

Media, Violence and Pornography

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The course explores possible boundaries to freedom of expression. It highlights John Stuart Mill's Harm to Others Principle as well as the Offence Principle: Can we say that sometimes, the harm or the offence brought about by a certain speech constitutes such an injury that it cannot be tolerated? More specifically, the question is: Under what conditions preventing offence can provide adequate grounds for limiting freedom of expression. Attention will be given to examples taken from the United States, Canada, Britain and Israel. We will touch upon controversial expressions such as racism; hate speech; incitement; offensive speech; hard core, soft core, and virtual pornography; media coverage of violence; violence on TV and in the movies; media coverage of suicide and of assisted suicide.

Grading

Active participation in class (25%);
Presenting a paper in class (25%);
Test (50%).

Readings noted with * are optional.

1. Why Speech Enjoys Special Status?

Introduction

Aharon Barak, "Freedom of Expression and Its Limitations", in Raphael Cohen-Almagor (ed.), *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin* (London: Ashgate Publishing Ltd., 2000), pp. 167-188.

R. Cohen-Almagor, "The Scope of Tolerance and Its Moral Reasoning", in *The Scope of Tolerance* (forthcoming).

The Absolutist School

The importance of the First Amendment in the US;
Self-government and autonomy.

Alexander Meiklejohn, "The First Amendment Is An Absolute", *The Supreme Court Review* (1961), pp. 245-266.

Alexander Meiklejohn, "Freedom of Speech", in Peter Radcliff (ed.), *Limits of Liberty* (Belmont, California: Wadsworth Publishing Co., 1966), pp. 19-26.

Raphael Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: University Press of Florida, 1994), chap. 5.

* Alexander Meiklejohn, "The Balancing of Self-Preservation Against Political Freedom", *California Law Review* (1961), Vol. 49, pp. 4-14.

* Hugo L. Black, "The Bill of Rights", *N.Y. University Law Review* (1960), Vol. 35, pp. 865-881.

* Raphael Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: University Press of Florida, 1994), chap. 1.

The Consequentialist School

The notion of tolerant society;
Actual harm v. the fear of consequences.

John Rawls, *A Theory of Justice* (Oxford: Oxford UP., 1971), pp. 216-221.

Lee C. Bollinger, *The Tolerant Society* (Oxford: Oxford UP, 1986), pp. 175-200.

Anthony Skillen, "Freedom of Speech", in Keith Graham (ed.), *Contemporary Political Philosophy* (Cambridge: Cambridge UP, 1982), pp. 139-159.

* Frederick Schauer, "The Cost of Communicative Tolerance", in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000), pp. 28-42.

* Raphael Cohen-Almagor, *The Boundaries of Liberty and Tolerance*, chap. 4.

2. Boundaries to Freedom of Expression

Mill's theory: freedom of thought, of speech, and of action;
Limits to free expression;
The Millian Truth Principle;
Respect for others.

J.S. Mill, *On Liberty*, chaps. 1, 3, 4, 5.

* David Lyons, "Liberty and Harm to Others", in Robert M. Stewart (ed.) *Readings in Social and Political Philosophy* (Oxford UP., 1986), pp. 156-167.

* Joseph Raz, "Autonomy, Toleration, and the Harm Principle", in Susan Mendus (ed.), *Justifying Toleration* (Cambridge UP., 1988), pp. 155-175.

* Joel Feinberg, *Harm to Others* (Oxford UP., 1984), chaps. 2, 3.

3. Offensive Speech

- Offensive speech in plays
- Offensive speech in films.

Joel Feinberg, *Offence to Others* (Oxford UP., 1985), Chaps. 7, 9.

R. Cohen-Almagor, "The Offence to Sensibilities Argument as A Ground for Limiting Freedom of Expression", *International Journal of Politics and Ethics*, Vol. 2, Issues 2 and 3 (2002), pp. 101-117 and 189-209 (two parts).

4. Racism

The Nazi attempted march in Skokie;
Media's ban on Meir Kahane;
Ban racist speech?;
The right to participate in elections;

David Kretzmer, "Freedom of Speech and Racism", *Cardozo Law Review* (1987), pp. 445-513.

R. Cohen-Almagor, *Speech, Media, and Ethics: The Limits of Free Expression* (New York and Houndmills: Palgrave, 2001), chap. 1.

R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL.: University Press of Florida, 1994), pp. 223-229.

R. Cohen-Almagor, "The Right to Participate in Elections: Judicial and Practical Considerations", in *Speech, Media, and Ethics: The Limits of Free Expression* (New York and Houndmills: Palgrave, 2001), pp. 42-65.

* Norman Dorsen, "Is There A Right to Stop Offensive Speech? The Case of the Nazis in Skokie", in Larry Gostin (ed.), *Civil Liberties in Conflict* (London: Routledge, 1988), pp. 122-135.

* R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance*, chap. 9.

