Hate speech:
What is there to be worried about?

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1. Introduction

Whenever hate speech is discussed, it's often in the context of the human rights tradition, where rights have to be balanced with one another and with corresponding responsibilities.[1] For instance, the Council of Europe's Additional Protocol to the Convention On Cybercrime invokes 'the need to ensure a proper balance between freedom of expression and an effective fight against acts of a racist and xenophobic nature'.[2]

I come from a very different tradition – the libertarian tradition, where a small number of essential freedoms, including freedom of speech, are absolute. Yes, I'm a free speech absolutist – we're a rare breed these days – and I firmly believe that if we aren't free to say what we believe, to express whatever emotion we like (including hate), and to hate whom we choose, then we aren't free at all.[3] As one senior UK judge has put it, 'freedom only to speak inoffensively is not worth having'.[4]

I realise that this puts me in a different position from many of you, who – even if you did disagree with the human rights framework – have little option but to work within it, as it is enshrined in European law. But hopefully, I can at least outline some of the reasons why I think the categories of 'hate speech' and 'hate crime' are problematic, and we can have a useful discussion about whether or not my misgivings are valid.

And even if we disagree, I still think it's useful once in a while to have a proper debate about the principle of free speech, rather than simply having a censorship contest in which we debate which particular hatemongers we want to see banned.

2. The problem with regulating hate speech (and prosecuting hate crime)

Those who argue for the regulation of hate speech often claim that they support the principle of free speech, but that there is some kind of distinction between standing

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[1] For an excellent critical history of human rights, see *The Rise and Rise of Human Rights*, Kirsten Sellars, Stroud: Sutton Publishing, 2002. For a critique of human rights framework as applied to the internet, see 'The diminishing importance of constitutional rights in the internet age', Sandy Starr, in *From Quill to Cursor: Freedom of the Media In the Digital Era* [http://www.osce.org/documents/rfm/2003/04/41_en.pdf] (.pdf 399 KB), Organisation for Security and Cooperation in Europe, Vienna: Organisation for Security and Cooperation in Europe, 2003, p57-72

[2] Additional Protocol to the Convention On Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems [http://conventions.coe.int/Treaty/en/Treaties/Word/189.doc] (.doc 71KB), Council of Europe, 28 January 2003, p2

[3] See 'Don't you just hate the Illiberati?' [http://www.spiked-online.com/printable/0000000CA5E2.htm], Mick Hume, *spiked*, 12 July 2004

[4] Stephen Sedley, *Redmond-Bate v Director of Public Prosecutions*, 23 July 1999 [http://www.freebeagles.org/caselaw/CL_bp_Redmond-Bate_full.html]

up for free speech as it has traditionally been understood, and allowing people to express hateful ideas.

For example, the Muslim Council of Britain argues that 'a free discourse...on the merits of Islam and Muslims...is of course necessary in an open society, but to urge others to hate, and thereby oppress, an entire faith community must be unacceptable at all times and all places'.[5] And the UK's Institute of Race Relations argues that 'the "press freedom" that was fought for in previous centuries...is not the freedom of large corporations to be involved in the industrialised production of racism for profit'.[6]

At the OSCE Meeting on the Relationship Between Racist, Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crimes that was held in Paris earlier this year, an Israeli delegate argued: 'Anti-Semitic sites...**do not** promote the free exchange of ideas envisioned by the fathers of the Enlightenment. They **do** encourage genocidal hatred towards Jews as well as others and constitute a clear, present and imminent danger to society.'[7]

I don't think free speech is divisible in the way that these commentators suggest, and I don't agree with them that particularly abhorrent ideas can somehow be disqualified from free speech protection. In my view, you either have free speech or you don't. The right to free speech, properly speaking, does not contain within it any prescription as to what the content of that speech will consist of. Such prescription goes against the whole meaning of the word 'free'. Free speech is a prerequisite for progressive ideas, but we must be clear that it will inevitably be put to use by those with ideas that appal us. It is incumbent upon us to contest ideas that appal us in the court of public opinion, rather than calling upon the state or private censor to suppress them.

