

The Individual Consequences of Hate Speech: A Comparison of Defamation and Hate Speech/Group Libel

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Abstract: There is a general consensus on the importance of having laws against individual-related defamation (usually called defamation) while at the same time there is an ongoing discussion about whether to hold on to the laws against group-related defamation (usually called hate speech or group libel). In Europe the discussion concerns whether to abrogate the hate speech laws that have been enforced for decades, while in the USA the question is rather about whether one should pass laws against hate speech at all (since the USA has never had such a law). The main difference between defamation against individuals and defamation against groups is that in the first case the defamation is targeted against one named individual, while in the second case it is targeted against multiple unnamed individuals who belong to the same minority group. I hold that the consequences of defamatory speech are very similar in both cases and that the speech likewise is harmful in both cases. Thus, I argue that if one passes laws against defamation, it should logically follow that one also passes laws against hate speech.

Keywords: Defamation, Hate Speech/Group Libel, Harm, Consequences, USA, Europe

1. Introduction

The discussion about freedom of speech and whether there should be any boundaries on speech is an ongoing debate, which is very closely related to the debate about democracy.¹ Prominent voices are opposing the laws against hate speech, claiming that they are a hindrance to the essen-

¹ Freedom of speech characterizes democracies after the Enlightenment as well as the democracies in ancient Greece. At the same time, other political systems such as dictatorships are characterized by their censorship.

tial democratic right of freedom of speech. However, it is rare to hear those same voices opposing the laws against defamation with the same arguments.

There are originally two main reasons for passing laws against defamation:

- 1) The prevention of injury/harm to individuals.
- 2) The prevention of instability in society.

The first reason is clearly reflected in various contemporary formulations of laws against defamation. Some formulations are primarily focused on injury or harm to a target's reputation, others on personal harm in general. Harm to a reputation, however, does also undoubtedly have harmful effects on other aspects of a person's life. The second reason is one that originates from the older term 'breach of the peace'; a formulation we do not find in contemporary laws against defamation.² Nowadays we do, however, find the formulation 'public order' in a number of laws and acts, e.g. the British Public Order Act from 1986, which includes the act against hate speech.³

In this article, I exclusively focus on the first of the two above mentioned reasons for passing laws against hate speech/group libel, namely the harm that defamatory speech causes its targets. My focus is not on discussing whether laws against defamation are grounded on valid and just foundations (i.e. that it is rational to pass laws against defamation), but solely on arguing that *if* one supports the laws against defamation on a harm-based principle, *then* one should likewise support the laws against hate speech/group libel.⁴ I shall discuss this further in the fourth section of this article.

In order to underline my points, I shall present two hypothetical cases, depicting two different individuals exposed to defamation: the former to individual defamation, the latter to hate speech/ group libel. Although the cases are mere illustrations, I consider them to have argumentative value since they are, I maintain, based on what one could call 'typical' experiences of targets of, respectively, individual defamation and hate speech/group libel; they may also help us in envisaging the harmful con-

² The term is, however, still present in a few other laws.

³ "Public Order Act 1986," accessed September 18, 2022, <https://www.legislation.gov.uk/ukpga/1986/64/contents>.

⁴ Group defamation (as well as group libel) is an older term for hate speech.

sequences that targets of hate speech/group libel often encounter. In addition to this, they can highlight the similar forms of harm that defamation and hate speech/group libel often cause their victims. In the second section, I shall define the concepts of defamation, group libel and hate speech, whilst in the third section I shall elaborate on harm-based arguments seen from different ethical perspectives. In the fifth section, I take a close look at one of the most widespread arguments of opponents of hate speech laws, namely the argument from political speech.

The discussion in this paper is primarily based on philosophical argumentation and hence does not evaluate legal systems in any depth. Although the paper is about the passing of certain laws, legal systems do not play any important role in it, since the main point of the paper is to emphasize the similar consequences that targets of defamation and targets of hate speech/group libel experience. These consequences, which in many cases include harm to victims, are not affected by particular legal systems per se, but they may be lessened if a state has passed laws against defamation and hate speech.

Importantly, this argument is based on the fact that theorists in general agree that hate speech causes harm to its targets. Both deontologists and consequentialists recognize that there are circumstances in which hate speech violates basic rights of its targets; that is, something which is harmful to the targets and which is therefore reason for prohibiting (some forms of) hate speech by law. Even though deontologists and consequentialists disagree on other circumstances around hate speech, the agreement they express about the harm that hate speech *in some cases* causes its targets is essential to the argument of this paper.

