

JANUARY 2012

**OFFENSIVE
LANGUAGE**

DOLAN CUMMINGS



DEBATING MATTERS
TOPIC
GUIDES

www.debatingmatters.com

MOTION:

**“THERE SHOULD BE
NO LEGAL CURBS
ON ‘OFFENSIVE’
LANGUAGE”**

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KEY TERMS

Hate speech

Sectarianism

INTRODUCTION

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In December 2011 the Scottish Parliament passed the Offensive Behaviour at Football and Threatening Communication Bill, which criminalises ‘offensive’ songs and chants by football fans and making ‘serious threats’, including expressions of religious hatred, online and elsewhere. The new law carries penalties of fines as well as prison sentences of up to five years [Ref: [BBC News](#)]. ‘Sectarian’ offence is considered a particular problem in Scottish football, as the two biggest clubs, Rangers and Celtic, are associated with Protestants and Catholics respectively, and some of the fans’ traditional songs and chants refer to the historic conflict in Northern Ireland, or include insults to the opposing fans’ religion. While there is no comparable legislation proposed in England and Wales (or indeed Northern Ireland), similar concerns have been expressed about offensive chants by football fans across the UK, as well as abusive comments from players on the pitch. The anti-racist Kick it Out campaign has in recent years broadened out its campaigning to challenge anti-Semitic and homophobic language used by football fans and players alike [Ref: [Kick it Out](#)]. The issue of offensive language extends beyond football, however, and, as reflected in the Scottish legislation, has become a particular concern in the context of online forums and social networking, especially Twitter. Recent Twitter controversies have included comedian Ricky Gervais causing offence by using the word ‘mong’ [Ref: [Daily Mail](#)], MP Diane Abbott attracting criticism for her comments about race [Ref: [Guardian](#)] and radio presenter Jon Gaunt censured for calling a guest ‘a Nazi’ [Ref: [spiked](#)]. Another concern is offensive speech in online forums, especially blogs, where anonymous commenters (often called “trolls”) sometimes write extremely offensive posts which, some argue, limits the free speech of the (often female) writers [Ref: [New Statesman](#)]. In its most extreme form, this is already a criminal offence under the Communications Act 2003, which outlaws sending messages that are “grossly offensive or of an indecent, obscene or menacing character,” and has been used to jail online “trolls” [Ref: [BBC News](#)]. Regardless of whether it is simply bad law as implemented [Ref: [Catholic Herald](#)] there is a principle at stake: should the Scottish legislation provide a model for more comprehensive regulation of public forums, or is free speech (even if offensive) an absolute which the law should have little interest in?



Legal limits to free speech

Free speech is a principle held dear by many, and regarded as essential to a healthy democracy. Nevertheless, a number of restrictions apply even in a relatively free and open society like Britain. The Official Secrets Act prevents people from revealing information judged likely to harm the national interest. The libel laws prevent people from publishing defamatory stories about others. And it is illegal to incite racial or religious hatred, or to threaten physical violence [Ref: [Wikipedia](#)]. Most of these laws have their critics, and some argue free speech should mean just that, but the issue here is whether the law should curb expression on the basis of offensiveness alone. Part of what is at stake is what we consider to be offensive, and how much offence we are willing to tolerate. Some see offensive football chants and insulting blog posts as trivial and best indulged or ignored. Others believe such things have a poisonous effect on our wider culture, and must be stamped out. But the subjective nature of offence means it can be hard to draw a line. Free speech campaigners argue that section five of the Public Order Act, which outlaws insulting language, 'is so broad that almost any protester on any subject can be arrested and fined for harassment, causing "alarm or distress"' [Ref: [Guardian](#)].

Should we tolerate 'offensive' language?