I also take issue with the idea that hate speech poses 'a clear, present and imminent danger to society', as the delegate at the OSCE event argued. The 'clear and present danger' exception to the principle of free speech has been manipulated to various ends, but as originally conceived by the American Supreme Court Justice Oliver Wendell Holmes Jr, it refers to those exceptional circumstances where rational individuals can be said to be compelled to act in a certain way. In Holmes Jr's classic example – 'a man falsely shouting fire in a theatre and causing a panic' – rational individuals are compelled to act by immediate fear for their safety.[8] In the vast majority of instances, however, the responsibility for an act lies with the individual who committed it, not with the individual who instructed the actor to do it.

The British academic David Miller complains that 'advocates of free speech tend to assume that speech can be clearly separated from action'.[9] Well, call me old-fashioned, but I believe there *is* a clear distinction between what people say and

[5] 'Law on "incitement to religious hatred" – responding to Will Cummins' [http://www.mcb.org.uk/letter76.html], Inayat Bunglawala, Muslim Council of Britain, 16 July 2004

[6] 'Freedom to hate?' [http://www.irr.org.uk/2003/may/ak000012.html], Arun Kundnani, Institute of Race Relations, 20 May 2003, reproduced from *Campaign Against Racism and Fascism*

[7] 'Statement by Nimrod Barkan' [http://www.osce.org/documents/cio/2004/06/3127_en.pdf] (.pdf 8.62 KB), Delegation of Israel, *OSCE Meeting on the Relationship Between Racist, Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crimes*, 16 June 2004, p1

[8] Oliver Wendell Holmes Jr, *Schenck v United States* [http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=us/249/47.html], 3 March 1919

[9] 'Not always good to talk' [http://www.guardian.co.uk/print/0,3858,4889396-103677,00.html], Ursula Owen and David Miller, *Guardian*, 27 March 2004

think on the one hand, and what they do on the other. Certainly, I don't think it's possible to have an equitable system of law without this basic assumption. Nonetheless, a growing number of people dispute the distinction. Increasingly, it is assumed that speech can be directly harmful to its audience, that speech can compel its audience to act, and that speech is equivalent to any abuses that it describes and depicts.

Discussing information technology, and the way that information relates to human agency, Sandra Brennan – professor of communications at the University of Wisconsin-Milwaukee – asks us to consider 'the way in which the production of information and informational transactions today themselves often serve as the trigger for other social processes and events'.[10] But I believe that agency resides in human beings, not in the information that human beings disseminate. Speech has consequences only if its audience chooses to give it consequences.

It is not speech in itself that makes things happen, but the estimation in which human beings hold speech. And if people hold ideas that you disagree with in high estimation, then you've got a problem that you're never going to solve by trying to stop those ideas from being expressed. The only way you're going to solve this problem is by persuading people of your own point of view. This process is conventionally known as political debate. And those who use hate speech regulation to suppress ideas they disagree with do themselves and their arguments a disservice, by opting out of a proper political debate.

You can see quite clearly the corrosive effect of angst over hate speech in recent elections, such as the French presidential elections held in 2002 and the European Parliament elections held earlier this year. The response by mainstream political parties, to the perceived threat of far-right parties, was to suggest that the main reason why people should vote is to keep the far right out. The idea is that if you don't vote, then you're automatically giving the far right a helping hand – a kind of electoral blackmail. This sends out an even more dangerous message than the bigoted rubbish put about by the far right. If the best reason you can give people to vote for you is to keep the other lot out, then that's a tacit admission that you don't actually have any ideas worth voting *for*.[11]

It's also the case that when politicians focus their attention and their policies upon the problem of hate speech and hate crimes, their concerns become a self-fulfilling prophecy. By constantly flagging up the problems of hatred and prejudice between people of different races, colours, or creeds, you encourage people to view their grievances in those terms. A vivid illustration of this was provided by the riots and violent clashes that occurred in the UK, in northern mill towns of Oldham, Bradford and Burnley, during 2001.

