

PRICE \$7.99

JAN. 19, 2015

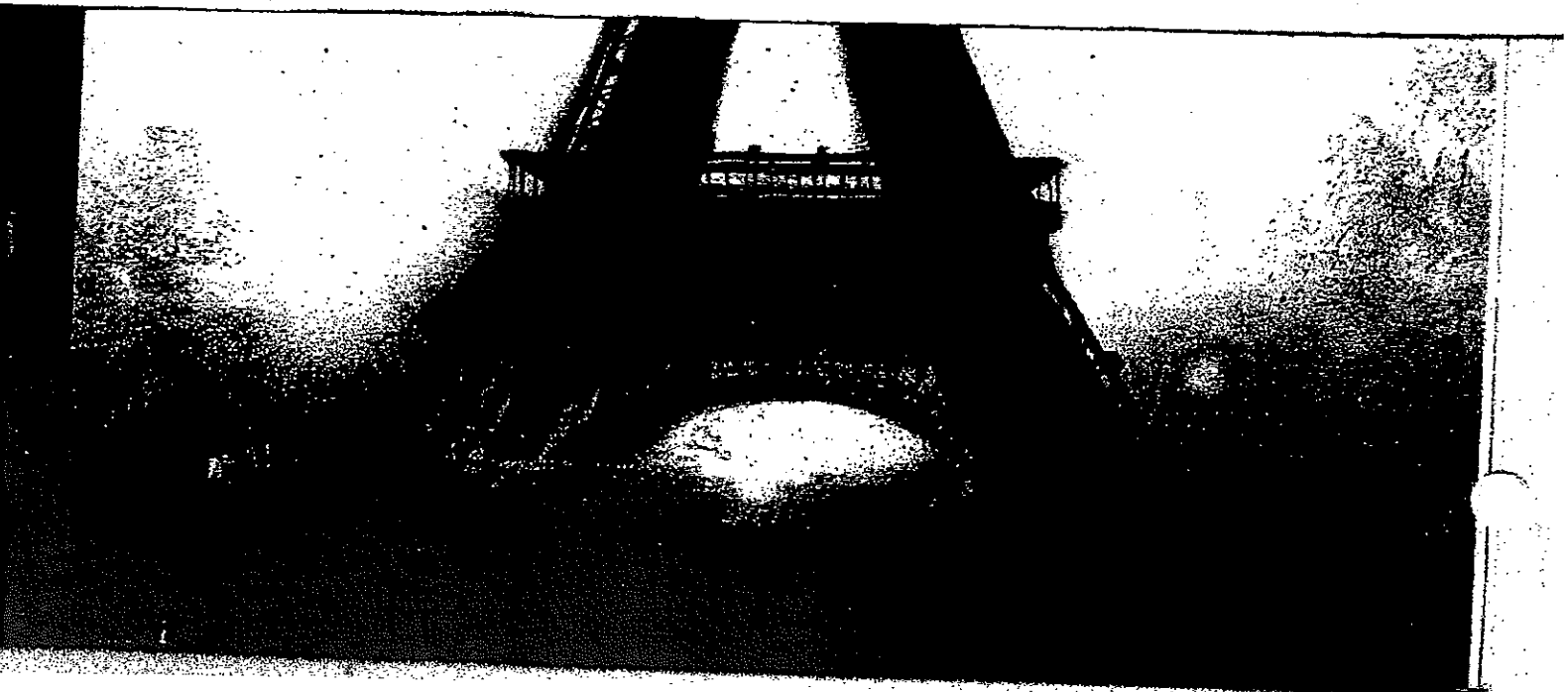
THE NEW YORKER

Inquiring minds: January 30, 2015

Howard Pachman, moderator

Issues presented:

- Horreur de la liberté de la parole [sic]
- Versus
- Freedom to use hate speech in U.S. as part of our first amendment.
- Four (4) different views of the French tragedy in Paris of the killing of the satirists of Charlie Hebdo and the Jews in kosher store.
- American Bar Association summary on hate speech in this country.
- During our discussion, I will cite several supreme court cases on hate speech.