2. The Concepts of Defamation, Hate Speech and Group Libel

Defamation is generally defined in terms such as *the act of communicating false statements about a person that injure the reputation of that person and bring him/her into disrepute*.⁵ As already indicated, the formulations of defamation laws vary slightly among different countries (as well as among different states in the USA), but they all emphasize the injury or harm of which targets of defamation are victims of.

⁵ Merriam-Webster.com Dictionary, s.v. “defamation,” accessed September 18, 2022, <https://www.merriam-webster.com/dictionary/defamation>.

Hate speech is generally defined in terms such as *speech expressing hatred towards a particular group of people based on religion, ethnicity, gender, sexual orientation* etc.⁶ Laws against hate speech also vary in their formulation according to the legislature in the countries that have passed such laws. As with the defamation laws, the variations are moderate. It is interesting, however, to recognize the differences that do emerge when one takes a closer look at the formulations. In some countries, such as England and France, the term “hatred” is mentioned in the laws against hate speech whereas in others, Denmark and New Zealand, for instance, the term is absent. When formulated in the laws, the term *hate* mostly occurs in the formulation ‘incitement to hatred’⁷ rather than ‘hate speech’. However, the term *hate speech* is generally used when referring to the laws prohibiting defamation against (minority) groups; further, one speaks of *hate speech laws* when one refers to these laws, regardless of the explicit and particular formulations of each respective law.

Another variation is that in some of the laws against hate speech, for instance, the Danish Law and the Swedish law, only hate speech against (minority) *groups* is explicitly criminalized, whereas in other laws, such the Norwegian law and the French law, hate speech against *individuals* who belong to certain minority groups, is explicitly criminalized as well.

The term, *hate speech* was first introduced by the American lawyer and activist, Mari Matsuda⁸ in the late 1980s. She was one of the leading figures of Critical Race Theory and used the term in an article in order to describe the coarse racist utterances that were (and still are) often uttered in US society. The term has since expanded in terms of content and meaning as well as becoming the accepted term when referring to defamation against groups in general.⁹ Unfortunately, by the same token, it has more or less replaced the older terms *group libel* and *group defamation* that used to cover defamation targeted at (minority) groups.

⁶ *Merriam-Webster.com Dictionary*, s.v. “hate speech,” accessed September 18, 2022, <https://www.merriam-webster.com/dictionary/hate%20speech>.

⁷ For example, in Norway, Russia and France.

⁸ Mary J. Matsuda (1956-), American lawyer, activist and law professor.

⁹ One often hears reference to ‘hate speech’ about speech which in principle would not fit under any of the hate speech/group libel laws.

I am of the conviction that the term *hate speech* has played a part in people choosing to reject the laws against the defamation of groups. The focus on feelings of hatred has led to arguments that one cannot pass laws against *feelings*, as these are both unmeasurable and subjective.¹⁰

The old term group libel is a far better description of what is at stake when talking about the defamation of certain groups: it is exactly the same as defamation against individuals, namely *exposure to libel*; only it is targeted towards a group with certain characteristics, be it ethnicity, colour, sexual orientation or something else. What this truly means is that it is targeted towards every individual who shares these characteristics. This also liberates the discussion from whether it is rational to pass laws against feelings or not, as well as whether the speaker was, in fact, expressing hatred or not.

The Dictionary of American History defines group libel laws with these words: “[...]group libel laws penalize speech or other communication that attacks or defames a particular group on the basis of its race, ethnicity, gender, sexual orientation, religion, or other such characteristic.[...]”. There is a significant difference between focusing on the *defamation* of certain groups of people as opposed to focusing on *hatred* towards these groups. The two terms lead to different associations, and the motives for passing laws against *hate speech* or *group libel* respectively may consequently differ depending on what definition our discussions are based on.

When we pass laws against *hate speech*, our motivation tends to be founded on our duty to protect minority groups from *hateful* expressions. The laws are hence passed in order to keep *hateful expressions* against groups of people out of the public domain. When we pass laws against *defamation* against minority groups, however, or what used to be called *group libel*, it appears that our motivation for passing the laws is founded on *defamatory speech* rather than on *hatred* directed against minority groups. Hence, the focus is not on the feeling or even the motivation of the speaker, but exclusively on the *content* of the expressions. What is more interesting is that the definitions formulated in the laws will have a substantial effect on the judgements of possible law cases.