Offensive though certain ideas might be to many of us, it's not illegal to hate others because of their skin colour, political or religious beliefs, sexuality or football affiliations, and traditionally it is not illegal to express hateful opinions [Ref: [Guardian](#)]. Critics of regulation argue that the discussion of 'offence' tends to undermine the distinction between deliberate incitement to

violence or hatred and simply expressing an opinion, or even using particular words [Ref: [spiked](#)]. Others insist that 'all hate crime begins with verbal abuse,' and all offensive language must therefore be taken seriously [Ref: [Guardian](#)]. From this perspective, insulting remarks should not be tolerated even if made in jest or the context of something like a football match where rivalries have traditionally inspired foul and aggressive language that would not be acceptable in other contexts. Regardless of the situation or intention, offence is unacceptable. Moreover, those concerned about online abuse point out that those on the receiving end often find it hard to tell whether offensive comments are meant as childish insults or serious threats [Ref: [New Statesman](#)]. Supporters of free speech have traditionally argued the best way to counter offensive ideas is through more speech rather than censorship, but advocates of regulation point out that offensive speech isn't always about ideas, and that this particular case for free speech falls down when offence is gratuitous.

Can the law be used to civilise public discourse?

Journalist Simon Jenkins argues genuine free speech cannot exist without regulation, just as the free movement of traffic requires everyone to follow certain rules. He cites US President Obama's comments about the need to civilise political debate, 'to impose some order on the chaos,' rather than allowing hate-mongers to dominate the public sphere [Ref: [Guardian](#)]. Many observers worry about the vitriolic language, or hate speech, that sometimes characterises American politics, and similar concerns are increasingly voiced about the decline of civility and respect in online debate in the UK and elsewhere. Some



argue that bans and tough action on abuse sends a message about what's acceptable and forces people to take their speech more seriously, thereby raising the level of public debate and discussion [Ref: [Guardian](#)]. Others argue that by promoting a 'culture of offence', the regulation of offensive speech only encourages people to make complaints and counter-complaints, effectively 'infantilising' public debate and leading to a loss of freedom of speech for all [Ref: [Guardian](#)]. Social networks have even been used to spread outrage about offensive comments made elsewhere, such as when broadcaster Jeremy Clarkson made a controversial joke on television following a public sector strike in November, and became the target of a frantic campaign online. Journalist Brendan O'Neill has coined the term 'Twitch-hunt' to describe this phenomenon [Ref: [The Week](#)]. Ultimately, though, the question is whether free speech should always trump civility, or whether offence is sometimes serious enough to justify legal curbs.



ESSENTIAL READING

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Anti-bigot laws passed by the Scottish Parliament
BBC News 14 December 2011

Teenage football fan stands up to Scotland's sectarian thugs
Tracy McVeigh *Observer* 20 November 2011

Trolling: Who does it and why?
Tom de Castella and Virginia Brown *BBC News Magazine* 14 September 2011

FOR

It shouldn't be a crime to insult someone
Mike Harris *Guardian* 18 January 2012

The rise and rise of intolerant tolerance
Stuart Waiton *spiked* 5 December 2011

Up with the IRA and Down with the Pope of Rome
Alex Massie *Spectator* 23 November 2011

Can Speech Be a Hate Crime?
Ross Kaminsky *American Spectator* 23 June 2011

AGAINST

Sing out for a country free of prejudice and hate
Joan McAlpine *Scotsman* 22 November 2011

Ricky Gervais, please stop using the word 'mong'
Nicola Clarke *Guardian* 19 October 2011

UK Free Speech vs US Free Speech – more speech not always the solution

Yaaser Vanderman *Law Think* 4 March 2011

Free speech can't exist unchained. US politics needs the tonic of order

Simon Jenkins *Guardian* 13 January 2011

IN DEPTH

Scotland: football hate law confused and unnecessary
David Paton *Index on Censorship* 16 November 2011

"You should have your tongue ripped out": the reality of sexist abuse online

Helen Lewis Hasteley *New Statesman* 3 November 2011

Now it's a war on words

Mick Hume *spiked* 11 February 2009



BACKGROUNDEERS

Comment: Repeal the Public Order Act's sweeping Section 5

Peter Tatchell *Pink News* 17 January 2012

How I started the Diane Abbott Twitter storm

Bim Adewunmi *Guardian* 5 January 2012

'There is no right not to be offended': true or false?

