

# The Wanderer

*Online Daily*

## Hate Speech Laws

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July 24, 2016

The Cato Institute in its Policy Analysis bulletin of May 24 has published a timely article by Robert Corn Revere on “Hate Speech Laws.” Revere is a Washington-based lawyer who practices First Amendment and media law.

Whether intentional or not, racial tension is promoted daily by big media as they give coverage to what otherwise might be construed as minor events in Baton Rouge or St. Paul. Protests in one part of the country or another against police brutality (never alleged police brutality) are treated as national events and in major newspapers, they are given front-page treatment under headlines such as “officers ought to be held accountable.”

In the context of discussions of hate speech, the right not to be offended is presented as a First Amendment right. Although related, that is a different issue.

Robert Revere turns to Justice Robert Jackson, whose dissenting opinion in a case that reached the Supreme Court in 1949 as *Terminiello v. City of Chicago* provides a guide.

Judge Jackson made an important distinction between the free expression of unpopular ideas and the expression of those ideas in a context that has the potential for violence, the imminence of a riot, for example. In Jackson’s opinion, it is the potential for violence — not the presence of hate — that separates free from restricted speech.

By reviewing a series of cases since *Terminiello*, Robert Revere shows that Jackson’s opinion has come to prevail in American law. In the words of Chief Justice Roberts, delivered in a case that reached the Supreme Court in 2007, “In the United States the presumption favors freedom of expression and the speaker gets the benefit of the doubt. Where the First Amendment is implicated the tie goes to the speaker, not the censor.”

That has not always been the case. Although Revere does not allude to it, in a case that did not reach any court, the silencing of Fr. Charles Coughlin, the “radio priest,” provides a counter example.

In the 1930s Fr. Coughlin could be heard coast to coast, reaching an audience of 30 million. He is reported to have received 80,000 letters a week. Many of his broadcasts were devoted to his

crusade against international atheistic Communism and its intellectual defenders. These broadcasts were judged to be anti-Semitic. For that and other reasons, the Vatican wanted him silenced, but neither the Vatican nor the apostolic delegate to the United States had the authority to silence him. His ordinary, Detroit's Bishop Michael Gallagher, had that power to silence him but refused.

The Roosevelt administration was not troubled by such niceties, and through a series of ad hoc administrative actions not only closed his radio program but forbade the publication of his weekly periodical, *Social Justice*.

Not until the student protests against the Vietnam War was the government again confronted with subversive speech on a major scale. How Justice Robert Jackson would have dealt with the Coughlin and the Vietnam protests remains open to speculation.

Revere compares what now seems to be settled law in the United States with that which prevails in the European Union, as adjudicated by the European Council on Human Rights. Revere shows that speech law in the United States contrasts sharply with that which prevails in member states of the European Union.

In 2009, Daniel Féret, a member of Belgium's Parliament and chairman of the political party Front National, was convicted of incitement to racial discrimination for distributing leaflets with slogans such as, "Stand up against the Islamification of Belgium" and "Send non-European job-seekers home." Similarly, Jean Marie Le Pen, chairman of the French National Front, was sanctioned for saying in a newspaper interview, "The day there are no longer 5 million but 25 million Muslims, they will be in charge."

Still, the question looms, "How much free expression can a liberal society tolerate without tearing itself apart?" No one is likely to accuse President Obama of incitement to riot, and yet the tone in many of his speeches is divisive, pitting blacks against whites, and assuming without investigation police brutality against blacks. Often in giving voice to the grievances of blacks, he seems to take sides, as does Justice Ginsburg, when neutrality is expected. Some claim the right not to be offended, but that right has yet to be recognized in American law.

Offensive speech may be better dealt with in the moral order rather than in the legal. One hopes that children are still taught, "Don't say that, it may hurt her feelings."

There is another insidious abuse of free speech that goes unnoticed but may have lasting effect. The *New York Times* is free to daily take issue with traditional or biblical morality and the teaching of the Catholic Church, and that speech is protected. The lingering effect of its editorial policy is hard to calculate, but many are intellectually formed by false reporting of the Church's history and teaching, and in many circumstances act in that light, certainly in the academic world.

With his enlightening essay, "Hate Speech Law," Richard Revere has raised a host of issues which beg to be addressed, but not here.