¹⁰ Cf. Mark Slagle, *An Ethical Exploration of Free Expression and the Problem of Hate Speech* (Taylor and Francis, 2009).

The prosecutors must look for different arguments and the courts for different types of evidence depending on what formulations (*hate* or *defamation*) are phrased in these laws.

In some countries and in a number of states in the USA, defamation laws belong under civil law, while in other countries and states they belong under criminal law. Hate Speech laws, however, belong under criminal law in all countries where they are implemented. This, inevitably, has an impact on the procedures of the different lawsuits, both in terms of differences between defamation laws according to which country or state one looks at, as well as in terms of the differences between defamation laws (when they belong under civil law) and hate speech laws in general. These differences do not, however, have any significant relevance in relation to the problem raised in this paper, namely whether it is rational to pass defamation laws founded on harm-based arguments while at the same time arguing against the passing of hate speech laws.

3. Harm, Welfare, and Dignity

In this section, I shall present the most essential harm-based arguments in the discussion about freedom of speech versus hate speech. Some of the oldest arguments for passing laws against defamation as well as group libel are: 1.) The protection of human dignity 2.) The right to equality (being treated equally with respect and having equal rights as a citizen) 3.) The right to a reputation.

These arguments are all related to one another, as equal respect for any human being will reflect a respect for that person's dignity and reputation. If one goes back to ancient Greece, equality among citizens was one of democracy's cornerstones next to personal and political freedom and freedom of speech. In fact, one also finds a law which resembles contemporary laws against hate speech/group libel in ancient Greek legislation.¹¹

The above mentioned arguments are right-based and deontological arguments, which proponents of hate speech laws still present in contemporary discussions. The rights at stake are moral rights as opposed to

¹¹ This law concerned merchants and craftsmen (who were often not citizens). Mogens Herman Hansen, *Demokratiets historie og vores*, (København: Museum Tusulanums Forlag, 2010).

legal rights, although one could, indeed, claim that legal rights are founded on moral rights. With this claim, however, follows an entirely different discussion, which is not evaluated in this paper.

Rights, whether ‘natural rights’, ‘human rights’ or any other rights, are always instrumental as they represent the protection of certain values, such as freedom and equality. Thus, right-based arguments are first and foremost rooted in a deontological perspective: the values that the rights protect are perceived as inviolable and essential to human life. However, the protection of certain values through rights can also be viewed from a utilitarian perspective. In that case the justification of upholding the rights of, for instance, freedom and equality is based on the consequences that the protection of people’s rights in general lead to. Hence, right-based arguments can be justified by both utilitarian and deontological principles, and only from different perspectives, namely the perspective of utility and the perspective of dignity.

Utilitarian arguments concerning freedom of speech and its possible boundaries are often associated with a Millian perspective. The rationale of Mill’s harm principle is based on the value theory *welfarism*, meaning that the overall aim of the principle is to maximize welfare in general.¹² However, Mill’s harm principle is, in fact based on a combination of utilitarian and deontological points of view. The harm principle itself, “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others”¹³, is founded on the ethical theory of utilitarianism. When it comes to the judgment of each particular case, however, the cases should be judged on a deontological foundation according to Mill. This means that the harm principle is developed as a guideline to secure the liberty of the most people possible in the widest sense possible. Nonetheless, it does also mean that *if* a citizen’s basic right is violated by another citizen, through speech, for instance, then the target’s right shall be protected even if this leads to a possible setback in welfare in a large number of citizens’ lives.

L.W. Sumner operates with a cost-benefit analysis in his interpre-

¹² According to Mill, welfare is first and foremost measured by personal freedom.

¹³ John Stuart Mill, *On Liberty* (London: John W. Parker and Son, 1859).

tation of Mill.¹⁴ He argues that if the cost, that is, the setback in welfare of targets of hate speech is greater than the benefits of the speaker's expression on the whole, then the speech should be prevented/have consequences for the speaker. The cost-benefit-approach aims at balancing people's basic rights, such as the individual right to equality, with the freest possible form of (political) speech. As Sumner points out, referring to and citing Mill:

Mill returns to this theme a number of times, arguing that encroachment on others' rights is a fit object of 'moral reprobation, and, in grave cases, of moral retribution and punishment'.

