

***Should freedom of speech allow for the protection to express all views?***

In this essay, I will argue that freedom of speech should not allow for the protection to express all views. I will argue that hate speech can be both harmful and silencing, which is why it should not be allowed. First, I will argue that racist speech is not merely offensive, but also legitimately harmful. Therefore, to balance between equality and freedom, this is a ground to prevent it. Then, I will argue that hate speech can also be silencing. For this I will use the example of pornography, which silences women. This way, too much free speech can undermine the free speech of others, which is another reason to prevent hate speech.

*Harm and offence*

There are many liberty-limiting principles. In this essay I will focus on just the private and public harm principle, and the offence principle. The private and public harm principle is the less controversial of the two. Simply, there is legitimate ground to limit my liberty if I intend to harm someone else. The offence principle is much more controversial. For instance, if some people get offended by a gay couple holding hands in public that should clearly not be enough reason to prevent that behaviour. This is why Feinberg (1980) argues in favour of an offence principle but with certain restrictions to prevent the suppression of minorities. He argues that it is necessary to prevent certain offensive acts such as public nudity.

One reason to outlaw hate speech would be because it is offensive. Feinberg's framework with the offence principle could be used for some forms of hate speech. The conditions he sets for liberty to be limited by the offence principle are:

1. Universality, the offence has to be shared by a reasonable cross-section of society.
2. Avoidability, the offence is not easily avoidable and is being forced upon you.
3. Normal susceptibility, a "normal" person would find this offensive.
4. Outlawing it cannot disadvantage minorities in the population.

An example of hate speech that could be outlawed this way would be publicly wearing swastika's while yelling Nazi chants. This would be offensive to a reasonable cross-section of society, is not easily avoidable as it is public, a "normal" person would find it offensive, and outlawing it does not disadvantage minorities in the population. However, it is more difficult to outlaw other forms of hate speech such as racism against ethnic minorities, as the offence would not be universal.

That is why Matsuda (1989) argues that racist speech is not only offensive but also harmful to the targets of the racism. It is much less difficult to outlaw something on the basis of it being harmful, the private harm principle is much less controversial. She argues, using many experiences of minorities, something she calls *outsider jurisprudence*, that racism can have significant harmful effects on the subjects. Racism can cause anxiety or depression, PTSD, and many forms of harm. She argues, therefore, that it should therefore be illegalized, something for which there already is a precedent in the international community. For instance, in countries in Europe such as Germany, hate speech is not allowed, whereas it is allowed in the United States because of how much they value the first amendment.

Whether racism should be outlawed is then fundamentally a question about freedom versus equality. It is about balancing the speech rights of hate speakers against the wellbeing of their targets (Anderson and Barnes 2025). And there is precedent and good reason to use the harm principle to tip the balance more in favour of equality.

### *Silencing*

MacKinnon (1987, chap. 14) argues along similar lines that pornography is also a form of hate speech which harms women and should therefore be banned. She is not referring to the widespread exploitation in the porn industry, but rather to harm which is done to women. She argues that pornography is a form of expression by the pornographers, they who make the pornography, but that the way that women are portrayed in many forms of pornography is a way in which male dominance is constructed, communicated, and enforced. Though there might be more healthy pornography, most of it is not. It shapes how men see women: submissive and available, and it normalizes abuse and domination. This results in widespread psychological harm.

However, she also gives another argument in favour of the banning of pornography, which Matsuda also already touched upon. Namely, that pornography *silences* women. As Langton (as explained in: Anderson and Barnes 2025) argues, pornography depicts women as not genuinely refusing sex when they say “no”. A woman’s “no” is no longer a refusal in pornography, instead it is part of a sexual script. This then also happens in a non-pornographic context. When a woman says “no”, this is no longer interpreted as a refusal to have sex, she will no longer be heard. That way, pornography *silences* women when they say “no”.

The same can be said about racist speech. Matsuda also argues that racism can lead to a withdrawal from public life, leading to an inability to express yourself as an ethnic minority. That way, racist speech and pornography do not only harm others, but they impede on other people’s freedom of speech. As a result, whether hate speech should

be outlawed is not only about the balance between freedom and equality, but also about the balance between the freedom of expression of the hate speaker and the freedom of expression of, for instance, women and ethnic minorities.

However, should hate speech be banned? Some argue that other measures such as supporting “counterspeech” are better as they are afraid that banning hate speech can be a slippery slope towards the abolishment of freedom of speech. Mill was already afraid of this and highlighted how important freedom of speech was. However, as Matsuda argues, given that many countries and the United Nations have already adopted a similar ban, this shows that it is definitely possible. And by maybe using the more narrow definition of racist speech that Matsuda provides, the negatives of limitation on free speech will not be very severe.

In conclusion freedom of speech should not be absolute. In this essay, I have argued that certain forms of hate speech—specifically racist speech and pornography—should not be protected under the banner of free expression. Drawing on Feinberg’s framework, I argued that the offence principle can justify some restrictions when speech causes serious and unavoidable offence, as in the case of highly public, symbolically violent speech. However, the offence principle has its limits—particularly when the offence is not widely shared. Therefore, I used to the work of Matsuda and MacKinnon, who demonstrate that hate speech is not merely offensive, but substantively harmful, allowing it to be suppressed using the harm principle. Racist speech can inflict long-term psychological damage. However, it can also impede on the freedom of expression of others by silencing them. Therefore, the freedom to speak must be balanced not only against equality, but also against the speech rights of others. When hate speech silences or marginalizes already vulnerable groups, it threatens the very conditions that make meaningful participation in public discourse possible. Therefore, a restriction on some forms of speech is not a betrayal of freedom, but a defence of it.

## **Bibliography**

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