



Extreme speech and democracy

Ivan Hare and James Weinstein (eds.)
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In this very timely volume, an outstanding group of scholars has been gathered together to address issues concerning the relationship between extreme speech and democracy. Must speech that, for example, incites religious hatred be tolerated on the grounds that free speech is the lifeblood of democracy? Or can some forms of extreme speech be prohibited since they threaten to undermine the necessary conditions of a strong democracy? The writers addressing these and other questions come from a variety of academic fields. Although most are scholars of law, some are from other disciplines, including political theory (Malik), social psychology (Savage and Liht), and literature (Edgar). Although the legal systems to which most frequent reference is made are American and European (and in particular the European Court of Human Rights), there are also chapters focusing on particular countries (including the United Kingdom, France, Hungary and Canada) and chapters presenting comparative analyses of different jurisdictions (for example, Reichman's comparison of the US and Israeli legal systems). The book is divided into seven main parts. After a set of introductory chapters, the other parts focus on hate speech, incitement to religious hatred, religious speech that offends secular values, incitement to terrorism, holocaust denial and the regulation of the media. The volume is very well presented with a list of detailed contents, tables of cases and legislation, and an excellent index. It is very slightly marred by occasional typographical errors, including, for example, reference to the Danish 'carton images' (p. 312) and 'pre-trial detention' (p. 482).

Most contributors to this book share the assumption that there is a strong link between democracy and free speech. The argument, put most pithily by Dworkin in his foreword, goes as follows: 'Fair democracy requires what we might call a democratic background', which requires inter alia that 'each citizen have not just a vote but also a voice' (p. vii). In other words, if you value democracy, you should also value freedom of speech, as the latter is a constitutive element of the former. However, while this may be true, it is nonetheless necessary to ask how far the democrat's commitment to free speech should extend. Should it include the toleration of extreme speech – even that



which incites legal disobedience or acts of terrorism against the state? Or should at least some instances of these types of extreme speech be prohibited because, if they were not, then democracy itself would be undermined?

According to the general consensus expressed in this book, few classes of speech are so extreme that they threaten democracy. In order to make this point, a number of chapter writers present a contrast between American and European law-making in this area, generally finding the former superior to the latter. Thus, to focus on two particular cases, *Brandenburg v. Ohio* (1969) is favourably contrasted with *Norwood v. DPP* (2003). In the former case, the distinction between the advocacy of law violation and the danger of imminent lawlessness was clearly established, offering strong protection even for speech that advocates the violent overthrow of a political regime (see Barendt's detailed analysis). In the latter case, in sharp contrast, the ECtHR upheld the UK courts' verdict that placing a poster in a window that read 'Islam out of Britain – Protect the British people' went beyond the bounds of legitimate political expression (see the comments by Weinstein and Malik, among others).

The papers gathered together here also provoke, although they do not attempt directly to answer, two further questions. The first is this: how can freedom of speech be defended to those who are not democrats? To put this in other words, how can it be demonstrated that freedom of speech is a universal human right? A number of authors in this volume do make reference to other arguments for free speech, but this is generally done in passing. Weinstein mentions 'other possible free speech values, such as the search for truth or individual autonomy and self-realization' (p. 48). While the first of these can be quickly dismissed – as Dworkin does when he refers to Mill's 'doubtful epistemology' (p. vii) – the other arguments are worthy of further consideration. Such arguments suggest that the right to free speech is an essential means of protecting individuals' vital interests – such as their interests in self-development and self-expression. While it is true that these arguments fall outside of the strict remit of this book, their consideration would be necessary to give a full account of the case for freedom of speech.

The second question is as follows: what measures can a democracy legitimately take to defend itself against forces that would threaten to destroy it? In this regard, the case of *Refah Partisi (The Welfare Party) v. Turkey* (2002) is of considerable interest (see in particular the discussion by Finnis, pp. 433–441). In January 1998, the Turkish Constitutional Court dissolved Refah Partisi – which was at the time the largest parliamentary party – on the grounds that the aim of this party was to make Turkey a non-democratic theocracy. The ECtHR upheld this decision, arguing that the party advocated policies that would discriminate between citizens on religious grounds and in so doing would violate the rule of law. Was the Strasbourg court right to approve of

the dissolution of a democratically elected political party on the grounds that its agenda was anti-democratic? Or, in doing so, did it wrongfully license states' violation of their citizens' right to political participation?

All in all, this book provides a fascinating survey of a range of issues concerning the tensions between extreme speech and democracy. There is no doubt that it will be a valuable resource for scholars working in this area, and well as providing a stimulus to their further thought.

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Reflections on time and politics

Nathan Widder

Pennsylvania State University Press, Pennsylvania, 2008, 208pp.,
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This book marks a significant stage in Widder's ongoing development of the philosophical bases of a pluralist political theory. Whereas his previous book *Genealogies of Difference* (Urbana: University of Illinois Press, 2002) unearthed subtle and often subterranean lineages of philosophical thought regarding difference with a view to showing how the all-too-easy appeal to this concept must be both more subtle and, once more subtle, becomes more demanding than we often assume, this book casts the same critical and constructive light on the notion of time. Widder is concerned that contemporary pluralists of various persuasions tend to assume uncritically that time is a form of movement. In particular, he has in his sights those contemporary heirs of Bergson who privilege an image of time as flowing and continuous movement. Widder claims that this image is 'analytically incomplete and inconsistent with respect to the principal philosophical sources inspiring this move' (p. 3). As such, those who employ this image of a