The right of free expression can therefore be justifiably restricted when its exercise threatens to violate the rights of others.¹⁵

There are other harm-based arguments that emphasize the harm that hate speech causes *per se*. The rationale of these arguments is that hate speech harms the targets' very selves: their self-image and self-respect as well as their feelings of self-worth and identity; in short, their *dignities*. This prevents them from being equal citizens in any given society, which according to deontologists is unacceptable as well as inconsistent with the idea of Democracy.

Some theorists, such as Jeremy Waldron¹⁶ and Stephen Heyman¹⁷, emphasize the loss of equal citizenship and the loss of equal status in society as the main cause of the harm inflicted on the dignities of victims of hate speech. They stress that hate speech which is targeted towards specific minority groups in society causes the members of these groups to lose (or perhaps never gain) recognition as equal citizens who hold equal status as members of society. The loss of recognition harms the targets' dignities both directly and indirectly. First, the targets may lose self-respect and self-worth by personally hearing and facing the

¹⁴ Leonard Wayne Sumner, *The hateful and the obscene: Studies in the limits of free expression* (Toronto: University of Toronto Press, 2015).

¹⁵ *Ibid*, p. 28.

¹⁶ Jeremy Waldron, *The Harm in Hate Speech* (Cambridge and London: Harvard University Press, 2012).

¹⁷ Stephen Heyman, *Free Speech and Human Dignity* (New Haven and London: Yale University Press, 2008).

hate speech. Second, they may experience discrimination and stigmatization by a society influenced by, on the one hand, particular incidents of hateful expressions and, on the other hand, hateful rhetoric in general.

Waldron explicitly points out that the importance of obtaining equal status as citizens justifies legislation against hate speech:

Affirmatively, what hate speech legislation stands for is the dignity of equal citizenship (for all members of all groups), and it does what it can to put a stop to group defamation when group defamation (of the members of a particular group) threatens to undermine that status for a whole class of citizens.¹⁸

This is one of many examples where Waldron emphasizes *the dignity of equal citizenship*, meaning that if one is not met with the same respect, opportunities and obligations as other citizens, one's dignity is not being upheld, and hence one suffers harm. Characteristically, Waldron also reminds us that the defamatory speech affects *every member* of a targeted group.

To summarize, both utilitarian/consequentialist and deontological arguments about freedom of speech and its potential boundaries are harm-based. Even though the arguments differ in their ethical perspectives and rationalizations, they do have in common the focus on *harmful speech*: they agree that some forms of speech cause harm and should therefore be prohibited/have consequences for the speaker.

4. The Individual Consequences of Defamation and Hate Speech

In this section, I shall illustrate, through thought experiments, the similarities and differences in consequences that targets of defamation and hate speech respectively may face. The prohibition to purposely harm a fellow human is well known throughout history and cultures as an essential principle to keep any society functioning. In modern society, however, we usually go back to the Enlightenment when arguing for: 1.) the freedom of speech, and 2.) the right to be protected against harm and injury.

When one enforces defamation laws, the interpretation of harm usually rests on the fact that the target has had his or her reputation ruined by the spreading of lies that have caused serious consequences for

¹⁸ Waldron, *The Harm in Hate Speech*, p. 61.

him/her. A typical example of this would be the target losing his/her job as a result of these lies and rumours. The consequences mirror the gravity of the rumours well; they often contain something about the target having acted criminally, for instance, having committed a sexual assault. Hence losing one's job may, in fact, not even be the worst of the consequences for the target of the defamation if one compares it to the condemning glances in the streets, and perhaps even the distancing or loss of esteem from his/her dearest ones.

I shall now present two hypothetical cases in order to shed light on, respectively, defamation against a named individual and hate speech/group libel against a minority group. The aim is to illustrate the harmful consequences that defamatory speech has on its victims in general as well as to point out how similar the consequences are independently of the speech being targeted against one, single individual, or against all the members of a minority group. After the presentation of the cases, I shall discuss the harmful consequences that the targets face and evaluate whether these consequences, both in similarity and in difference, can clarify the importance of passing laws against hate speech/group libel.

Case I (individual defamation)

Mr. Smith is working as a teacher in a secondary school. He has been teaching for some years, and as a whole, the years have passed more or less smoothly. One day, however, when he turns up at work, his colleagues are acting strangely towards him, and the next thing he knows, he is called to the principle's office. Here he learns that there are rumours spreading accusing him of being a rapist. The rumours are false, and Mr. Smith is naturally in shock. Now follows a long period where Mr. Smith is first formally accused of rape, then loses his job, and finally must struggle to prove his innocence through a legal case. After several months, Mr. Smith has cleared his name, and he is working again, only in a new school (as he doesn't want to be reminded of the case). His family, friends and colleagues support him, and his life (almost) turns back to normal.

