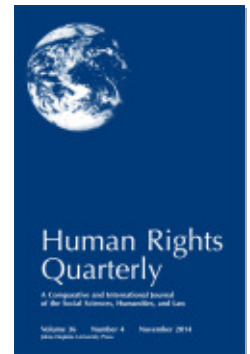# Words of Violence: "Fear Speech," or How Violent Conflict Escalation Relates to the Freedom of Expression

Antoine Buyse

Words of Violence: "Fear Speech," or How Violent Conflict Escalation Relates to the Freedom of Expression

Antoine Buyse*

ABSTRACT

The limits of the freedom of expression are a perennial discussion in human rights discourse. This article focuses on identifying yardsticks to establish the boundaries of freedom of expression in cases where violence is a risk. It does so by using insights from the social sciences on the escalation of violent conflict. By emphasizing the interaction between violence and discourse, and its effect on antagonisms between groups, it offers an interdisciplinary perspective on an ongoing legal debate. It introduces the notion of "fear speech" and argues that it may be much more salient in this context than hate speech.

I. INTRODUCTION

During the ethnic violence following the 2008 elections in Kenya, radio broadcasts called for the "people of the milk"—the Kalenjin tribe—to "take out the weeds in our midst"—the rival Kikuyus. Kikuyu radio stations in turn warned of the "animals from the West," meaning tribes from Western

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Kenya.[1] Such words can be dangerous in situations of forced displacement and violence when the intended audience understands the metaphors, as was the case here.

There is rarely a direct causal link between freedom of expression and violence, especially in the context of restricting or countering dangerous speech in a wider sense. However, ways to determine possible linkages are crucial.[2] Violence exists as an option, as a mode of action in the public or private sphere, in virtually every society. Nonetheless, that does not automatically turn it into a legitimate political option.

The possible effect of words—whether broadcast on television, used in newspaper articles, or circulating as rumors—on the violent escalation of conflict is one of the most difficult issues in debates on the freedom of expression. Even the most avid proponents of an almost unfettered freedom will probably draw the line when speech directly incites violence, but rarely will words be as direct as an order to shoot somebody. In most cases it is very difficult to agree on where the legal and/or societal boundaries of the freedom of expression should be drawn. Instances of incitement to violence often, but do not always, overlap with hate speech, where restrictions are even more contested among legal scholars and practitioners. How then to assess when words can kill?

In this article the focus will be on what the legal discipline could learn from other fields, including the study of violent conflict, on the escalation of violence. This perspective may help to develop tools for policy makers and judges to deal in a more scientifically-grounded way with situations in which permissible limitations to the freedom of expression must be assessed. Legal scholars have no clear-cut answers to this. Obviously, this is not only caused by ideological debates, but also by the inherent balancing exercise required—i.e., freedom of expression is pitted against other fundamental interests and even rights. From the perspective of international human rights law, in situations of violent conflict escalation, the right to life and the prohibitions on discrimination and incitement to violence are most at stake.[3] Since the scales may tilt differently depending on the circumstances, it is essential that yardsticks are identified to make informed judicial or policy decisions.

First, this article will focus on the various theories in the social sciences on the dynamics of conflict escalation between groups, with a particular emphasis on ethnic violence. Second, it will further zoom in on framing

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1. *Radio Propaganda: Crackles of Hatred*, The Economist (23 July 2009), *available at* http://www.economist.com/node/14098593.
2. *See* Eric Heinze, *Viewpoint Absolutism and Hate Speech*, 69 Mod. L. Rev. 543, 545 (2006).
3. As indicated, this article will focus on human rights law. For perspectives on the issue in the context of (international) criminal law, *see* Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 Va. J. Int'l L. 485 (2008); Carol Pauli, *Killing the Microphone: When Broadcast Freedom Should Yield to Genocide Prevention*, 61 Ala. L. Rev. 665 (2010).

theory as a way to understand potential connections between discourse (the expressions used) and actual acts (the violence to be prevented). Third, moving from social sciences to legal standards, this article will delve into the international human rights context relevant to the freedom of expression and violent conflict escalation. Finally, the challenges of using social science insights on conflict escalation in legal and political decision-making will be assessed.

II. THE DYNAMICS OF VIOLENT CONFLICT ESCALATION

From the outset, it is important to note that the form of violent conflict escalation under study here is neither interpersonal violence (one individual against another), nor inter-state violence (wars in the traditional sense). Rather, the focus is on the intermediate level of inter-group violence, which may include violence of the state against a group or vice versa.[4] Social scientists specializing in conflict escalation have identified a number of recurring factors. Escalation occurs when one or more parties in a conflict start to use tactics of increasing harshness against each other: from consultation to threats and, eventually, to violence.

An important theory that sheds light on processes of escalation is the structural change model of Pruitt and Kim.[5] This model distinguishes three types of change which occur during escalation and which themselves fuel further escalation. One could thus call them both reflectors and catalysts of processes of escalation.

The first type of change is psychological: changes within persons, including group leaders, involved in a conflict. This may range from emotions, such as hatred and anger, to more structural changes, such as increasingly hostile attitudes and negative perceptions of others, which make it harder to empathize with them. The "other" is decreasingly perceived as an individual and increasingly as a member of a certain category or group (e.g., a race, class, or people). In the extreme, the other is no longer seen as a human being. Such psychological changes have a number of consequences: facilitating blame against the other party in a conflict, lowering the threshold for taking countermeasures or even revenge, inhibiting communication with the other party, and reducing empathy.

