2 A HISTORY OF LAWS ON HATE AND ABUSE

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The past decade has seen a sharp drop in respect for civil liberties, according to *The Economist*'s *Democracy Index*. No liberties 'have deteriorated as much as … freedom of expression and media freedom'. This includes substantial deteriorations in Western Europe (EIU 2020). Part of this free speech recession is driven by European liberal democracies intent on fighting 'hate speech' with significant collateral damage for important political, religious and artistic speech due to the inherent vagueness and majoritarian bias of hate speech bans.

French President Emmanuel Macron (2018) has warned that '[o]ur governments, our populations will not tolerate much longer the torrents of hate coming over the Internet'. In 2019 Angela Merkel told the German Bundestag that '[f]reedom of expression has its limits. Those limits begin where hatred is spread … where the dignity of other people is violated'. The war on hate speech is not limited to talk. *The Times* reported that more than 3,300 people – or around nine people a day – were arrested in the UK in 2016 as part of a police effort 'to combat social media hate

speech'.[1] On 23 April 2020 the Scottish Government presented its Hate Crime Bill, which includes new offences of 'stirring up hatred' based on age, disability, race, religion, sexual orientation, transgender identity and variations in sex characteristics.[2] Following non-binding EU initiatives, France and Germany have imposed 'intermediary liability' for social media networks, who must remove hate speech within 24 hours.[3]

These European governmental initiatives seem to have had an impact on the content moderation policies of US-based private social media platforms. Facebook deleted 26.9 million pieces of content for violating its Community Standards on 'hate speech' in the last quarter of 2020. That's nearly seventeen times the 1.6 million instances of deleted 'hate speech' in last quarter of 2017.[4]

1 Police arresting nine people a day in fight against web trolls. *The Times*, 12 October 2017 (https://www.thetimes.co.uk/article/police-arresting-nine-people-a-day-in-fight-against-web-trolls-b8nkpgp2d).

2 Hate Crime Bill, Scottish Government, 23 April 2020 (https://www.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/introduced/bill-as-introduced-hate-crime-and-public-order-bill.pdf). This has now been passed into law, as noted in the Introduction.

3 France threatens big fines for social media with hate-speech law. *Wall Street Journal*, 13 May 2020 (https://www.wsj.com/articles/france-threatens-big-fines-for-social-media-with-hate-speech-law-11589398472?mod=e2tw). Germany's online crackdowns inspire the world's dictators. *Foreign Policy*, 6 November 2019 (https://foreignpolicy.com/2019/11/06/germany-online-crackdowns-inspired-the-worlds-dictators-russia-venezuela-india/).

4 Community Standards Enforcement Report, February 2021 (https://transparency.facebook.com/community-standards-enforcement).

Given the long and bloody history of religious, ethnic and racial intolerance in Europe and the US, equality and non-discrimination are vital goods constituting cornerstones of liberal democratic societies. These goods are challenged when minority groups are subject to hatred and bigotry, which can ultimately result in emotional harms and can even damage mental health.[5] However, by targeting hate speech through various forms of censorship, European democracies are presuming that free speech and equality are conflicting rather than mutually supportive values. The idea that free speech is a hindrance to equality and a vector of racism is also prevalent among those who protest against racism and police brutality towards minorities following the killing of George Floyd, an African-American man, by the police in Minneapolis in May 2020. Several newspaper editors have been fired for publishing opinions deemed hurtful to victims of racism, just as streaming services such as Netflix have removed 'offensive' content, e.g. the 1939 classic *Gone with the Wind*.

There are compelling reasons to be sceptical of this logic. Several authors have pointed out the lack of empirical evidence that hate speech laws constitute an effective remedy against purported harms such as hate crimes (e.g. Strossen 2018: 121ff, 133ff). Critics have also pointed out that restrictions of 'hate speech' punishing 'bad tendencies' rather than imminent harm are inherently vague, which creates a risk of targeting important criticism and

5 Who gets to define what's 'racist'? *Contexts,* 15 May 2020 (https://contexts.org/blog/who-gets-to-define-whats-racist/).

dissent. This 'bad tendency' rationale essentially vests enforcers with unfettered discretion, and is the Achilles heel of contemporary laws, which allow hateful speech to be punished despite the absence of imminent harm (Strossen 2018; Walker 1994; Shiell 2019; Mchangama 2011; Heinze 2016). Moreover, restrictions on free speech – even when formally neutral – will tend to perpetuate and entrench the values of the dominant in-group and marginalise out-groups.