THE TALK OF THE TOWN

COMMENT SATIRE LIVES

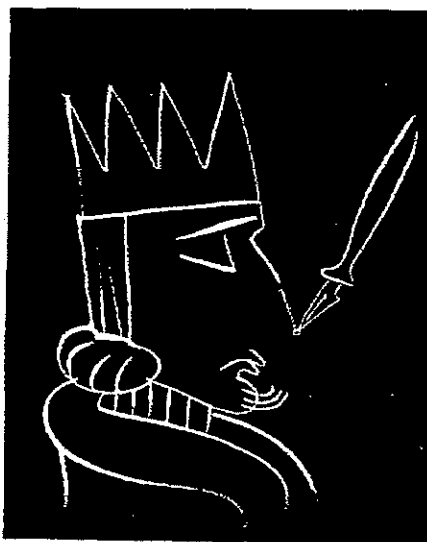
The staff of the French magazine *Charlie Hebdo*, massacred in an act that shocked the world last week, were not the gentle daily satirists of American editorial cartooning. Nor were they anything like the ironic observers and comedians of manners most often to be found in our own beloved stable here at *The New Yorker*. (Though, to be sure, the covers of this magazine have startled a few readers and started a few fights.) They worked instead in a peculiarly French and savage tradition, forged in a long nineteenth-century guerrilla war between republicans and the Church and the monarchy. There are satirical magazines and "name" cartoonists in London and other European capitals, particularly Brussels, but they tend to be artier in touch and more media-centric in concern. *Charlie Hebdo* was—will be again, let us hope—a satirical journal of a kind these days found in France almost alone. Not at all meta or ironic, like *The Onion*, or a place for political gossip, like the Paris weekly *Le Canard Enchaîné* or London's *Private Eye*, it kept alive the nineteenth-century style of direct, high-spirited, and extremely outrageous caricature—a tradition begun by now legendary caricaturists, like Honoré Daumier and his editor Charles Philippon, who drew the head of King Louis-Philippe as a pear and, in 1831, was put on trial for lèse-majesté.

Philippon's famous faux-naïf demonstration of the process of caricature still brings home the almost primitive kind of image magic that clings to the act of cartooning. In what way was he guilty, Philippon demanded to know, since the King's head was pear-shaped, and how could merely simplifying it to its outline be viewed as an attack? The coarser and more scabrous cartoons that marked the covers of *Charlie Hebdo*—and took in Jesus and Moses, along with Muhammad; angry rabbis and ranting bishops, along with imams—were the latest example of that tradition. In the era

of the Internet, when images proliferate, merge, and alter in an Adobe second, one would think that the power of a simple, graffiti-like scrawl was minimal. Indeed, analysts of images and their life have been telling us for years that this sort of reaction couldn't happen anymore—that the omnipresence of images meant they could not offend, that their meanings and their capacity to shock were enfeebled by repetition and availability. Even as the Islamist murderers struck in Paris, some media-studies maven in a liberal-arts college was doubtless explaining that the difference between our time and times past is that the ubiquity of images benumbs us and their proliferation makes us indifferent. Well, not quite. It is the images that enrage; many things drove the fanatics to their act, but it was cartoons they chose to fixate on. Drawings are handmade, the living sign of an ornery human intention, rearing up against a piety.

For those who recall *Charlie Hebdo* as it really, rankly was, the act of turning its murdered cartoonists into pawns in a game of another kind of public piety—making them martyrs, misunderstood messengers of the right to free expression—seems to risk betraying their memory. Wolinski, Cabu,

Honoré: like soccer players in Brazil, each was known in France by a single name. A small irreverent smile comes to the lips at the thought of the flag being lowered, as it was throughout France last week, for these anarchist mischief-makers, and they would surely have roared at the irony of being solemnly mourned and marched for by former President Nicolas Sarkozy and the current President, François Hollande. The cartoonists didn't just mock those men's politics; they regularly amplified their sexual appetites and diminished their sexual appurtenances. It is wonderful to see Pope Francis condemning the horror, but also worth remembering that magazine's special



Christmas issue, titled "The True Story of Baby Jesus," whose cover bore a drawing of a startled Mary giving notably frontal birth to her child. (Did the Pope see it?)

