**Hate Speech Consultation Ireland**

On Thursday 24th October 2019, the Government launched a public consultation (the “**Consultation**”) on hate speech laws in Ireland. As part of this Consultation the Government confirmed their intention to consult with members of the public, academics and groups who have experienced hate speech either “*personally or seen, read or heard*” what they consider to be hate speech, in order that the Government might understand the “*kinds of protection that the law on hate speech should offer and the groups that need protection”.*

In Ireland we currently have the Prohibition of Incitement to Hatred Act, 1989 which makes it a criminal offence to publish, use words, or play a recording that is abusive, threatening, or insulting and that is intended or is likely to stir up hatred. The Government have signalled their intention to update this law to “*ensure it meets the needs of a modern, democratic society”.*

The Consultation is said to comprise of three parts:

1. A five-question online survey (the “**Survey**”);
2. A written submission (the “**Submission**”); and
3. Workshops.

In theory, seeking to engage the public in a consultation on an amendment to law appears to be a noble and welcome gesture intended to ensure the law reflects the wishes of society, unfortunately a first review of both the Survey and Submission have, in my opinion, confirmed otherwise. The list of questions comprising the Survey are set out below.

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| **The Survey**   1. In your opinion, what groups or communities of people in Ireland are targeted by hate speech? 2. Please describe the kinds of hate speech that you think are (or are not) serious enough to be a criminal office. 3. Is it necessary or right to place limits on freedom of expression by making some forms of hate speech a crime? If so, what protections do you think the law on incitement to hatred should offer? 4. Do you think those who are actively involved in publishing or distributing hate speech should be subjected to criminal prosecution? 5. Is there anything else important we should consider as part of this review?   (together the “**Questions**”) |

I view the Questions as presupposing an unverified assumption (i.e. that there is universal agreement as to what constitutes hate speech; that hate speech exists; that hate speech is targeted at particular communities; that hate speech should be criminalised), thereby attempting to limit direct replies only to those that serve the agenda of the person asking the question and compromising the ability of the person responding to the question to answer in a way they normally would. These types of questions are referred to as trick or loaded questions.

The most famous trick question is: *“When did you stop beating your wife?”*. The problem with this question is that it presupposes that the respondent beats his wife, if this question contained no presupposition it would ask “*Have you ever beaten your wife?”*

The purpose of asking a seemingly benign question in this way is to coerce the respondent into answering yes or no, but regardless of how the respondent answers they will appear to agree with the questions underlying presupposition. Question two from the Survey is set out below:

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| Question: *“Please describe the kinds of hate speech that you think are (or are not) serious enough to be a criminal office.”* | |
| Answer A: “*The following kinds of hate speech are serious enough to be a criminal offence….”*  – this answer presupposes that you consider X, Y and Z to be hate speech. | Answer B: *“The following types of hate speech are not serious enough to be a criminal offence….”*  – this answer too presupposes that you consider X, Y and Z to be hate speech, although you do not consider them to require criminal sanction. |

Asking a question in this way reduces the ability of the person responding, to contradict the assumption that hate speech exists. Therefore, the correct response should be to question or reject the implicit assumption that hate speech exists, while illustrating why you consider the question inappropriate.

**The Submission**

Prior to making a written submission you are asked to read the “*consultation document*” on the Department of Justice and Equality website. Same confirms that *“hate speech is a crime in itself under the Prohibition of Incitement to Hatred Act 1989*”, and advises that in addition to updating this legislation, the Government is also *“developing new legislation to deal with hate crime, which is separate but closely related to hate speech”.* The consultation document confirms that “*The Department of Justice and Equality is conducting research on the effectiveness of approaches to hate crime legislation in other countries”*

The consultation document asks respondents to consider the following issues:

