

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

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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.

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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?

distribution
comprehension
consideration

necessary

3

a minimal distribution requirement

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

[the ability] to hear or see speakers' words

4

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?

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Law

Ronald Dworkin obituary

Brilliant philosopher of law who put human dignity at the centre of his moral system

Godfrey Hodgson

Thu 14 Feb 2013 08:31 EST



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/>.

5

Lorem Ipsum

"Consectetur adipisicing elit." "Etiam venenatis tortor sed lectus."

>Lorem Ipsum. Platea Porta. Massa

Lorem Ipsum

Lorem Ipsum dolor sit amet, consectetur adipisicing elit. Duis tellus. Donec ante dolor, iaculis nec, gravida ac, cursus in, eros. Mauris vestibulum, felis et egestas ullamcorper, purus nibh vehicula sem, eu egestas ante nisi non justo. Fusce tincidunt, lorem neque dapibus consectetur, leo orci mollis ipsum, eget suscipit eros purus in ante.

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Quid Novi?

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Accumsan
Rhoncus
Torquent
Phasellus
Tempor
Auctor

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

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6

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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7

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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8

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

9

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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10

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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11

a minimal consideration requirement

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

12

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?

13

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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14

comprehension failure

one way in which racist hate speech could interfere with **comprehension** would be by producing in its audience beliefs that prevent them from **recognizing the communicative intentions** of speakers from the minority racial groups that it targets. However, racist hate speech could undermine comprehension in a slightly different and considerably more radical way than the 'no-means- yes' case just described. Pornography prevents comprehension, if it does, by producing in its (mostly male) audience beliefs that prevent them from grasping the nature of women's communicative intentions in certain contexts. Racist hate speech could in principle prevent comprehension in **a yet more extreme way**: by producing in its audience beliefs that prevent them from recognizing that the speaker has any communicative intentions *at all*.

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15

Nothing about the content of the sentence has changed. It remains a meaningful sentence in English, and appropriately acculturated English-speaking audiences can grasp that meaning. But no one would take a parrot that produces this sentence to *mean anything by it*.

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an odd example? you *do* understand what was (in fact) meant

Descartes was a very fine philosopher



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16

consideration failure

We should distinguish comprehension failure from another kind of silencing that might occur when, for instance, an audience is caused to think that **speakers are intellectually limited or otherwise inferior**. In this case, the audience grasps what the speaker means to say perfectly well, but ignores it or dismisses it out of hand because they believe the speaker is not the kind of person worth listening to...There is considerable evidence that racist hate speech—especially when directed by a member of a dominant group against a member of a historically marginalized group—functions to undermine the attention and consideration that is paid to the speech of those it targets.

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Descartes was a very fine philosopher

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We could spin the parrot example so it's a case of consideration failure—'This is a parrot, he knows nothing about philosophy!'

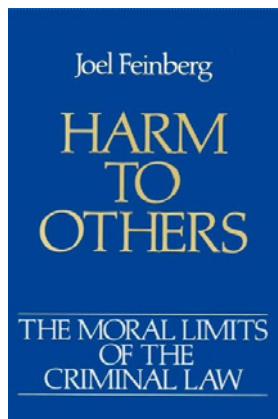
18

consideration failure

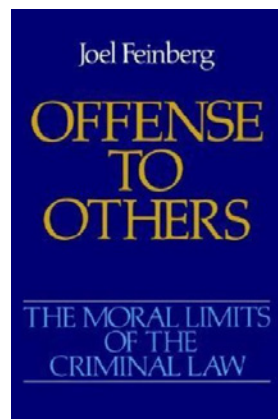
Proposed law: “no one shall act in ways that systematically prevents the speech of another from being attended to or considered.”

what do you think?

19



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20

Joel Feinberg

Article Talk

From Wikipedia, the free encyclopedia

Joel Feinberg (October 19, 1926 – March 29, 2004) was an American political and legal philosopher. He is known for his work in the fields of ethics, action theory, philosophy of law, and political philosophy^[1] as well as individual rights and the authority of the state.^[2] Feinberg was one of the most influential figures in American jurisprudence of the last fifty years.^[3]

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21



A copy of Salman Rushdie's novel 'The Satanic Verses' is burned during a demonstration in Bradford, England, in 1989 called by Muslims. (Severin Carrell / Camera Press / Redux)

SALMAN RUSHDIE AND THE CULT OF OFFENSE

This is what happens when you debase free expression in the name of free expression.

By Graeme Wood

AUGUST 14, 2022

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22

Cambridge Union to host 'gender critical' academic



The Cambridge Union is set to host controversial academic Dr Kathleen Stock on the 17th November for a debate on the motion, this house believes in the right to offend, *Varsity* can reveal.