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[10] 'The Emergent Global Information Policy Regime', Sandra Brennan, in *The Emergent Global Information Policy Regime*, ed Sandra Brennan, Basingstoke: Palgrave Macmillan, 2004, p36

[11] See 'Defending democracy – against the voters' [http://www.spiked-online.com/printable/00000006D8AF.htm], Josie Appleton, *spiked*, 23 April 2002; 'Where are Le Pen friends now?' [http://www.spiked-online.com/printable/00000006D8BC.htm], Dominic Standish, *spiked*, 29 April 2002; 'Who's afraid of the far right?' [http://www.spiked-online.com/printable/00000006D8D1.htm], Mick Hume, *spiked*, 3 May 2002; 'The myth of the far right' [http://www.spiked-online.com/printable/00000006D931.htm], Brendan O'Neill, *spiked*, 12 June 2002; 'Cranking up the cranks', Josie Appleton, *spiked*, 3 June 2004 [http://www.spiked-online.com/printable/0000000CA564.htm]; 'Compulsory voting: turnout is not the problem' [http://www.spiked-online.com/printable/0000000CA591.htm], Jennie Bristow, *spiked*, 16 June 2004; 'Blowing up the BNP' [http://www.spiked-online.com/printable/0000000CA5FC.htm], Sandy Starr, *spiked*, 16 July 2004

The conventional view was that these incidents were stoked by the far right, but there is actually evidence to suggest that the racial tensions in these towns owed more to the blanket coverage and policing of hate speech and hate crimes. The police in these areas were so keen to demonstrate their commitment to dealing with hate, that they treated crimes committed by whites against Asians as racially motivated, even when they were not reported as such. It's not so much that these towns had a greater problem with racism than other towns in the UK, but rather that in these towns, the authorities made racism into a higher-profile issue – with explosive consequences.[12]

It's important to make a distinction between forms of prejudice such as racism, on the one hand; and emotions such as 'hate', on the other – discussions about hate speech and hate crimes tend to muddle these two things. Racism is a wrongheaded prejudice that deserves to be contested, whereas hatred is not objectionable in itself – it's simply an emotion, and it can be an entirely legitimate and appropriate emotion at that. The Council of Europe uses the word 'hatred', in the context of the Additional Protocol to the Convention On Cybercrime, to mean 'intense dislike or enmity'.[13] But are right-thinking people not entitled to feel 'intense dislike or enmity' – towards racists, for example?

Society's bad guys and extremists don't have a monopoly on hate – hate is something that most of us experience at one time or another, and is as necessary and valid an emotion as love. Even David Blunkett, the UK's home secretary and the country's principal architect of initiatives against hate speech and hate crimes, has admitted that when he heard that the notorious serial killer Harold Shipman had committed suicide in prison, his first reaction was: 'Is it too early to open a bottle?'[14] All credit to Blunkett for being honest about his reaction, but it's frustrating that he doesn't seem to make the connection with his own authoritarian policies, which would deny us the freedom to experience and express sentiments such as this.

Ultimately, the very idea that we might regulate hate speech and prosecute hate crimes is authoritarian, because it presumes to judge people's private, internal thoughts, rather than their public, external actions. There are already adequate laws in place in most countries that prohibit intimidation, assault and damage to property. By creating the special categories of 'hate speech' and 'hate crime' to supplement these, and presuming to judge people's motivations for action rather than their actions alone, all you've done is reinvented what the author George Orwell called 'thoughtcrime'.

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[12] See 'Same Oldham story?' [http://www.spiked-online.com/printable/00000002D0F7.htm], Brendan O'Neill, *spiked*, 29 May 2001; 'Why banning the BNP is bad for democracy' [http://www.spiked-online.com/printable/00000002D121.htm], Brendan O'Neill, *spiked*, 12 June 2001; 'Oldham: unasked questions' [http://www.spiked-online.com/printable/00000002D179.htm], Brendan O'Neill, *spiked*, 9 July 2001; 'After Bradford: engineering divisions' [http://www.spiked-online.com/printable/00000002D19A.htm], Josie Appleton, *spiked*, 16 July 2001; 'The trouble with multiculturalism' [http://www.spiked-online.com/printable/00000002D35E.htm], Kenan Malik, *spiked*, 18 December 2001; 'Who divided Oldham?' [http://www.spiked-online.com/printable/00000006D8C1.htm], Brendan O'Neill, *spiked*, 1 May 2002; 'Imposing "parallel lives"' [http://www.spiked-online.com/printable/00000006DBFE.htm], Bruno Waterfield, *spiked*, 22 January 2003; 'How "diversity" breeds division' [http://www.spiked-online.com/printable/0000000CA690.htm], Munira Mirza, *spiked*, 19 August 2004