The second type of change occurs within groups. When in a conflict, groups show increased internal cohesion and leadership becomes more militant.[6]

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4. The three levels are in many ways interconnected, as individual instances of violent retribution often follow in the wake of inter-group violence. The latter can, in turn, escalate into full-fledged war.

5. For this and what follows, *see* Dean G. Pruitt & Sung Hee Kim, Social Conflict: Escalation, Stalemate, and Settlement 101-20 (3d ed. 2004).

6. *See also* Otomar J. Bartos & Paul Wehr, Using Conflict Theory 111-13 (2002).

The third type of change is even broader and can occur within communities or societies as a whole. It involves polarization by increasing the tendency to choose a side. This in turn makes it more difficult to take a moderate, centrist stance. Possibilities for mediation and de-escalation become scarcer. Pruitt and Kim point to a harmful side-effect of escalation: though at the outset the goal of a group may have been limited to winning out in the conflict, escalation adds a will to harm the other party.[7]

Insights from social psychology support this theory. Ervin Staub, a leading psychologist specializing in the study of violent escalation, has identified similar processes as Pruitt and Kim. Staub emphasizes that large-scale violence is the most extreme potential result of a development which starts with discrimination and "limited acts of harm-doing," such as exclusion, humiliation, and small-scale violence.[8] Violent conflict escalation becomes more likely when the culture of a social group includes more of the following characteristics: a history of devaluing or stigmatizing the other group and using violence to solve conflicts, very strong respect for authority or the authorities, a lack of pluralism, unhealed wounds or continuing traumas in a group, and being passive (internal or external) bystanders at the start of escalation.[9] In addition, leadership behavior is crucial. Leaders of groups can, to an important extent, intensify or counter escalation. A process of cultural devaluation in which a specific group or several groups are identified as the source of social problems, such as inequality, insecurity, or violence, is often accompanied by negative stereotypes. Moreover, social inequality and generally difficult conditions of life, such as scarcity of basic goods and services, can be facilitating factors. Finally, social psychology teaches us that the threshold to use more violence is greatly lowered once violence has been applied.[10] Identifying other recent acts of violence may thus be relevant in assessing the possible consequences of expressions in a specific situation.

III. ETHNIC CONFLICT

While the processes described above relate to conflicts between all kinds of groups, for present purposes, the focus will be on ethnic violence specifically. The reason for this is that ethnic violence is statistically one of the most important threats to stability and security within states as well as to the international system; it is the most common kind of violent intra-state conflict.[11] Some have argued that ethnicity is a strong mobilizing concept for

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7. PRUITT & KIM, *supra* note 5, at 90.
8. ERVIN STAUB, THE PSYCHOLOGY OF GOOD AND EVIL: WHY CHILDREN, ADULTS, AND GROUPS HELP AND HARM OTHERS 303 (2003).
9. *Id.* at 41.
10. *Id.* at 325, 374.
11. For a description of precise statistics, with references, *see, e.g.*, Ulrike Theuerkauf, *The One-Dimensionality of the Institutional Incentives Approach to Ethnic Violence*, 33 STUD. CONFLICT & TERRORISM 783, 785 (2010).

people to group around because many people's social networks are likely to be within their own ethnic group.[12] This, however, is not by itself a sufficient explanation, as people also tend to have strong linkages with others of the same class or education level. Indeed, the observation that many modern-day conflicts are seen to be based on or described along (ethnic) identity lines has sparked extensive debate on the linkages and causal connections between ethnicity and violence.

A number of approaches on these connections can be distinguished. The main divide seems to be between theories emphasizing structures as key in explaining and understanding violent conflict escalation and theories stressing the agency of individual actors.[13] Structure based theories relate a society's conflict proneness to a number of factors, varying from the institutional design of power-sharing between groups, to structural injustices and even the extent of cross-ethnic ties and organizations.[14] Still salient in popular imagination and in the media is the theory of primordialism: the idea that ethnic violence stems from age-old, more or less fixed differences between ethnic groups as "natural communities" based on either biology or long-term cultural traditions which time and again lead to new eruptions of violence. Many recent armed conflicts in the Balkans and Africa are reported on in this way, though in academia this approach has in the last decades been discarded as being misguided.[15] In effect, outbreaks of ethnic riots, no matter how passionate, are often "highly patterned" events, as Donald Horowitz concluded after carefully comparing a large number of such riots.[16] What all structurally based approaches have in common is that they see structures as either explanations or ways to understand why conflict breaks out. Their relative weakness in the context under review, however, is their focus on long-term characteristics of a group or society which cannot explain the precise timing of violence.[17]

Agency-based approaches, by contrast, focus on the conscious choice by individuals and groups to use violence. A first stream of theories focused on agency does away with the concept of ethnicity as decisive for violence. Rational choice proponents, such as Russell Hardin, claim that what explains inter-group violence is not so much old hatred, but rather the advantages that members of groups see for themselves if their group gains ascendancy over others.[18] An example of this is Paul Collier's statistical analysis aiming to show that groups will use violence when perceived benefits are greater