Dr Kathleen Stock is currently trustee of the LGBT Alliance, who have been called a transphobic organisation

From "Cambridge Union to Host 'Gender Critical' Academic," *Varsity*, October 29, 2022. © Varsity Publications 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/>.

23

Mill's "Harm Principle"

the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. **That 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.** His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. (*On Liberty*, 80)

but what about "offense"—couldn't the state sometimes intervene here?

24

harm: sense 1

...the sense in which we can say that any kind of thing at all can be “harmed.” By smashing windows, vandals are said to harm people’s property; neglect can harm one’s garden; frost does harm to crops. Quite clearly this is harm in a transferred sense; we don’t feel aggrieved on behalf of the windows or the tomatoes, nor are they the objects of our sympathies. Rather our reference to their “harm” is elliptical for the harm done to those who have interests in the buildings or the crops, those who have in a manner of speaking “invested” some of their own well-being in the maintenance or development of some condition of those objects.

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25

harm: sense 2

The second genuine sense of “harm” is that from which the transferred sense derives, namely harm conceived as the thwarting, setting back, or defeating of an interest. The term “interest” when used in this way is obviously not meant to refer to “money due on loans” or “the excitement of attention or curiosity,” perhaps its most common senses. There is, however, a familiar commercial-legal sense of the word that can serve as a helpful model for understanding the word in the sense in which it is linked to harm....If I have an interest, in this sense, in the Apex Chemical Company, I have a kind of stake in its well-being...I have a very large stake indeed, however (and not merely in a financial sense), in the furtherance of my professional career, the protection of my total assets, the peace and prosperity of my country, and the well-being of my family and loved ones. It is greatly *in my interest* that these causes flourish.



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26

harm: sense 3

The third sense of harm, while closely related to the second, is in fact a distinct notion that can often be at variance with it. This is a kind of normative sense which the term must bear in any plausible formulation of the harm principle. To say that A has harmed B in this sense is to say much the same thing as that A has wronged B, or treated him unjustly. One person wrongs another when his indefensible (unjustifiable and inexcusable) conduct violates the other's right, and in all but certain very special cases such conduct will also invade the other's interest and thus be harmful in the sense already explained

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2 without 3? 3 without 2?

27

harm and the harm principle

What then is the sense of "harm" employed by the harm principle, as we will here understand it? Since we have distinguished harms (setbacks to interest) from wrongs ("harm" in the third sense), and allowed for the existence both of rare nonharmful wrongs and common nonwrongful harms, which of these combinations captures the sense of "harm" in the liberty-limiting principle?...The sense of "harm" as that term is used in the harm principle must represent the overlap of senses two and three: only setbacks of interests that are wrongs, and wrongs that are setbacks to interest, are to count as harms in the appropriate sense.

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28

1. The reading is from volume 2 of a 4 volume work. In volume 1 Feinberg explains what he means by 'offense':

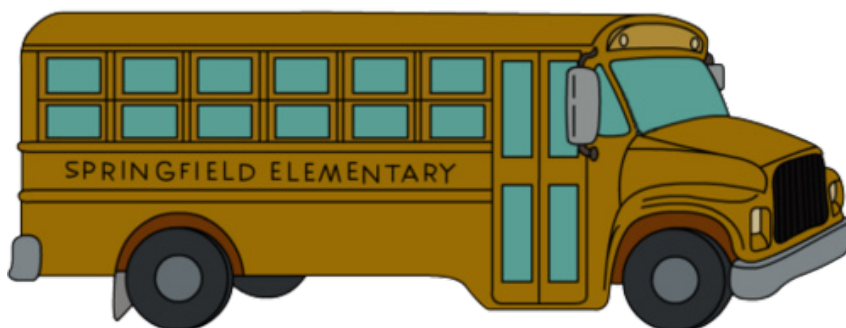
Unhappy but not necessarily harmful experiences can be divided into two categories: those that *hurt* and those that *offend*....Analogous to [physical discomfort], however, are various nonpainful mental states, which are of sufficient interest to be placed in a separate category, and labeled "forms of offendedness." Like their physical analogues, these form a great miscellany of conditions that have little in common except that they don't hurt but are nevertheless universally disliked. Some of the more prominent mental states in this category have already been mentioned: unpleasant sensations, disgust, shocked sensibilities, irritation, frustration, anxiety, embarrassment, shame, guilt, boredom, and certain kinds of responsive anger and fear.

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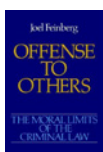
Is this a good definition? Can you think of a better one?