[13] Explanatory report [http://conventions.coe.int/Treaty/en/Reports/Html/189.htm], Additional Protocol to the Convention On Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, Council of Europe, 28 January 2003

[14] See 'Blunkett admits Shipman error' [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/uk_politics/3404041.stm], BBC News, 16 January 2004

In Orwell's classic novel *1984*, thoughtcrime is the crime of thinking criminal thoughts, 'the essential crime that contained all others in itself'.[15] Hatred is permitted, indeed is mandatory, in Orwell's dystopia, so long as it is directed against enemies of the state. But any heretical thought brings with it the prospect of grave punishment.

It is difficult to completely outlaw rebellious thoughts – as *spiked* editor Mick Hume argues, 'so long as we are talking about thoughts and words rather than actions, nobody can be compelled not to hate'.[16] But Orwell demonstrates how, through the policing of language and by forcing people to carefully consider every aspect of their behaviour, orthodoxy can be sustained and heresy ruthlessly suppressed. No hard evidence is necessary to hold someone guilty of thoughtcrime in *1984* – as with hate speech and hate crime today, the authorities have unlimited latitude to interpret your words and actions as being motivated by the wrong sentiments.

The preoccupation with language and etiquette of those who object to hate speech, and the significance they ascribe to words, are reminiscent of the strategies employed in *1984* to reduce people's capacity to think prohibited thoughts. As one character says in the novel, 'in the end we shall make thoughtcrime literally impossible, because there will be no words in which to express it'.[17]

The human instinct to question received wisdom and resist restrictions upon thought is, ultimately and thankfully, irrepressible. But inasmuch as it can be repressed, the authorities must encourage a form of wilful ignorance that Orwell calls 'crimestop' – the principal means of preventing oneself from committing thoutcrime. In Orwell's words: '*Crimestop* means the faculty of stopping short, as though by instinct, at the threshold of any dangerous thought. It includes the power of not grasping analogies, of failing to perceive logical errors, of misunderstanding the simplest arguments...and of being bored or repelled by any train of thought which is capable of leading in a heretical direction. *Crimestop*, in short, means protective stupidity.'[18]

Labelling speech that we disagree with 'hate speech', and seeking to prohibit it instead of taking up the challenge of disputing it, can only lead to a world in which we resort to 'protective stupidity' to prevent the spread of objectionable ideas. Apart from anything else, this gives those objectionable ideas a credibility that they often don't deserve, by entitling them to assume the righteousness of combating authoritarian regulation. Better to debate those we disagree with head-on, than make them martyrs to censorship.

3. The problem with regulating hate speech online

The internet continues to be perceived as a place of unregulated and unregulable anarchy, but this is becoming increasingly inaccurate. Governments are more and more interested in regulating internet content – which is presumably while we're having this conference – while commentators such as Jonathan Zittrain, co-director of the Berkman Centre for Internet and Society at Harvard Law School, describe 'concrete, if tentative steps toward coercing internet service providers operating

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[15] *1984*, George Orwell, Harmondsworth: Penguin, 2000, p21

[16] 'The more they talk about "choice", the less we get' [http://www.spiked-online.com/printable/00000006DFC8.htm], Mick Hume, *spiked*, 13 November 2003

[17] *1984*, George Orwell, Harmondsworth: Penguin, 2000, p55

[18] Ibid, p220-221

within their territories to limit what their users can see online, no matter where such material might originate'.[19]

Certainly, content regulation such as that contained in the Additional Protocol to the Convention On Cybercrime is frightening in its scope. The Additional Protocol seeks to prohibit 'racist and xenophobic material', which is defined as 'any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors'.[20] It isn't difficult to imagine how the Bible or the Qur'an could fall afoul of such all-encompassing censorship.