These criticisms of hate speech bans are not merely abstract and theoretical. They have strong historical support. And, as I hope to show, key episodes in the history of free speech support the notion that hate speech bans are more likely to *hurt* than to benefit minorities and disadvantaged groups, and that a commitment to robust free speech protections has been indispensable for remedying systematic discrimination and oppression.

Suppression of abolitionist writings in the US

In 1835, Northern abolitionists began an organised campaign to end American slavery by sending publications to white Southerners. The abolitionist campaign was met with vitriolic opposition by Southern states which adopted laws prescribing harsh penalties – including flogging and hanging – for publishing and distributing abolitionist writings (Curtis 2000: 128–29, 293–94). Not unlike social media companies today, Southern postmasters were obliged to screen the mail for abolitionist writings and prevent their circulation. Southern politicians even demanded a federal

law against abolitionist writings and that Northern states punish anti-slavery opinions, although these initiatives failed.

Southern congressmen did manage to push through the 'Gag Rule' in 1836, prohibiting the presentation of anti-slavery petitions in Congress until its repeal in 1844. Southerners used several different justifications for the censorship of 'fanatic and incendiary' abolitionist speech (Curtis 2000: 153). These included the idea of group libel. Senator John C. Calhoun of South Carolina complained that the abolitionist petitions 'contained reflections injurious to the feelings of himself, and those with whom he was connected' (Curtis 2000: 176). He and his constituents refused to be 'deeply, basely and maliciously slandered'.[6] Southern politicians also argued that abolitionist speech would create 'discontent' leading to violent rebellion, even if criticism of slavery did not directly incite to revolt and rebellion. As one commentator argued: 'The unavoidable consequences of [abolitionist] sentiments is to stir up discontent, hatred, and sedition among the slaves' (Curtis 2000: 135). In other words, the 'bad tendency' of abolitionist speech was sufficient grounds for suppression, even in the absence of any imminent harm, and it essentially prohibited transmission of anti-slavery opinion in the South.

Only a robust commitment to free speech ideals among Northerners prevented suppression of abolitionist ideas at the federal level as well as in Northern states. This was often motivated by constitutional principle rather than

6 Cong. Globe, 24th Congress, 1st Sess., 3rd vol. (1836): 77.

sympathy with abolitionists, who were frequently despised as 'fanatics' even by polite opinion in the North. But both mainstream Northern opinion and abolitionists argued that pro-slavery ideas should be free to circulate in the North and that in a free exchange the case for slavery would be defeated. The runaway slave and abolitionist Frederick Douglass became a famous orator and writer, and central to his political philosophy was the idea that 'the right of speech is a very precious one, especially to the oppressed'.[7] In 1860 he wrote a plea for free speech in Boston after an anti-slavery meeting in Boston was disrupted by mob violence:

> Slavery cannot tolerate free speech. Five years of its exercise would banish the auction block and break every chain in the South. They will have none of it there, for they have the power. But shall it be so here? ... A man's right to speak does not depend upon where he was born or upon his color. The simple quality of manhood is the solid basis of the right – and there let it rest forever.[8]

Douglass's insistence on the intimate link between free speech and equality was taken up by a number of individuals and groups which fought the systematic discrimination against African-Americans under 'black codes' and Jim Crow laws in the South after the abolition of slavery and

7 The Kansas–Nebraska Bill, speech at Chicago, 30 October 1854.

8 Frederick Douglass's 'Plea for freedom of speech in Boston', 9 December 1860 (https://lawliberty.org/frederick-douglass-plea-for-freedom-of-speech-in-boston/).

well into the second half of the twentieth century. These included the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People (NAACP). Having seen how free speech restrictions tended to hurt minorities and progressive groups, the ACLU and (after some wavering) the NAACP did not pursue the idea of promoting racial equality through hate speech or group libel laws. In the words of Samuel Walker, 'the principal strategy for advancing *group* rights came to be the expansion of constitutionally protected *individual* rights' (Walker 1994: 16), which included repudiating free speech restrictions based on bad tendencies. This strategy led to a cascade of landmark Supreme Court cases expanding First Amendment freedoms, providing a prominent platform for mobilising the American people and securing a 'civil rights revolution' empowering African-Americans.

British colonialism

In the early nineteenth century British political radical speech was routinely suppressed by laws against seditious and blasphemous libel. But reforms in the 1830s and 1840s removed most obstacles to political and religious speech in Britain. John Stuart Mill wrote that the working class had thrown off the yoke of 'paternal' government when they were taught to read and had access to newspapers and political tracts (Mill 1909).