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12. Stuart J. Kaufman, *Ethnicity as a Generator of Conflict, in* ROUTLEDGE HANDBOOK OF ETHNIC CONFLICT 91, 99 (Karl Cordell & Stefan Wolff eds., 2010).
13. JOLLE DEMMERS, THEORIES OF VIOLENT CONFLICT 16 (2012). For a critical and extensive overview of current theories, *see id.*
14. On the latter point, *see* Kaufman, *supra* note 12, at 98.
15. John R. Bowen, *The Myth of Global Ethnic Conflict*, 7 J. DEMOCRACY 3, 3 (1996).
16. DONALD L. HOROWITZ, THE DEADLY ETHNIC RIOT 1 (2001).
17. DEMMERS, *supra* note 13, at 74, 75.
18. RUSSELL HARDIN, ONE FOR ALL: THE LOGIC OF GROUP CONFLICT 151 (1995).

than potential losses or disadvantages ensuing from war.[19] This perspective essentially emphasizes the ordinariness or even banality of war, rather than its ethnic character. John Mueller has stressed the role of small groups of thugs who perpetrate most violence in an ethnic war by seizing opportunities, either guided by political elites or, at the very least, being given free reign by them without the interference of normal maintenance of law and order by the police. This, in his view, explains much more of the violence than the idea of large groups of ordinary citizens within the population turning against their neighbors.[20] In many ways, then, this is ordinary crime condoned by elites under the guise of ethnic war as a justification for action. Once a tipping point in the extent of violence is reached, however, escalation of violence may spiral out of the elites' control. In such a situation, fear- or self-defense-based preemptive violence may "seem to be a compelling interest, thereby insuring further violence."[21]

A second stream of theories does not factor out the notion of ethnicity in violence, but rather perceives it from an *instrumentalist* perspective. Ethnicity is viewed as an especially strong group mobilization tool. Such instrumental use of ethnicity can come from above (elite-driven) or from below (mass-driven). When politicians in power feel threatened by the loss or decrease of their power base or when new political actors pursue power and influence, they may play the ethnic card and foster ethnic tensions in order to prevent their constituency from crumbling or, for new actors, to build up a power base. Elite-driven theories thus see the behavior of political actors as crucial in explaining whether conflict turns violent.[22] As Stuart Kaufman argues, these actors can only do so effectively if they tap into an existing "myth-symbol complex": the whole package of beliefs, stories, and ethnic symbols which position an ethnic group in antagonism to one or more other groups.[23] In such a "symbolist" approach, the assumption is that the probability of violence is dependent upon the degree of hostility in the myths.[24] Ethnic violence can also be "mass-driven" by events "on the ground." This may happen when people use violence against another ethnic group in order to prevent the defection or assimilation of members of their

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19. Paul Collier & Anke Hoeffler, *Greed and Grievance in Civil War*, 56 Oxford Econ. Papers 563 (2004). *But see* Demmers, *supra* note 13, at 103, 112–13 (criticizing the validity of Collier's findings).
20. John Mueller, *The Banality of "Ethnic War,"* 25 Int'l Sec., 42, 42-43 (2000).
21. Hardin, *supra* note 18, at 155.
22. Felix Kuntzsch, The Onslaught of Violence: Collective Identity and the Escalation of Ethnic Conflict 48, 53 (2007). *See also* Bowen, *supra* note 15, at 12.
23. Stuart J. Kaufman, Modern Hatreds: The Symbolic Politics of Ethnic War (2001).
24. Stuart J. Kaufman, *Correspondence: Hate Narratives and Ethnic Conflict*, 31 Int'l Sec. 180, 188 (2007). Depending on one's point of view about the independent, preexisting character of the myth-symbol complex—and emphasizing that aspect rather than its use by actors—one could also see the symbolist approach as partially structural rather than agency-based.

own group or when marginal members of a group commit violence against another ethnicity in order to gain acceptance within their own group.[25]

A third actor-based perspective goes beyond instrumentalism's focus on the use of ethnicity and violence for social or political purposes. Rather, it emphasizes that identities are constructions and are thus ascribed rather than preexisting. Building on the classic conception of sociologist Max Weber that ethnicity is a way of drawing boundaries between groups, constructivists point out that ethnic groups are created by social interaction and are thus, in principle, flexible rather than static.[26] In that sense, constructivism ties in with insights from instrumentalism.

What is important here is that violence and ethnicity influence each other. Violence may strengthen the identity of an ethnic group if it is perceived or actually interpreted by political actors as an attack on the group as a whole. Without this label, it would be perceived as a social annoyance which could best be dealt with by law enforcement.[27] Violence perceived as particularly threatening can antagonize groups to the point of severing cross-group social ties. Each additional incident of violence, whether purposefully organized by elites or committed by extremists on the ground in order to force moderate leaders to choose sides, can further harden the boundaries between groups.[28] Out of peoples' many identities, ethnicity becomes the most salient under the perceived or real threat of violence. The instigation of fear among one's own group, rather than hatred against the other, has been found to be a key mechanism in such processes leading to violence.[29] This may lead to accepting state violence against the group one fears or, if the state fails to do so, violence by extremists or even mere thugs. Thus "fear speech," expressions aimed at instilling (existential) fear of another group, rather than "hate speech"—aimed at engendering hatred—may be more relevant when assessing violent conflict escalation.

