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The Fight for Free Speech, Even if it's Offensive

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The fight for free speech, even if it's offensive

Secretary of State Hillary Clinton did not mince words when discussing the amateurish video that sparked violence in Muslim

countries: The video was "disgusting and reprehensible" and the American government had "absolutely nothing" to do with it.

But Clinton knew she also had to explain why the United

States had not suppressed the video. So she described our country's "long tradition of free expression," and how that meant "we do not stop individual citizens from expressing their views no matter how distasteful they may be."



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That's certainly correct. But even many Americans might find it difficult to understand. After all, why should we pro-

tect speech that most Americans find "disgusting"? And why should we protect speech that incites violence, even if it's by people halfway around the world?

Of course, the problem with suppressing offensive speech is who gets to decide what's "offensive." Indeed, in certain times and places, a majority of Americans might have been offended by those who opposed the Vietnam War, who thought that blacks should sit in the front of a bus, or who claimed that people evolved from apes. Even today many Americans might be offended by the idea that Muhammad is the latest prophet, or, for that matter, that Joseph Smith is.

Living in a free society means we can challenge conventional wisdom, criticize government, and express our faith, even if our views are unpopular. It is the core attribute that distinguishes our country from a country like Iran that "protects" its citizens from "offense" by telling wom-

en what they can wear and punishing people who dare to question the majority's faith.

Fortunately, the First Amendment to the Constitution ensures us this freedom by protecting all ideas, even those that offend. Indeed, Justice William Brennan Jr. said it is a "bedrock principle" of the First Amendment that the government may not suppress an idea "simply because society finds the idea itself offensive or disagreeable." And he said this while upholding the right to burn the American flag.

But what if the speech incites violence? Is it enough that we can punish those who actually commit the violence, or should we also be able to punish those whose speech encourages it?

Perhaps surprisingly, the Supreme Court has said that we can punish incitement. People are free to advocate passionately for their ideas, but their speech loses protection when it is directed to in-

citing imminent lawless action.

So, for example, someone opposed to abortion could say that abortion is murder and that abortion doctors engage in genocide. But a rabid pro-life speaker who riles up a crowd outside an abortion clinic by saying abortion must be stopped by any means necessary might have crossed the line. That speech is no longer just advocacy. It is intended, and is likely, to provoke imminent lawless action.

Yet isn't that what the anti-Islam movie was doing? Wasn't it inciting people to riot, albeit people thousands of miles away?

It was, but in a different way. In that instance, the violent reaction was not by those encouraged by the message, but by those enraged by it. They were a "hostile audience," and the Court tells us that the question is whether the government can punish a speaker whose speech provokes such an aggressive reaction.

The core problem here is avoiding the "heckler's veto." Put simply, if an audience's violent reaction can justify suppressing speech, then we are giving the audience the power to decide what speech is protected. But why should a group of enraged individuals have the right to determine what an American can say?

By now, you probably appreciate why the Supreme Court describes freedom of speech as "powerful medicine."

Our natural instincts keep telling us to suppress speech we abhor. But our commitment to freedom of speech keeps telling us we can't.

Yet the Court tells us to take heart. That the air might be filled with "verbal cacophony," it says, is "not a sign of weakness but of strength." It is in that very tumult that our "fundamental societal values" are being realized.

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