

Speak Your Truth: Don't Let the Government Criminalize Free Speech

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"If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter." — George Washington

What the police state wants is a silent, compliant, oblivious citizenry.

What the First Amendment affirms is an engaged citizenry that speaks truth to power using whatever peaceful means are available to us.

Speaking one's truth doesn't have to be the same for each person, and that truth doesn't have to be palatable or pleasant or even factual.

We can be loud.

We can be obnoxious.

We can be politically incorrect.

We can be conspiratorial or mean or offensive.

We can be all these things because the First Amendment takes a broad, classically liberal approach to the free speech rights of the citizenry: in a nutshell, the government may not encroach or limit the citizenry's right to freedom of religion, speech, press, assembly and protest.

This is why the First Amendment is so critical.

It gives the citizenry the right to speak freely, protest peacefully, expose government wrongdoing, and criticize the government without fear of retaliation, arrest or incarceration.

Nowhere in the First Amendment does it permit the government to limit speech in order to avoid causing offense, hurting someone's feelings, safeguarding government secrets, protecting government officials, discouraging bullying, penalizing hateful ideas and actions, eliminating terrorism, combatting prejudice and intolerance, and the like.

When expressive activity crosses the line into violence, free speech protections end.

However, barring actual violence or true threats of violence, there is a vast difference between speech that is socially unpopular and speech that is illegal, and it's an important distinction that depends on our commitment to safeguarding a robust First Amendment.

Increasingly, however, the courts and the government are doing away with that critical distinction, adopting the mindset that speech is only permissible if it does not offend, irritate, annoy, threaten someone's peace of mind, or challenge the government's stranglehold on power.

Take the [case of *Counterman v. Colorado*](#) which is before the U.S. Supreme Court.

Under the pretext of clamping down on online stalking, [Colorado wants the power to be able to treat expressive activities on social media as threats](#) without having to prove that the messages are both reasonably understood as threatening an illegal act and intended by the speaker as a threat.

While protecting people from stalking is certainly a valid concern and may be warranted in this particular case, the law does not require speech to be a "true threat" in order to be criminally punished. The Supreme Court has defined a "true threat" as "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

Indeed, Colorado's stalking law is so broad that a person can be charged with stalking for repeatedly contacting, surveilling or communicating with an individual in such a way that a reasonable person would feel serious emotional distress.

In the absence of any substantive guidelines on what constitutes a true threat on social media, such laws could empower the government to misinterpret any speaker's intent and meaning in order to criminalize legitimate political speech that is critical of government officials and representatives.

Case in point: in Oklahoma, a street preacher who expressed his moral outrage over public drag queen performances that occur in front of children and churches that endorse same-sex marriage [was given a five-year restraining order and threatened with arrest after citing Bible verses on social media](#) about God's judgment of sin.

The Rutherford Institute has taken on the case, warning that the ramifications of it going unchallenged could render anyone who quotes the Bible a criminal if it makes a listener feel unsafe or threatened or judged.

This is what it means to criminalize free speech: it turns those who exercise their free speech rights into criminals.

This criminalization of free speech, which is exactly what the government's prosecution of those who say the "wrong" thing using an electronic medium amounts to, was at the heart

of [Elonis v. United States](#), a case that wrestled with where the government can draw the line when it comes to expressive speech that is protected and permissible versus speech that could be interpreted as connoting a criminal intent.

The case arose after Anthony Elonis, an aspiring rap artist, used personal material from his life as source material and inspiration for rap lyrics [which he then shared on Facebook](#).

For instance, shortly after Elonis' wife left him and he was fired from his job, his [lyrics included references to killing his ex-wife](#), shooting a classroom of kindergarten children, and blowing up an FBI agent who had opened an investigation into his postings.

Despite the fact that Elonis routinely accompanied his Facebook posts with disclaimers that his lyrics were fictitious, and that he was using such writings as an outlet for his frustrations, [he was charged with making unlawful threats](#) (although it was never proven that he intended to threaten anyone) and sentenced to 44 months in jail.

The question the U.S. Supreme Court was asked to decide in *Elonis* was whether his activity, in the absence of any overt intention of committing a crime, rose to the level of a "true threat" or whether it was protected First Amendment activity.

In an 8-1 decision that concerned itself more with "[criminal-law principles concerning intent rather than the First Amendment's protection of free speech](#)," the Court ruled that prosecutors had not proven that Elonis intended to harm anyone beyond the words he used and context.

That was back in 2015.

Despite the Supreme Court's ruling in *Elonis*, Corporate America has taken the lead in policing expressive activity online, with social media giants such as Facebook, Twitter and YouTube using their formidable dominance in the field to censor, penalize and regulate speech and behavior online by suspending and/or banning users whose content violated the companies' so-called community standards for obscenity, violence, hate speech, discrimination, conspiracy theories, etc.

The fallout is as one would expect.

The internet has become a forum for the government—and its corporate partners—to monitor, control and punish the populace for speech that may be controversial but is far from criminal.

Everything is now fair game for censorship if it can be construed as hateful, hurtful, bigoted or offensive provided that it runs counter to the established viewpoint.

In this way, the most controversial issues of our day—race, religion, sex, sexuality, politics, science, health, government corruption, police brutality, etc.—have become battlegrounds for those who claim to believe in freedom (of religion, speech, assembly, press, redress, privacy, bodily integrity, etc.) but only when it favors the views and positions they support.

In more and more cases, the government is declaring war on what should be protected political speech whenever it challenges the government's power, reveals the government's corruption, exposes the government's lies, and encourages the citizenry to push back against the government's many injustices.

Indeed, there is a long and growing list of the kinds of speech that the government considers dangerous enough to red flag and subject to censorship, surveillance, investigation and prosecution: hate speech, conspiratorial speech, treasonous speech, threatening speech, inflammatory speech, radical speech, anti-government speech, extremist speech, etc.

In recent years, the government has used the phrase “domestic terrorist” [interchangeably](#) with “anti-government,” “extremist” and “terrorist” to describe anyone who might fall somewhere on a very broad spectrum of viewpoints that could be considered “dangerous.”

As I make clear in my book [Battlefield America: The War on the American People](#) and in its fictional counterpart [The Erik Blair Diaries](#), the ramifications are so far-reaching as to render almost every American an extremist in word, deed, thought or by association.

You see, the government doesn’t care if you or someone you know has a legitimate grievance. It doesn’t care if your criticisms are well-founded. And it certainly doesn’t care if you have a First Amendment right to speak truth to power.

It just wants you to shut up.

Yet no matter what one’s political persuasion might be, the right to disagree with and speak out against the government is the quintessential freedom. When exercised regularly and defended vigorously, these First Amendment rights serve as a bulwark against tyranny.

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