Case II (hate speech/group libel)

An established politician in the USA is expressing that male refugees are rapists, claiming that this has been proven. The politician mentions a couple of different cases where male refugees have been accused and convicted of rape in different refugee camps. The politician utters his words orally, but they are part of a recorded interview which is very quickly shared and spread on social media.

Now, Mr. Abdul is a 28-year-old refugee who has just gained a residence and work permit after a couple of years in the USA. Mr. Abdul goes looking for a job a few days after the politician's utterances about refugees, but no matter how polite and friendly he is, and however much he emphasizes his qualifications, he is turned down everywhere. Mr. Abdul knows that the politician's words, which have been spread out online over the previous days, have had a strong effect on the public and thereby on potential employers of his. Abdul can clearly sense the different atmosphere and the strong contempt that has emerged lately, and he also hears from some of his refugee friends who are employed that the situation as a refugee has become worse ever since the aforesaid politician's utterances.

Looking at the two different cases, there are clearly some distinct differences between them. Mr. Smith is falsely accused of having raped someone. He loses his job and has to go through a long and challenging legal case. Luckily, his name is cleared, and he (more or less) goes back to his old life. He must live with the feeling of not being found innocent by everyone, though. Mr. Abdul, on the other hand, is not personally accused of having committed rape. However, it has publicly been uttered by an influential public figure that all male refugees are rapists. Hence, indirectly, he is accused of being a rapist.

Mr. Smith may be said to be worse off, because he is personally accused and he actually loses his job and good reputation because of the defamation of which he is a target. Mr. Abdul, on the other hand, could also be said to be the one worse off, because he cannot prove that the politician's defamatory speech is the reason that he remains unemployed as well as the reason that he is a victim of a damaged reputation.

Mr. Smith has the option to run a legal case and prove his innocence. He can clear his name (almost) completely. Mr. Abdul has the option to prove by his behaviour that even though he belongs to the

group that the politician has defamed, he is not a rapist, and he has not personally been accused or convicted as such. However, it is impossible for him to clear his name completely since there is no concrete case to take to court, and his personal name has not been dishonoured. He is only indirectly being accused and only subtly being turned down by every potential employer, but the consequences are still very real in Abdul's life.

Even if there are some basic differences in the cases of Mr. Smith and Mr. Abdul, one can easily point out the similarities, which in terms of consequences far outweigh the differences:

Mr. Smith and Mr. Abdul are both victims of a severely injured reputation, they are both under false accusations of serious crimes, and they are both unemployed. The first two factors are obvious in both cases, whilst it may be difficult for Mr. Abdul to prove that he is unemployed due to the politician's defamation of refugees. Nevertheless, common sense tells us that it most definitely makes it harder for Mr. Abdul to be employed after such accusations even though it may not be impossible (as it is for Mr. Smith until he has proven the accusations to be false). The bottom-line is that, in these thought experiments, the basic consequences and the injury that Mr. Smith and Mr. Abdul suffer are quite similar as both cases clearly carry serious injury to the targets' reputations and qualities of life. The main difference lies in Abdul's challenge of proving his case.

What is of utter importance to emphasize, looking at these two cases is, of course, that the USA does not have any laws against hate speech and, hence, that the politician cannot be charged for his defamatory expression about male refugees. Had he been a European politician, someone (whether a male refugee or another inhabitant in the respective country) could have charged him and he would probably have had to face the consequences for his defamatory and generalizing expression. This may also have led to a 'victory' for the male refugees who in turn would most likely not have had to face the same challenges in terms of job seeking, for instance, since their names (as a group) would have been cleared.¹⁹

¹⁹ Cases like these are, of course, never simple and it is difficult to predict exactly what would have happened if this were a real case. However, it is not unlikely that if the politician was charged, the media would have covered the

In this hypothetical case, the challenges and consequences following the politician's expression are, of course, discussed from a short-term perspective. In many other cases, there will be long-term consequences which are a result of many defamatory expressions during a longer period of time.²⁰

If one looks at the cases from a consequentialist perspective, one could claim that in Mr. Smith's case the defamation should be illegal, since firstly, it does not add happiness or positive consequences to anyone (except perhaps a gleeful person who spreads rumours and lies) and secondly, it is not to be counted as political speech, since it only addresses Mr. Smith's personal life. In Mr. Abdul's case, however, the question about whether the defamatory speech should be legal is an open question where the conclusion would depend on circumstances such as, for example, a cost-benefit approach and whether the politician's comment should be interpreted as political speech or not. Therefore, one of several possible conclusions could be that the politician should be free to express any opinion, since hindering his (political) opinion will: 1.) cause a setback in the politician's welfare by limiting his freedom, and 2.) have serious consequences for the public by hindering them from being informed by the politician (or at least hearing his opinion, which they are then free to interpret and challenge as they like).