Nor was it only people's pieties that the cartoonists liked to tweak. Georges Wolinski, eighty years old, born of a Polish Jewish father and a Tunisian Jewish mother, caused a kerfuffle two years ago by creating a poster—for the Communist Party, no less—in favor of early retirement, which showed a happily retired man grabbing the rear ends of two apparently compliant miniskirted women. "Life Begins at Sixty" was the jaunty caption. Yet Wolinski, for all his provocations, was a life-affirming and broadly cultured bon vivant, who became something of an institution; in 2005, he was awarded the Légion d'Honneur, the highest French decoration.

In recent years, *Charlie Hebdo* has had to scabble for money. It gets lots of attention, but satirical magazines of opinion are no easier to finance in France than they are in America. Still, Wolinski and his confederates represented the true Rabelaisian spirit of French civilization, in their acceptance of human appetite and their contempt for false high-mindedness of any kind, including the secular high-mindedness that liberal-minded people hold dear. The magazine was offensive to Jews, offensive to Muslims, offensive to Cath-

olics, offensive to feminists, offensive to the right and to the left, while being aligned with it—offensive to everybody, equally. (The name *Charlie Hebdo* came into being, in part, in response to a government ban that had put an earlier version of the magazine out of business; it was both a tribute to Charlie Brown and a mockery of Charles de Gaulle.) The right to mock and to blaspheme and to make religions and politicians and *bien-pensants* all look ridiculous was what the magazine held dear, and it is what its cartoonists were killed for—and we diminish their sacrifice if we give their actions shelter in another kind of piety or make them seem too noble, when what they pursued was the joy of ignobility.

As the week came to its grim end, with the assassins dead and several hostages—taken not by chance in a kosher grocery store—dead, too, one's thoughts turned again to the inextinguishable French tradition of dissent, the tradition of Zola, sustained through so much violence and so many civic commotions. "Nothing Sacred" was the motto on the banner of the cartoonists who died, and who were under what turned out to be the tragic illusion that the Republic could protect them from the wrath of faith. "Nothing Sacred": we forget at our ease, sometimes, and in the pleasure of shared laughter, just how noble and hard-won this motto can be.

—Adam Gopnik

The biggest threat to French free speech isn't terrorism. It's the government.

The murders at Charlie Hebdo, while tragic, aren't the problem.

Parisians rally at the Place de la Republique. (Thierry Chesnot/Getty Images)

By Jonathan Turley January 8

Jonathan Turley is the Shapiro professor of public interest law at George Washington University.

Within an hour of the massacre at the headquarters of the Charlie Hebdo newspaper, thousands of Parisians spontaneously gathered at the Place de la Republique. Rallying beneath the monumental statues representing Liberty, Equality and Fraternity, they chanted "Je suis Charlie" ("I am Charlie") and "Charlie! Liberty!" It was a rare moment of French unity that was touching and genuine.

Yet one could fairly ask what they were rallying around. The greatest threat to liberty in France has come not from the terrorists who committed such horrific acts this past week but from the French themselves, who have been leading the Western world in a crackdown on free speech.

Indeed, if the French want to memorialize those killed at Charlie Hebdo, they could start by rescinding their laws criminalizing speech that insults, defames or incites hatred, discrimination or violence on the basis of religion, race, ethnicity, nationality, disability, sex or sexual orientation. These laws have been used to harass the satirical newspaper and threaten its staff for years. Speech has been conditioned on being used “responsibly” in France, suggesting that it is more of a privilege than a right for those who hold controversial views.

In 2006, after Charlie Hebdo reprinted controversial cartoons of the prophet Muhammad that first appeared in a Danish newspaper, French President Jacques Chirac condemned the publication and warned against such “obvious provocations.”

“Anything that can hurt the convictions of someone else, in particular religious convictions, should be avoided,” he said. “Freedom of expression should be exercised in a spirit of responsibility.”

