

24.150 Liberalism, Toleration, and Freedom of Speech, Fall 2023

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ch. 7



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The democratic legitimacy argument against hate speech

Dworkin: "majority decision is not fair unless everyone has had a fair opportunity to express his or her attitudes or opinions ..., not just in the hope of influencing others .., but also just to confirm his or her standing as a responsible agent in, rather than a passive victim of, collective action."

Dworkin, Ronald. From "A New Map of Censorship." *Index on Censorship* 23, no. 1-2 (1994): 96-15. © Writers and Scholars International Ltd. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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The democratic legitimacy argument against hate speech

Q1. What does "law L is legitimate" mean?

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The democratic legitimacy argument against hate speech

A law is legitimate = (i) citizens have a moral duty to obey the law; and (ii) the government is morally permitted to punish people for breaking it.

Note (i) is complicated. You have a moral duty not to murder, whether or not laws against murder are legitimate. But you have a moral duty to drive on the right, only because that's the law around here.

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Waldron's questions/objections.

A. Does the argument prove too much?

P1. If it is not the case that "everyone [in a State's jurisdiction] has had a fair opportunity to express his or her attitudes or opinions," then no law passed by that State (under those conditions) is legitimate.

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P2. If there are laws punishing **any** speech, then it is not the case that everyone has had a fair opportunity etc.

C. So if there are laws punishing **any** speech, no law passed by the State (when those restrictions speech were/are in force) is legitimate.

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What is the argument?

P1. If it is not the case that "everyone [in a State's jurisdiction] has had a fair opportunity to express his or her attitudes or opinions," then no law passed by that State (under those conditions) is legitimate.

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P2. If there are laws punishing hate speech, then it is not the case that everyone has had a fair opportunity etc.

C. So if there are laws punishing hate speech, no law passed by the State (when the hate speech laws were/are in force) is legitimate.

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Waldron's questions/objections.

B. Is the first premise true?

P1. If it is not the case that "everyone [in a State's jurisdiction] has had a fair opportunity to express his or her attitudes or opinions," then no law passed by that State (under those conditions) is legitimate.

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Waldron's questions/objections.

B. Is the first premise true?

"Some skinheads beat up a Muslim minicab driver after the London bombings of July 7, 2005; Dworkin's view seems to imply that it is wrong for the police to pursue, arrest, and indict these assailants because Britain has religious hate speech laws that take away the legitimacy of downstream laws against assault. The police must stand by and not intervene, because any intervention would be wrong. That's what "deprived of legitimacy" means."

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Waldron's questions/objections.

C. Is the second premise true?

P2. If there are laws punishing hate speech, then it is not the case that everyone has had a fair opportunity etc.

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Waldron's questions/objections.

2. On p. 190 Waldron writes that most hate speech laws "bend over backwards to ensure that there is a lawful way of expressing something like the propositional content of views that become objectionable when expressed as vituperation." He doesn't give any examples. So suppose Martians fleeing a catastrophe on their home planet have landed and established a colony on an unoccupied island, one unclaimed by any terrestrial nation. They are sophisticated enough to have a language, which some Americans have learned to speak (some Martians have also learned English). Do you think Waldron would regard either of the following as hate speech? If so, can you think of a way to re-phrase them so that he'd regard them as lawful?

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Waldron's questions/objections.

"Those Martians are idiots, if they ever visit this country they shouldn't be allowed to drive, they'd be a danger to the rest of us."

"Martians shouldn't be trusted to be doctors or lawyers in this country, they're not up to doing those jobs well."

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Q4. A common objection to hate speech laws is that they are inevitably over-broad: any law that would criminalize expressions of hate towards African-Americans, Jews, homosexuals, and so on, would also make some of what Malcolm X or Martin Luther King, Jr. said illegal. What do you think?



Salaam, Abdul. *Is the White Man Still the Devil?: The Nation of Islam, (The Honorable) Elijah Muhammad and Malcolm X*. Friesen Press, 2013. © Friesen Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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LOMAX: I have heard you say that a thousand times, but it always jolts me. Why do you call the white man a devil?

