

# **Submission on Hate Speech by Men's Voices Ireland**

## **General comment on Hate Speech legislation**

There have been scores of academics and other commentators de-platformed, denied speaking rights or shouted down in US campuses in recent years on the vague excuse that they were spreading "hate speech". Any views that certain vociferous groups don't like is branded in this way in order to deny them expression and many university presidents have caved in to the demonstrators. This policy of appeasement, far from pacifying such groups, simply serves to inflame and embolden them even further to the extent that free speech has been endangered on many campuses. This has led to the University of Chicago setting out a set of Principles defending free speech on the campus. The Chicago Principles have been endorsed by FIRE, the Foundation for Individual Rights in Education, and by Heterodox Academy, an association of academics throughout the US, concerned for the preservation of the principles of free expression and academic freedom. A growing number of US universities have committed to these principles and have been joined by the state of Florida which has called on the public universities and colleges it funds to do likewise. More recently the State of Ontario in Canada has made a similar commitment.

In recent discourse online and on social media as well as in public debates, certain words like racism, sexism, transphobia, have been thrown about in indiscriminate manner in order to silence opponents. Such words which used to have a very narrow and well defined, well-corralled meaning, have attained such a wide application that it is nearly impossible to have a civil and worthwhile debate on the issues in question without someone hurling them in an abusive manner. Causing people to fear to speak out because of possibly violating vaguely defined laws, does not lead to a healthy democracy and to a vigorous public discourse; instead it leads to anger, bitterness and a festering resentment. The wording of hate speech laws itself calls into question fundamental principles of law. Language no longer need have the intent of causing offence, but merely judged likely to cause offence, is now to be prohibited. This is a denial of mens rea, a long-established legal principle, and a serious weakening of commitment to basic principles.

Orwell once said: "If liberty means anything it means the right to tell people what they don't want to hear." Without the freedom to offend, free speech and free thoughts cannot truly exist. To be sure, the freedom to offend can propagate stupid, irrational and hurtful ideas. However, freedom to speak freely is also the best means to fight against tyranny or fascism or to overturn foolish but widely accepted dogma. A 2012 factsheet produced by the ECtHR concedes that there is no universally accepted definition of the expression "hate speech". Indeed an earlier, 2008, factsheet opines that "this kind of speech does not necessarily manifest itself through the expression of hatred or emotions." Hate speech laws are loosely worded and arbitrarily enforced. They only protect certain groups and rarely require an

actual victim. They are focused more on the response of the hearer than on the truth of the statement.

1. When laws are vaguely worded, they can be very far-reaching. Moreover, they have a grave dampening effect on serious discourse since they inhibit what people say in the absence of clear guidelines of what is not permissible.
2. It is the perception of the listener that counts, rather than an objective standard. This puts too much power in the hands of the listener.
3. Hate speech laws do not necessarily require falsehood.
4. They often only protect certain people. Such laws specify certain protected groups thereby giving them favoured status. This can and has been used to prevent legitimate comment which is in the public interest. No group should be above criticism even when this is vigorous.
5. Hate speech laws need not require a victim. There is simply an unidentifiable group of alleged victims.
6. Hate speech laws are often criminal in nature.

Freedom of expression is the hallmark of a free and democratic society. It is the first right to be banned by tyrannical or even illiberal states. In some states speech that is insulting or offensive is outlawed. We believe that restrictions on freedom of speech should be very narrow and extremely well-defined. As in the First Amendment to the US Constitution, the law should only restrict speech when there is an incitement to imminent violence.

The evidence that hate speech is widespread is not convincing according to some journalists: [link removed]

An Irish Independent editorial of Oct 28 2019 calls for common sense to be applied saying it would be incorrect to assume there are vast levels of hate speech and crimes in this country. It goes on: "Other than from anecdotal evidence, mostly on online forums, the fact is we do not really know how extensive the problem has become."