Elsewhere, the Additional Protocol seeks to outlaw the 'denial, gross minimisation, approval or justification of genocide or crimes against humanity'.[21] And we are told that 'the drafters considered it necessary not to limit the scope of this provision only to the crimes committed by the Nazi regime during the Second World War and established as such by the Nuremberg Tribunal, but also to genocides and crimes against humanity established by other international courts set up since 1945 by relevant international legal instruments.'[22]

This is profoundly worrying. The scale and causes of atrocities such as those in Rwanda or former Yugoslavia are still matters for legitimate debate, as is whether the term 'genocide' should be applied to these episodes. The European authorities claim to oppose historical revisionism, and yet they stand to enjoy new powers that will entitle them to impose upon us *their* definitive account of recent history – which we must then accept as true, on pain of prosecution.

The Additional Protocol could have been worse though – apparently, 'the committee drafting the Convention discussed the possibility of including other content-related offences', but 'was not in a position to reach consensus on the criminalisation of such conduct'.[23] Still, the fact that the Council of Europe reached the consensus it did on so many aspects of regulating hate speech is a worrying indicator of how accepted regulation has now become. As one commentator cynically remarked of the Additional Protocol: 'This will make the world a better place because criminalising certain forms of speech is scientifically proven to eliminate the underlying sentiment. Really, I read that on a match cover.'[24]

When you examine the evidence that is used to justify regulating hate speech on the internet, it becomes obvious that this medium lends itself to lazy and hysterical thinking about social problems. Because of the enormous diversity of material

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[19] 'Internet points of control', Jonathan Zittrain, in *The Emergent Global Information Policy Regime*, ed Sandra Brennan, Basingstoke: Palgrave Macmillan, 2004, p204

[20] Additional Protocol to the Convention On Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems [http://conventions.coe.int/Treaty/en/Treaties/Word/189.doc] (.doc 71KB), Council of Europe, 28 January 2003, p3

[21] Ibid, p4

[22] Explanatory report [http://conventions.coe.int/Treaty/en/Reports/Html/189.htm], Additional Protocol to the Convention On Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, Council of Europe, 28 January 2003

[23] Ibid

[24] 'Euro thought police criminalise impure speech online' [http://www.theregister.co.uk/2002/11/11/euro_thought_police_criminalize_impure/print.html], Thomas C Greene, *Register*, 11 November 2002

available online, people with a particular axe to grind can simply log on and discover whatever truths about society they wish to. Online, one's perspective on society is distorted. When there are so few obstacles to setting up a website, or posting on a message board – anybody with a computer and a connection can do it – all voices appear equal.

The internet is a distorted reflection of society, where minority and extreme opinion are indistinguishable from the mainstream. Methodological rigour is needed, if any useful insights into society are to be drawn from what one finds online. Such rigour is lacking in discussions of the supposed problem of online hate speech.

For example, Tara McPherson, associate professor of critical studies and gender studies at the University of California, has written about the problem of deep-South redneck websites – what she calls 'the many outposts of Dixie in cyberspace'.[25] As one reads through the examples she provides of neo-Confederate eccentrics, one could be forgiven for believing that 'The South Will Rise Again', as the flags and bumper stickers put it. But by that token, society must also be under siege from paedophiles, Satanists, and every other crackpot to whom the internet provides a free platform.

'How could we narrate other versions of Southern history and place that are not bleached to a blinding whiteness?', asks McPherson, as though digital Dixie were a major social problem.[26] In its present form, the internet inevitably appears to privilege the expression of marginal views, by making it so easy to express them. But we must keep in mind that the mere fact of an idea being represented online, does not grant that idea any great social consequence.

This isn't to deny that the internet has made it easier for like-minded individuals on the margins to communicate and collaborate. Mark Potok, editor of the Southern Poverty Law Centre's *Intelligence Report* – which 'monitors hate groups and extremist activities' – has a point when he says: 'In the 1970s and 80s the average white supremacist was isolated, shaking his fist at the sky in his front room. The net changed that.'[27] French minister of foreign affairs Michel Barnier makes a similar point, albeit more forcefully, when he says: 'The internet has had a seductive influence on networks of intolerance. It has placed at their disposal its formidable power of amplification, diffusion and connection.'[28]

But to perceive this 'power of amplification, diffusion and connection' as a dire problem is to ignore its corollary – the fact that the internet also enables the rest of us to communicate and collaborate, to more progressive ends. Just as the principle of free speech benefits us all, from the mainstream to the margins, and invites us to make the case for what we see as the truth; so technologies that make it easier to