If one takes Mill, for example, the question of whether the defamatory speech in Mr. Abdul's case should be legal or not would also be open. According to Sumner's interpretations of Mill's harm principle, Mill is a proponent of a so-called indirect consequentialism. This means that Mill proposes that one looks at the general consequences of regulating people's social acts, such as speech, with right-based arguments. Hence, from this point of view, one could claim that Mill would probably hold that the defamatory speech in Abdul's case should be illegal since the protection of Abdul's rights, for instance, to be treated equally,

case and it would have turned out in favour of the male refugees.

²⁰ A lot of discrimination against minority groups will be based on ongoing hateful expressions which have been expressed by many different people over decades. Hence, sometimes when a member of a minority is discriminated against, in job searching for instance, this can be based on hate speech which one cannot track or point to specifically. In these cases there is not, of course, only one person that you can charge of hate speech.

would have better consequences in general than the acceptance of the politician's defamatory speech would. However, this would be viewed from a broader perspective where the specific case of Abdul would serve as an example of numerous similar cases in society.

From Waldron's point of view, and hence a deontological point of view, it is reasonable to claim that both Mr. Smith and Mr. Abdul are victims of harmful consequences due to the defamatory speech, and that the speech should be prohibited in both cases. From a deontological perspective, one would claim that Mr. Abdul (presumably along with many fellow men) has suffered a harmed dignity as a consequence of the politician's public expression about male refugees. First, Mr. Abdul's dignity is harmed by not being treated as an equal citizen and second, his right to equality is harmed when he is turned down by employers, solely based on the fact that he is a male refugee. This also exemplifies the affinity between deontological and right-based arguments as well.

The hypothetical examples of Mr. Smith and Mr. Abdul are, of course, mere illustrations that are meant to show how similar the consequences of defamation and hate speech/group libel *can* be. They are meant to be reflections of countless similar cases, which truly go on. In addition to this, they are meant to shed light on how hate speech/group libel has an effect on *individuals* belonging to a targeted group and not just a faceless mass as we sometimes tend to perceive groups of people.

Waldron also points out this important element:

How does one libel a group? What aspects of group reputation are we trying to protect with laws against racial or religious defamation? The first thing to note is that it is not the group as such that we are ultimately concerned about – as one might be concerned about a community, a nation, or a culture. The concern, in the end, is individualistic.²¹

Some opponents of hate speech laws seem to be ignorant of the fact that a group of certain characteristics always consists of individuals who individually have to face the reactions of the defamatory speech expressed about them among the public. These reactions are, of course, diverse, and while some of them will take the form of minor distrustfulness, others will

²¹ Waldron, *The Harm in Hate Speech*, p. 56.

come in more serious forms, such as employers firing (or not wanting to employ) the targets of the hate speech/ group libel. In the worst-case scenarios, of course, targets are also victims of hate crimes.²²

The interesting thing is that when one realizes how hate speech harms individuals on a personal level and not just ‘arbitrary’ groups on an abstract level, the similarities between defamation and hate speech/group libel become so much clearer. This supports, as already mentioned, one of the reasons why group libel is also a better term to use than hate speech, because the term group libel so clearly expresses the similarity between defamatory speech targeted against single individuals and defamatory speech targeted against many individuals who belong to the same, particular group.

5. The Argument from Political Speech

In this section, I shall present one of the most essential arguments of the opponents of hate speech laws, namely *the argument from political speech*. There are, of course, a number of different arguments against the passing of hate speech laws. Some of these arguments focus primarily on the connection between freedom of speech and democracy, for instance, Dworkin’s argument of legitimacy;²³ others view absolute freedom of speech as a prerequisite for upholding people’s autonomy.²⁴ The ‘chilling effect’ argument is also interesting; it focuses on the self-censorship that laws against hate speech may cause. The defenders of this argument claim that the mere knowledge of there being a law against hate speech causes some people to hold back their true (and legal) political opinions in fear of being accused and convicted.