* John Solomos, *Race and Racism in Contemporary Britain* (Basingstoke: Macmillan, 1989), chaps. 4, 7, 10.

5. Hate Speech

Media coverage of hate speech and Holocaust denial in Canada;

The David Duke affair in the United States;

Nazi memorabilia on the Internet: The *Yahoo* case in France and the USA.

David E. Boeyink, "Reporting on Political Extremists in the United States: The Ku Klux Klan, the Unabomber, and the Militias", in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000), pp. 215-231.

R. Cohen-Almagor, "Ethical Considerations in Media Coverage of Hate Speech in Canada", *Review of Constitutional Studies*, Vol. 6, No. 1 (2001), pp. 79-100.

Joel R. Reidenberg, "Yahoo and Democracy on the Internet", *Jurimetrics*, Vol. 42 (2002), pp. 261-280.

Video: Websites of hate.

Ernst Zundel.

* Gabriel Weimann and Conrad Winn, *Hate on Trial* (Mosaic Books, 1985), chaps. 3, 4.

* David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair* (Toronto: Doubleday, 1985), chaps. 8, 10.

* Wayne Sumner, "Should Hate Speech be Free Speech? John Stuart Mill and the Limits of Tolerance", in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).

* Barry Steinhardt, "Hate Speech", in Yaman Akdeniz, Clive Walker and David Wall (eds.), *The Internet, Law and Society* (Harlow, Essex: Pearson Education Ltd., 2000), pp. 249-271.

5. Threats and Incitement

Advocacy v. incitement;
 The Nuremberg files;
 The Paladin case;
 The assassination of Yitzhak Rabin;
 Media accountability;

***USA v. Baker and Gonda* 890 F. Supp. 1375, US District Court, E.D. Michigan (June 21, 1995).**

***USA v. Alkhabaz* 104 F.3d 1492 (6th Cir. 1997).**

***Planned Parenthood of the Columbia/Willamette Inc. et al v. American Coalition of Life Activists*, U.S Court of Appeals for the Nine Circuit (May 21, 2002).**

***Rice v. Paladin Enterprises Inc.*, No. 96-2412, 128 F.3d 233 (November 10, 1997).**

* *Planned Parenthood of the Columbia/Willamette Inc. et al v. American Coalition of Life Activists*, No. 95-1671-JO, 41 F.Supp.2d 1130 (March 16, 1999).

* *Planned Parenthood of the Columbia/Willamette Inc. et al v. American Coalition of Life Activists*, U.S Court of Appeals for the Nine Circuit (March 28, 2001).

* Jennifer E. Rothman, "Freedom of Speech and True Threats", *Harvard J. of Law & Public Policy*, Vol. 25, Issue 1 (2001).

Video: Paladin Press.

Incitement in Israel

Raphael Cohen-Almagor, "Combating Right-Wing Political Extremism in Israel: Critical Appraisal", *Terrorism and Political Violence*, Vol. 9, No. 4 (1997), pp. 82-105.

Raphael Cohen-Almagor, "Boundaries of Freedom of Expression Before and After Prime Minister Rabin's Assassination", in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).

Video: The Incitement Campaign against Prime Minister Rabin

6. Terrorism

The Media - the terrorist's best friend;
 The October 1970 crisis in Canada: media coverage of the FLQ;
 Objectivity and neutrality;
 The relationships between government, media and terrorists;
 Free speech after September 11, 2001;
 The Patriot Act.

Lord Chalfont, "The Price of Sympathy", in Benjamin Netanyahu (ed.), *Terrorism: How the West Can Win* (New York: Farrar, Straus, Giroux, 1986), pp. 126-129.

R. Cohen-Almagor, "Objective Reporting in the Media: Phantom Rather than Panacea", in *Speech, Media, and Ethics: The Limits of Free Expression* (London: Palgrave, 2001).

R. Cohen-Almagor, "The Terrorists' Best Ally: The Quebec Media Coverage of the FLQ Crisis in October 1970", *Canadian Journal of Communication*, Volume 25, No. 2 (2000), pp. 251-284.

Marin R. Scordato and Paula A. Monopoli, "Free Speech Rationales After September 11th: The First Amendment in Post-World Trade Center America", *Stanford Law and Policy Review*, Vol. 13 (2002), 185.

Video: ABC on Terrorist events

* R.D. Crelinsten, "Power and Meaning: Terrorism as a Struggle over Access to the Communication Structure", in Paul Wilkinson and Alasdair M. Stewart (eds.), *Contemporary Research on Terrorism* (Aberdeen: Aberdeen University Press, 1989), pp. 419-450.

* Marc Raboy, *Movements and Messages* (Toronto: Between the Lines, 1984), pp. 64-74.

* Robert A. Hackett, and Yuezhi Zhao, *Sustaining Democracy? Journalism and the Politics of Objectivity* (Toronto: Garamond Press, 1998), Chap. 2.