[25] 'I'll take my stand in DixieNet', Tara McPherson, in *Race in Cyberspace*, ed Beth E Kolko, Lisa Nakamura, Gilbert B Rodman, New York: Routledge, 2000, p117. For a review of this book, see '*Race in Cyberspace*', Sandy Starr, in *Global Review of Ethnopolitics*, vol 1, no 4 [http://www.ethnopolitics.org/archive/volume_I/issue_4/issue_4.pdf] (.pdf 903 KB), p132-134

[26] 'I'll take my stand in DixieNet', Tara McPherson, in *Race in Cyberspace*, ed Beth E Kolko, Lisa Nakamura, Gilbert B Rodman, New York: Routledge, 2000, p128

[27] Intelligence Project [http://www.splcenter.org/intel/intpro.jsp] section of the Southern Poverty Law Centre website; Quoted in 'Fear and loathing' [http://www.guardian.co.uk/print/0,3858,4991037-110837,00.html], Nick Ryan, *Guardian*, 12 August 2004

[28] 'Opening of the meeting' [http://www.osce.org/documents/cio/2004/06/3105_en.pdf] (.pdf 19.2 KB), *OSCE Meeting on the Relationship Between Racist, Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crimes*, Michel Barnier, French minister of foreign affairs, 16 June 2004, p2

communicate benefit us all, and we should be exploiting them as a public platform for our own beliefs, rather than trying to withdraw them as a public platform for other people's beliefs.

We should always keep our wits about us, when confronted with supposed evidence that online hate speech is an ever-growing problem. A much-cited survey by the web and email filtering company SurfControl recently concluded that there was a 26 percent increase in 'websites promoting hate against Americans, Muslims, Jews, homosexuals and African-Americans, as well as graphic violence' between January and May this year, 'nearly surpassing the growth in all of 2003'. But it is far from clear how such precise quantitative statistics can be derived from subjective descriptions of the content of websites, and from a subjective emotional category like 'hate'.

This filtering company unwittingly illustrates how any old piece of anecdotal evidence can be used to stir up a panic, claiming: 'Existing sites that were already being monitored by SurfControl have expanded in shocking or curious ways. Some sites carry graphic photos of dead and mutilated human beings.'[29] If SurfControl had got in touch with me a few years ago, I could easily have found a few photos of dead and mutilated human beings on the internet for them. Maybe then, they would have tried to start this same panic a few years earlier? Or maybe they wheel out the same shocking claims every year, in order to sell a bit more of their filtering software – who knows?

Certainly, it's possible to put a completely opposite spin on the amount of hate speech that exists on the internet. My colleague Karin Spaink for example, chair of the privacy and digital rights organisation Bits of Freedom, draws upon statistics to conclude that 'slightly over 0.015 percent of all web pages contain hate speech or something similar' – a far less frightening assessment.[30]

It's also inaccurate to suggest that the kind of online material that gets labelled as hate speech goes unchallenged, although one does sometimes wish that it was challenged in a more substantial way. When it transpired recently that the anti-Semetic website Jew Watch ranked highest in the search engine Google's results for the search term 'Jew', a Remove Jew Watch campaign was established, to demand that Google remove the offending website from its listings.[31] Fortunately, Google did not capitulate to this particular demand, even though elsewhere the search engine has been guilty of purging its results, in order to meet the demands of governments and other concerned parties.[32]

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[29] 'SurfControl reports unprecedented growth in hate and violence sites during first four months of 2004' [http://www.surfcontrol.com/news/newsitem.aspx?id=650], SurfControl, 5 May 2004

[30] 'Is prohibiting hate speech feasible – or desirable?: technical and political considerations' [http://www.osce.org/documents/rfm/2004/06/3263_en.pdf] (.pdf 50.1 KB), Karin Spaink, Bits of Freedom, 30 June 2004, p14

[31] See the Google [http://www.google.com] and Jew Watch [http://www.jewwatch.com] websites.