On the other hand, violence itself is also a construction. In the first place, the occurrence of the violence makes it imaginable and the interpretation of it may make it legitimate—e.g., for the defense of one's group by means of preemptive attacks on the other group out of fear that they will strike first. Secondly, as Staub also argued, the igniting factor in conflict escalation is often not so much an event in itself—a riot, scandal, or murder—but rather the meaning that is assigned to that event.[30] A violent row between

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25. James D. Fearon & David J. Laitin, *Violence and the Social Construction of Ethnic Identity*, 54 Int'l Org. 845, 857 (2000).
26. Demmers, *supra* note 13, at 25, 26.
27. Kuntzsch, *supra* note 22, at 87.
28. Fearon & Laitin, *supra* note 25, at 864.
29. Anna Simons & John Mueller, *Correspondence: The Dynamics of Internal Conflict*, 25 Int'l Sec. 187, 187–90 (2001); Kuntzsch, *supra* note 22, at 60; Demmers, *supra* note 13, at 28, 29.
30. Staub, *supra* note 8, at 398.

two people in public can be perceived as anti-social or criminal behavior. The same incident can, however, also be interpreted as part of a pattern of clashes between two groups or—as an even stronger incentive to mobilize people—as the attack of one group on the other. The victim is then symbolic for a wider attack on the group to whom that victim belongs. Often, a lack of information on the cause or culprit of the incident may cause an entire group, rather than an individual, to be held responsible and become the target of retaliation.[31] The interpretation of an event, the assignment of meaning that becomes preponderant in public discourse, can thus have important consequences for the reactions to that event.[32] Here, again, the role of opinion leaders is key. This suggests that the societal position or practical influence of the person availing herself of the freedom of expression is relevant. The specific instigation of violence between groups and the labeling of the violence as ethnic together function as a "means to police the boundaries between ethnic groups."[33]

Focusing on this interaction between the formation of social processes and words, the political scientist Vivienne Jabri argues that the assigning of meaning is the defining element in violent conflicts.[34] Violent conflicts are themselves part of social systems which sustain and support violence. One of the key ways in which this happens is through discourse, the totality of words and thoughts addressing a particular problem or issue.[35] The use of language, from this perspective, is not just a reflection of reality, but actively constructs how people perceive and understand events. Especially when one interpretation, one discourse, gains the upper hand and stifles alternative voices, the danger of violent escalation is larger. The assignment of meaning is closely connected to power or "discursive hegemony," as Jabri dubs it.[36] The existence or, by contrast, absence of a diverse media landscape as well as the actual space for voices of opposition within specific media—newspapers, television, radio channels, or social media—and access to media are all relevant for a contextual analysis in freedom of expression cases. The lack of media diversity and access may dangerously strengthen the importance of rumors about violence that has occurred or is about to occur. Again, as Horowitz concluded from his study of ethnic riots, perpetrators in ethnic violence may, through rumors, get "the facts about the facts" wrong. Moreover, "before the violence begins, they add false facts: rumors

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31. Kuntzsch, *supra* note 22, at 96.
32. *Id.* at 86, 87.
33. *Id.* at 69.
34. Vivienne Jabri, Discourses on Violence: Conflict Analysis Reconsidered (1996).
35. One may note that in this way the discursive approach tries to overcome the chasm between structure and agency based approaches and therefore offers a promising way forward in understanding ethnic conflict escalation. *See* Demmers, *supra* note 13, at 119, 120.
36. Jabri, *supra* note 34, at 133.

of . . . nonexistent atrocities performed by the target group, poisoned water supplies, skirmishes reported as massacres. Rioters imagine themselves engaged in self-defense even when the physical aggression of their opponents has been manufactured."[37]

Anthropologists have also emphasized the importance of the sanctioning of violence through words and practices as part and parcel of conflict escalation. Their findings corroborate the claims of constructivist theorists and proponents of the discursive approach. Bettina Schmidt and Ingo Schröder in their *Anthropology of Violence and Conflict* emphasize that for violence to happen it needs to become imaginable. They distinguish four stages on the path from conflict to war. First, there needs to be a conflict: social and economic contradictions at the base of competition between groups. Second, there is a phase of confrontation in which the contradictions come to be perceived as relevant and salient. Third, violence is turned into a legitimate form of action by way of imagining violent scenarios, which they call violent imaginaries.[38] Fourth, the violent conflict or war is put into practice.[39]

What the constructivist, discursive, and anthropological approaches have in common is their emphasis on the interaction between the interpretation of violence and ethnic group formation. In addition, they enable a focus on specific events and interpretations, thus rendering them promising avenue for yielding insights that may be useful for balancing rights and interests concerning the freedom of expression. A useful way to operationalize the importance of labeling violence and ethnicity and thereby trying to understand violent conflict escalation is framing theory. In the four-phase model of Schmidt and Schröder, framing processes are crucial in the second and third phases. The next section will address frames and framing in assessing the risks of violent conflict escalation.

IV. FRAMING THEORY

Framing theory originated in sociology with the seminal work of Erving Goffman, who described how frames organize our experience of reality. The outbreak of a disease, for example, could be interpreted or "framed" as the wrath of the gods or as a result of a lack of hygiene, depending on the frame used. Some frameworks are so present within particular social

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37. Horowitz, *supra* note 16, at 555. *See id.* at 71, 85 (for the role of rumors).
38. That is, from the recent or more remote past. In that latter sense this connects to the myth-symbol complexes of Kaufman.
39. Bettina Schmidt & Ingo W. Schröder, *Introduction: Violent Imaginaries and Violent Practices*, in Anthropology of Violence and Conflict 1, 19 (Bettina Schmidt & Ingo W. Schröder eds., 2001).

groups that they even constitute central elements of the group's culture.[40] For present purposes, some of the most interesting uses and developments of framing theory stem from communication studies, since these focus on the power and effects of communicating texts. Analyzing frames help us to understand ways in which "influence over human consciousness is exerted by the transfer or communication of information from one location—such as a speech, utterance, news report, or novel—to that consciousness."[41] This analysis may be helpful in drawing the boundaries of freedom of expression in a specific situation in order to prevent violence.

