

What Not to Say

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SIMON THOMPSON, NOV 5 2013

What should we be able to say to one another? What should we not say? And what sorts of speech should not just be censured, but also subject to criminal sanction?

In the UK today, a number of different sorts of speech may be illegal. Some of these limits are relatively uncontroversial. For instance, soliciting to murder is rightfully a criminal offence. Other limits are much more contentious.

In 2010, for example, Paul Chambers posted this message on Twitter: 'Crap! Robin Hood airport is closed. You've got a week and a bit to get your shit together otherwise I'm blowing the airport sky high!!' He was subsequently charged under the *Communications Act* of 2003 of sending 'by means of a public electronic communications network a message that is grossly offensive or of an indecent, obscene or menacing character'. Originally found guilty, Chambers' conviction was quashed by the High Court in 2012 which found that his tweet was not objectively 'menacing'.

But what about cases in which a speaker deliberately tries to incite hatred against a particular group of people? Should such so-called hate speech be criminalized or not? Is it closer to the solicitation of murder or to the sending of a menacing message? Under current UK law, incitement to hatred against people defined by 'colour, race, nationality ... or ethnic or national origins' has been illegal for several decades.

More recently, people defined by their religion and their sexual orientation have been added to this list. The justification for these recent extensions has been to bring the same level of legal protection to these last two groups as that already enjoyed by the others. But protection against what? Against hatred itself? Or against the harms that hatred may cause?

To my mind, it's the potential for hate speech to lead to actual harm that provides the best justification for its criminalization. But the problem with this argument is that it's rarely possible to discern a clear and relatively short link between a particular speech and harm caused to specific individuals (and, if it was possible, then this would be a case of incitement to violence rather than of incitement to hatred).

In the absence of a simple causal story, I think that the best way to show that hate speech can harm is to argue that it contributes to a climate of hatred in which harm to specific individuals and groups is more likely to occur. Such a climate is a mixture of hateful ideas, values, attitudes and dispositions prevailing in a particular society at a particular time, a mixture which is directed toward specific groups defined by reference to certain ascribed characteristics, and which increases the risk that members of these groups will suffer significant harms.

This idea of a climate of hatred only provides the start of an argument in support of laws against hate speech. But, whilst it leaves many important questions unanswered, at least it suggests a plausible way of explaining why some things should not be said.

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