The Paris Grand Mosque and the Union of French Islamic Organizations sued the newspaper for insulting Muslims — a crime that carries a fine of up to 22,500 euros or six months’ imprisonment. French courts ultimately ruled in Charlie Hebdo’s favor. But France’s appetite for speech control has only grown since then.

The cases have been wide-ranging and bizarre. In 2008, for example, Brigitte Bardot was convicted for writing a letter to then-Interior Minister Nicolas Sarkozy about how she thought Muslims and homosexuals were ruining France. In 2011, fashion designer John Galliano was found guilty of making anti-Semitic comments against at least three people in a Paris cafe. In 2012, the government criminalized denial of the Armenian genocide (a law later overturned by the courts, but Holocaust denial remains a crime). In 2013, a French mother was sentenced for “glorifying a crime” after she allowed her son, named Jihad, to go to school wearing a shirt that said “I am a bomb.” Last year, Interior Minister Manuel Valls moved to ban performances by comedian Dieudonné M’Bala M’Bala, declaring that he was “no longer a comedian” but was rather an “anti-Semite and racist.” It is easy to silence speakers who spew hate or obnoxious words, but censorship rarely ends with those on the margins of our society.

Notably, among the demonstrators this past week at the Place de la Republique was Sasha Reingewirtz, president of the Union of Jewish Students, who told NBC News, “We are here to remind [the terrorists] that religion can be freely criticized.” The Union of Jewish Students apparently didn’t feel as magnanimous in 2013, when it successfully sued Twitter over posts deemed anti-Semitic. The student president at the time dismissed objections from civil libertarians, saying the social networking site was “making itself an accomplice and offering a highway for racists and anti-Semites.” The government declared the tweets illegal, and a French court ordered Twitter to reveal the identities of anti-Semitic posters.

Recently, speech regulation in France has expanded into non-hate speech, with courts routinely intervening in matters of opinion. For example, last year, a French court fined blogger Caroline Doudet and ordered her to change a headline to reduce its prominence on Google — for her negative review of a restaurant.

While France long ago got rid of its blasphemy laws, there is precious little difference for speakers and authors in prosecutions for defamation or hate speech. There may also be little difference perceived by extremists, like those in Paris, who mete out their own justice for speech the government defines as a crime. To them, this is only a matter of degree in responding to what the government has called unlawful provocations. As the radical Muslim cleric Anjem Choudary wrote this past week, “Why in this case did the French government allow the magazine *Charlie Hebdo* to continue to provoke Muslims?”

It was the growing French intolerance of free speech that motivated the staff of Charlie Hebdo — and particularly its editor, Stéphane Charbonnier — who made fun of all religions with irreverent cartoons and editorials. Charbonnier faced continuing threats, not just of death from extremists but of criminal prosecution. In 2012, amid international protests over an anti-Islamic film, Charlie Hebdo again published cartoons of Muhammad. French Prime Minister Jean-Marc Ayrault warned that freedom of speech “is expressed within the confines of the law and under the control of the courts.”

Charbonnier wasn't cowed — by the government pressure, the public protests or the inclusion of his name on a list of al-Qaeda targets. In an interview with the French newspaper *Le Monde*, he echoed Mexican revolutionary Emiliano Zapata and proclaimed, “I would rather die standing than live on my knees.” Charbonnier was the first person the gunmen asked for in their attack on the office, and he was one of the first to be killed.

The French, of course, have not been alone in rolling back protections on free speech. Britain, Canada and other nations have joined them. We have similar rumblings here in the United States. In 2009, the Obama administration shockingly supported Muslim allies trying to establish a new international blasphemy standard. And as secretary of state, Hillary Clinton invited delegations to Washington to work on implementing that standard and “to build those muscles” needed “to avoid a return to the old patterns of division.” Likewise, in 2012, President Obama went to the United Nations and declared that “the future must not belong to those who slander the prophet of Islam.”

