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“DIRTY WORDS” AND THE OFFENSE PRINCIPLE

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Unabridged dictionaries are dangerous books. In their pages man's vilest thoughts find means of expression. Terms denoting all that is foul or blasphemous or obscene are printed there for men, women and children to read and ponder. Such books should have their covers padlocked and be chained to reading desks, in the custody of responsible librarians, preferably church members in good standing. Permission to open such books should be granted only after careful inquiry as to which word a reader plans to look up, and how he plans to use it.

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There are generally thought to be two principles to which liberals might appeal to provide some justification for the limiting of individual liberty by coercive legislation. The first is the “Harm Principle,” which says, roughly, that the state's restriction of someone's liberty might be justified to prevent harm to others (either individuals or institutional practices). The second is the “Offense Principle,” which says that the state's restriction of someone's liberty might be justified to prevent offense to others.² The latter principle is the focus of this paper.

¹ Quoted in Burges Johnson, *The Lost Art of Profanity* (Indianapolis: The Bobbs-Merrill Company, 1948), p. 19.

² I hasten to point out, however, that there remains a great deal of unresolved confusion in the literature over the extension of both “offensiveness” and “harmfulness,” i.e., is the set of all offensive things a subset of harmful things, does it merely intersect with the set of harmful things, or are the two wholly distinct? Obviously the way in which this question is answered will have a bearing on just how many principles justifying coercive legislation liberals generally adhere to. Indeed, this has been a nettlesome problem for some time, a problem that can perhaps be traced back to Mill's famous “exception” to the Harm Principle allowing for legislation to prohibit “offenses against indecency” (John Stuart Mill, *On Liberty* (Arlington Heights, Illinois: Harlan Davidson, Inc., 1947), p. 99). I hope to address this specific problem elsewhere. For purposes of this paper, however, I essentially follow the exposition and distinctions of Joel Feinberg, although, as I point out below, his view may be incomplete.



While the Offense Principle has received fairly scant attention in the philosophical literature (with one significant exception), it has provided the main justification for legislation in realms with which we are all intimately familiar, viz., the public airwaves involved in television and radio. Specifically, the Federal Communications Commission (FCC), an appointed arm of the federal government, oversees and regulates both broadcast mediums and has the power to fine or revoke the licenses of television or radio stations that broadcast offensive material. But what exactly counts as offensive material? Further, under what circumstances, if any, should such material be regulated by the state?

Joel Feinberg argues that appeal to the Offense Principle may occasionally serve to justify state restrictions of individual liberty, but he insists on certain stringent conditions being fulfilled before the offense in question merits restriction. Nevertheless, he argues against including considerations of reasonableness with respect to the offense taken. What I will contend, however, is that a carefully specified condition of reasonableness must be met by liberals appealing to the Offense Principle. After a brief discussion of the relation between harm and offense, I will show that the arguments given against appealing to a reasonableness condition are inadequate, and then I will show how applying the test of reasonableness to the case of vulgar public language (the so-called “dirty words”) reveals that, not only should there be no state restriction of such language over the public airwaves, but also that certain aesthetic considerations may provide positive reasons for its public use.³

³ While I restrict my analysis in this paper to television and radio, there are also laws on the books against more broadly construed public profanity which are occasionally enforced. For example, consider the charges brought in 1997 against the Mayor of Brandon, Mississippi. While agitated prior to a public meeting, Mayor Roe Grubbs directed certain remarks to a City Attorney “which included the word ‘damn’” and were picked up by a nearby microphone. The Mayor was charged with public profanity. Reported in *The Memphis Commercial Appeal*, Nov. 13, 1997. There is also the recent, more publicized case of the “cursing canoeist” (Timothy Boomer), who, after falling out of his canoe in a lake in northern Michigan, proceeded to let loose with a stream of profanities. A couple with two young children in a nearby canoe heard the words and paddled furiously away. Boomer was convicted in June 1999 for violating an 1897 state law against cursing in front of children. In August 1999, he was sentenced to perform four days community service and either pay a fine of \$75 or spend three nights in jail.

HARM VS. OFFENSE

How is being offended different from being harmed? In terms of their being justifications for legislation, both involve being wronged in some way, but Feinberg claims that offense and harm are not strictly commensurable *kinds* of wrongness.⁴ He defines “harm,” in the sense relevant for the Harm Principle, as involving the violation of a person’s rights which involves a setback to that person’s interests.⁵ Thus, for example, I am harmed by your intentional breaking of my legs in that you did so against my will and your doing so sets back my general interest in being able to walk around on my own. “Offense,” on the other hand, in the sense relevant for the Offense Principle, involves conduct producing “unpleasant or uncomfortable experiences – affronts to sense or sensibility, disgust, shock, shame, embarrassment, annoyance, boredom, anger, fear, or humiliation – from which one cannot escape without unreasonable inconvenience or even harm.”⁶ Being offended, in other words, involves being subjected to a particular kind of *nuisance*: I both suffer a “universally disliked mental state”⁷ caused by the

See *The Los Angeles Times*, Aug. 24, 1999. What I have to say in this paper should also, by extension, be applied to these sorts of laws.

⁴ Joel Feinberg, *Offense to Others (The Moral Limits of the Criminal Law, Volume Two)* (Oxford: Oxford University Press, 1985), p. 3.