According to Robert Entman, who created one of the most influential definitions in the field, an exercise in framing is "to select some aspects of a perceived reality and make them more salient in a communicating text."[42] In that sense, frames are ideas that organize and provide meaning to a range of events, connecting them into a coherent whole.[43] The presence of a frame in a text or other form of expression does not in itself make it effective. What matters is how it resonates with the audience. This is what salience entails: it makes information "more noticeable, meaningful or memorable."[44] This may happen in several ways, such as the ordering or placing of information in the text or by linking them to symbols which are familiar to the audience group's culture. As a frame involves information selection, it is characterized not just by the points it stresses, but also by what is omitted. Entman distinguished four framing functions: (1) defining an issue or problem (who is doing what in a certain context); (2) diagnosing the causes (why is something happening); (3) evaluating it morally (is what actors are doing good or bad); and (4) recommending remedies (what should be done and why).[45] Not all frames include all of these four functions.

Frames thus give meaning, but they also organize involvement.[46] The more salient a frame is, the higher the chances that feelings and potentially actions are triggered in the audience. This is where words and action link or, as Jabri would say, where discourse and social practices interact. Literature on social movements has explicitly made this connection between frames and collective action. Where frames influence the form and timing of collective action, important actors within groups are also actively engaging in producing and maintaining meaning. Put differently: they are engaged in the framing itself. These actors may be community leaders, politicians, state

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40.   Erving Goffman, Frame Analysis: An Essay on the Organization of Experience 27 (1974).

41.   Robert M. Entman, *Framing: Toward Clarification of a Fractured Paradigm*, 43 J. Comm. 51, 51–52 1993.

42.   *Id.* at 52.

43.   Claes H. de Vreese, *New Avenues for Framing Research*, 56 Am. Behav. Sci. 365, 366 (2012).

44.   Entman, *supra* note 41, at 53.

45.   *Id.* at 52.

46.   Goffman, *supra* note 40, at 345.

officials, or the media. The latter can function either as a relatively autonomous voice by actively analyzing the frames of the actors it reports about or reframing their messages on the one hand, or as a mere conduit of the frames put forward on the other hand. Frames that are geared towards action by or within a group are called collective action frames. These have the triple function of mobilizing potential supporters within a group, of demobilizing opponents, and of increasing bystander support.[47] In the context of violence this would entail seeking the acquiescence of bystanders, so that the actual perpetrators of the violence can act with the fewest possible impediments.

As sociologists Robert Benford and David Snow have argued, collective action framing can be divided into three so-called core framing tasks: diagnostic framing, prognostic framing, and motivational framing.[48] Diagnostic framing identifies what the main problem in a given situation is and attributes responsibility or blame to specific actors for that problem. If, for example, the problem is increasing insecurity or poverty in a certain region, this may be blamed on a specific ethnic group. Empirical research has shown that one of the main frames widely used is that of injustice. A frame can identify victims—usually the own group—of some injustice and advocate for action to counter that. One of the gravest injustices is the threat to life and limb. Such fear-instilling framing ties in with insights from both rational choice and constructivist theories on conflict escalation. This emphasizes the role of fear in strengthening inter-group ties, hardening boundaries between groups, and increasing the chances of violence.[49]

Prognostic framing focuses on identifying solutions to the problem and specific strategies to come to that solution. This may, in the same example used previously, include calls to chase or even kill members of the group blamed for insecurity or poverty. Motivational framing is described by Benford and Snow as "a call to arms," a justification or rationale for engaging in action to achieve change. This may happen by stressing that a situation is urgent or severe or that the proposed solution is the most efficacious or appropriate. In our example, chasing the other ethnic group from the region may be presented as the only way to quickly and permanently tackle the problem at its core or as a holy duty stemming from local religion. Diagnostic framing tasks overlap with Entman's definition and evaluation functions. Prognostic framing more or less parallels the remedial function.

Finally, motivational framing partially, but not entirely, links both diagnostic and prognostic framing with moral assessment. This latter form of framing is especially important, since it can both provide the moral justification for violence and stress its urgency. Benford and Snow's insights also relate to the

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47. Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 Ann. Rev. Soc. 611, 614 (2000).
48. For this and what follows, *see id.* at 615–17.
49. *See supra* Part III.

salience aspect from framing in communication studies by explaining that a frame becomes more salient when it reflects centrality (how essential are the frames to the lives of the target audience?), experiential commensurability (do frames resonate with the audience's everyday lives?), and narrative fidelity (to what extent do the frames culturally resonate with the audience?).[50]

Relating the above to violent conflict escalation, one may infer that diagnostic frames which blame an ethnic or otherwise identifiable group for a grave injustice or even violence may be more violence-inducing themselves than those which only identify a problem without attributing blame. This effect can be strengthened or mitigated by the prognostic frame, depending on whether it advocates for (violent) retaliation on the one hand or peaceful protest, negotiation, or resignation on the other. Finally, the immediacy of the risk of violence is influenced by the motivational frame: is acting a religious or ideological duty for every member of the group or just something to potentially consider? Benford and Snow's saliency traits are also helpful here: direct (perceived) threats of violence by another group are undoubtedly central to people's lives, experiences of incidents of violence (or rumors about them) make a frame much more experientially commensurate, and linking the frame explicitly to existing myth-symbol complexes increases their narrative fidelity. Benford and Snow have also pointed to factors influencing the credibility of a frame. Frames are more credible if they are consistent (for example consistency between the words and actions of the framers) and empirically credible (seen as connected to some form of evidence), particularly when the articulators of the frames themselves are credible. The higher the status of the framer within the group and the larger his or her perceived expertise, the more credible the frames can be.[51]