MALCOLM X: Because that's what he is. What do you want me to call him, a saint? Anybody who rapes, and plunders, and enslaves, and steals, and drops hell bombs on people... anybody who does these things is nothing but a devil. Look, Lomax, history rewards all research. And history fails to record one single instance in which the white man – as a people – did good.

(<https://teachingamericanhistory.org/document/a-summing-up-louis-lomax-interviews-malcolm-x/>)

From "A Summing Up: Louis Lomax interviews Malcolm X" by Malcolm X. 1963. Teaching American History. © Ashbrook Center. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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BACKGROUND

Farrakhan: In His Own Words



"Satan is going down. Farrakhan has pulled the cover of the eyes of the Satanic Jew and I'm here to say your time is up, your world is through. You good Jews better separate because the satanic ones will take you to hell with them because that's where they are headed." – Saviours' Day speech, 2/25/18

"The Jews were responsible for all of this filth and degenerate behavior that Hollywood is putting out: turning men into women, and women into men." – Saviours' Day speech, 2/25/18

"I don't care what they put on me. The government is my enemy, the powerful Jews are my enemy." – Saviours' Day speech, 2/25/18

From "Farrakhan: In His Own Words." Anti-Defamation League. © Anti-Defamation League. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

[Reminder: Germany's hate speech law bans attacks on 'the human dignity of others by insulting, maliciously maligning or defaming segments of the population.']

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Israel-Hamas War | LIVE Updates 10m ago | Maps | What We Know | Photos | Gaza Hospital Blast | Biden's Trip to Israel | Inside Hamas's Assault

How Harvard Students Became the Center of a Free Speech Fight

By Anemona Hartocollis
Anemona Hartocollis reported from Cambridge, Mass., where she met with Jewish students and students who are pro-Palestinian activists.
Oct. 18, 2023 Updated 8:44 a.m. ET

A truck with a billboard displayed their names and photos, and critics put out do-not-hire lists. The students say it's a campaign to shut them up.



A billboard truck displayed the names and faces of Harvard students who were linked to an anti-Israel letter. Sophie Park for The New York Times

Hartocollis, Anemona. From "How Harvard Students Became the Center of a Free Speech Fight." *New York Times*, October 18, 2023. © The New York Times Company. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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On a campus already bitterly divided, the statement poured acid all over Harvard Yard.

A coalition of more than 30 student groups posted an open letter on the night of the [the Hamas attack](#), saying that Israel was “entirely responsible” for the violence that ended up leaving more than 1,400 dead, most of them civilians.

The letter, posted on social media before the extent of the killings was known, did not include the names of individual students.

But within days, students affiliated with those groups were being doxxed, their personal information posted online. Siblings back home were threatened. Wall Street executives demanded a list of student names to ban their hiring. And a truck with a digital billboard — paid for by a conservative group — circled Harvard Square, flashing student photos and names, under the headline, “Harvard’s Leading Antisemites.”

Campuses have long wrestled with free speech. What is acceptable to say and what crosses into hate speech? But the war between Israel and Hamas has heightened emotions, threatening to tear apart already fragile campus cultures.

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Words That Silence? Freedom of Expression and Racist Hate Speech

Caroline West

<https://doi.org/10.1093/acprof:oso/9780199236282.003.0009> Pages 222–248

Published: May 2012

Abstract

This chapter examines the prevailing assumption that the value of freedom of speech itself is necessarily only or best served by permitting racist hate speech. It is argued that anything worthy of the label ‘freedom of speech’ must satisfy three relatively minimal conditions, namely, minimal distribution, minimal comprehension, and minimal consideration. If racist hate speech silences other speech by interfering with its production/distribution, comprehension, or consideration, then racist hate speech may function to undermine, rather than exemplify or enhance, freedom of speech. If so, there might be a free speech argument against permitting racist hate speech. The chapter provides a novel framework within which such claims can be evaluated.