Practical Ethics Blog 3 January 2012

It's time to give up Twitterstorms

James Ball *New Statesman* 30 December 2011

Fans unite to kill bill to end sectarianism

Jill Duchess of Hamilton *Catholic Herald* 10 November 2011

Pat Nevin and Graham Spiers back hate crime bill

BBC Democracy Live 6 September 2011

David Baddiel tackles anti-Semitism in football

BBC News 14 April 2011

Don't feed the trolls

Steven Baxter *New Statesman* 5 March 2011

How Jon Gaunt became a free-speech martyr

Rob Lyons *spiked* 15 July 2010

Fry's 'twitch-hunt' of Moir sets press freedom back

Brendan O'Neill *The Week* 20 October 2009

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FILMCLUB

RECOMMENDS:

• 'The Lives of Others' (15), 2006

• '1984' (15), 1984

• Find out more about our partnership with the education charity FILMCLUB, how you can bring the power of films into your school debates, and this autumn's recommendations from the FILMCLUB team for Debating Matters!

ORGANISATIONS

• Academics for Academic Freedom

• Anti-Defamation League

• Index on Censorship

• Kick it Out

• Nil by Mouth



IN THE NEWS

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Police probe racist Twitter attacks on Rangers stars Maurice Edu & Kyle Bartley

Sunday Mail 15 January 2012

England skipper John Terry faces racism charge

Sun 22 December 2011

Should Rick Perry's YouTube ad be banned as hate speech?

Globe and Mail 8 December 2011

Sack Jeremy Clarkson over strike comments, Unison urges

BBC News 1 December 2011

Jade Goody website 'troll' from Manchester jailed

BBC News 29 October 2011

'I was naive': Finally Ricky Gervais apologises for 'mong' comments

Daily Mail 21 October 2011

Facebook refuses to take down rape joke pages

Guardian 30 September 2011

Coroner slams 'vile' school bullies who taunted suicide girl, 15, in death

Daily Mail 22 July 2011

'Alarming' levels of anti-Semitism in football must be tackled

Telegraph 14 April 2011



ABOUT DEBATING MATTERS

Debating Matters because ideas matter. This is the premise of the Institute of Ideas & Pfizer Debating Matters Competition for sixth form students which emphasises substance, not just style, and the importance of taking ideas seriously. Debating Matters presents schools with an innovative and engaging approach to debating, where the real-world debates and a challenging format, including panel judges who engage with the students, appeal to students from a wide range of backgrounds, including schools with a long tradition of debating and those with none.

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Debating Matters engages a wide range of individuals, from the students who take part in the debates, the diverse group of professionals who judge for us, the teachers who train and support their debaters, and the young people who go on to become Debating Matters Alumni after school and help us to continue to expand and develop the competition. If you enjoyed using this Topic Guide, and are interested in finding out more about Debating Matters and how you can be involved, please complete this form and return it to us at the address below.

Debating Matters Competition
Academy of Ideas Ltd
Signet House
49-51 Farringdon Road
London
EC1M 3JP

- Yes, I'd like to know more. Please send me further information about the Debating Matters Competition:
- I am a teacher and would like further details about events in my area and how to enter a team
- I am a sixth form student and would like further details about events in my area
- I am interested in becoming a Debating Matters judge
- I am interested in sponsoring/supporting Debating Matters
- Other (please specify)

First name

Surname

School/company/
organisation

Professional role
(if applicable)

Address

Postcode

Email address

School/work phone

Mobile phone



**“DEBATING MATTERS
TEACHES A WAY
OF THINKING.
INTELLECTUAL
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TRISTRAM HUNT, HISTORIAN & BROADCASTER