A final point about framing: a lot depends on how dominant or even exclusive a frame is in relation to a specific event or set of events. As Jabri argued, the struggle is often not about a violent act itself, but about establishing the interpretation of that violence: discursive hegemony. It is an attempt to control groups not by a monopoly on legitimate uses of violence alone, but very much by a monopoly on the interpretation of violence.[52] Political and social leaders are in competition with each other and often with the media when seeking support of a group for specific goals by highlighting certain elements of an event or problem and downplaying or ignoring others. Framing is thus an important instrument of exerting political power.[53] Controlling the media and closing down alternative voices thereby becomes a crucial feature in winning over larger audiences. In experiments, communication

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50. Benford & Snow, *supra* note 47, at 621, 622.
51. *Id.* at 619–22.
52. Charles King, *The Micropolitics of Social Violence*, 56 World Pol. 431, 449 (2004). *See also* Demmers, *supra* note 13, at 134 (citing Paul Brass, Riots and Pogroms 45 (1996)).
53. Entman, *supra* note 41, at 55.

researchers have indeed found that being confronted by competitive frames increased the effect of the audience's personal beliefs and decreased the effects of the frames.[54] In assessing the effect of a contested expression on potential violent conflict escalation, the media and communication landscape[55] in a given situation should thus be taken into account.[56] Since the actual confrontation of a target audience with a single coherent frame or competing frames is crucial, not just media diversity but also the segmentation of media should be taken into account. A media landscape may be very diverse, but if social or ethnic groups mainly use only one or a few outlets, they will not be influenced by competing frames.

These are all useful pointers in determining whether a certain expression should be assessed to contribute to violent conflict escalation and therefore should be countered in one way or another. Interestingly, human rights cases make the framers specific: the culprit who communicates a frame or the actor, even the state, which by contrast tries to censor the frame, can end up in court. In the following two sections we will shift from the conflict studies perspective to the legal one. This will first be done by way of a short overview of the norms regulating the limits of the freedom of expression in situations of potential violence. Subsequently, we will focus on how balancing in freedom of expression cases could be informed by the insights from the social sciences dealt with above.

V. THE HUMAN RIGHTS FRAMEWORK

Freedom of expression is, as is widely known, not an absolute right under human rights law. The International Covenant on Civil and Political Rights (ICCPR), as well as regional instruments such as the American Convention on Human Rights (ACHR) and the European Convention on Human Rights (ECHR), include grounds of limitation through which states can legally limit expression.[57] Freedom of speech can be curtailed when there is a basis for it

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54. De Vreese, *supra* note 43, at 370.
55. This would include both traditional media and also social media—the latter being modern means of the large-scale spreading of information, including rumors.
56. Jack Snyder & Karen Ballentine, *Nationalism and the Marketplace of Ideas*, 21 Int'l Sec. 5, 14 (1996).
57. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., art. 19, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) [hereinafter ICCPR]; American Convention on Human Rights, *signed* 22 Nov. 1969, art. 13, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), O.A.S.T.S. No. 36, 1144 U.N.T.S. 143 (*entered into force* 18 July 1978); European Convention on Human Rights, art. 10, *opened for signature* 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5 (*entered into force* 3 Sept. 1953) (in all respectively). For a recent analysis of freedom of expression in the Inter-American System, *see* Claudio Grossman, *Challenges to Freedom of Expression Within the Inter-American System: A Jurisprudential Analysis*, 34 Hum. Rts. Q. 361 (2012).

in national law, when it serves a legitimate aim, and when it is necessary in a democratic society. These requirements are cumulative: failure to comply with any of the three results in a violation of human rights. In relation to possible escalation of violence, the aims of national security and public order, included in Article 19 of the ICCPR, may be relevant. Public calls for violence can be combated by invoking those aims. From a human rights perspective this requires vigilance. Aims which may in themselves seem legitimate have often been used by governments to stifle dissent. Nevertheless the ICCPR includes, in Article 20, a duty for states to act in some instances: "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."[58]

This provision thus aims to protect against two varieties of violence. First, its goal is to protect against violence which is an inherent part of war, thereby focusing on the international dimension. This emphasis on aggression against other states can be explained by the—at the time the ICCPR was drafted—recent memory of World War II. Second, it aims to offer protection against violence resulting from discrimination amongst others on the grounds of ethnicity or religion.[59] The link between expressions and violent action will often be more straightforward—and thereby easier to establish from a legal point of view—in cases of war propaganda and direct incitement to violence. But concerning incitement to hatred or discrimination it is much more difficult to establish any links.