Knee jerk responses are not appropriate and may well result in bad law. [link removed]

The journalist Eilis O'Hanlon concurs and goes further:

Constantly seeing hate where none exists can easily end up becoming a self-fulfilling prophecy. If you go looking for racism, misogyny, homophobia, you'll invariably find it.

In her view: Much of the worst excesses happen online, which is notoriously difficult to police or prosecute. She then goes on to relate the London experience in 2017, where a new Online Hate Crime Hub was launched, with a mission to "work with community

experts" to crack down on offensive speech. Since then, the unit has spent £1.7m of public money, and has resulted in just six successful prosecutions, none of which led to imprisonment. The Garda for the first time, will also now record so-called "non-crime hate incidents" on the Pulse database. O'Hanlon says that this will be even more controversial if gardai follow the UK guidelines which state that "evidence of the hostility is not required for an incident or crime to be recorded as a hate crime or hate incidents".

A recent report in America looked at the damage being done by the sort of extreme self-loathing and liberal guilt which has gripped white progressives in recent times, and which is pushing them further to the extremes in their attitudes than the minorities they claim to be speaking up for. O'Hanlon finishes by giving figures for 2016 in Ireland which show that there were 13 reports of anti-Muslim incidents, and fewer than three of transphobia.

Another journalist, Ian O'Doherty, is equally sceptical: If we criminalise hate speech we better start building a few more prisons he says. The definition, as outlined by Commissioner Harris, is so broad that it would prove to be virtually unworkable even in normal times - when you add in social media, it becomes both a legal quagmire and a crank's charter. Commissioner Drew Harris said that the new definition would encompass: "Any criminal offence which is perceived by the victim or any other person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender." O'Doherty states that we have already seen how these exact laws work in the UK. They've been an absolute disaster. [link removed]

UK academics Matthew Goodwin and Eric Kaufmann have written about the uproar that was caused when in 2018 they proposed to hold a public debate on immigration and ethnic change and the stream of condemnation that was poured out on them. Their article is a salutary reminder of what can happen when sensitive topics are raised in a climate where "hate speech" laws dominate such topics. [link removed] "It was interpreted as an open attack on immigrants and minorities. Before the event had taken place, before a word had been spoken, one professor accused us of "helping to advance a white nationalist agenda" and engaging in "nativist and racist discourse." Other academics retweeted accounts that suggested we were "complicit in violence," Still others contended that we were contributing to racism."

The debate eventually went ahead but only after they changed the title. "Even after this change, academics joined with self-described anti-fascist activists to publish an open letter on the platform Open Democracy. Titled "Framing ethnic diversity as a 'threat' will normalise far-right hate," the letter claimed that the debate "was framed within the terms of white supremacist discourse". This kind of ferocious abuse shows how easily freedom of speech can be threatened and suppressed even when it is conducted by enlightened people.

Finally, once one starts down this road there need be no end to the categories to be protected from “hate speech” to the exclusion of other categories. According to an article in the UK Independent of Oct 16 2018 misogyny is now to be seriously considered as a form of “hate speech”. [link removed] It says: “Take the recent proposals to make misogyny a hate crime. Given current levels of street harassment, sexual assault and male violence against women, this can only be a good thing. But why stop there? Why not make misandry – prejudice against men and boys – a hate crime, too? Surely that way no one is left out. Feminists have argued that the degree to which misogyny underpins crimes committed against women means this has to change.

We have also heard that consideration is being given to the idea of reversing the burden of proof in these cases. While it is not mentioned in your public consultation document we would like to put on record our view that reversing the burden of proof in any circumstances would be a serious corruption of criminal law and an attack on the presumption of innocence, which is one of the most fundamental rights of our citizens.