⁵ *Ibid.*, p. x. Feinberg’s interest-oriented account of harm has repeatedly been challenged, however. See, for example, Dorothy Grover, “Posthumous Harm,” *The Philosophical Quarterly* v. 39, no. 156 (July 1989): 334–353, esp. 347–350; E. Haavi Morreim, “The Concept of Harm Reconceived: A Different Look at Wrongful Life,” *Law and Philosophy* v. 7 (1988): 3–33, esp. pp. 23–27; Anthony Ellis, “Offense and the Liberal Conception of the Law,” *Philosophy & Public Affairs* v. 13, no. 1 (Winter 1984): 1–23, esp. pp. 5–6; and John Kleinig, “Crime and the Concept of Harm,” *American Philosophical Quarterly* v. 15, no. 1 (January 1978): 27–36. What is common to all of these challenges, however, is the partial agreement with Feinberg that, while setbacks to interests are not *necessary* conditions of harm, they are indeed *sufficient* conditions of harm. (Ellis contends that setbacks to *desires* may be neither necessary nor sufficient for harms, but mere desires are different from interests, and I think a carefully construed interest-based theory of harm might be able to account for his counterexamples. See Ellis, p. 5.) That is all I need for purposes of this paper.

⁶ Feinberg, p. 5.

⁷ *Ibid.*, p. 1.

nuisance, and “I attribute that state to the wrongful conduct of another.”⁸

Of course, most of us probably have an interest in not being offended, but if that is true, then every time we are offended we are straightforwardly *harmed*, according to the preceding definition of harm, insofar as our general interest in not being offended has been violated.⁹ Thus it would seem that all cases of offense are actually cases of harm. Feinberg maintains a distinction, however, by claiming there to be “some offenses that are (in a narrow sense) ‘harmless’ in that they do not lead to any *further* harm, that is, they do not violate any interests other than the interest in not being offended.”¹⁰ This, then, is the sense of “offense” to be contrasted with harm and is thus to be the sense relevant for the Offense Principle.

While this distinction may be somewhat problematic,¹¹ I think it is satisfactory enough for our purposes here. However, two implications of this position need to be emphasized. First, certain types of actions/events ordinarily labeled offensive may not fall under the rubric of this Offense Principle, simply because they may pro-

⁸ *Ibid.*, p. 2. As Feinberg points out, it is not necessary, in terms of the Offense Principle, that I also *resent* the offending party for causing me to be in that psychological state. I may not care who it is that is doing the offending. All that is required for the Offense Principle to play a role is that I am offended and I know the source is external to me.

⁹ The intentions of the person performing the offensive/harmful action will, at least in part, determine whether or not the offense/harm was in fact *wrongful*.

¹⁰ Joel Feinberg, “‘Harmless Immoralities’ and Offensive Nuisances,” in Norman S. Care and Thomas K. Trelogan, eds., *Issues in Law and Morality: Proceedings of the 1971 Oberlin Colloquium in Philosophy* (Cleveland: The Press of Case Western Reserve University, 1973), p. 85 (emphasis in original).

¹¹ For example, being offended involves my being placed into an unpleasant psychological state. That alone seems a reason to consider the offensive action to be harmful in the ordinary sense of the word. Why not consider it as such? Furthermore, it is unclear why the scales of offense and harm are incommensurable, that, as Feinberg puts it, “[O]ffenses are a different sort of thing altogether, with a scale all of their own” (*Offense to Others*, p. 3), given that extreme offenses may also “be actually harmful, in a minor sort of way” (*ibid.*). Is it their extreme nature that makes them harmful? If so, why not think of them as being on the lowest part of the harm scale and not on a different scale altogether? I suspect that, due to these worries and others, Feinberg’s treatment of the distinction between offense and harm is ultimately too imprecise to cover all cases. But as I mention in the text, the rough distinction he offers is sufficient for my purposes in this paper.

duce not only offense (in the sense above) but also harm. For example, continuous extreme offense may ultimately *harm* a person by causing him to be so emotionally upset that he is simply no longer able to pursue his interests.¹² And given what Feinberg calls the self-evident claim that “*offense is surely a less serious thing than harm,*”¹³ it seems obvious that such harmful offenses ought to fall under the rubric of the Harm Principle rather than the Offense Principle.¹⁴ What I am interested in here, however, are *mere*, or *harmless* offenses, offensive actions/events that are simply not extreme enough to cause the kind of emotional trauma constitutive of this type of harm. While some may contend that this kind of offense is a trivial matter indeed, such harmless offenses may nevertheless be caused by a very wide range of activities, including those involving the “indecent,” the “obscene,”¹⁵ the “disgusting,”

¹² Feinberg discusses this possibility in *Offense to Others*, p. 3.

¹³ *Ibid.*, p. 2; emphasis in original.

¹⁴ Notice that it is not an offended mental state *per se* that is a necessary condition for this type of harm; rather, it is the emotionally traumatized state of mind that matters, and this mental state could be caused by inoffensive events/actions as well. See *ibid.*, p. 3.

¹⁵ There has been a recent movement by some feminist writers to categorize certain obscenities, e.g., pornographic materials, as constituting rather straightforward *harms* to women (and in some cases men), so that these “obscenities” would go far beyond being *mere* offenses. See, e.g., Catherine MacKinnon, “Pornography, Civil Rights, and Speech,” in Steven Jay Gold, ed., *Moral Controversies: Race, Class, and Gender in Applied Ethics* (Belmont, CA: Wadsworth Publishing Co., 1993), pp. 345–356; Harry Brod, “Pornography and the Alienation of Male Sexuality,” in Gold, pp. 372–383; and Andrea Dworkin, “Power,” in Susan Dwyer, ed., *The Problem of Pornography* (Belmont, CA: Wadsworth Publishing Co., 1995), pp. 48–52. Such arguments recognize the obvious point (mentioned above) that harms are inherently more serious than mere offenses. The question, then, is whether or not certain obscenities are, in fact, harmful offenses (indeed, they may be too harmful to be called “offenses” at all). The heart of the debate, therefore, is over (a) what counts as a harm (a conceptual question), and (b) whether or not pornography in fact causes harm (generally an empirical question). If the conceptual issue were settled and the empirical issue were well-established (both conditions that have not yet been adequately satisfied, in my opinion), then these obscene events/actions rightly would no longer fall under the rubric of harmless offenses. But until that day comes, I think we are safe in including all or most obscenities under the category of harmless offenses. It at least seems abundantly clear that the obscenities I deal with in the last part of the paper – vulgar words – belong in this category, and that is what ultimately matters for our purposes here.

and so forth, and given that these activities are quite often the targets of state legislation – justified by appeal to the Offense Principle – they remain significant enough to warrant our present investigation.