Article 20 of the ICCPR is an outlier among human rights treaty provisions since it does not directly confer rights on individuals but rather imposes obligations on states. One could argue, however, that other rights are indirectly protected by this provision, including the right to life and the right not to be discriminated against. Put differently, Article 20 formulates positive obligations connected to these rights.[60] Nevertheless, it remains a paradoxical provision in a document which, for the most part, establishes rights and freedoms. This explains why Article 20 was contested from the outset and caused a lot of debate and intense negotiations during the drafting phase of the Covenant.[61] The main bone of contention was the prohibition of incitement to discrimination in the second paragraph of the article. A number of—predominantly Western—states were concerned that the pro-

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58. ICCPR, *supra* note 57, art. 20.
59. Jakob Th. Möller & Alfred de Zayas, United Nations Human Rights Committee: Case Law 1977-2008: A Handbook 3 377 (2009).
60. Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 471 (2d ed. 2005).
61. Ineke Boerefijn & Joanna Oyediran, *Article 20 of the International Covenant on Civil and Political Rights*, *in* Striking A Balance: Hate Speech, Freedom of Expression and Non-Discrimination 29, 29-32 (Sandra Coliver ed., 1992).

vision could lead to censorship and other far-reaching intrusions into the freedom of expression. It may come as no surprise that many states made reservations to Article 20 when ratifying the Covenant.

Article 20 directly imposes obligations upon states to restrict the freedom of expression in certain circumstances, but such restrictive measures by states are bound by the same human rights requirements as those under Article 19. The threefold test of legal basis, legitimate aim, and necessity also apply to combating war propaganda and incitement to discrimination, hostility, or violence. The Human Rights Committee, which monitors state compliance with the ICCPR, has confirmed this both in its views in individual cases and in its recent General Comment on the freedom of expression: Article 19 and 20 complement each other.[62]

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) goes even beyond Article 20 of the ICCPR. Article 4 of CERD obliges states to declare the following forms of expression punishable by law: "dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin."[63] CERD thus indicates that criminal law should be a state's tool of choice in the context of discrimination based on race or ethnicity. In doing so, it is stricter than Article 20 of the ICCPR, which requires a legal prohibition but does not specify a specific body of law—administrative or criminal—to be applied.[64] Again, just as under the ICCPR, required state action should not lead to excessive restrictions of the freedom of expression. Article 4 of CERD therefore stipulates that any measures taken should have "due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention." Both explicitly include the freedom of expression. The fight against racial discrimination should thus always be balanced against free speech, even if CERD does require the state to take steps.[65]

The margin of discretion for states in balancing can be found, for example, in the kind of criminal sanction chosen. A severe criminal law

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62. *Malcolm Ross v. Canada, Communication No.736/1997, adopted* 18 Oct. 2000, U.N. GAOR, ¶ 10.6, U.N. Doc CCPR/C/70/D/736/1997; General Comment No. 34, Article 19: Freedoms of Opinion and Expression, *adopted* 12 Sept. 2011, U.N. GAOR, Human Rights Committee, 102d Sess., ¶¶ 50-52, U.N. Doc. CCPR/C/GC/34, (2011).

63. International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., art. 4, 660 U.N.T.S. 195 (*entered into force* 4 Jan. 1969), *reprinted in* 5 I.L.M. 352 (1966) (adopted in 1965, a year before the ICCPR).

64. Stephanie Farrior, *Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech*, 14 Berkeley J. Int'l L. 1, 48 (1996).

65. Legal scholars have widely differing opinions on this issue. *See* Karl Josef Partsch, *Racial Speech and Human Rights: Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, in* Striking A Balance, *supra* note 61, 21, 21-28.

measure applied to all utterances can be disproportionate, since it would not give due regard to the freedom of expression. A clash of legal norms of that kind occurred in the famous *Jersild* judgment of the European Court of Human Rights.[66] The applicant, a Danish television journalist, complained about his conviction in Denmark. Jersild had made a program in which racist youth were given the opportunity to present their extreme views on foreigners. During the proceedings in Strasbourg, Denmark argued that it was bound to apply the provisions of CERD next to those of the ECHR, since it had ratified both treaties. The European Court held that the conviction of the journalist had been disproportionate. It took into account, among other things, his position as a journalist and the fact that his intentions were not racist. The *Jersild* case did not relate to any violence as a result of the expressions at stake, however. In the latter situation it might be easier to argue that the freedom of expression should be trumped by the necessity to combat violence. But once again, the difficult question that arises is, which kinds of expression contribute to violence? As the responses of the United Nations to the Danish Mohammad cartoons—which were followed by violent reactions in a number of countries—show, the different human rights monitoring mechanisms have been struggling with the issue, especially when the links between the violence and the expression are tenuous.[67]

A final key aspect of the freedom of expression from a legal perspective is that it includes both rights and duties. In human rights treaties, the possibilities to restrict the freedom of expression are linked to "duties and responsibilities" which accompany the right to express oneself freely. Both Article 19 of the ICCPR and Article 10 of the ECHR include such wording. The potential dangers of the freedom of expression were thus acknowledged in the drafting and negotiating phase of these treaties.

As argued here, the human right to free expression is not an impenetrable fortress but rather a flexible membrane which offers more or less protection according to the situation at hand. A concrete balancing of rights or interests is very often necessary. This will usually happen under the third test of restricting the freedom of expression: assessing whether the interference was necessary. The broad parameters of the system of allowed restrictions under the international right to freedom of expression do not, however, answer which factors should be taken into account in assessing violence-conducive speech.

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66. Jersild v. Denmark, App. No. 15890/89, Eur.Ct.H.R. Judgment (23 Sept. 1994), *available at* http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57891#{%22item id%22:[%22001-57891%22]}.

67. For an elaborate analysis, *see* David Keane, *Cartoon Violence and Freedom of Expression*, 30 Hum. Rts. Q. 845 (2008).

