

The fine art of hating

It may be a sin but it shouldn't be a crime to loathe thy neighbour

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It's a thin line between love and hate' the Pretenders sang in 1983, but it's one that legislators are eager to enforce. Western democracies as well as the European Court of Human Rights are so concerned about hate speech that they have not only criminalised its utterance, but, if the law commissions of Scotland and England have their way, will extend its sanction from the public to the private domain.

The novelty of policing speech that 'implies a high degree of animosity' represents a remarkable extension of criminal law. Policing what we do with words requires the law to interpret and adjudicate upon what J.L. Austin identified as a performative speech act. Austin showed that such acts could not only misfire, they could produce unintended consequences. Developing speech act theory in a way that Austin would have considered fallacious, the UK College of Policing considers hate 'not caused by the speech but the speech itself constitutes the harm'.

Ogden Nash would be in trouble for writing, 'hate is a verb, that to me is superb, And love just a drug on the mart... Any kiddies from school, can love like a fool, but hating, my boy, is an art'. Why? It's an art form that a new class of speech managers want to eradicate.

The idea that certain words cause harm and must be policed first developed amongst critical theorists and human rights lawyers. The progressive ideological preoccupation with how we use words led to laws that not only control what we say and think, but how we should feel. What more does it mean to hate? Is it intrinsically harmful and, more pertinently, eradicable through speech management?

The Bible is ambivalent. Christianity hated sin but not the sinner. Christ, if Luke reported him accurately, was guilty of 'a precrime hate incident' when he stated that 'if any man come to me and hate not his father and his mother, and his wife and his children, and his brethren and his sisters, yea and his own life also, he cannot be my disciple'.

Aquinas, who codified the Catholic perspective on sin and virtue, considered hatred a vice, but not a capital one. It

arose, as Augustine had earlier revealed, from the passions, most notably anger. Even a Christian, Augustine disclosed, could find anger solidifying into hatred when confronted by a hostile enemy.

During the Reformation, protestant reformers and counter reformation antagonists solidified their hatred of those they considered heretical, or reprobate. Calvin found that 'God distinguishes between the righteous and the unrighteous, and in such a way as shows that he is not an idle spectator; for he is said to approve the righteous, and to hate the wicked'.

Religious hatred, in the centuries of reformation and religious warfare not only devastated European Christendom after 1517, it also laid the foundations of the early modern state. Hatred, in fact, served as a resource for critically productive animosity. The long history of Calvinism and Puritan nonconformity evinced a fondness for sectarian controversy that subverted, according to Mathew Arnold, any 'ideal of complete, harmonious, human perfection'. Thus, radical controversialists like John Milton, defended freedom of speech and publication, including hate speech, directed polemically at his more conservative and catholic opponents.

William Hazlitt captured the character of this anti-establishment style and the creative dynamism it unleashed in his 1826 essay *On the Pleasure of Hating*. 'Hate', Hazlitt wrote, 'like a quantity of superfluous bile upon the stomach, wants an object to let it out upon'.

Like Augustine, Hazlitt considered hatred a passion intrinsic to human nature. The more we examine human psychology, Hazlitt opined, the more we realise that 'we are made up of antipathies'. Without something to hate, 'we should lose the very spring of thought and action. Life would turn to a stagnant pool, were it not ruffled by the jarring interests, the unruly passions, of men.' Without something contemptible to react against, nineteenth century radicals agreed, there could be neither progress nor productivity.

Significantly, hatred and by extension hate speech, exemplifies what Hazlitt and later moral philosophers would view as a

conflict of values: morally admirable from one perspective, deplorable from another. Part of the problem with contemporary hate crime is that religious enthusiasts and contemporary progressive ideologues frequently confuse the pleasure of hating with a form of virtue. After all, it can feel good to believe that some ethnicities or sexualities are either victimized or intolerable.

Perverse creatures that we are, we take pleasure in being certain that we are right. Requiring a pluralist democracy, therefore, to sanction certain speech acts because their audience might find their perlocutionary impact harmful draws the common law into an area that until, very recently, the judiciary sought to avoid.

In the evolution of the European secular state the coincidence between law and morality could, in some circumstances, be very small. In a theocracy, law is religious law, every crime is recognized as a sin and every sin proscribed as a crime. This is the case in theocracies like Iran or Saudi Arabia, but in western Europe and the US the divergence between sin and crime since the Enlightenment has been a remarkable political achievement. Here the state came to be understood as an association whose members subscribe to a variety of religious and moral beliefs and yet live under one, common law.

Distinguishing between crime and sin is one of the core characteristics of modern, secular, European societies. It is not unique to them, nor an absolutely secure distinction. There never was a time when argument was not apt to take the form that outlined appropriate moral and political conduct and whether government should or shouldn't be active in certain manners and matters. This was so even where government activity did not entail the direct enforcement of what was believed to be right for human conduct.

As John Wolfenden's committee found in their 1957 report on homosexuality — at that time a criminal offence — a lot of behaviour many people find morally reprehensible is not criminal. Wolfenden reasonably asked on what the law should base the prevailing 'moral view'? Any appreciation of the rule of law and the evolution of the secular modern state should take into account the separation of criminal law from sin, the hatred of sin and the imposition of a moral, theological or ideological orthodoxy. Wolfenden found, and parliament agreed, that moral offence or sin needed to be distinguished from crime; there must 'remain a realm of private morality and immorality which is, in crude terms, not the law's business. It is this distinction between criminal law and sin, that the common law of the 1950s emphatically sustained and that hate speech legislation now wants to overturn.