Second, Feinberg fails to make explicit what seems to be an important difference between harms and offenses, viz., one might be harmed without being aware of it, but the same is not true of being offended. To be offended is simply to be in an offended mental state, of which one is (by definition, it seems) aware, whereas to be in a harmed state does not require that one be in any particular mental state at all. For example, I may harm you by electronically transferring all of your money into my own bank account. You may not be aware of the harm, but it seems that from the moment I steal your money I have dealt a significant blow to your interests. You no longer have the capacity to buy certain things, even if you do not attempt to exercise that capacity for some time.¹⁶ On the other hand, you simply cannot be offended without your being in an offended mental state, i.e., a mental state involving a negative attitude toward the offending action/event. I may curse at you, emit gaseous odors in your general direction, fornicate on your front lawn, or burn a flag before your eyes all I like, but if I fail to produce the appropriate disliked/unpleasant state of mind in you, I simply have not offended you. We may say you ought to have been offended by something (in that you seem to have – or perhaps ought to have – the sensibilities the “offender” is attempting to affront), but we cannot say you *are* offended until you have experienced the relevant state of mind. Conversely, because there is this aspect of normativity involved in offense,¹⁷ we may also say that you ought *not* to have been offended

¹⁶ Indeed, several philosophers have maintained that one can be harmed posthumously, which clearly would not involve any mental state at all on the part of the harmed person. See, e.g., Grover.

¹⁷ An aspect of normativity, I should emphasize, that seems absent in ordinary cases of harm. For example, it would seem quite odd to claim that, given your present interests, you *ought* to have been harmed by my stealing your money, even though you honestly claim not to be. We may say that you ought to *feel* harmed (i.e., be righteously indignant), but this is a different normative claim, a claim about what one’s attitude toward the independently existing harm ought to be. There is an objective fact of the matter with regard to harm itself that obtains regardless of one’s attitude toward the harmful action. If I have an interest in X, and someone sets back that interest wrongfully, I have been harmed, regardless of my reaction to the harm. Contrast this picture with that of offense, in which

by something. Such a possibility will be significant in the discussion that follows.

So much for what offense is and how it is different from harm. But what are the conditions under which offensive behavior should be regulated by the state? It is to this matter that we now turn.

OFFENSE AND THE VARIETIES OF REASONABLENESS

Feinberg lays out several conditions that must be met before offensive actions/events become worthy of state intervention. He has recently abandoned more absolutist conditions in favor of a balancing metaphor: we must weigh both sides in a particular case of alleged offense to determine what the state's role ought to be. Both the offended parties' and the offending parties' interests matter here, and when both parties' interests conflict, we must pay close attention to several factors.

First, consider the offender. In weighing her interests, we should take into account the following three factors: (1) the importance of the "offending" conduct, both to the "offender" and to society at large (keeping in mind the great social importance of unfettered expression); (2) the possibility that the "offending" conduct might have been performed at times/places causing less or no offense; and (3) "the extent, if any, to which the offense is caused with spiteful motives."¹⁸ Keeping in mind the balancing metaphor, if my offensive conduct is of great social utility, could not have been performed at any other place/time, and was done with no spiteful motives, then the considerations involved on the side of those offended must be *extremely* weighty to override my interests and justify the state's stepping in. So what are the considerations on the other side of the scales?

There are four factors Feinberg considers on the part of those being offended. First, we must take into account the "magnitude

one's attitude toward a particular action/event is *constitutive* of whether or not one is offended. Here it makes perfect sense to make normative claims about the reactions one ought to have had toward particular actions/events, and in so doing one is making normative claims simply about whether or not one ought to have been offended.

¹⁸ Feinberg, *Offense to Others*, p. 26.

of the offense,”¹⁹ which includes its intensity, duration, and extent. So the more intense, durable, and widespread a particular offense, the more weighty considerations in its favor become. Second, an offense becomes more serious the more difficult it becomes for an offended person to avoid it. If I can easily avoid being offended by your gag-inducing body odor by moving to another location, then your offense is quite trivial. If, however, you’ve placed a large billboard depicting graphic images of bestiality directly outside of my bedroom window, your offense is of far greater seriousness. Third, offenses that are voluntarily incurred (or are foreseen risks of actions one willingly takes) simply do not count as offenses for which coercive legislation might be enacted. For example, if I’ve heard titillating rumors about public sexual displays taking place at the club down the street and I attend one night to satisfy my curiosity, my complaint at being offended by such displays is to be disregarded. Finally, if “offended states occur because of a person’s abnormal susceptibility to offense, their seriousness is to be discounted in the application of a legislative ‘offense principle.’”²⁰ For example, if I am offended by any public use of words relating to parts of the body (insofar as all such talk conjures up unwanted and distracting sexual imagery in my mind) and I cannot turn on my television without hearing about “piano *legs*,” “chicken *thighs*,” and “turkey *breasts*,” my complaints about these alleged offenses should carry no weight. As Feinberg puts it, “If a mere sneeze causes a glass window to break, we should blame the weakness or brittleness of the glass and not the sneeze.”²¹

Notice, however, that none of these four conditions considers the *reasonableness* involved in the offense taken.²² Consider a case in which nearly all members of a particular community are racists, taking great offense (solely because of their racist beliefs) to the sight of a huge billboard in the center of town depicting an interracial couple kissing. There are no abnormal susceptibilities to the offense at work here (if “normal” is a statistical concept referring to the

¹⁹ Ibid., p. 35.

²⁰ Ibid.

²¹ Ibid., p. 34.

