

Tyler Morning Telegraph

When 'hate speech' is banned, who defines 'hate'?

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The freedom of speech is the most fundamental tenet of our Bill of Rights. Any proposal to limit that freedom should be approached with great caution. Yet there's a fresh movement afoot to ban "hate speech."

Banning "hate speech" would give power to those who define it, and take power and agency from everyone else.

Currently, internet giants Facebook, Twitter and Google are looking for ways to ban hate speech online. The companies acknowledged to Bloomberg News that "it remains a 'challenge' to strike the right balance between freedom of expression and hate speech."

As Brent Bozell points out for Fox News, "It's a necessary endeavor but also one that introduces the human factor and, as a result, subjective opinion. It's not difficult to find the slippery slope where matters of 'hatred' are concerned."

Bozell cites the example of the [Southern Poverty Law Center](#), a left-wing group that tracks such "hate" groups as the [Family Research Council](#), the [Center for Security Policy](#) and the [Traditional Values Coalition](#).

"And what views do these 'haters' hold?" Bozell asks. "Some support traditional marriage, some stopping illegal immigration, some fighting radical Islam."

This is the wrong approach to hate speech. Some speech is, of course, hateful and repellent. But the answer isn't to ban it. The answer is to counter it. In the United States, we must defend the First Amendment even for those we disagree with.

"It is often said that the First Amendment is not an absolute, but, at the same time, a central tenet of the law protecting freedom of expression in the United States holds that it is a 'prized American privilege to speak one's mind, although not always with perfect good taste, on all public (issues),' " writes Robert Corn-Revere for the [Cato Institute](#).

The First Amendment doesn't protect "fighting words," but those must be defined very carefully - the category must only include speech that is likely to cause an immediate riot.

"American law has maintained this focus on the probability of violence rather than the potential to cause offense even when the expression at issue includes racial provocation," Corn-Revere explains. "The Court tightened its test for what constitutes illegal incitement in *Brandenburg v. Ohio* in the face of images of members of the Ku Klux Klan burning a cross as a sign of racial hatred."

As the court explained, even repellent speech is protected.

“The history of the law of free expression is one of vindication in cases involving speech that many citizens find shabby, offensive, or even ugly,” the Supreme Court has ruled.

Now, there’s a difference in what the government can ban - the First Amendment restricts only the government - and what private companies such as Twitter can do.

But a European editor summed it up nicely in the aftermath of the Charlie Hebdo terrorist incident: “the issue boils down to whether a free society chooses to defend the right to offend, or opts instead to champion a right not to be offended.”

If it’s the latter, that society won’t long be free.