West, Caroline. From “Words That Silence? Freedom of Expression and Racist Hate Speech.” In *Speech & Harm: Controversies Over Free Speech*. Edited by Ishani Maitra and Mary Kate McGowan. Oxford University Press, 2012. © Oxford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



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Cornell University professor calls Hamas terror attack ‘exhilarating’ and ‘energizing’

By Jesse O’Neil
Published Oct. 16, 2023, 4:13 p.m. ET

O’Neil, Jesse. “Cornell University professor calls Hamas terror attack ‘exhilarating’ and ‘energizing.’” *New York Post*, October 16, 2023. © NYP Holdings, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

what was the Cornell Free Speech Alliance’s point?
what do you think?

1. What are West’s “minimal conditions” for free speech? Does she think that the minimal conditions are sufficient for free speech, necessary for free speech, both, or neither?



a minimal distribution requirement

The opportunity to distribute words and the like to a public audience

[the ability] to hear or see speakers' words

West on Dworkin

Is it plausible in principle to suppose that freedom of speech includes nothing more than the opportunity to distribute meaningful sounds and scrawls to a reasonably wide public audience, as Dworkin, in good liberal company, seems to imply?

West, Caroline. From "Words That Silence? Freedom of Expression and Racist Hate Speech." In *Speech & Harm: Controversies Over Free Speech*. Edited by Ishani Maitra and Mary Kate McGowan. Oxford University Press, 2012. © Oxford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



Hodgson, Godfrey. From "Ronald Dworkin Obituary," *The Guardian*, February 14, 2013. © Guardian News & Media Limited. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

2. What is West's "Meaning Obliterator"? What point does she use it to make?

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the meaning obliterator

The Meaning Obliterator allows speakers to distribute words, but intervenes so as to prevent would-be audiences from grasping the meaning of the speakers' words. 'Overthrow the dictator', dissidents chant; 'Numfuttal', 'Numfuttal', 'Numfuttal' is all the audience are able to grasp as they hear the dissidents chant. The device allows speakers to distribute meaningful noises, but it makes those sounds seem like meaningless gibberish to the audience.

If having the opportunity to distribute meaningful words to a reasonably wide public audience were all it took for speech to be free, then dissidents in the situation just described would be free to speak. But it seems clear that they are not free to speak in any meaningful sense.

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a minimal comprehension requirement

free speech requires that were a speaker to produce the appropriate words, and were an audience to want to hear what the speaker has to say, there is no agent (individual, group, or institutional) whose actions systematically prevent the audience from comprehending the intended meaning of the speaker's words.

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2. What is West's "input buffer"? What point does she use it to make?

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the input buffer

The device allows the speaker's words to be distributed and comprehended, but it prevents the information that is heard and understood from entering as input into the deliberations of receivers, and so from posing any threat to receivers' existing beliefs and desires. The device allows the receivers' beliefs and desires to evolve naturally, except that they are completely insensitive to what they have heard.

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support from Mill

The point was well appreciated by Mill, who is quite explicit that the benefits of free speech can only obtain where opinions are not simply voiced, but also attended to: '[T]ruth has no chance', writes Mill, 'but in proportion as every side of it, every opinion which embodies even a fraction of the truth, not only finds advocates, but is so advocated as to be listened to'. It is clear that by 'listened to' Mill meant more than merely that words can be heard by an audience. The expression must also be able to be considered, so that such merits as the ideas may have can emerge to inform the deliberations and actions of receivers.

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a minimal consideration requirement

agents [should] refrain from acting in ways that systematically prevent the speech of another from being attended to or considered.

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3. What is racist hate speech, as West explains it? If her argument succeeds, would it show that other kinds of hate speech might undermine free speech? If so, what kinds?

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racist hate speech

Racist hate speech expresses derogatory feelings about, or attitudes towards, people on the basis of their race in order 1) directly to inflict psychological injury on them (in the case of face-to-face encounters) or 2) to incite in third parties hostility towards or hatred for them, or both. So defined, racist hate speech differs from merely racially discriminatory speech (speech that advocates a negative view of a particular racial group) in that its primary function or purpose is to cause psychological injury to its targets and/or to arouse hostility or hatred for the group targeted.

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