## **Response to the Public Consultation document.**

As outlined above we have serious reservations about the enactment of further hate speech laws and indeed the retention of the current legislation (The Prohibition of Incitement to Hatred Act, 1989). Free speech is an important, indeed vital, part of a free democratic society and legislation of this type can be used to stifle debate and legitimate criticism. Our comments below are subject to this reservation and in recognition of the fact that there is such legislation already on the Statute books which is unlikely to be repealed. We believe that the current legislation is fundamentally flawed as outlined in our response to Issue 1 below

### **Issue 1: Protected characteristics covered by the 1989 Act**

In your 'Public Consultation Document', you state "*Tackling hate speech and hate crime are both essential to ensure that all people living in Ireland can feel safe, valued and equally respected and protected under law. This tolerance and respect for the equal dignity for all human beings is fundamental to Ireland's identity as a democratic, pluralistic society.*" These are laudable sentiments however the 1989 Act and the amendments which you envisage, do not *ensure that all people living in Ireland can feel safe, valued and equally respected and protected under law*. The restrictive coverage of the Act, in that it only protects groups of persons on account of certain characteristics means that it does not provide equal protection to all people living in Ireland. **The restrictive protection, which would primarily apply to a select group of persons is divisive and, if widely known, will lead to resentment against those privileged groups who benefit from the preferential treatment and is in itself a source of incitement to hatred.**

We note that in page 1 of the document you state that you wish to "*...ensure that Ireland's legislation on hate speech is fit for purpose and is effective in meeting the real needs of communities and individuals who are living with the impacts of hate speech.*" Again the legislation does not protect individuals who may be subject to hate speech, which could be any person living in Ireland, but only certain privileged groups.

One of the most savage crimes committed this year was the attack on Kevin Lunney in Cavan. This horrific crime was preceded by a hate campaign against Mr Lunney and his colleagues in QIH, which included posters in public places. Yet the hate campaign that preceded this savage crime is not prohibited by the 1989 Act because it was not carried out on account of the select characteristics in that Act.

There was also an attack on the property of a member of Dail Eireann recently on account of the views he expressed. It is likely that there was some 'hate speech' preceding that attack but it was not prohibited by the 1989 Act. **At present there is probably more hatred**

**directed against people because of the views they hold and espouse on social and political matters than for any other reason.**

Our view on this matter is that, if we are to have hate speech legislation, the definition of hate should be based solely on the content and intent of the speech and not the motive for engaging in such speech or the characteristics of the person or group referred to in the speech. It should also protect individuals as well as groups, regardless of their characteristics, in the same way that for example, defamation legislation protects all people without distinction. **To continue with the current selective protection will only create division and resentment and, therefore the law as it stands could be a source of incitement to hatred’.** The only reason it has not already given rise to such resentment is because its exclusive, selective nature is not widely known at present, however that will change following this consultation process.

We are also of the view that this type of selective protection is contrary to article 40.1 of Bunreacht na hEireann.

**The definition of hatred therefore should be ‘conduct or material, whether it involves words, written material, images or sounds, which is intended to stir up hatred against an individual or a group of persons’.**

#### **Issue 2: Use of the term “hatred” in the Act**

If the purpose of the Act is to criminalise ‘hate speech’ then “hatred” is the correct term. The other terms suggested in your document, ‘hostility’ and ‘prejudice’ are vague and could give rise to frivolous accusations. The fact that you recognise that prosecutions are rare proves that such crimes, against the selected groups covered by this legislation, are quite rare. Also the fact that protection under the Act is so limited and designed to protect a vociferous minority of the population, to the exclusion of the majority of the population, may also be a factor in the low rate of prosecutions.

#### **Issue 3: Application of the Act to online speech**

The wording of the current legislation is broad enough. Private communications between friends or within closed groups, which are not open to the general public, should not be criminalised.

#### **Issue 4: Proving intent or likelihood**

Our views on this have been set out above. An act or communication should not be deemed criminal unless there was criminal intent. Introducing the concept of recklessness would almost certainly increase the number of frivolous cases and wrongful convictions.