²² Even though Feinberg explicitly wants to take into account the reasonableness of the *offender’s* conduct. See, e.g., *ibid.*, p. 26.

susceptibilities of the average citizen of the community), exposure to the offense is not voluntary, the town members cannot reasonably avoid the offense (given that it’s a hub of necessary activity), and the offense is intense (to them), durable, and quite widespread (nearly all members of the community find it offensive). It looks, then, like the state might very well be justified in banning such a billboard in this community by appealing to the Offense Principle (as long as the offending party’s interests were outweighed), despite the fact that the offense taken to it by the community members seems quite unreasonable. To avoid the possibility of such a seemingly problematic case, then, perhaps we should add the following condition, what I will call the *Reasonableness Condition*:

*Unreasonableness with respect to offended reactions renders weightless complaints about the offending action/event in the application of a legislative Offense Principle.*²³

In the case just sketched, then, the Reasonableness Condition presumably would provide a justification for the state’s ignoring of the complaints of a racist community.

Feinberg admits the possibility of such a case, but he explicitly rules out appealing to a Reasonableness Condition for two reasons. First, he thinks that including any such a condition would, for the most part, be “redundant and unnecessary,”²⁴ given that his first condition (having to do in part with the extent of the offense involved) would likely rule out most idiosyncratic and/or unreasonable reactions to particular situations. But here is precisely a case in which

²³ A somewhat similar criterion, called the Reasonableness Standard, is offered in Donald VanDeVeer, “Coercive Restraint of Offensive Actions,” *Philosophy & Public Affairs* v. 8, n. 2 (Winter 1979), p. 181. However, VanDeVeer goes on to argue against such a standard, giving the allergy analogy I consider (and reject) below. (VanDeVeer also conflates irrational beliefs/sensibilities with unreasonable ones, assuming that unreasonable beliefs are “‘evidently irrational’” (p. 181), yet this strikes me as quite misleading. A belief or sensibility might be perfectly rational and yet remain unreasonable. For example, it may be in my best interests (prudentially rational) to be offended by certain immodest behavior (perhaps I want to impress my devout fiancée with my own piety), but the offense I take at that behavior may nevertheless be unreasonable (in that it presupposes some false belief about the world, say). I go on towards the end of this section to provide another reason to distinguish unreasonable from irrational reactions.)

²⁴ Feinberg, *Offense to Others*, p. 35.

the extent of an unreasonable reaction is quite widespread. Feinberg claims that the “very unreasonableness of the reaction will tend to keep it from being sufficiently widespread to warrant preventive coercion,”²⁵ but this seems patently false once one reflects for a moment on the history of the United States alone, which has included widespread unreasonable offense taken to – and attendant state action against – the sight of interracial couples, black men glancing directly at white women, and gay couples expressing public affection.

Feinberg’s second reservation about including a Reasonableness Condition is, perhaps, more serious. Doing so, he remarks, “would require agencies of the state to make official judgments of the reasonableness and unreasonableness of emotional states and sensibilities, in effect closing these questions to dissent and putting the stamp of state approval on answers to questions which, like issues of ideology and belief, should be left open to unimpeded discussion and practice.”²⁶ More specifically, Feinberg is worried that “offensive” actions sometimes take the form of ridiculing what many people respect (the flag, religion, etc.), and a state’s determination of what things *are* worthy of respect (what things it is in fact reasonable to respect) would be both dangerous and “contrary to liberal principles.”²⁷ But is this in fact the case? Is the Reasonableness Condition itself illiberal?

Before answering this question we first need to address a serious ambiguity in the Reasonableness Condition. To see the problem, consider two neighbors, Homer and Apu. Apu is a practicing Hindu who is also, because of his religious beliefs, a vegetarian. Homer is a practicing Christian who believes, for religious reasons (given man’s dominion over the animals), that cooking and eating meat in his backyard is perfectly permissible. Suppose that whenever Homer barbecues steaks in his backyard, the smell drifts over to Apu’s backyard. Apu is greatly offended by both the smell and the thought of someone cooking cow flesh, and he asks the city council to ban such barbecues from the town. How are we to judge the reasonableness or unreasonableness involved in Apu’s reaction and/or

²⁵ Ibid., p. 36.

²⁶ Ibid., pp. 36–37.

²⁷ Ibid., p. 37.

complaint? After all, it seems perfectly reasonable for a Hindu to be offended by the cooking of meat. But is it reasonable for Apu to accept the Hindu beliefs and lifestyle underlying the offended reaction in the first place? Further, is Hinduism itself a reasonable religion? Finally, is Apu's argument to the city council in favor of the ban a reasonable one?

The ambiguity in the Reasonableness Condition as it stands, then, has to do with what precisely should be the target of the state's evaluation of reasonableness. There seem to be four different possible targets: (1) the reasonableness/unreasonableness of a person's offended reaction itself, i.e., is the person's reaction reasonable, say, from within the general worldview to which that person adheres? (2) the reasonableness/unreasonableness of the offended person's reasons for adhering to the general worldview that underlies and gives rise to the offended reaction, i.e., do the person's reasons for buying into this system of thought withstand any sort of critical scrutiny? (3) the reasonableness/unreasonableness of the worldview itself, e.g., is it a logically coherent and consistent view of the world? (4) the reasonableness/unreasonableness of the offended person's justification(s) for legislation against the offending action/event, i.e., is the argument for state coercion against the offender a "good" one?

Feinberg seems to have in mind both (1) and (2), implying that a liberal state has no business engaging in either sort of judgment. It would be illiberal, he thinks, for the state to evaluate the reasonableness either of someone's offended reaction (based on a particular worldview) or of someone's reasons for belief in the truth of his/her worldview itself (a belief yielding the offended reaction). In this he is quite right. The liberal state has no business interfering with the rights of its citizens to worship, respect, believe, disbelieve, or despise anything at all, so it would also be quite illegitimate for the state to say anything about the appropriateness of offended reactions justified by those private beliefs. But Feinberg has nothing to say about evaluations of types (3) or (4), which are also quite clearly evaluations of reasonableness/unreasonableness with respect to offended reactions. What I wish to argue, then, is that it is both normal and appropriate for the state to make judgments of types (3) and (4), and that making such judgments of reasonableness does

not at all commit the state to making the troublesome judgments of types (1) and (2) about which Feinberg is worried.