The future once belonged to free speech. It was the very touchstone of Western civilization and civil liberties. A person cannot really defame a religion or religious figures (indeed, you cannot defame the dead in the United States). The effort to redefine criticism of religion as hate speech or defamation is precisely what Charbonnier fought to resist. He once said that by lampooning Islam, he hoped to make it “as banal as Catholicism” for the purposes of social commentary and debate.

Charbonnier died, as he pledged, standing up rather than yielding. The question is how many of those rallying in the Place de la Republique are truly willing to stand with him. They need only to look more closely at those three statues. In the name of equality and fraternity, liberty has been curtailed in France. The terrible truth is that it takes only a single gunman to kill a journalist, but it takes a nation to kill a right.

COMMENTARY

Blasphemy Is at the Front Lines of Free Speech Today

By Walter Olson

This article appeared in TIME on January 7, 2015.

If you defend freedom of speech today, realize that “blasphemy” is its front line, in Paris and the world.

There is no middle ground, no soft compromise available to keep everyone happy—not after the murders at the satirical newspaper *Charlie Hebdo*. Either we resolve to defend the liberty of all who write, draw, type, and think—not just *even* when they deny the truth of a religion or poke fun at it, but *especially* then—or that liberty will endure only at the sufferance of fanatical Islamists in our midst. And this dark moment for the cause of intellectual freedom will be followed by many more.

Can anyone who has paid attention truly say they were surprised by the Paris attack? The French satirical magazine had long been high on a list of presumed Islamist targets. In 2011—to world outrage that was transient, at best—fanatics firebombed its offices over its printing of cartoons. Nor was that anything new. In 2006, the Danish cartoonists of *Jyllands-Posten* had to go into hiding for the same category of offense, as had author Salman Rushdie before them.

In a new book entitled *The Tyranny of Silence: How One Cartoon Ignited a Global Debate on the Future of Free Speech*, journalist Flemming Rose, who was at the center of the Danish cartoon controversy, traces its grim aftermath in the self-silencing of Western opinion. Most of the prestige Western press dodged the running of the cartoons, and beneath the talk of sensitivity was often simple fear. As journalist Josh Barro noted today on Twitter, “Islamists have by and large succeeded in intimidating western media out of publishing images of Muhammad.”

That fear has been felt in the United States as well. Yale's university press, in publishing a book on the Muhammad cartoons controversy, chose to omit printing the cartoons themselves, on the grounds that doing so "ran a serious risk of instigating violence." (The late Christopher Hitchens brilliantly assailed the press for its lack of courage.)

As for elected leaders, they were hardly better. The French government repeatedly pressured *Charlie Hebdo* not to go so far in giving offense. The government of Jacques Chirac stood by at, or by some accounts even encouraged, a court action aimed at fining the magazine for having offended some Muslims. Then-British foreign minister Jack Straw, representing the nation that gave the world John Milton and John Stuart Mill, blasted re-publication of the cartoons as "insensitive" and "disrespectful." And if you imagine the leaders of the United States did much better, here's another Christopher Hitchens column on how mealy-mouthed they were at the time in the cause of the intellectual liberty that is supposed to be among America's proudest guarantees.

The danger is not that there will be too little outpouring of solidarity, grief, and outrage in coming days. Of course there will be that. Demonstrations are already underway across France. The danger comes afterward, once the story passes and intellectuals and those who discuss and distribute their work decide how and whether to adjust themselves to a more intense climate of fear. At media outlets, among conference planners, at universities, there will be certain lawyers and risk managers and compliance experts and insurance buyers ready to advise the safer course, the course of silence.

And then there are the lawmakers. After years in which blasphemy laws were assumed to be a relic of the past, laws accomplishing much of the same effect are once again on the march in Europe, banning "defamation of religion," insult to religious beliefs, or overly vigorous criticism of other people's religions when defined as "hate speech." This must go no further. One way we can honor Charb, Cabu, Wolinski, Tignous, and the others who were killed Wednesday is by lifting legal constraints on what their successors tomorrow can draw and write.

uslims do not believe in the concept of freedom of expression'

By Eugene Volokh January 9

Contrary to popular misconception, Islam does not mean peace but rather means submission to the commands of Allah alone.

