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**Freedom of speech**

1st Amendment - “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.”

# Hate speech or free speech? What much of West bans is protected in U.S.

Haut du formulaire

Bas du formulaire

By [Adam Liptak](https://www.nytimes.com/by/adam-liptak)- June 11, 2008

**VANCOUVER, British Columbia —** A couple of years ago, a Canadian magazine published an article arguing that the rise of Islam threatened Western values. The article's tone was mocking and biting, but it said nothing that conservative magazines and blogs in the United States did not say every day without fear of legal reprisal.

Things are different here. The magazine is on trial.

Under Canadian law, there is a serious argument that the article contained hate speech and that its publisher, Maclean's magazine, the nation's leading newsweekly, should be forbidden from saying similar things, forced to publish a rebuttal and made to compensate Muslims for injuring their "dignity, feelings and self respect."

The British Columbia Human Rights Tribunal, which held five days of hearings on those questions in Vancouver last week, will soon rule on whether Maclean's violated a provincial hate speech law by stirring up animosity toward Muslims.

As spectators lined up for the afternoon session last week, an argument broke out.

"It's hate speech!" yelled one man.

"It's free speech!" yelled another.

In the United States, that debate has been settled. Under the First Amendment, newspapers and magazines can say what they like about minority groups and religions - even false, provocative or hateful things - without legal consequence.

The Maclean's article, "The Future Belongs to Islam," was an excerpt from a book by Mark Steyn called "America Alone." The title was fitting: The United States, in its treatment of hate speech, as in so many areas of the law, takes a distinctive legal path.

"In much of the developed world, one uses racial epithets at one's legal peril, one displays Nazi regalia and the other trappings of ethnic hatred at significant legal risk and one urges discrimination against religious minorities under threat of fine or imprisonment," Frederick Schauer, a professor at the John F. Kennedy School of Government at Harvard, wrote in a recent essay called "The Exceptional First Amendment."

"But in the United States," Schauer continued, "all such speech remains constitutionally protected."

Canada, Britain, France, Germany, the Netherlands, South Africa, Australia and India all have laws or have signed international conventions banning hate speech. Israel and France forbid the sale of Nazi items like swastikas and flags. It is a crime to deny the Holocaust in Canada, Germany and France.

Last week, the actress Brigitte Bardot, an animal rights activist, was fined €15,000, or $23,000, in France for provoking racial hatred by criticizing a Muslim ceremony involving the slaughter of sheep.

By contrast, U.S. courts would not stop the American Nazi Party from marching in Skokie, Illinois, in 1977, though the march was deeply distressing to the many Holocaust survivors there.

Six years later, a state court judge in New York dismissed a libel case brought by several Puerto Rican groups against a business executive who had called food stamps "basically a Puerto Rican program." The First Amendment, Justice Eve Preminger wrote, does not allow even false statements about racial or ethnic groups to be suppressed or punished just because they may increase "the general level of prejudice."

Some prominent legal scholars say the United States should reconsider its position on hate speech.

"It is not clear to me that the Europeans are mistaken," Jeremy Waldron, a legal philosopher, wrote in The New York Review of Books last month, "when they say that a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack."

Waldron was reviewing "Freedom for the Thought That We Hate: A Biography of the First Amendment" by Anthony Lewis, the former New York Times columnist. Lewis has been critical of attempts to use the law to limit hate speech.

But even Lewis, a liberal, wrote in his book that he was inclined to relax some of the most stringent First Amendment protections "in an age when words have inspired acts of mass murder and terrorism." In particular, he called for a re-examination of the Supreme Court's insistence that there is only one justification for making incitement a criminal offense: the likelihood of imminent violence.

The imminence requirement sets a high hurdle. Mere advocacy of violence, terrorism or the overthrow of the government is not enough; the words must be meant to, and be likely to, produce violence or lawlessness right away. A fiery speech urging an angry racist mob immediately to assault a black man in its midst probably qualifies as incitement under the First Amendment. A magazine article - or any publication - aimed at stirring up racial hatred surely does not.

Lewis wrote that there is "genuinely dangerous" speech that does not meet the imminence requirement. "I think we should be able to punish speech that urges terrorist violence to an audience, some of whose members are ready to act on the urging," Lewis wrote. "That is imminence enough."

Harvey Silverglate, a civil liberties lawyer in Boston, disagreed.

"When times are tough," he said, "there seems to be a tendency to say there is too much freedom."

"Free speech matters because it works," Silverglate continued. Scrutiny and debate are more effective ways of combating hate speech than censorship, he said, and all the more so in the post-Sept. 11 era.

"The world didn't suffer because too many people read 'Mein Kampf,"' Silverglate said. "Sending Hitler on a speaking tour of the United States would have been quite a good idea."

Silverglate seemed to be echoing the words of Justice Oliver Wendell Holmes, whose 1919 dissent in Abrams v. United States eventually formed the basis for modern First Amendment law.

"The best test of truth is the power of the thought to get itself accepted in the competition of the market," Holmes wrote. "I think that we should be eternally vigilant," he added, "against attempts to check the expression of opinions that we loathe and believe to be fraught with death."

The distinctive U.S. approach to free speech, legal scholars say, has many causes. It is partly rooted in an individualistic view of the world. Fear of allowing the government to decide what speech is acceptable plays a role. So does history.

What we're learning here is really the bedrock difference between the United States and the countries that are in a broad sense its legal cousins. Western governments are becoming increasingly comfortable with the regulation of opinion. The First Amendment really does distinguish the U.S., not just from Canada but from the rest of the Western world.

**> Questions**

1/ What is the only limit to hate speech ?

2/ What are the two contrasting opinions on that issue ?

3/ What is your own opinion on that matter ? Write a short paragraph and be ready to share it with the class.