REASONABLENESS AND THE LIBERAL STATE

To begin with, consider the Rawlsian picture of a well-ordered liberal society.²⁸ On his model, the basic structure of the liberal state is supported through the possibility of agreement among its citizens, despite their plurality of individual conceptions of the good (or “comprehensive doctrines”). The idea is that the liberal state is constructed through a (hypothetical) overlapping consensus of certain types of comprehensive doctrines. The result is that from the perspective of every (admissible) private comprehensive doctrine the basic principles of the state are found to be acceptable. And within the overlapping consensus of the citizens is found the idea of public reason, “the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.”²⁹ This is reason that sets limits on public dialogue, not only with regard to the subject matter of such dialogue, but also with regard to how such dialogue is to take place. The *subject matter* of public reason involves the essentials of the constitution, e.g., who may vote, who may hold property, and “what religions are to be tolerated.”³⁰ The *method* of public reason demands that all dialogue participants “be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality.”³¹

Notice, though, that on this view there are two different points at which the condition of *reasonableness* comes to the fore. In the first place, to be admissible to the general agreement situation a comprehensive doctrine must itself be reasonable. The goal of the procedure is consensus on the basic structure of a liberal, pluralistic society, and if a particular comprehensive doctrine is not (or if

²⁸ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

²⁹ *Ibid.*, p. 214.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 218.

those who hold the doctrine are not) reasonable, i.e., if adherence to the doctrine requires one to be unwilling to propose and/or abide by fair terms of cooperation with others from outside the doctrine, then consensus cannot be reached, or, if initially reached, cannot be sustained. Consequently, Rawls discusses several requirements a comprehensive doctrine must fulfill in order to count as what we might call *privately* reasonable, including its being internally consistent, coherent, and stable.³²

The second point at which the notion of reasonableness plays a role in this model of a well-ordered liberal society is within the realm of public reason. For when one offers a justification for the state's limiting of another's liberty, the justification must itself be reasonable, i.e., it must meet the demands of public reason and be offered in terms that all other reasonable individuals within the society could endorse, and this involves passing two tests. First, reasonable public justifications must, at the very least, conform to certain basic standards of *ways of reasoning in general*, including the acknowledgment of "principles of inference, . . . rules of evidence, and much else . . ." ³³ Second, reasonable public justifications are limited in terms of the *types* of reasons that can be offered. If I offer a justification appealing *solely* to reasons stemming from my own private comprehensive doctrine (even if such a doctrine were itself, as I have termed it, *privately* reasonable), my justification would not meet the demands of public reason, and it would thus be *publicly* unreasonable.

This last point is further buttressed by a consideration of the *motivation* behind laws and lawmaking within the liberal political tradition. As Anthony Ellis points out, "The function of the law in the liberal tradition is to create and safeguard the conditions necessary for the flourishing of *individuality*."³⁴ Laws are (or at least ought to be) intended to provide and maintain a framework within which citizens may freely pursue their own conceptions of the good; thus, governments and their laws are instituted in order to secure, in the words of the Declaration of Independence, those inalienable rights of life, liberty and the pursuit of happiness. This latter pur-

³² Ibid., p. 59.

³³ Ibid., p. 220.

³⁴ Ellis, p. 5; emphasis in original.

suit is only possible where there is general order and freedom from harms and, perhaps, offensive nuisances.³⁵

Consequently, there are several sorts of laws that will be impermissible in a liberal state. For example, certain sorts of paternalistic laws, laws prohibiting activities solely because a majority of citizens wants them to be prohibited, and laws requiring activities solely because they are part of generally-heeded custom all undercut the motivation behind liberal legislation. And laws prohibiting activities solely on the basis that they violate the tenets of a particular moral or religious code are impermissible as well. All such laws would constitute “an attack upon individuality”³⁶ and would thus be unreasonable within a liberal democracy.³⁷

As a result, there are two points (corresponding to points (3) and (4) in the varieties of reasonableness discussed earlier) at which the liberal state is perfectly justified in making, and making use of, evaluations of reasonableness. On the one hand, it may legitimately ignore the complaints of adherents based on tenets of *comprehensive doctrines* that are internally inconsistent, incoherent, or unstable. On the other hand, it may consider weightless *public justifications* for state coercion (a) if they are derived solely from beliefs found

³⁵ Ibid. Ellis maintains, however, that nuisance laws are justified under the Harm Principle, and he argues that the Offense Principle, as it is usually construed, should have no application in a liberal state. I, however, am less willing to eliminate the Offense Principle out of hand. All of this depends, of course, on how “harm” is defined, and Ellis’ attempt to define it as anything that destroys the conditions necessary for the flourishing of individuality seems in one sense too narrow (e.g., consider a case in which a woman is raped and then has her memory of the crime erased; the conditions of her flourishing have perhaps not been destroyed at all, even though it seems obvious that she has been harmed), and in another sense too broad (e.g., Ellis’ view would allow foul smells to constitute harms, but this seems to stretch the concept too widely). I set aside these difficulties here. His general point about the motivation behind the law is quite apt and useful for our own purposes.

³⁶ Ibid., p. 6.