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| 1) the list of protected characteristics covered by the Act and whether these should be changed;   - noting that respondents might consider the inclusion of “*gender identity*”; |
| 2) the use of the term ‘*hatred*’ in the Act and whether this should be changed;   - noting that under the Act there is a requirement to prove that words or material were intended or likely to stir up hatred. The consultation document advises that “*this is a very high threshold*” and asks whether *“the requirement to stir up hatred should be replaced by another term (hostility or prejudice, for example)”* |
| 3) whether the wording of the 1989 Act is adequate to deal with online communications; and |
| 4) the need to prove the intent or likelihood of stirring up hatred and whether this should be changed;  - nothing that in some cases prosecutions may not succeed as intent or likelihood cannot be proven, and advising that the Government is therefore considering whether the need to prove intent or likelihood within the Act should be changed, “*for example to include circumstances where the person was reckless as to whether their action would stir up hatred.”* |

I surmise from the above questions that it may become a criminal offence to intentionally or unwittingly call a person by a gender they do not associate themselves with. I make this assumption based on the fact the Government have questioned whether “*gender identity*” should be included as on of the protected groups and secondly as the Government have stated that proving intent is too high a threshold to meet to secure a reasonable number of convictions for hate speech.

While the Submission, unlike the Survey, does make some reference to Freedom of Expression, its importance is not highlighted to the degree one might expect of a fundamental freedom enshrined in the Irish Constitution. Another worrying feature of the consultation, is that while most commentary has been made about the intent to engage with experts and those afflicted by hate crime, no mention is made of any intention to engage with proponents of free speech or academics from countries where free speech has been stifled to understand whether the “*cure of censorship is worse than the disease of hate speech”.* I personally find this the most worrying feature of the entire “consultation” process.

I would content that only in tightly defined circumstances should coercive force of government be deployed to eliminate so called hate speech, because “*Even worse than speech’s potential power to harm individuals and society, is government’s potential power to do likewise, by enforcing ‘hate speech’ laws. Predictably, this elastic power will be used to silence dissenting ideas, unpopular speakers, and disempowered groups.”*

Where might more stringent hate speech laws lead?

* In 2016, British police detained and questioned [more than 3,300 people](https://www.thetimes.co.uk/article/police-arresting-nine-people-a-day-in-fight-against-web-trolls-b8nkpgp2d) for “*grossly offensive”* comments on social media;
* In 2018, a British YouTuber was [convicted](https://www.telegraph.co.uk/news/2018/03/20/youtube-user-convicted-hate-crime-pet-dogs-nazi-salutes/) for posting a video in which, as a joke, he taught his girlfriend’s dog to perform a Nazi salute;

The argument made by those who propose the introduction of stringent hate speech laws is that it will help reduce violent extremism or even hatred, however studies including “Explaining right-wing terrorism and violence in Western Europe” in 2017 concluded that “*countermeasures intended to constrain radical right politics appear to fuel extreme right violence”* and that open-mindedness *“and dialogue might then work better than exclusion, public repression, or aggressive confrontation.”*

The reason why seemingly well-intentioned laws to censor hateful speech are ineffective is because there is no single agreed upon standard for what constitutes hate speech as speech that sounds menacing to one person, may sound comedic to another. The result being that when individuals cannot be sure what will be judged as hateful, they avoid certain topics and speech altogether. This is not how a free and democratic society operates. The result of such tyrannical government is seen in the likes of Rwanda where President Paul Kagame won re-election to a third term with 99% of the vote.

Another repercussion of censorship is the mutation of bad ideas and opinions into violent action. Let us not be so naïve as to believe that outlawing certain speech or criticism of certain topics will result in the disappearance of bad ideas and opinions. Quite the contrary has been known to happen, as those who are forbidden to speak are forced underground, thereby removing a societies ability to defuse dangerous ideas by arguing against them. To truly be a democratic society you must be free to discuss any idea, no matter how repugnant it may seem.

A famous quote reads *“Freedom of speech does not protect speech you like; it protects speech you do not like”.*

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