So writes "a radical Muslim cleric in London and a lecturer in sharia," Anjem Choudary, in a USA Today op-ed. USA Today has performed a valuable public service here — I mean this entirely sincerely — in reminding people that there is a very dangerous religious denomination out there, which is willing to teach the propriety of murder of blasphemers, which supports the death penalty for apostasy, and which would more broadly suppress the liberty of both Muslims and non-Muslims alike.

To give one more example, a survey touted by CNN as showing that "Around the World, Muslims Heralded Religious Freedom" actually showed that, though "Ninety-seven percent of Muslims in South Asia, 95% in

Eastern Europe, 94% in sub-Saharan Africa and 85% in the Middle East and North Africa responded positively to religious freedom, according to the poll,” in many countries huge percentages of Muslims favor “the death penalty for people who leave the Muslim religion.” For instance, in South Asia, death for apostates is favored by 79% of Afghan Muslims, 75% of Pakistani Muslims, and 43% of Bangladeshi Muslims. In the Middle East and North Africa, the numbers were 88% in Egypt, 83% in Jordan, 62% in the Palestinian Territories, 41% in Iraq, 18% in Tunisia, and 17% in Lebanon.

So there is a religious group — what we might call a “denomination,” to use the Christian term, or “stream,” to use the term sometimes used as to branches of Judaism — that is a deadly enemy to Western democracies and to our most fundamental values. And it’s a large religious denomination: My sense is that it has tens of millions or perhaps hundreds of millions of adherents (though different beliefs of this religious denomination may get more or less support).

What makes all this especially difficult, though, is that some of our most important allies in fighting this religious denomination are other Muslims. They are allies (often) in the military sense, in that we need and often get their logistics and intelligence support, the cooperation of their armed forces and police forces, and permission to operate in their territory. Western police and intelligence organizations also need as much cooperation as possible from their Muslim citizens (and noncitizen residents), in trying to identify and locate the radicals who kill (or who plan to kill).

And, most importantly, my sense is that such extremist ideologies decline because of ideological competition within the religion — more tolerant forms of Islam (or Christianity) drawing adherents away from the less tolerant ones. (Consider Egyptian president Sisi’s call for a “religious revolution” within Islam.) At the same time, unfortunately, the competition goes both ways: Large pools of moderate members of a religion can be substantial sources of new recruits for the more extreme versions of the religion.

Condemning all Muslims as having such murderous and illiberal views (views that blasphemy or apostasy, for instance, should be suppressed through either private or governmental violence) is thus both factually mistaken and counterproductive. If you were trying in 1800 to fight the excesses of the Catholic Church — I use this just as a structural analogy here — doing so by condemning all Christians would be a pretty poor tactic. At the same time, the fact remains that there is within Islam a religious denomination, stream, sect, movement, or whatever else that is a deadly ideological, political, and military enemy to us and our way of life.

Eugene Volokh teaches free speech law, religious freedom law, church-state relations law, a First Amendment Amicus Brief Clinic, and tort law, at UCLA School of Law, where he has also oft

Debating Hate Speech

American Born Deba

to them points

Hate speech is speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits. Should hate speech be discouraged? The answer is easy—of course! However, developing such policies runs the risk of limiting an individual's ability to exercise free speech. When a conflict arises about which is more important—protecting community interests or safeguarding the rights of the individual—a balance must be found that protects the civil rights of all without limiting the civil liberties of the speaker.

In this country there is no right to speak *fighting words*—those words without social value, directed to a specific individual, that would provoke a reasonable member of the group about whom the words are spoken. For example, a person cannot utter a racial or ethnic epithet to another if those words are likely to cause the listener to react violently. However, under the First Amendment, individuals do have a right to speech that the listener disagrees with and to speech that is offensive and hateful.

Think about it. It's always easier to defend someone's right to say something with which you agree. But in a free society, you also have a duty to defend speech to which you may strongly object.

Acts Speak Louder than Words

One way to deal effectively with hate speech is to create laws and policies that discourage bad behavior but do not punish bad beliefs. Another way of saying this is to create laws and policies that do not attempt to define hate speech as hate crimes, or "acts." In two recent hate crime cases, the U.S. Supreme Court concluded that acts, but not speech, may be regulated by law.