Formally, Britain was committed to exporting its liberal values. *Encyclopædia Britannica* declared that '[i]n the British colonies the press is as free as it is in England'.

The reality was very different. In the colonies race and ethnicity replaced class as the basis of policing speech when anti-colonial movements began agitating against British imperial rule.

In India, sweeping prohibitions against sedition and the promotion of 'feelings of enmity or hatred between different classes of Her Majesty's Subjects' were adopted (Acharya 2015).[9] In 1908 the nationalist leader Bal Gangadhar Tilak wrote a number of newspaper articles arguing that a lethal terrorist attack was the regrettable but natural consequence of British rule.[10] Tilak was convicted and sentenced to six years of transportation for sedition and 'promoting enmity between communities'.[11]

India's most famous champion of independence was also punished for his words. According to Mahatma Gandhi (1921), the freedoms of speech and association were 'the two lungs that are absolutely necessary for a man to breathe the oxygen of liberty'. But in 1922, Gandhi was sentenced to six years in prison for encouraging non-violent resistance to British rule. At his trial he made a rousing speech in favour of free expression (Gandhi 1922):

9 The primary source is the Indian Penal Code of 1860, sec. 124A (added by Act 27 of 1870, sec. 5); sec. 153A (added by the Indian Penal Code Amendment Act 4 of 1898, sec. 5), in *Government of India, The Unrepealed General Acts of the Governor General in Council: 1834–67*, 3rd edn (Calcutta: Office of the Superintendents of Government Printing, India, 1893), 1: 273, 279.

10 Second Tilak Trial-1909, Bombay High Court (https://bombayhighcourt.nic.in/libweb/historicalcases/cases/Second_Tilak_Trial_-1909.html).

11 *Emperor v. Bal Gangadhar Tilak* (1908) 10 BOMLR 848 (https://indiankanoon.org/doc/1430706/); The second coming of sedition. *The Wire*, 18 February 2016 (https://thewire.in/law/the-second-coming-of-sedition).

> Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.

Though Gandhi was convicted for sedition rather than hate speech, his eloquent defence of free speech serves as a warning against all content-based restrictions punishing bad tendencies. Unless punishments for speech are limited to promoting imminent harm, such as clearly inciting violence, they can be abused to silence political dissent.

As anti-colonial movements gained traction, British officials started operating a parallel system of censorship based on race. In 1918 the British governors in the Caribbean were specifically instructed to intercept and prevent the circulation of anti-colonial writings sent to 'negroes' under their jurisdiction. In 1927 the Secretary of State for the colonies circulated a secret memo (Newell 2016: 68) stressing the need to censor material that could:

> arouse undesirable racial feeling by portraying aspects of the life of any section of His Majesty's subjects which, however innocent in themselves, are liable to be misunderstood by communities with other customs and traditions.

This parallel system also applied to the cinema. Censors relied on guidelines issued by the British Board of Film

Censorship. These prohibited depicting 'antagonistic or strained relations between white men and the coloured population of the British Empire'. In Hong Kong these were expanded to include 'showing the white man in a degrading or villainous light' and 'racial questions, especially the intermarriage of white persons with those of other races' (Newman 2013: 167). Contemporary supporters of hate speech laws may argue that the racist free speech restrictions of colonial Britain represent the very oppression they want hate speech laws to prevent. But it is worth remembering that at the time Britain was seen as the world's preeminent liberal state, whose values were widely admired. Accordingly, Britain's censorship of anti-colonial movements should serve as a powerful reminder that even in the most enlightened countries laws punishing the bad tendency of speech are likely to reflect and protect majoritarian biases at the expense of unpopular groups whose ideas might be seen in a very different light by later generations.

Apartheid South Africa

Censorship and suppression were fundamental features of South African apartheid. The Publications Act banned 'undesirable' publications including ones thought to harm relations between groups, and those that brought any section of the community into 'ridicule or contempt' (de Lange 1997).

While formally neutral and aimed at equality between all groups of the South African population, these

provisions were really aimed at preserving white supremacy, the defining feature of apartheid. As the chairman of an official censorship body explained (de Lange 1997: 23):

> The Appeal Board has emphasized that the South African community in no way wants to suppress criticism against whites or the government, but writers should realize that they are on delicate ground and that they have to make sure that what they publish does not assume the character of a hateful attack on the white man.

