

Freedom of Expression, Hate Speech, and Censorship

Peter Vallentyne, Philosophy, VCU, April 6, 2013

In a narrow sense, hate speech is symbolic representation that expresses, hatred, contempt, or disregard for another person or group of persons. The use of deeply insulting racial or ethnic epithets is an example of such hate speech. In a broader sense, hate speech also includes the symbolic representation of views are deeply offensive to others. The expression of the view that women are morally inferior to (or less intelligent than) men is example of hate speech in the broader sense. The question I shall address is this: What should be done about hate speech in the broad sense in a free and open society?

I shall focus primarily on moral questions about hate speech, and not on the constitutional question about what sorts of restrictions the First Amendment permits. The courts have made clear that restrictions on freedom of expression are unconstitutional if they are formulated in vague language, are not the least restrictive means to achieving a compelling state interest, or are not viewpoint neutral (i.e., if the expression of certain views is prohibited, but the expression of opposing views is not). The views I defend are, I believe, with these constitutional constraints.

As a minimum, there are a number of things that we can, and should, do to deal with hate speech that do not involve the restriction of freedom of expression. As citizens, educators, and public leaders, we must have the courage and energy to denounce publicly hate speech (even if it is legally allowed). We must emphasize how it is typically based on pseudo-science, superstition, ignorance, and insecurity. We must show just how ridiculous and abhorrent the hate speech claims are. In addition, we must educate the public, and especially children and adolescents, on the importance of free and open discussion. They must understand the importance of protecting the

right of people to express views that they find morally repugnant. They must also understand the importance of keeping an open mind, of listening to those with whom they disagree, and of civilly and respectfully addressing points of disagreement.

So, there are a number actions that can be taken without restricting freedom of expression. This leaves the question: Under what conditions, if any, is it morally legitimate for the state to restrict freedom of expression? Before answering that question, we must address the question of why freedom of expression matters.

In On Liberty (1859) John Stuart Mill identifies a number of reasons why it is morally important to protect freedom of expression. One reason is that freedom of expression is a freedom that intrinsically matters a lot to most people. It involves both the freedom to express our beliefs and values, and the freedom to be informed by the publicly expressed beliefs and values of others. A second reason that it is morally important to protect freedom of expression is that freedom of expression typically promotes the discovery of, and the respect for, the truth. The knowledge gained matters both in its own right and because it leads to better decisions and thus a better quality of life. Although there are other reasons for some sort of protection of freedom of expression, these two reasons are sufficient, I believe, to establish the moral importance of such protection.

Given the importance of human freedom generally, J.S. Mill concludes, and I concur, that legal restrictions on freedom are morally legitimate only if they are the least restrictive means of reducing the extent to which innocent people are significantly harmed by others. Applied to freedom of expression, this yields the result that legal restrictions that do not reduce significant harms to others, or which are not the least restrictive means of doing so, are not morally legitimate.

A full discussion of this implication would require a careful discussion of what counts as a significant harm, which I cannot give here. A plausible view, I would argue, would not consider mild offense as a significant harm, and thus would not allow restrictions of freedom of expressions to reduce mild offense to others.

The second reason given above for the why freedom of expression is important was that it typically promotes the discovery of, and respect for, the truth. Truth is sufficiently important that, I claim, restrictions on freedom of expression are morally legitimate only if the prohibited expression plays no reasonable role in critical inquiry (e.g., reflection, discussion, or debate). It follows from this that even expression that significantly harms others should not be prohibited, if it plays a reasonable role in critical inquiry.

Although I can't here defend the view, I claim that the above two conditions exhaust the conditions under which restrictions on freedom of expression are morally illegitimate. Consequently, I claim, restrictions on expression are morally justified if and only if (1) the prohibited expression plays no reasonable role in critical inquiry, and (2) the restrictions are the least restrictive means of reducing significant harm to others.

On this view, it is illegitimate to prohibit the mere expression of a view advocating the superiority, or inferiority, of some social group. As long as it has a reasonable role in critical inquiry, suppression is inappropriate. It is also illegitimate to prohibit expression merely because some (or many) find it offensive. The prohibition must be effective in reducing significant harms to others. Finally, it may well be legitimate to prohibit the expression of hate speech when it is repeatedly directed at particular person face-to-face in a context where its purpose is intimidation

and not critical inquiry. Typically, such expression will, I would argue, significantly harm the individual, and as long as the restriction is the least restrictive means of reducing the harm, it is legitimate.

As should be apparent, the approach advocated above will typically judge suitably crafted harassment codes (which focus on significant effects on others) morally legitimate, but will typically judge speech codes (which focus on the content of what was said) morally illegitimate.

Obviously, the issue is complex, and I have only skimmed the surface in this short space. There are many complexities that deserve a much fuller discussion. And I haven't addressed at all various objections that many would raise. But enough has been said, I hope, to outline and motivate a particular liberal approach to freedom of expression.

Suggested Readings

Barendt, E. Freedom of Speech (1985).

Coliver, Sandra, ed. Striking a Balance: Hate Speech, Freedom of Expressions, and Non-Discrimination (1992).

Fish, Stanley. There's No Such Thing as Free Speech (1994).

Greenawalt, Kent. Speech, Crime, and the Uses of Language (1989).

Hentoff, Nat. Free Speech for Me - But Not for Thee (1992).

Mill, John Stuart. On Liberty (1859).

Schauer, Frederick. Free Speech (1982).

Smolla, Rodney. Free Speech in an Open Society (1992).

Sunstein, Cass. Democracy and the Problem of Free Speech (1993).

Nadine Strossen, Defending Pornography (1995).

Tucker, D.F.B. Law, Liberalism, and Free Speech (1985).