VI. INDICATORS FOR BALANCING IN FREEDOM OF EXPRESSION CASES

What indicators or factors, then, do the social sciences bring to bear on legal balancing? As has been argued, the interaction between violence and words—between actions and discourse—is essential in violent conflict escalation. A first key factor is thus the occurrence of recent earlier violence. Although this may be a strong indication, it is not a sufficient one. It may make violence imaginable, but the more important issue is to establish how that previous violence is actively framed by the speaker or, in the alternative, in which frame it is received by the target audience of the expression. Here the diagnostic, prognostic, and motivational framing typologies are useful. They relate to the content of the expression.

The diagnostic frame helps to deconstruct a text, speech, blog, or radio/TV broadcast by looking at the question of whether a specific group—or a person explicitly identified as member of a group—is blamed for a problem. It is relevant to assess whether the expression under scrutiny includes stereotypes which reverberate with the intended audience. The more dehumanizing these stereotypes are, the more dangerous they can be, as they lower the threshold to use violence. By contextualizing an event, diagnostic frames may also relate it to a violent past, as part of a pattern of committed injustices against the own group. Prognostic framing, by articulating the steps to be taken in order to "solve" the problem, may greatly influence the risk of violence. Apart from the straightforward category of direct and open calls to violence, the risk of violence may also increase if nonviolent alternatives to resolve the claimed conflict are discredited or discarded. As a last step, motivational framing influences the saliency of the frame and thereby of the potential use of violence: it can be almost literally a call to arms to engage in collective action by the group and serves to justify the urgency and immediacy of the diagnostic and prognostic frames.

Combining the three forms of framing, speech directed at stigmatizing another group may pave the way for violence (hate speech), but it is fear speech that is a much stronger indicator of impending violence. This is true especially when speech takes the form of instilling fear that the other group is out to strike one's own group with violence, possibly even with the aim of extermination (existential fear). This also links up to the identified saliency features of a frame: centrality, experiential commensurability, and narrative fidelity.

Beyond the content of the expression, the context should also be taken into account. The media context of the utterance is relevant. Not only is the reach of the media used relevant, but also whether there is sufficient space for alternative voices in the debate and whether those alternatives are likely to reach the target audience; in other words, whether the expression at stake

is part of a discursive hegemony or not. The extent to which the media—as a conduit between the source of the expression and the audience—reframes the expression is very relevant here. In addition, the position of the person whose expression is assessed is important. Leading personalities in groups, whether through a formal or informal position of leadership, have a relatively large influence on the likelihood of conflict escalation. This may vary from politicians or community or religious leaders to persons with a large following on social networks. As indicated above, the credibility of the frame is influenced by its internal consistency, its empirical credibility, and the credibility of the framer himself.

As this overview of relevant factors shows, it is always a combination of the content of the disputed expression and its context which should be taken into account. Although social sciences often work with probabilities rather than proof beyond reasonable doubt, as lawyers would, the presence of these factors can assist both policymakers and judges in their decision-making. Adopting a framing analysis approach may help to deconstruct and understand an expression in a more scientifically-grounded way. The burden of proof in showing the presence of these factors should, in principle, lay with the actor interfering with the freedom of expression.

VII. CONCLUSION

Freedom of expression is a core value of democratic societies and violence can be a real threat to democracy and peace. Limiting the former to prevent the latter is a delicate endeavor. From a human rights perspective, the right to life and the prohibition of discrimination are to be balanced against the freedom of expression. To a certain extent, judges and policy makers will always have to navigate between Scylla and Charybdis. Insights from conflict studies and other social sciences can, as has been argued above, be helpful in making well-reasoned decisions. Rather than the traditional legal emphasis on hate speech, I have argued that the focus in this context should be on what I have dubbed "fear speech." This best helps to link the actor-based approaches which emphasize the interactions between violence and speech to the construction of both through framing. It also reflects the process in which violent action against another group is legitimized as a form of self-defense against impending or recent lethal danger.

Translating factors taken from social sciences into useful judicial yardsticks is an exercise that should be performed cautiously. There are three main caveats. First, the actual balancing requires a contextual analysis which extends far beyond a legal assessment. This entails that such an assessment is better performed by national judges and policymakers than by international courts, although the latter can indicate the factors to be taken into account.

As has been argued in this article, these should include a number of key factors elaborated upon above. Second, the use of experts is required. Just as forensic or statistical expertise may serve to inform judges in their decision-making, so too would expertise in discourse, media analysis, and conflict escalation be of added value. The above offers fruitful links for assessing the potential effects of expressions on violent conflict escalation.

A final caveat in trying to connect legal and social science approaches in addressing violent conflict escalation: law is only one among many instruments to prevent violent escalation between groups. Education and awareness-raising are equally important.[68] Acting too late or too little can endanger lives, while interfering too much can stifle open debate in a democracy. When having to choose between an actual, punitive interference with the freedom of expression and the potential of violence, the former should, in principle, be given precedence. In practice, this means that combating the risks of violence should in the first place focus on strengthening public debate—fostering alternative frames to the dangerous ones—rather than using criminal law tools. Since alternative voices and alternative visions in public discourse are an important factor in halting escalation, the use of such non-juridical tools in the earliest stages of escalation is key.

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68. Adrian Marshall Williams & Jonathan Cooper, *Hate Speech, Holocaust Denial and International Human Rights Law*, 6 Eur. Hum. Rts. L. Rev. 593, 613 (1999).