Not surprisingly, many works were banned for subjecting whites to ridicule or contempt. Nobel Prize winner Nadine Gordimer's *Burger's Daughter* was initially banned because it 'contain[ed] various anti-white sentiments'. *Roots*, the American mini-series on slavery, was banned in 1984 'as a substantial number of likely viewers would identify with the cause of the oppressed American slaves' (Coetzee 1990: 12). Portrayals of 'sexual intercourse between White and Coloured persons [if] represented to the public as normal, natural, satisfying and right' were also banned (de Lange 1997: 25).

American abolitionists and civil rights activists had been able to appeal to and ultimately rely on constitutional freedoms couched in universalist terms. Anti-colonialist movements within the British empire could point to the chasm between colonial censorship and Britain's liberal traditions, which included a commitment to freedom of thought and speech going back to the abolition of prior censorship in 1695. But no such legal or ideological support

was available to the opponents of apartheid. The South African Constitutions of 1961 and 1983 contained no Bill of Rights and explicitly discriminated on the basis of race, entrenching apartheid.

This hampered the ability to use free speech as a weapon against apartheid. In fact, the systematic denial of free speech and inability to challenge white supremacy peacefully lay at the heart of the ultimate decision of the leadership of the African National Congress (ANC) to aim to achieve its goals by force. At his infamous Rivonia Trial in April 1964, Nelson Mandela delivered an iconic defence of liberty explaining why the ANC had turned to armed resistance (Mandela 1964):

> All lawful modes of expressing opposition to [white supremacy] had been closed by legislation, and ... we had either to accept a permanent state of inferiority, or to defy the Government. ... We first broke the law in a way which avoided any recourse to violence; when this form was legislated against, and when the Government resorted to a show of force to crush opposition to its policies, only then did we decide to answer violence with violence.

Mandela's speech contains a powerful indictment of the idea that speech restrictions serve to secure social peace and limit violence. Indeed, free speech may be seen as the antithesis of violence, since it allows the peaceful airing of grievances, while censorship may serve to radicalise those who are silenced.

The United Nations, human rights and hate speech

The history of drafting and enforcing UN treaties concerning free speech reaffirms yet again that even well-intentioned 'hate speech' bans empower government officials to suppress any speech they disfavour, including human rights advocacy. After the end of World War II, the new United Nations set out to adopt a catalogue of international human rights.

The negotiations concluded with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Article 19 stipulates that:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

But the road to this landmark achievement was not without friction and profound ideological disputes as Cold War tensions increased. The drafting process that led to Article 19 triggered a vehement debate on the limits of tolerance (Morsink 1999; Farrior 1996; Mchangama 2011). To what extent should Nazis and fascists be allowed to advocate the very ideologies that had covered Europe in totalitarian darkness? The foremost champions of not only permitting states to *prohibit* hate speech but making it a *duty* for all states to do so were the communist states led by the Soviet Union. The Soviet delegation argued that Article 19 could not stand alone since 'the freedom this article would give to the Nazis

would undercut and threaten … the very right affirmed in the article; without the limiting clause, the article would be self-destructive'. Most tellingly – and perhaps most decisively for the final outcome – the Soviets pushed for a phrase explicitly criminalising 'fascism' (Morsink 1999: 66–68).

American diplomats warned against any free speech restrictions which might justify authoritarian censorship norms. A number of European states were less principled than the US but thought it a step too far to include an obligation to prohibit hate speech in an international human rights declaration. These concerns ultimately defeated the Soviet proposal.

But when the UN set out to adopt the legally binding International Covenant on Civil and Political Rights (ICCPR) the conflict flared up again. In one of the first meetings, a Soviet diplomat argued that a duty to prohibit hate speech was necessary since '[m]illions had perished because the propaganda of racial and national superiority, hatred, and contempt, had not been stopped in time'.[12]

The US representative Eleanor Roosevelt emerged as a dogged defender of free speech. She warned against the Soviet proposal as 'extremely dangerous' since it:

> would only encourage Governments to punish all criticisms in the name of protection against religious or national hostility. … [and] be exploited by totalitarian

12 U.N. Commission on Human Rights, 5th Sess., U.N. Doc E/CN.4/SR.123, 14 June 1949: 4 (http://hr-travaux.law.virginia.edu/document/iccpr/ecn4sr123/nid-1820).