³⁷ Some people invariably maintain that the abolition of slavery and the civil rights laws in the 1960’s were justified on moral or religious grounds, and so it must occasionally be permissible to establish laws with such justifications. However, it seems quite clear that these were laws justified by the Harm Principle, properly construed. Attention may certainly be brought to an issue by appealing to moral or religious grounds, but that is not to say that justification of any legislation enacted in response to such rhetoric is provided by those grounds.

in (reasonable *or* unreasonable) private comprehensive doctrines, given that such justifications could not also be endorsed by all other (reasonable) citizens consistent with their freedom and equality, or (b) if these reasons do not meet the requirements of general ways of reasoning (e.g., they embrace contradictions, draw improper inferences, etc.). One's public justifications, therefore, must be publicly reasonable, and a liberal state has every right to make such a determination.

But, one might object, do we really have the sort of agreement on the ways of reasoning this position seems to assume and require? What exactly are these so-called agreed-upon "principles of inference" and "rules of evidence" involved in reasonable ways of reasoning? Won't reasonable people in fact disagree about fundamental issues in legislation? If so, wouldn't the Reasonableness Condition be without much practical force? What exactly (to get to the heart of the matter) is meant by "reasonable"?³⁸

I readily admit that the concept of the reasonable is rather imprecise, but that is not to say that we do not have enough of a grasp on it for it to be extremely useful. Consider, for example, the role of reasonableness in jury deliberations. The defendant is to be found guilty "beyond a *reasonable* doubt," but rarely, if ever, is this phrase defined or explained for the jurors in anything close to a precise way. Nevertheless, unanimous agreement is regularly reached by them while employing this "vague" concept as their standard of judgment.

I think this example indicates that people generally have an intuitive understanding of what it takes for something (a doubt, e.g.) to be reasonable. At the very least, I would suggest that people in general would (and do) accept certain minimal requirements on ways of reasoning, simply because effective communication and group decision-making would be impossible without them. For example, imagine a debate on public policy with someone who embraced contradictions or who derived claims from clearly false beliefs. How would it even be possible, say, both to implement and not to implement a particular policy? What sort of communication could possibly ensue about education or the space program with someone who insisted on the flatness of the earth? Thus, for purely pragmatic

³⁸ I am grateful to Michael Gorr for raising these worries.

reasons, agreement on basic acceptable ways of reasoning needs to be presupposed.

But of course even if we posit certain basic, generally agreed-upon requirements for public reasoning, that does not ensure agreement on all issues. Basic principles of evidence and inference underdetermine what conclusions we will draw. As Rawls puts it, “Different conceptions of the world can reasonably be elaborated from different standpoints and diversity arises in part from our distinct perspectives.”³⁹ As a result, “[M]any of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion.”⁴⁰ In other words, *of course* reasonable people may reasonably disagree. What matters, though, is that in their deliberations they play by agreed-upon rules, and if their goals include – which they must in any type of liberal state – the pragmatic considerations of effective communication, viable policy-implementation, and consensus on the policies chosen, their best bet for achieving such goals is to presuppose the basic rules of evidence and inference found in our already-accepted intuitive concept of reasonable ways of reasoning.

To summarize, then, it is not contrary to liberal principles for the state to make determinations of the reasonableness of *arguments offered* for coercive legislation against those who offend, especially including those whose reasons stem solely from comprehensive doctrines based on specific religious or moral beliefs. The liberal state may engage in judgments of the reasonableness of such justifications without at all having to engage in judgments of the reasonableness of the offended reactions themselves. We can now, therefore, reformulate our original, ambiguous Reasonableness Condition as follows:

*Reasonableness Condition**: Arguments for state legislation against offensive actions/events that are unreasonable according to the demands of public reason are to carry no weight in the application of a legislative Offense Principle.

We may now see how this reformulated condition would apply to the original case of the “offensive” billboard depicting an inter-

³⁹ Rawls, p. 58.

⁴⁰ Ibid.

racial couple kissing in the town heavily comprised of racists. What arguments might the majority give for banning the billboard? I imagine that, in the case as construed, the argument might go as follows: "The billboard illustrates an activity offensive to (most of) our moral/religious sensibilities, showing as it does a mixing of the races that we (the majority) hold to be immoral/sinful. Thus, it should be banned." An argument worded in this way would quite clearly violate the terms of the Reasonableness Condition*, for it makes explicit appeal solely to reasons stemming from a particular comprehensive doctrine, reasons that could not be endorsed by other reasonable citizens who did not share the moral/religious sensibilities in question. Notice that there is no need for the state here to make any reference to the reasonableness of the offended reaction itself (although it still seems quite unreasonable – to me, anyway). Rather, all that is required is an examination of the reasons given for state intervention, and if they make reference solely to particular moral or religious sensibilities, they fail the test of public reasonableness and are to carry no weight. Consequently, Feinberg's worry that any state determination of reasonableness with respect to offended reactions would be illiberal is, in fact, groundless.

So much for our defense of the "reasonableness" portion of the Reasonableness Condition*. But what of the last part of the condition? Specifically, why should arguments not meeting the Reasonableness Condition* carry *no* weight, as opposed merely to receiving *less* weight than reasonable justifications? I here wish to consider two different arguments along these lines. Doing so will also allow us to make certain other distinctions important for our consideration in the final section of the application of the Reasonableness Condition* to the case of "dirty words."