29

"A ride on the bus," pp. 10-13. Which stories describe acts that should be illegal? Why?



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30

A . Affronts to the senses

Story 1. A passenger who obviously hasn't bathed in more than a month sits down next to you. He reeks of a barely tolerable stench. There is hardly room to stand elsewhere on the bus and all other seats are occupied.

Story 2 . A passenger wearing a shirt of violently clashing orange and crimson sits down directly in your forward line of vision. You must keep your eyes down to avoid looking at him.

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31

Story 3 . A passenger sits down next to you, pulls a slate tablet from his brief case, and proceeds to scratch his fingernails loudly across the slate, sending a chill up your spine and making your teeth clench. You politely ask him to stop, but he refuses.

Story 4. A passenger elsewhere in the bus turns on a portable radio to maximum volume. The sounds it emits are mostly screeches, whistles, and static, but occasionally some electronically amplified rock and roll music blares through.

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32

B. Disgust and revulsion

Story 5. This is much like story 1 except that the malodorous passenger in the neighboring seat continually scratches, drools, coughs, farts, and belches.

Story 6 . A group of passengers enters the bus and shares a seating compartment with you. They spread a table cloth over their laps and proceed to eat a picnic lunch that consists of live insects, fish heads, and pickled sex organs of lamb, veal, and pork, smothered in garlic and onions. Their table manners leave almost everything to be desired.

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33

Story 7. Things get worse and worse. The itinerant picnickers practice gluttony in the ancient Roman manner, gorging until satiation and then vomiting on to their table cloth. Their practice, however, is a novel departure from the ancient custom in that they eat their own and one another's vomit along with the remaining food.

Story 8. A coprophagic sequel to *story 7*.

Story 9. At some point during the trip the passenger at one's side quite openly and nonchalantly changes her sanitary napkin and drops the old one into the aisle.

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C. Shock to moral, religious, or patriotic sensibilities

Story 10. A group of mourners carrying a coffin enter the bus and share a seating compartment with you. Although they are all dressed in black their demeanor is by no means funereal. In fact they seem more angry than sorrowful, and refer to the deceased as “the old bastard,” and “the bloody corpse.” At one point they rip open the coffin with hammers and proceed to smash the corpse’s face with a series of hard hammer blows.

Story 11. A strapping youth enters the bus and takes a seat directly in your line of vision. He is wearing a T-shirt with a cartoon across his chest of Christ on the cross. Underneath the picture appear the words “Hang in there, baby!”

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35

Story 12. After taking the seat next to you a passenger produces a bundle wrapped in a large American flag. The bundle contains, among other things, his lunch, which he proceeds to eat. Then he spits into the star-spangled corner of the flag and uses it first to clean his mouth and then to blow his nose. Then he uses the main striped part of the flag to shine his shoes.

D. Shame, embarrassment (including vicarious embarrassment), and anxiety

Story 13. The passenger who takes the seat directly across from you is entirely naked. On one version of the story, he or she is the same sex as you; on the other version of the story, he or she is the opposite sex.

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36

Story 14. The passenger in the previous story proceeds to masturbate quietly in his or her seat.

Story 15. A man and woman, more or less fully clothed to start, take two seats directly in front of you, and then begin to kiss, hug, pet, and fondle one another to the accompaniment of loud sighs and groans of pleasure. They continue these activities throughout the trip.

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37

Story 16. The couple of the previous story, shortly before the bus reaches their destination, engage in acts of mutual masturbation, with quite audible instructions to each other and other sound effects.

Story 17. A variant of the previous story which climaxes in an act of coitus, somewhat acrobatically performed as required by the crowded circumstances.

Story 18. The seat directly in front of you is occupied by a youth (of either sex) wearing a T-shirt with a lurid picture of a copulating couple across his or her chest.

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38

Story 19. A variant of the previous story in which the couple depicted is recognizable (in virtue of conventional representations) as Jesus and Mary.

Story 20. The couple in stories 15-17 perform a variety of sadomasochistic sex acts with appropriate verbal communications (“Oh, that hurts so sweet! I Sit me again! Scratch me! Publicly humiliate me!”).

Story 21. The two seats in front of you are occupied by male homosexuals. They flirt and tease at first, then kiss and hug, and finally perform mutual fellatio to climax.

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39

Story 22. This time the homosexuals are both female and they perform cunnilingus.

Story 23. A passenger with a dog takes an aisle seat at your side. He or she keeps the dog calm at first by petting it in a familiar and normal way, but then petting gives way to hugging, and gradually goes beyond the merely affectionate to the unmistakably erotic, culminating finally with oral contact with the canine genitals.

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40

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