[32] See 'Replacement of Google with alternative search systems in China: documentation and screenshots' [http://cyber.law.harvard.edu/filtering/china/google-replacements], Berkman Center for Internet and Society, September 2002; 'Localised Google search result exclusions' [http://cyber.law.harvard.edu/filtering/google], Benjamin Edelman and Jonathan Zittrain, Berkman Center for Internet and Society, October 2002; 'Empirical Analysis of Google SafeSearch' [http://cyber.law.harvard.edu/people/edelman/google-safesearch], Benjamin Edelman, Berkman Center for Internet and Society, April 2003

Eventually, Remove Jew Watch successfully used Googlebombing – creating and managing web links in order to trick Google's search algorithms into associating particular search terms with particular results – to knock Jew Watch off the top spot.[33] Since those behind Jew Watch could conceivably have used Googlebombing themselves to boost their rankings, this was fair game, and certainly preferable to Google (further) compromising its ingenious automatic search technology with partial, subjective ranking criteria.[34] But vacuous tactics such as Googlebombing remain a poor substitute for a proper contest of ideas.

4. Conclusion and recommendations

A free flow of speech and ideas is a necessary condition for any progressive politics, and for any successful struggle against oppression. If that free flow of speech and ideas is restricted, even with the best of intentions, then the conditions for social progress do not fully exist.

Those authorities whom we ask to protect us from hate speech today, are the same authorities from whom we will have no protection tomorrow, if we start letting them decide what we're allowed to read, watch, listen to, and download. Sandra Brennan points out that when it comes to internet regulation, 'there is a several-hundred-year-old history of development of procedural constraints upon the potentially unbridled decisionmaking of those in power – including checks and balances put in place within government, representation of views of those governed in decisionmaking, due process, and decisionmaking transparency – that is being reversed'.[35]

According to the Additional Protocol to the Convention On Cybercrime, 'national and international law need to provide adequate legal responses to propaganda of a racist and xenophobic nature committed through computer systems'.[36] But legal responses are entirely *inadequate* for this purpose – as I have sought to demonstrate, legal responses to hateful opinions inadvertently bolster them, by removing them from the far more effective and democratic mechanism of public scrutiny.

'Hate speech' is worse than useless as a heading under which to discuss ideas that we object to. Just about the only thing that 'hate speech' *does* usefully convey is the attitude of content regulators – these are people who really *hate speech*, inasmuch as they cannot bear to see a no-holds-barred public discussion about a controversial issue.

My four concluding recommendations to you are as follows.

- **Don't confuse actions with words**

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[33] See 'Dropping the bomb on Google' [http://www.wired.com/news/print/0,1294,63380,00.html], John Brandon, Wired News, 11 May 2004

[34] For more on the technology and politics of Google search results, see 'Google hogged by blogs' [http://www.spiked-online.com/printable/00000006DE60.htm], Sandy Starr, *spiked*, 15 July 2003; 'Giddy over Google'

[35] 'The processes of emergence', Sandra Brennan, in *The Emergent Global Information Policy Regime*, ed Sandra Brennan, Basingstoke: Palgrave Macmillan, 2004, p10

[36] Additional Protocol to the Convention On Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems [http://conventions.coe.int/Treaty/en/Treaties/Word/189.doc] (.doc 71KB), Council of Europe, 28 January 2003, p2

We must maintain a clear distinction between what individuals say and think on the one hand, and what they do on the other. Only then can we have an equitable system of law in which individuals are assumed to be rational legal subjects, responsible for their own actions.

- **Don't confuse emotions with ideas**

  Hatred is not an idea, it is an emotion – albeit not an especially fashionable one at the moment. The consequences of seeking to outlaw a particular emotion are terrifyingly authoritarian, arguably even more so than the consequences of seeking to outlaw a particular idea. If we must talk of content regulation, then let us at least address the ideas contained within the content, not the emotions that the content expresses. By definition, one cannot have a rational discussion about the merits of different emotions – the currency of rational discussion is ideas.

- **Don't panic**

  There is obviously a considerable amount of distressing material to be found on the internet. But the fact that something exists online tells you nothing about how widely read or widely accepted it is. We cannot develop coherent policy on the basis of endless, knee-jerk reactions to extreme material, every time some scaremonger digs it up and demands that something be done about it.

- **Don't patronise the public**

  We need to trust the public with free speech and strong ideas. Nobody is more qualified than the public to deal with these things.