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Legal Rights of Hate Groups

In 2008, the Southern Poverty Law Center counted 926 active “hate groups” in the United States. “Hate groups” as defined by Wikipedia are “an organized group or movement that advocates physical or verbal aggression toward or refusal to interact with persons on the basis of those persons' possession and/or exhibition of a certain characteristic” (Hate groups). These groups have been around through out America’s history; however, the law has never risen up to stop them completely. This is because “hate group’s” opinions and right to assemble are protected under the first amendment. Although this may not have necessarily been what the founding fathers had in mind when writing this amendment, no record of what their thinking was can be found. Therefore, we have to go by what was written into law and as citizens of the United States these groups have the right to speak their mind.

“Hate groups” form for many reasons: disgruntled youth looking for a place of belonging, people who have felt targeted by a certain group of people, and even those that simply believe they are the best of human kind. Often finical situations put people into a disadvantaged state where they feel powerless; “hate groups” provides a way for them to regain their feeling of worth (Williams, 2004, p. 68). Whatever the reasons these groups are present within our society and have something to say. The question remains if they have the legal right to say it?

William L. Pierce, the founder of the National Alliance – a white advocacy group – wrote in an article, “When I see a hate letter I often feel a flash of anger at the hater who wrote it...” (Roleff, 1999, p. 90). This quote represents something that I regard as one of the first problems that arises when discussing “hate groups.” I believe the title “hate groups” brings up two issues: one, is that this term evokes a feeling of dislike toward those within said “hate group” and two, it puts group members into a defensive position. Another example where people discriminate against “hate groups” is the Cuffley v. Mickes case. The Klu Klux Klan of the Missouri wished to be a part of the Adopt-a-Road program was denied because of what their group represented (Cline, 1999). It was not the role of this program to judge if this group was eligible to participate in this program because of what their group stood for. It is my belief that all people are created equal, so by placing a term that draws negative feelings out of both parties it only allows for one more prejudice to blockade an open discussion. By giving another term to these groups that does not conjure these negative feelings, it will then permit both sides to view each other differently. One term that seems to have a less negative cogitation is extremist groups. In replacing the term “hate group” with extremist group it does not devalue group members opinions, while still stating that their ideas are an extreme and not the view point of all people. Through out this paper, I will refer to “hate groups” under the term extremist groups.

“Bigoted speech is symptomatic of a huge problem in our country; it is not the problem itself” (Bender & Leone, 1999, p. 41). As citizens of the United States, we are allowed certain rights that are defined in our Constitution and the Bill of Rights. The first amendment of the Bill of Rights states,

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (The United States Bill of Rights).

Through this amendment all people are allowed to hold and speak to their own opinions; whatever those might be. Extremist groups tend to have very strong opinions often regarding things such as race, religion, ethnicity, sex, or sexual orientation – although these are not the only ones. One organization in particular has protected Americans civil rights and liberties for almost ninety years now; the American Civil Liberties Union (ACLU) has taken on many cases for extremist groups and other individuals who’s freedom of speech is being challenged. When the ACLU was asked why it tolerates and even defends this type of speech the response was that in silencing them, there is the potential to silence those that speak against these extremist groups (Bender & Leone, 1999, p.38). After all, the first amendment is there to protect both sides of the argument.

The ACLU believes that by increasing diversity, and having discussions where extremist ideas can be challenged with respect is a more productive solution than trying to shut them down (Bender & Leone, 1999, p.38). A well known ruling that the ACLU was a part of was that of *Terminiello v. Chicago*. Father Terminiello was convicted of a “breach of peace” when he delivered a racially charged speech that seemed to incite a riot. When brought before the Supreme Court, it was ruled that “breach of peace” ordinance was unconstitutional as it infringed upon the right to freedom of speech. As part of the ruling Supreme Court Justice Douglas wrote, “a function of free speech under our system is to

invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger" (Terminiello v. Chicago, 1949). A term that was coined during the Schenck v. United States case – the ruling was regarding whether Schenck could speak out against the draft of World War I – was the idea of “clear and present danger” (Schenck v. United States). “Clear and present danger” is the thought that if substantive evils occur due to what someone has said, that person is then in violation of the law (Clear and present danger). In other words, opinions may be stated in words and actions that are in accordance with the law but may not call people to commit illegal action.