I shall, however exclusively concentrate on the argument from political speech, as this argument is one of the most widespread arguments among opponents of hate speech laws and as it is of great relevance to

²² Results from a number of studies have shown a causality between hate speech and hate crimes.

²³ In order to have a legitimate democracy, all citizens must have the opportunity to utter freely on any (political) subject. Dworkin is also a defender of the argument from political speech.

²⁴ These scholars, such as Cass Sunstein and Eric Barendt, view limits on (political) speech as a violation of individual autonomy.

the discussion about whether to pass hate speech laws. The argument from political speech highlights the importance of protecting speech that can be labelled as political opinion in a very broad perspective. The argument stresses that freedom of political speech is of pivotal importance to the practice of democracy; that it is, indeed, one of the most essential elements in the upholding of democracy.

Most defenders of the argument from political speech point to this argument as a valid reason for opposing laws against hate speech. The rationale is that most (or perhaps all) expressions which are categorized as hate speech, are, in fact, also political speech, and should therefore be protected. Further, the defenders of the argument from political speech hold that there is a relevant difference between the laws against defamation and the laws against hate speech. The difference that they point to is that defamatory speech targeted against individuals rarely is to be counted as political speech, while defamatory speech targeted against groups often (if not always) is to be counted as political speech.

Definitions of political speech are relatively rare; this is something which Katharine Gelber²⁵ points to in her article “Freedom of political speech, hate speech and the argument from democracy: The transformative contribution of capabilities theory”. Among the scholars who have defined political speech are the legal scholars, Cass Sunstein and Eric Barendt. Sunstein defines political speech as speech that “is both intended and received as a contribution to public deliberation about some issue”.²⁶ This immediately raises the question of what is to be considered “a contribution” and whether all issues are of equal relevance. Barendt²⁷, on the other hand, characterizes political speech as speech “in the political sphere” as well as “political and social discussion”, which, of course, raises the question of which matters (and thereby, also expressions) are to be considered as belonging under “political” and “social” discussion. Barendt underlines that expressions against and about

²⁵ Katharine Gelber, “Freedom of political speech, hate speech and the argument from democracy: The transformative contribution of capability theory,” *Contemporary Political Theory*, 9 (2010), p. 304–324.

²⁶ Cass Sunstein, *Democracy and the problem of free speech* (New York: The Free Press, 1995), p. 130.

²⁷ Eric Barendt, *Freedom of speech* (Oxford: Oxford University Press, 2005), pp 154-155.

the government, even revealing government secrets and verbally “attacking” the government, are expressions that belong under political speech.²⁸ Barendt, however, also explicitly points to expressions of racial hatred as belonging under political speech.

The freedom to criticize governments is non-controversial in liberal democracies. In fact, it is a prerequisite of functioning liberal democracies. Hence, self-governance is a well-known principle in liberal democracies, and it likewise plays an important role in the argument from political speech. As Gelber puts it: “[...] it is argued that political speech warrants the very highest standards of protection because of its centrality to self-governance”.²⁹ Whether this self-governance applies to the governance of (all of) the citizens of a democratic society in general (i.e. through democratic decision-making) or to each individual’s self-governance (in the meaning of autonomy), they both apply to foundational democratic principles and they can both apply to the defence of political speech in a broad sense.

Thus, the importance of self-governance and the possibility to criticize governments are two central reasons for defending the argument from political speech. I hold that although there are examples of speech that can be categorized as *both* political speech *and* hate speech, there are, in fact, also many examples of hate speech that do not fit under the label of ‘political speech’. An archetypical example of hate speech is: ‘All x people are rats’. This is plainly coarse, degrading and dehumanizing speech, which is the essence of what the laws against hate speech are meant to protect groups of people (first and foremost, minorities) against.

If the definition of political speech, as in Barendt’s case, is meant to include ‘all’ forms of speech, then the argument dissolves itself: the term simply becomes a shield for the approval of *all* expressions, including hate speech. The term ‘political’ hence loses its meaning. There are, as already mentioned, examples of expressions that may not be easy to define as being *either* political speech *or* hate speech. Sometimes these expressions take the form of a more indirect criticism of a government, for instance, criticizing the government’s acceptance of controversial,

²⁸ Ibid.