> States for the purpose of rendering the other articles null and void.[13]

But this time around principled warnings failed to carry the day. Sixteen countries from Latin America, Africa, the Middle East and Eastern Europe proposed a text which became ICCPR Article 20(2): 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.' When put to a vote in the General Assembly, it was adopted with 52 votes in favour, 19 against and 12 abstentions. The 19 countries that voted against included almost all Western liberal democracies (Mchangama 2011).

Unfortunately, the concerns of Eleanor Roosevelt turned out to be prescient, as communist states used the nebulous concept of 'incitement to hatred' to punish hundreds of dissidents, human rights activists and religious believers who challenged communist rule.

Concerned about Western radio stations broadcasting uncensored news – including banned writings of dissidents – into millions of homes behind the Iron Curtain, the Soviet Union warned that it would never tolerate 'the dissemination of … racism, fascism … hostility among peoples and false slanderous propaganda' (Morgan 2018: 179).

Yugoslavia actively supported the Soviet line on ICCPR Article 20 at the UN while at home it criminalised incitement to hatred with punishments of up to ten years in prison. But

13 U.N. International Covenant on Civil and Political Rights (ICCPR), 6th Sess., U.N. Doc E/CN.4/SR.174, 28 April 1950 (http://hr-travaux.law.virginia.edu/document/iccpr/ecn4sr174/nid-1741).

this provision was used to curb political criticism as well as the religious and nationalist sentiments of the country's different ethnic groups. In 1981 an imam was sentenced to four years' imprisonment for provoking national and religious hatred after criticising the authorities and urging parents to raise their children as Muslims. An Orthodox priest and three other men were given sentences of four to six years for singing nationalist songs at a christening. The liberal Croatian writer and dissident Vlado Gotovac – sometimes called 'the Croat Vaclav Havel' – got two years for hostile propaganda and incitement to national hatred for interviews with foreign journalists (Kolb 1982).

Whereas communist states used (and abused) human rights–related exceptions to free speech to silence and punish dissidents, the dissidents themselves appealed to the core protection of free speech in international human rights law. The very first paragraph of the famous Charter 77, co-authored by Vaclav Havel, complained that '[t]he right to freedom of expression … guaranteed by [ICCPR] Article 19 … is in our case purely illusory'.[14]

The use of human rights language and in particular the emphasis on the robust protection of free expression created a positive feedback loop allowing dissidents to challenge censorship and oppression through the amplification of Western governments, media and human rights organisations. According to several historians, this pressure contributed to the demise of communist rule and the

14 Charter 77 (1 January 1977), trans. at Roy Rosenzweig Center for History and New Media (https://chnm.gmu.edu/1989/archive/files/declaration-of-charter-77_4346bae392.pdf).

mostly peaceful transition to democracy in many former communist states (Thomas 2001; Morgan 2018).

The end of the Cold War did not neutralise the potential abuse of ICCPR Article 20(2) identified by Eleanor Roosevelt in 1950. In 1999, the Organization of Islamic Cooperation (OIC) launched a more than decade-long campaign at the UN to counter 'defamation of religions'. This was an attempt to prohibit blasphemy, in particular criticism and mockery of Islam – which is banned in most of the 57 OIC member states, some of whom even prescribe the death penalty. Often these laws are targeted at religious minorities, unorthodox Muslims and secularists (Fiss and Kestenbaum 2017). Prominent victims include the Saudi blogger Raif Badawi, sentenced to ten years in prison and 1,000 lashes for secular writings on his blog. With defamation of religion the OIC sought to fuse and expand the categories of blasphemy and hate speech by incorporating the former into the latter and then use this piece of legal creationism as the platform for a free-standing prohibition on blasphemy under international law.

A typical example of a resolution on defamation of religion would urge states:

> to prohibit the dissemination, including through political institutions and organizations, of racist and xenophobic ideas and material aimed at any religion or its followers that constitute incitement to racial and religious hatred, hostility or violence.[15]

15 U.N. Human Rights Council resolution 7/19, Combating defamation of religions, 27 March 2008 (https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_19.pdf).

In 2011 the annual OIC resolutions on defamation of religion were defeated by a US-led UN resolution.[16] It condemned advocacy of incitement to hatred, but only called on criminalising 'incitement to *imminent violence* based on religion or belief' (emphasis added). This was a standard inspired by the US Supreme Court's decision in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), which held that speech could only be banned if it constituted incitement to imminent lawless action and was likely to result in such action. This invalidated an Ohio law used to convict a Ku Klux Klan leader who had denounced 'niggers' and 'Jews'. It might seem ironic that a Supreme Court case protecting the free speech of white supremacists should help defeat an attempt to legitimise the suppression of dissent in authoritarian states.

