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## Hate or not

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JAMES MADISON, it seems, was a cockeyed optimist. Writing to Thomas Jefferson on the passage of the Virginia Statute of Religious Freedom, he said, "We have in this country extinguished forever making laws for the human mind"--prosecuting people for their thoughts, in other words.

In late April, the House of Representatives passed the Local Law Enforcement Hate Crimes Prevention Act, which adds "gender, sexual orientation, gender identity, or disability" to the already protected classes of race, color, and religion in federal hate-crimes laws. Assault, kill, or harm someone who happens to belong to one of these groups, and you're subject to extra jail time.



Social conservatives have been up in arms about the bill, whose twin is now making its way through the Senate, seeing in it the danger of its squelching the free speech of those with a religious objection to homosexuality. Could a pastor who preaches on Romans 1 end up in the jug?

Supporters of the bill say no, but Nat Hentoff, advocate for the Bill of Rights and self-styled "member of the Proud and Ancient Order of Stiff-Necked Jewish Atheists," isn't so sure.

Writing for the Cato Institute, Mr. Hentoff says Democrats need to read up on the Constitution, because the bill violates the First and Fourteenth Amendments (specifically, freedom of speech and religion and equal protection under the law) and the prohibition of double jeopardy. What's more, it "appalls" him that the American Civil Liberties Union consistently refuses to challenge hate-crime laws.

Inherent in hate-crime laws is the establishment of an unequal system of justice. For example, when a Colorado gang specifically targeted a white woman for rape as an initiation rite, the prosecutor refused to press state hate-crime charges because the victim was not a member of a protected class.

Furthermore, Mr. Hentoff notes that some free-speech advocates point out that current U.S. law says that "any action that 'abets, counsels, commands, [or] induces a perceived hate crime' shares in the guilt of that crime and is therefore punishable." So would speaking out against homosexuality or challenging gender-identity assumptions, once they're added to the protected classes, be prosecutable?

No reasonable person wants to see an individual beaten or killed or robbed for any reason. Hate is wrong, whichever way it flows. But the bill racing through Congress carries with it some consequences about which Americans who value the freedom to speak should be concerned. Would Madison approve? Would he be able to say if he didn't?

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