnic, or other identities. While the immediate target may be a single person or small group, the harm caused by hate speech can extend to entire communities by promoting discrimination and intolerance. In the extreme, hate speech has been used to promote violence and genocide. While the term is always used pejoratively and implies a moral breach, not all hate speech is dangerous enough to merit government regulation. The central law and policy debate over hate speech is where to draw the line between expression that is merely morally objectionable and expression that should be declared legally impermissible. The latter end of the spectrum is sometimes referred to as dangerous or extreme speech.

Hate speech presents a complex policy challenge because what its object perceives as unconscionable could, from the speaker's perspective, be a legitimate expression of genuine grievances and/or a form of political speech. Thus, hate speech often brings two foundational rights into conflict – equality, including the right to be protected from discrimination, and freedom of expression. Digital communication has compounded the problem. First, it spreads messages beyond the intended audience and contexts, with consequences that may be impossible for their creators and publishers to foresee. Second, digital tools – including photo editing software and video games – increase the likelihood of messages being actively manipulated and recontextualized by third parties, again with unpredictable results. Third, digital platforms provide a more open arena for "crowdsourcing" hate speech: many individuals can get involved in the generation, propagation, and escalation of such expression to a degree not previously possible. Fourth, online hate speech raises jurisdictional conundrums, given the lack of international consensus on laws and norms, including over the liability and responsibilities of global internet intermediaries such as Google and Facebook.

In international law and in every domestic jurisdiction, freedom of expression is a qualified right: states can lawfully limit this right in certain circumstances. There is no consensus on when hate speech falls within those circumstances. Policy responses cluster around three broad approaches. One requires states to balance the right to freedom of expression with the need to protect minorities against incitement to discrimination, hostility, or violence. This is the thrust of international human rights law, which has been usefully crystallized in the Camden Principles on Freedom of Expression and Equality – a 2009 document signed by high-level United Nations and other officials, civil society representatives, and academic experts (Article 19, 2009). These principles are based on the International Covenant on Civil and Political Rights (ICCPR), which informs the work of the United Nations Human Rights Committee and Human Rights Council. Similar balancing approaches are taken by the European Court of Human Rights (which applies the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms), the Inter-American Court of Human Rights (which applies the Organization of American States' American Convention on Human Rights), and the African Court on Human and Peoples' Rights (applying the African Union's African Charter on Human and Peoples' Rights).

A second approach is epitomized by US jurisprudence. To keep public discourse wide open and free of government interference, the US Supreme Court resists regulation that discriminates among viewpoints, including prohibitions of offensive words or symbols. As a result, hate speech is generally considered to be protected by the First Amendment to the Constitution.

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