But the progressive potential of protecting the free speech of bigots would not have surprised one of the justices who joined the majority decision in Brandenburg. In 1967 Thurgood Marshall became the first African-American Supreme Court Justice. Central to Marshall's philosophy, in the words of one biographer, was the idea that 'liberty and equality, properly understood, complemented each other'. Specifically, Marshall's record of protecting free speech claims from the bench underlined his belief that (Adelman 2013: 129):

16 U.N. Human Rights Council resolution 16/18, Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, 12 April 2011 (https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf).

> The First Amendment also promoted equality and social justice because it afforded members of subordinated groups, whose voices are most likely to be suppressed, an opportunity to give voice to their concerns.

The continuing importance of free speech in protecting minorities

I hope this short historical sketch of past free speech struggles will serve to vindicate Thurgood Marshall's belief in the 'intersectionality' – properly understood – of free speech and equality. Because, as we have seen, there is an intimate relationship between censorship and political systems built on the subjugation of one or more groups of people whether based on race (slavery, colonialism and apartheid), political ideology (communism) or religion (Islamic blasphemy bans). In such systems restrictions on free speech – even when formally neutral – will tend to perpetuate and entrench the values of the dominant in-group and marginalise the out-group. Far from imperilling vulnerable minorities, free speech is one of their most important safeguards. It is no coincidence that Frederick Douglass, Gandhi, Martin Luther King, Nelson Mandela, and Vaclav Havel all invoked the transformative, equalising, universalist, and liberating potential of free speech in their fight to mobilise public opinion against injustice.

No doubt contemporary hate speech bans in mature and consolidated liberal democracies are more benign than the laws of the antebellum South or communist bloc. But the examples of hate speech laws targeting political,

religious, artistic and symbolic speech on burning issues dividing opinion among citizens in democracies are many (Strossen 2018). And as new political orthodoxies arise, speech restrictions tend to mushroom as a result of 'scope creep' and new and unpopular minorities risk becoming the target of hate speech laws. In Germany the prohibition against the burning of flags was recently expanded with the argument that the sole aim of flag burning is to 'stir up hatred, anger and aggression', although flag-burning has often been used as a symbolic protest against government policies, such as warfare and oppression.[17] In France hate speech laws also overlap with criticism of governments and several people – many of them Muslims – have been punished for advocating a boycott of Israel.[18]

Moreover, as Eleanor Roosevelt foresaw, even with the best intentions, hate speech laws are liable to be abused by authoritarians. A year after the adoption of Germany's Network Enforcement Act thirteen countries had copy-pasted the German initiative. Among them were Russia, Belarus and Venezuela.[19] Turkey provides a particularly tragic example of how speech restrictions adopted to shield minorities can become a weapon pointed in their direction. In

17 Germany makes burning foreign flags a jailable offense. Deutsche Welle, 15 May 2020 (https://www.dw.com/en/germany-makes-burning-foreign-flags-a-jailable-offense/a-53445868).

18 France's criminalisation of Israel boycotts sparks free-speech debate. France 24, 21 January 2016 (https://www.france24.com/en/20160120-france-boycott-israel-bds-law-free-speech-antisemitism).

19 Germany's online crackdowns inspire the world's dictators. *Foreign Policy,* 6 November 2019 (https://foreignpolicy.com/2019/11/06/germany-online-crackdowns-inspired-the-worlds-dictators-russia-venezuela-india/).

2020 the Ankara Bar Association filed a police complaint against Turkey's Religious Affairs Directorate for provoking 'hatred and hostility' after homophobic comments by a prominent imam. As a response a prosecutor opened an investigation into the Ankara Bar Association for 'insulting ... religious values', a move supported by the Turkish Ministry of Justice.[20]

A robust and principled commitment to free speech will not defeat racism and bigotry on its own. But it does provide the victims of hatred and discrimination a platform from which to expose the bigots, appeal to common values, and deny bigoted majorities the means to impose their intolerance. Laws against hate speech, on the other hand, chart a dangerous course for the minorities they are intended to protect.

20 Turkey: criminal case for opposing homophobic speech. Human Rights Watch, 1 May 2020 (https://www.hrw.org/news/2020/05/01/turkey-criminal-case-opposing-homophobic-speech).