**9 - Social media, misogyny, and gender critical speech: a human rights approach to hate in the UK**

Michele Goodbody1

1Liverpool John Moores University

# Aims/Objectives

# A critical evaluation of the impact gender critical speech has on freedom of expression

# To recommend legislative changes in terms of human rights as the right to expression is being narrowed

# A proposed definition of hate speech which can be solidified into legislation

# An evaluation of the impact hate crime has on freedom of expression

# An evaluation of the impact speech has as a manifestation of a belief

# Overview

# “Gender-critical beliefs refer to the view that someone’s sex – whether they are male or female – is biological and immutable and cannot be conflated with someone’s gender identity, whether they identify as a man or a woman.”[[1]](#footnote-1) A growing number of people have been more vocal about this view with varying results. Maya Forstater lost paid work because she shared her views online,[[2]](#footnote-2) Harry Miller[[3]](#footnote-3) was arrested for tweets he shared in response to government plans to change the Gender Recognition Act,[[4]](#footnote-4) Kate Scottow was arrested for referring to a transwoman as ‘he’ on social media,[[5]](#footnote-5) Professor Jo Phoenix was cancelled from speaking at Essex University because of her ‘gender critical’ views,[[6]](#footnote-6) and JK Rowling received death threats for sharing her ‘gender-critical’ views online.[[7]](#footnote-7) In all cases, the theme which connects them is their shared gender-critical views being determined as hateful yet each one saw either a person discriminated, criminalised, censored or on the receiving end of hate themselves. Gender critical speech is becoming ever more a divisive, political, and toxic form of speech. Nancy Kelley, the chief executive of Stonewall has likened gender-critical beliefs to anti-semitism because of the extreme nature of the views and the insistence that the viewpoint is targeting a protected characteristic such as sexuality, gender identity, and race.[[8]](#footnote-8)

# Yet, people have the right to freedom of expression, a right which is considered the cornerstone of democracy. A right, which allows all viewpoints to be shared and considered without fear of legal sanction or censorship. A right which is at the essence of what it means to be human in the way we communicate. The right which permits words which shock and offend…. Such are the demands of pluralism and tolerance… without which there is no democratic society.[[9]](#footnote-9) It accepts the “the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative”[[10]](#footnote-10) however, increasingly, opinions and views are being labelled as hate speech without their being a universal definition of ‘hate speech’ which raises concerns.

A further concern rests in the abuse which stems from people’s expression, Laud notes “more and more people have moved online, individuals inclined toward racism, misogyny, or homophobia have found niches that can reinforce their views and goad them to violence.”[[11]](#footnote-11) Amnesty International attest that women are more susceptible to receiving hate online which flows through to offline abuse.[[12]](#footnote-12) Yet women are not afforded the same level of protection comparative to transgender people.[[13]](#footnote-13) This creates further division and produces more hate. Limited monitoring of social media means unpopular or distasteful views can spread instantly, furthermore, content removal on social media means people face the risk of arrest for expressing unpopular opinions, or they are self-censoring, suggesting the basic right to freedom of “expression is being reduced. This research will evaluate the relationship between hate speech and the basic right to freedom of expression and whether it represents hate in the realm of gender.

**Lit Review**

There is no universal definition of hate speech, simply broad guidance at national, European, and international levels. It includes protecting a person/group from the incitement of violence or hate based on an immutable characteristic.[[14]](#footnote-14) However, the Universal Declaration of Human Rights includes gender as a ‘characteristic’ worthy of protection whereas Europe do not. Gender is argued as both an immutable characteristic and one that is not. In England, the legal framework includes a collective of statutes used to criminalise speech, these include Public Order Act[[15]](#footnote-15), Communications Act[[16]](#footnote-16), and Malicious Communications Act[[17]](#footnote-17). All of which align with the notion that there is an action associated with the speech. Yet, alongside these statutes is the Human Rights Act[[18]](#footnote-18) which affords a person the right to freedom of expression. The collection of various treaties and national laws covering human rights, equality and crime are adding to the confusion of whether an opinion is hateful because dependent on how a view is expressed and perceived will alter the avenue of legal recourse. The ‘opinion’ however, may be the same. Terms such as ‘stirring up’, ‘menacing’ and ‘grossly offensive’ are applied objectively to expression but the way we communicate is subjective and how we understand information is based upon perception, therefore, when cases are decided it is based upon looking at the context. For example, *Connolly[[19]](#footnote-19)* drew upon the actions of posting photographs of aborted fœtus’s to three pharmacists. The action of posting the photos was enough to satisfy the threshold of causing anxiety and distress even though that was not the intention. Whereas a conviction was quashed in *Karsten[[20]](#footnote-20)* as no threat or menace was deemed to exist in withheld phone calls which the respondent felt threatened by. Where gender has become a problem in the arena of ‘speech’ links to hate crime and equality principles. Hate crime, for example, has five protected characteristics, race, religion, sexual orientation, disability, and transgender. Women, however, are not afforded protection as a characteristic, yet, looking at the broad and ambiguous concepts of hate speech, it could be argued that women sit within the heading of ‘immutable characteristic’. Very few statutes assist with defining ‘gender’ or ‘sex’ which adds the confusion as to what is acceptable in terms of speech under the subheading ‘gender’.

**Theory**

Freedom of expression is a long-established principle which has been present in societies around the world for over the importance of expression however, founding theory surrounding expression dates back to Ancient Greece where Socrates devised a way of questioning called *Elenchus****[[21]](#footnote-21)***which focused on people challenging each other’s arguments or statements as a way of determining ‘truth’. It influenced legal systems as it is the foundation for cross-examination of witnesses, the importance of this technique being that by accepting all viewpoints you allow for greater understanding within the sphere of knowledge. Another movement which saw a transition to the importance of expression was censorship. John Milton discussed this in his work Areopagitica where he addressed parliament over the proposed reinstatement of licensing of books and pamphlets where he recognised that while censorship may come from the pretense of good it opens the door to he misuse of government and oppression of people.**[[22]](#footnote-22)** This fear has continued through to modern day where the EU has been discussing the ‘chilling effect’ censorship has people in so far as the negative effect legal sanctions can have in suppressing what people say, it goes against the grain of the natural/legal person. Finally, another key figure to discuss is that of John Stuart Mill who wrote ‘on liberty’**[[23]](#footnote-23)**, Mill’s focus was of tolerance towards each other in order to develop societies and was of the mindset that by allowing all ideas into the arena, collectively, people work together towards a shared agreement. The only time Mill supports the suppression of expression is when the truth is thought to be harmful towards another and this is where the legitimate restrictions can counter the right fully. However, where there is ambiguity is in the definition of the principle itself as there is no indicator on what specifically harm is, meaning when states interfere with this right and in some instances, excessively.

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