²⁹ Gelber, *Freedom of political speech*, p. 305.

perhaps even anti-democratic, norms in minority communities. If one looks at expressions like: *Muslim men suppress their wives* or: *Muslim men do not consider women as equal human beings*, these are expressions that generalize a large group of people (Muslim men) and which may be perceived as strongly offensive and even defamatory speech. These kinds of expressions, however, cannot solely be categorized as hate speech, since they are clearly also a political criticism of: 1.) a minority group which, according to the speaker, refuse women's access to basic rights, and 2.) the government for accepting these particular circumstances.

The above mentioned expressions are, of course, controversial, since not all Muslim men, nor communities, suppress women. The expressions may lead to conflicts and growing resentment towards Muslims among the population which may be harmful to Muslim individuals, Muslim communities, and society in general. However, the expressions are of a political character, and hence, in the case of such expressions, it is not an easy task to categorize the expressions as *either* hate speech *or* political speech. First, in cases like these, it is a question of interpretation based on the respective hate speech legislation and whether one categorizes these expressions as hate speech or not.³⁰ Second, these expressions are examples of statements that can be categorized as *both* political speech *and* hate speech at the same time. The question then is whether the fact that an expression can be labelled as political speech is a valid reason for it not to be illegal/have consequences, even though it may also be labelled as hate speech.

As already stated, the defenders of the argument from political speech point to crucial foundations of democracy, namely the right to criticize any government as well as the right to self-governance. These are invaluable rights which should obviously be upheld. However, these rights do not justify the dismissal of hate speech legislation since *firstly*, not all hate speech is also political speech, and *secondly*, hate speech that is also considered political speech may in some cases be sanctioned by the law, for instance, if the harm that the speech leads to outweighs the importance of the political speech. *Thirdly*, political speech that is

³⁰ If someone sues the speaker of expressions like these (in a country with implemented hate speech laws), and a case is raised, the respective judge must interpret whether these expressions are to be regarded as hate speech or not.

also considered hate speech may in some cases be accepted as legal speech, for instance, if the political importance of the expression outweighs the potential harm of it. The bottom line is that although the argument from political speech is an argument of great relevance and importance in any liberal democracy, it does not reach as far as to validate the dismissal of hate speech legislation.

6. Conclusion

Defamation laws are primarily founded on harm-based arguments and if one compares defamation against single individuals to defamation against numerous individuals who belong to certain groups, the harm they suffer from the defamatory speech is in many ways similar. From a deontological point of view, laws against hate speech are defended mainly because of the harm they are said to cause to victims' dignities. Waldron, as we have seen, emphasizes that the harm done to the victims' dignities is by virtue of the victims not being met with respect as equal citizens in a given society. From a consequentialist point of view, the passing of laws against hate speech is also defended, although to a lesser extent. Inspired by Mill, Sumner, as we have also seen, points to the importance of balancing people's personal rights, which in some cases may justify setting limits on speech.

Although hate speech laws can be defended from a consequentialist perspective, there are also consequentialists who oppose these laws. Their criticism is firstly directed against the lack of evidence that defamatory speech is, in fact, harmful (as they question studies that have concluded so); and secondly, it is directed against the censorship of political speech, which they argue is more harmful than the hate speech performed against groups.

One of the main arguments against the passing of hate speech laws is *the argument from political speech*. The defenders of this argument claim that the importance of political expression is so vital that one cannot compromise with it under any circumstances. Furthermore, defenders of the argument from political speech often interpret hate speech as political speech, and hence they are against any form of legislation against hate speech. This interpretation is, however overly simplified, since there are, indeed, expressions that do express hate with no true political message included. Further, in some cases where political speech and hate speech do overlap, there may be valid reasons, based on democratic principles, for protecting targets from

the hate speech (meaning criminalizing it), even though the speech may also contain a political message.

When one is a proponent of defamation laws founded on harm-based arguments, it appears to be a contradiction to simultaneously be an opponent of hate speech/group libel laws. The rationale is that the harm-based arguments apply as much to passing hate speech/group libel laws as they do to passing defamation laws. Although there are differences in the two cases, for instance, that the individual defamation sometimes may be more personalized than hate speech/group libel, there are, in general, essential similarities to be found: both the defamatory speech itself as well as its consequences are often very similar in the cases of defamation and of hate speech/group libel. Advocating for defamation laws should, therefore, logically lead to advocating for hate speech laws, whereas opposing hate speech laws should lead to the opposing of defamation laws.