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992), involved the juvenile court proceeding of a white 14-year-old who burned a cross on the front lawn of the only black family in a St. Paul, Minn., neighborhood. Burning a cross is a very hateful thing to do: it is one of the symbols of the Ku Klux Klan, an organization that has spread hatred and harm throughout this country. The burning cross clearly demonstrated to this family that at least this youth did not welcome them in the neighborhood. The family brought charges, and the boy was prosecuted under a Minnesota criminal law that made it illegal to place, on public or private property, a burning cross, swastika, or other symbol likely to arouse "anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender." The case went all the way to the Supreme Court, which ruled that the Minnesota law was unconstitutional because it violated the youth's First Amendment free speech rights.

Note that the Court did not rule that the act itself—burning a cross on the family's front lawn—was legal. In fact, the youth could have been held criminally responsible for damaging property or for threatening or intimidating the family. Instead, the law was defective because it improperly focused on the motivation for—the thinking that results in—criminal behavior rather than on criminal behavior itself. It attempted to punish the

youth for the content of his message, not for his actions.

In the second case, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), Mitchell and several black youth were outside a movie theater after viewing *Mississippi Burning*, in which several blacks are beaten. A white youth happened to walk by, and Mitchell yelled, "There goes a white boy; go get him!" Mitchell and the others attacked and beat the boy.

In criminal law, penalties are usually based on factors such as the seriousness of the act, whether it was accidental or intentional, and the harm it caused to the victim. It is also not unusual to have crimes treated more harshly depending upon who the victim is. For example, in most states battery (beating someone) is punished more harshly if the victim is a senior citizen, a young child, a police officer, or a teacher.

Under Wisconsin law, the penalty for battery is increased if the offender intentionally selects the victim "because of the race, religion, color, disability, sexual orientation and national origin or ancestry of that person." The Supreme Court ruled in *Wisconsin v. Mitchell* that this increased penalty did not violate the free speech rights of the accused. The Court reasoned that the penalty was increased because the act itself was directed at a particular victim, not because of Mitchell's thoughts.

Libertarian and Communitarian Perspectives

There is a range of approaches to when hate speech might be regulated. On one end is the libertarian perspective; on the other, the communitarian. In both *R.A.V.* and *Mitchell*, the Supreme Court took the libertarian approach.

Libertarians believe that individuals have the right to free speech and that government should be able to limit it only for the most compelling reasons. Most libertarians recognize fighting words as an example of a sufficiently compelling reason to limit free speech. Notwithstanding the libertarian viewpoint, the courts have been careful to interpret this exception narrowly.

Communitarians take a different approach. They believe that the community's well-being is society's most important goal and that an individual's right to free speech may be limited in the interests of community harmony. They believe that treating people with fairness and dignity justifies at least some free-speech restrictions—that eliminating or reducing hate speech is a sufficiently compelling goal to justify government regulation. Communitarians would expand the fighting words doctrine to allow for increased government regulation.

Can a middle ground be found—a way to accommodate both the communitarian and libertarian perspectives? Perhaps so. Government has the obligation to protect speech by disallowing laws that are too restrictive, yet it can also encourage individuals to respect each other.

Success on Campus

Here's how one community recently approached an incidence of hate speech by calling attention to it rather than attempting to suppress it—by

encouraging speech that pointed out how out of place the hate speech was in a community that values the dignity of all.

Matt Hale, a notorious racist, was recently asked to speak at the University of Illinois at Springfield. Hale is the leader of the World of the Creator, a white supremacist group. His presence on campus was controversial. Several students, faculty, and community members thought that the university should cancel his appearance. Instead, he was allowed to speak. Hale's audience was not impressed. He came across as having a confusing set of beliefs that were out of place in a democratic, multicultural society. Several faculty and students spoke out against his message of hatred.

By allowing Hale to speak, the university recognized free speech rights but also provided a means for community members to respond. Communitarian and libertarian goals were both met.