Another amendment within the Bill of Rights is the fourteenth amendment. The first section discusses who is considered a citizen under the law (The United States Bill of Rights). Many people who feel that extremist speech should not be allowed bring up the fourteenth amendment. This article simply states that all people who are considered citizens of the United States should be regarded equally. This amendment does not place any sort of rules regarding people’s speech and only states that the law may not discriminate against a group or individual. It does prove that all citizens are equal under the law; therefore, have the right to speak their own opinion freely. Those who oppose extremist views are protected and should feel that they have the right to speak out without retaliation. It is sad that often people who are being targeted by extremist groups do not feel safe to practice their freedom of speech. This is not a fault of the law but an issue of those who enforce it.

In regards to limiting freedom of speech, another argument that often comes up is the idea that other countries have bounds on their right to free speech and they seem to be working.

“In Great Britain, for example, a Racial Relations Act was adopted in 1965 to outlaw racist defamation. But throughout its existence, the Act has largely been used to persecute activists of color, trade unionists and anti-nuclear protesters, while racists – often white members of Parliament – have gone unpunished” (Bender & Leone, 1999, p. 40).

I believe that one can not compare the United States idea of what freedom of speech means to other countries, simply because of how easily identifiable our right is. Many other countries do not have a system based on one single document. In order to change the wording regarding our right to freedom of speech, it would take a lot of social change as well. If Congress could get a bill passed that opened up the idea of changing the constitution, it would then have to pass the state governments and go back to Congress to be re-voted on. During this time a public outcry would arise. Groups like the ACLU and individuals would protest the change. In fact, extremist groups and non-extremist groups would probably stand up against this idea. Citizens of the United States value this amendment above all; it is after all the first amendment. Attempting to change it would never be possible as so many of our societal ideals rest within this one statement.

Besides the fact that attempting to change this right would be extremely difficult, it would be very hard to find a punishment. Say we manage to limit freedom of speech, how would we punish the offenders? We would not be able to lock them up in jail. Our jails are

already over crowded to the point where we cannot if all those convicted now. There is also the possibility of creating fines. Not only would we have to come up with a system to determine the level to which someone broke the law, we would also have to prove conclusively that it was “hate speech.” Extremist groups would probably then set up funds to help with the fines. This would then give them an opportunity to place people who go to jail or are fined as martyrs for the cause. Lifting these people up and making them champions for the others to idolize.

A medium that already causes problems regarding this topic is that of the Internet. There is no easy way to determine the impact of the Internet on extremist groups and how well they reach their intended audience (Weimann, 2006, p. 103). “The proliferation of [extremist’s] presence on the Net is an indication of their evaluation of the medium’s effectiveness. Today all [extremist] groups are in one way or another...on the Net” (Weimann, 2006, p. 105). Long gone are the days of extremist groups handing pamphlets to passer-bys on street corners, or mailing out packets about their organization. Now one is more likely to get an email with links to websites, or come across a blog about the latest happenings of these groups. Determining how much is too much when it comes to freedom of speech on the Internet is difficult. As a society we are still exploring the limits of what we can do, well frantically trying to figure out the limits of the law concerning this information super highway. Maybe we should not fear what might happen but allow the possibility that this might be a new way to reach individuals within these extremist groups. The Internet provides a non-violent arena for discussion (Weimann, 2006, p. 208). As talked about earlier, the idea that speaking out against extreme ideas is more powerful then simply trying to quiet

them. The Internet poses a unique opportunity to bring information in a relatively cheap and easy format to people who would normally not be able to find it.

Even with this new forum, there still is a fine line between extremist speech and “hate crimes.” These two things – although at times related – are different and “hate crimes” are not protected by the first amendment. According to a ruling in the *Chaplinsky v. New Hampshire* case there is one type of “hate speech” that can be legally restricted. This is the idea of “fighting words”, which is when a person is attempting to incite a crime to happen. This ruling happened in 1942 and has such a narrow scope that it is rarely applied to recent “hate speech” proceedings. “Hate crimes” are illegal actions that a person commits against another person due to prejudices. This is not protected under the first amendment, as they are actions such as: vandalizing, harassment, intimidation, invasion, and violence. Things such as these do have legal consequences and should. When an individual moves from using words to taking action, the line of protected speech has been passed. From that point on it is up to the law to decide the punishment. Which should – but does not always – fit the crime. This paper is not written to defend “hate crimes.”

It is clear that the United States enjoys the privilege that is freedom of speech is. It is easy to think that groups who have extreme opinions should be silenced; but this will not help the situation. It will simply start the trend that would eventually bring freedom of speech to an end. As a society we need to stop trying to quiet each other but start listening and responding. It has been said many times that in order to fight extremist groups and their opinions we as a society need to stand up challenge them head on.

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