

Against Laws Against Hate

Laws prohibiting people from promoting through speech or other expression hatred toward others in virtue of their race or ethnicity or religion or sexuality or sex or culture restrict people's ability both to express themselves without fear of official sanction or punishment and to be heard by whomever they mean to address. Such laws—hate propaganda laws—enable courts to fine or imprison those found to have expressed hate and they direct authorities to prevent or suppress expressions of hate.

While we (at least, while many of us) value highly the freedom to say what we want to whom we want, we also value highly peace in our communities, respect for individuals, and the feelings of our neighbours and friends. We want very much to create and enjoy communities free of prejudice and oppression, and we might find that tolerating expressions of hate prevents us from doing so. Perhaps, then, we might think, the restrictions on expression embodied in hate laws are well warranted in view of these other things we hold dear.

Let us leave aside for the moment the question whether restrictions on expression do in fact serve well (or well enough) the goal of reducing prejudice and oppression.

Even if hate propaganda laws do make some significant difference to our endeavour to create and enjoy pleasant and just communities, there is at least one sufficient reason to reject them.

This reason stems from the idea that a political and legal system is sound only if those who live under it can consent to live under it. This is the principle of the consent of the governed.

Only if one has a fair chance to express one's views of social institutions and laws and to try to bring others to one's views could one properly consent to living under the laws. Even should some institution or law not be to one's liking, one can accept that law as the outcome of a fair process of law making. And one can continue to agitate for the removal of that law.

On the other hand, should one find the laws merely the expression of another's will, and not the outcome of a fair process of law making, then one cannot consent to be governed by them. One would be living in an authoritarian regime.

Hate propaganda laws, laws that restrict or prevent one from ridiculing or denigrating others on the basis of race, religion, sexuality, and the rest, are contrary to the principle of the consent of the governed. They constitute an element of unfairness in the process of law making.

Those who oppose the full integration of people of some particular sort into the life of our community cannot, in principle, accept the policies or laws by which we hope to promote integration if they have been prevented from expressing their opposition in whatever way they see fit to express it. On the other hand, if they lose the fight despite having laboured under no restrictions on the means they can use, then they can consent to those policies or laws.

“But ridicule and denigration?!? How are these fair?” They are not, or at least so you and I would maintain. But it is unfair to impose on others our standards of fair persuasion. One has not had the opportunity to be heard and to change people’s minds except that one has been free to employ one’s own chosen methods. Persuasion by argument presented civilly might be our chosen method (and we will argue, civilly, that it is the best method), but it is unfair to require that it be everyone’s method. (I’m supposing that argument is our chosen method. That argument is far from common in public life or even at a university such as Saint Mary’s indicates that my supposition is false.)

“Expressions of hate can cause much anguish and pain to those against whom they are directed. Is tolerating expressions of hate worth this anguish and pain?” Yes, it is, in view of the principle of the consent of the governed. Here, though, the question whether hate laws actually achieve anything might be to the point. If they do serve their purpose effectively, then one might argue that it is best overall to side with them despite their violating the principle of consent of the governed. Nonetheless, even if hate laws are effective means of alleviating pain and overcoming prejudice, we have many other means at our disposal to combat racist and sexist and whatever attitudes. Our chief task is to show those who hate just how wonderful it is to live concerned for the well being of everyone in our community. Rather than silence hate, we do better to meet it with discussions and invitations to live without it.

“Restrictions on expressions of hate actually promote debate and democracy, for they enable members of oppressed groups to speak without fear of being taunted or called names.” That hate propaganda laws have this effect is not clear; neither is whether this fear actually prevents people from speaking. In any case, though, our task is to create fora in which oppressed people can speak freely and be heard, and to do so without thereby restricting the speech of others.

“We meet daily with plenty of restrictions on speech. We are not free to slander others or to libel them, we are not free to utter threats, we may not incite a crowd to riot, we may not berate our professor as we follow her in the halls, we may not write graffiti on walls. We manage to live under these restrictions without damaging our democracy or infringing on the principle of the consent of the governed.” Each of these is a restriction on our freedom to express ourselves and, for that reason, each should be construed as narrowly as possible. To the extent that these restrictions are necessary to protect various things we hold dear, they might be legitimate, though regrettable, impositions on freedom. But we must be careful about them, for each has its dangers.

“Those who hate will not consent to the full integration or participation of all members of our communities no matter whether that goal is approved democratically or not, whether they have had their say or not. Our tolerating the intolerant will not serve to make them more accepting or tolerant.” The point here might well be true. But it is not primarily for their sake that those who hate should be free to say what they want how they want. It is for our sake, given our principles and ideals. We betray our principles when we institute hate propaganda laws.

For the sake of argument, I have supposed that laws against the expression of hate have been and will continue to be applied carefully and conscientiously and only to expressions of hate. Even so, I say, they should be rejected as inconsistent with the principle of consent of the governed.

A serious practical problem with hate propaganda laws, though, is that they invite capricious and arbitrary application. They do this, in part, because hate is a psychological attitude and it is often difficult to tell from an expression whether hatred stands behind it or not. To disapprove of something is not in itself to hate anyone. One can disapprove of homosexuality, for instance, without hating homosexuals or anyone else. One can disapprove of women assuming positions of authority without hating women or anyone else. One can oppose affirmative action programmes while being entirely on the side of members of under-represented groups. One can despise religion while not despising anyone religious.

A sound principle of political life is never to support a measure that requires for its good work that authorities be people of intelligence, discernment, integrity, and good will. Because they invite capricious and arbitrary application, hate propaganda laws in the hands of the ignorant, stupid, or lazy, let alone the corrupt or malevolent, will menace us all.

Inequality, oppression, exclusion, and marginalization on the basis of race, ethnicity, religion, sexuality, sex, or culture are terrible things, things we are rightly concerned to oppose and to eliminate. The problem is how to oppose and eliminate them—how to do so both effectively and without thereby betraying our best values and highest ideals.

There are many effective and nobles ways to promote equality, justice, and inclusivity. One of them is to confront expressions of prejudice carefully and publicly so as to identify the false beliefs or pernicious tastes and values on which they rest. Expressions of hate can be met with words, not suppression. Another is to model for others our own attitudes of respect, friendliness, and fellow feeling, to show them what it is like to be caring and just.

I think that laws against expressions of hate are ineffective and dangerous. What I have argued in this posting is that they are ignoble.