* Robert G. Picard, "The Journalist's Role in Coverage of Terrorist Events", in Alali, A. Odasuo and Kenoye Kelvin Eke (eds.), *Media Coverage of Terrorism* (Newbury Park, Cal.: Sage, 1991), pp. 40-48.

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http://www.eff.org/Privacy/Surveillance/Terrorism_militias/20011025_hr3162_usa_patriot_bill.html

7. Media Coverage of Violence and of Suicide

Media coverage of suicide;
Violence in communication and its influence on children;
Should we employ censorship in television?

Canadian Broadcast Standards Council, Ontario Regional Council, Decision Concerning 'Mighty Morphin Power Rangers' on CIII-TV (April-May 1994), files 9394-270; 9394-277).

R. Cohen-Almagor, "Media Coverage of Suicide: Comparative Analysis", *Speech, Media, and Ethics: The Limits of Free Expression*, pp. 105-123.

Video: Violence on Television

8. Medical Ethics: Assisted Suicide

Jack Kevorkian's suicide machine;
Sue Rodriguez;
Death on Request: The first euthanasia on TV;
Jack Kevorkian's campaign .

Margaret A. Somerville, "Euthanasia in the Media: Journalists' Values, Media Ethics and 'Public Square' Messages", *Humane Health Care International*, Vol. 13, No. 1 (Spring 1997), pp. 17-20.

Josefson, Deborah, "Video Guide to Suicide Is Shown on Television," *BMJ*, Vol. 320 (12 February 2000).

Beth Haller and Sue Ralph, "Not Worth Keeping Alive? News framing of physician-assisted suicide in the United States and Great Britain," *Journalism Studies*, Volume 2, Number 3 (August 2001), pp. 407- 421.

Video: 60 Minutes on Jack Kevorkian

Video: Death on Request

* E. Haavi Morreim, "Bioethics and the Press", *The Journal of Medicine and Philosophy*, Vol. 24, No. 2 (April 1999), pp. 103-107.

* Albert Rosenfeld, "The Journalist's Role in Bioethics", *The Journal of Medicine and Philosophy*, Vol. 24, No. 2 (April 1999), pp. 108-129.

* Martyn Evans, "Bioethics and the Newspapers", *The Journal of Medicine and Philosophy*, Vol. 24, No. 2 (April 1999), pp. 164-180.

* R. Cohen-Almagor, "Language and Reality at the End of Life", *Journal of Law, Medicine and Ethics*, Vol. 28, No. 3 (Fall 2000), pp. 267-278.

9. Pornography

Erotica, Soft and hard-core pornography;

Liberal, feminist and conservative views.

Child pornography.

T.M. Scanlon, "Freedom of Expression and Categories of Expression", *Un. of Pittsburgh Law Review*, No. 3 (1979), pp. 519-550 (read only the part dealing with pornography).

Roth v. U.S. 354 U.S. 476 (1957).

Ronald Dworkin, "Do We Have A Right to Pornography?", in *A Matter of Principle* (Oxford: Clarendon Press, 1986), pp. 335-372.

Rae Langton, "Whose Right? Ronald Dworkin, Women, and the Pornographers", *Philosophy and Public Affairs*, Vol. 19 (1990), pp. 311-359.

Yaman Akdeniz, "Child Pornography", in Yaman Akdeniz, Clive Walker and David Wall (eds.), *The Internet, Law and Society* (Harlow, Essex: Pearson Education Ltd., 2000), pp. 231-248.

Video : Not a Love Story

Virtual Pornography

Ashcroft v. Free Speech Coalition 535 U.S. (2002).

Arnold H. Loewy, "Taking Free Speech Seriously: The United States Supreme Court and Virtual Child Pornography", *UNC Public Law Research Paper No. 02-17* (2002).

10. Looking Ahead

The authority of the Press Council;
Should the Council be equipped with more powers?
Who should control the media;
The role of schools of communication;
Do we need codes of ethics?

Sir David Calcutt QC, "Review of Press Self-Regulation," London HMSO - Department of National Heritage (January 1993), pp. XI-XIV, 1-63, 75-77.

Raphael Cohen-Almagor, "Ethical Boundaries to Media Coverage", *Speech, Media, and Ethics: The Limits of Free Expression* (Houndmills and New York: Palgrave, 2001). Reprinted in *Australian Journal of Communication*, Vol. 26, No. 2 (1999), pp. 11-34.

R. Cohen-Almagor, "The Work of the Press Councils in Britain, Canada, and Israel: Comparative Appraisal", in *Speech, Media, and Ethics: The Limits of Free Expression*.

Neil Nemeth, "A News Ombudsman as an Agent of Accountability", in David Pritchard (ed.), *Holding the Media Accountable* (Bloomington and Indianapolis: Indiana University Press, 2000), pp. 55-67.

* R. Cohen-Almagor and Y. Yanovitzky, "Perceptions of Media Coverage among the Israeli-Jewish Public: A Reflection of Existing Social Cleavages?", in *Speech, Media, and Ethics: The Limits of Free Expression*.