OFFENSE AND ALLERGIES

As I have tried to make clear, the Reasonableness Condition* applies only to arguments given for coercive legislation against offensive actions/events, saying nothing about the reasonableness of offended reactions themselves. But presumably if offended reactions are themselves unreasonable (on some generally-accepted intuitive grounds, say), it seems fairly clear that arguments for coer-

cive legislation against the offending actions/events based on those unreasonable reactions will not meet the demands of the Reasonableness Condition*. If it is unreasonable for you to be offended by X, then it seems your arguments for preventing others from performing X will probably also be unreasonable. Nevertheless, Donald VanDeVeer argues that such unreasonable reactions should still carry *some* weight in an application of the Offense Principle by comparing the states of persons offended unreasonably to the distressed states of severe allergy sufferers.⁴¹ The analogy is supposed to hold in four respects: (1) both states involve a characteristic of a person that is a necessary condition for that person's being harmed in a certain way; (2) both states involve a characteristic present involuntarily; (3) few persons have this particular characteristic; and (4) this "characteristic may be one that its possessor would be better off without."⁴² So the person who is unreasonably offended by some action/event is like the severe allergy sufferer in these ways: he is someone in a minority who involuntarily believes something that he would be better off not believing. He is, essentially, someone with eccentric sensibilities, sensibilities he cannot voluntarily eliminate, and so he has a particular vulnerability to distress in the presence of certain actions/events. Do we have an obligation, then, to take these eccentric sensibilities into account, *even if the offende*e is unable to give any (reasonable) public reasons in support of legislation against the offensive actions/events? VanDeVeer claims that we certainly have an obligation to take the sensibilities of the severe allergy sufferer into account, and so, if the allergy sufferer is analogous to the unreasonably offended person in all relevant respects, we also have an obligation to take that person's sensibilities into account. As a result, "[a] principle of offense which gave no consideration to bizarre sensibilities or beliefs would . . . be indefensible."⁴³

Unfortunately, VanDeVeer conflates two distinct types of offended reactions: those due to "bizarre sensibilities" and those that are perhaps (statistically) normal but are still *unreasonable*. By calling "unreasonable" those reactions that (analogous to severe allergic reactions) are essentially due to eccentric sensibilities, VanDeVeer

⁴¹ VanDeVeer, pp. 181–183.

⁴² Ibid., p. 182.

⁴³ Ibid.

unnecessarily muddies the waters. Perhaps we should merely take him to be objecting to Feinberg’s fourth condition on offense taken (that offended reactions due to abnormal susceptibilities should receive no weight for legislative purposes), but his analogy to severe allergic reactions simply does not hold with regard to offended reactions *not* due to eccentric sensibilities that are nevertheless offered as the basis for publicly unreasonable arguments with respect to coercive legislation.⁴⁴

The main problem with VanDeVeer’s analysis, however, is that many offended reactions are either reasonable or unreasonable, whereas allergic reactions are neither. The negative normative assessment we may coherently make with regard to certain offended reactions – “You shouldn’t be offended by such things” – quite simply cannot sensibly be made to someone suffering from a severe allergic reaction. For example, it would be nonsensical to say to someone allergic to dairy products, “You shouldn’t be allergic to cheese.” As a result, the analogy VanDeVeer wants to run between the two states seems quite problematic.

Nevertheless, there seem to be certain offended states that *are* neither reasonable nor unreasonable, and perhaps the analogy holds in these cases. These are states we might call *nonreasonable* states,⁴⁵ states for which it seems *no reasons can even be given* and for which rational appraisal or criticism seems entirely moot (as opposed to unreasonable states, for which *bad* reasons are given and which *are* subject to rational appraisal/criticism). These states might include

⁴⁴ In fact, it is unclear that VanDeVeer’s analogy holds for *any* type of offended reaction, given the way in which we have defined offense, simply because allergic reactions generally constitute a *harm* to the sufferer (consider, e.g., the extreme case in which someone allergic to bee stings can die if untreated immediately). Recall that offended reactions as they are relevant for the Offense Principle involve a harm only in the trivial sense that they involve setbacks to the offended person’s interest in not being offended, i.e., they are essentially *harmless*. If the offensive action/event *also* causes harm, then the now-harmed person’s complaint falls under the rubric of the Harm Principle, where it is automatically to be taken more seriously. Thus, it seems VanDeVeer’s analogy holds only for certain types of *harmed* states due to a person’s abnormal susceptibility for being harmed (hemophiliacs, say, who bruise and bleed quite easily). Surely the plight of such people ought to count for something, but this would entirely be due, it seems, to their being harmed, not offended.

⁴⁵ Following Feinberg, *Offense to Others*, p. 36.

offended reactions to bad odors, disgusting food, products of bodily excretion, etc.⁴⁶ And here, it seems, the analogy between these types of offended states and allergic reactions may hold in certain respects, and perhaps the reason it holds is due to the fact that these types of offended states primarily (if not entirely) seem to involve involuntary *physical* reactions to a certain type of direct contact with the world⁴⁷ and thus seem to involve no beliefs or reasons of any kind and so cannot be eliminated through belief revision or even be the subject of coherent normative assessment. Either I am or I am not offended by these things, and no reasons of any kind would seem to justify or revise that physical reaction either way. Consequently, we might agree with VanDeVeer here that these types of reactions deserve *some* consideration under the Offense Principle.

Indeed, it might even be the case that one could provide arguments for legislation against such offensive actions/events that would fully meet the Reasonableness Condition*, despite the non-reasonableness of the offended reaction. Suppose I am offended by the smell emanating from the rubber factory down the road. My reaction is one of involuntary physical revulsion, and I can give no reasons for why the smell is offensive; it just *is*. I might, then, argue as follows for why the factory should be moved, fined, or shut down: “I am a normal human being with a normal functioning nose. I react to the smells wafting into my house with disgust. There is nothing whatsoever I can do to alter my reaction, other than to wear nose plugs around the clock or to have my nose surgically altered, both of which are patently unreasonable things for me to have to do in this situation. Any other human being with a functioning nose would react in the same, offended way in these circumstances. Please, then, do what you can to stop this ongoing offense.” Such an argument would seem to me not to be publicly unreasonable: it makes use of neither reasons derived solely from a particular comprehensive doctrine nor reasons that could not be fully endorsed by all other reasonable citizens, and it does not violate the minimal standards

⁴⁶ Ibid.

⁴⁷ I suspect (although I am not prepared to argue for this point here) that these “nonreasonable” offended reactions are hardwired into us for sound evolutionary reasons. After all, it makes perfect sense for us to have evolved mechanisms enabling us to be averse to potential food sources that would be quite bad for us if ingested.

of ways of reasoning in general. Even those citizens without fully functioning noses (who would not themselves be offended in such circumstances) could recognize the reasonableness of the request (as would, I imagine, the owners of the factory). So the Reasonableness Condition* can, it seems, be met by arguments for legislation against actions/events producing non-reasonable offended reactions.

Nevertheless, we must tread carefully here. For one might maintain that some people's offended reactions to interracial or homosexual couples *are of precisely the same type* as the non-reasonable reactions just considered. After all, the racist or homophobic person may not be able to give any reasons for his reactions either. He may simply respond to sights of interracial or homosexual couples with a fairly straightforward *physical* disgust akin to his physical revulsion toward bad odors or spoiled food. Therefore, if the Reasonableness Condition* can be met with respect to offensive odors or foods, it seems it could also be met with respect to these other ("formally identical") cases of non-reasonable offense. But if this is the case, then the Reasonableness Condition* would seem to take seriously precisely the sorts of offended reactions it was designed to reject.

We avoid such a conclusion by recognizing that there remains a crucial distinction between the types of disgusted reactions involved. Consider once more the offended reaction of a person to the sight of an interracial couple. The disgust this person experiences is admittedly an unpleasant feeling, and it may very well be as unpleasant a feeling as the feelings of anxiety or fear aroused by certain harmful events. But such a feeling is nevertheless an expression of a *moral* view.⁴⁸ It is the feeling of someone who has internalized the normative belief that it is morally wrong for people of different races to interact in a sexual manner. Regardless of whether or not these reasons for the offended reaction can be dredged up and articulated, they remain expressions that stem from a particularly moral attitude about race.

Indeed, having physical reactions of this sort may be *integral* and *proper* as an expression of one's moral views, no matter what those views consist in. If you truly believe that homosexuality is an

⁴⁸ On this general point, see also Ellis, p. 9, and Michael Stocker with Elizabeth Hegeman, *Valuing Emotions* (Cambridge: Cambridge University Press, 1996), esp. pp. 56–59.

abomination in the eyes of God (and you are also a firm believer that God's views define morality), then we would expect you to be physically repulsed by the viewing of, or even the thought of, homosexual activity. Otherwise, we might suspect that you do not truly believe what you profess to believe. Additionally, we would think it downright inappropriate or bizarre for one who professed to believe all forms of anti-Semitism were abominable to react with anything but horror bordering on nausea at the graphic depictions available of certain Nazi atrocities against Jews.⁴⁹ As Anthony Ellis puts it, "When people are strongly committed to certain moral views . . . this shows itself in feelings."⁵⁰

Consequently, *certain types* of disgusted reactions reveal negative moral or religious attitudes towards the offending actions/events, regardless of whether or not the offended person is able to articulate the internalized normative judgments behind the reaction. This inability, however, should not prevent us from recognizing that there *is* a normative view at work here. But now we can see the difference between these types of physical reactions and those toward rotten food or overpoweringly bad odors, for the former are expressions of moral/religious views, while the latter are not. Persons physically disgusted by the sight or thought of interracial couples, homosexual activity, or Nazi atrocities are all reacting, at least in part, to (what they take to be) the immoral behavior of others. When we ask these people why they are disgusted by such behavior, they may not be able to give any reasons other than, "Because it's wrong!", but that reason alone provides the tip-off that they are expressing a normative judgment. Alternatively, persons who are physically disgusted by maggot-ridden food or foul odors (a) are not even reacting directly to any *behavior*, moral or otherwise, and (b) are not expressing any inarticulated normative judgments about the object of their disgust. When we ask these people why *they* are disgusted by certain smells, they will not respond by saying such things are wrong; at most, they might simply say, "Because they

⁴⁹ Ellis, p. 10. Alternatively, Stocker cites Sartre's comment about a frequently heard *anti-Semitic* argument, viz., " 'You see, there must be *something* about the Jews; they upset me physically' " (Stocker, p. 59). Stocker mentions this case as an illustration of emotions revealing the valuing of individuals.

⁵⁰ Ellis, pp. 9–10.

smell horrible, nothing more.” These would truly be non-reasonable offended reactions, as we are using the term, reactions that very well might form the basis of arguments for state legislation that are not publicly unreasonable. At the very least, as Ellis notes, “Our objection to offensive smells has nothing to do with morality.”⁵¹

But if certain other disgusted physical reactions are expressions of private moral or religious views, then arguments for state legislation based on them will *not* satisfy the Reasonableness Condition*, even if the offended person cannot fully articulate his own reasons for the reaction. Remember, if one’s justification for the limiting of another’s liberty stems solely from one’s particular moral or religious views (i.e., one’s private comprehensive doctrines), and this justification cannot also be endorsed by all other reasonable citizens as consistent with their freedom and equality, then it does not meet the demands of public reason, and so, according to the Reasonableness Condition*, it is to carry no weight with regard to public policy. Thus, far from being *non-reasonable* offended reactions, disgusted reactions expressing moral views indeed involve reasons, and, accordingly, when offered in support of coercive legislation, these reasons are subject to public scrutiny.

But what if someone is offended by certain behaviors where the offended reaction is truly *not* an expression of a moral or religious view? So, for example, Bob may be an honest, self-aware person who says, “I know there’s nothing immoral about homosexuality, but nevertheless I shudder when I see two men kissing. It disgusts and offends me, and I cannot shake that feeling no matter how much I try to persuade myself otherwise.” No real reasons can be given by Bob for his reaction, and we have assumed that his reaction does not stem from, and in fact expresses the opposite of, his own moral convictions. I would suggest that Bob’s is not a non-reasonable

⁵¹ Ellis, p. 8. Strictly speaking, of course, this isn’t necessarily true. Long-time vegetarians, for example (like our old friend Apu), may very well be offended by the smells of cooked meat coming from their neighbor’s barbecue. Similarly, Muslims may be offended by the smell of pork. I think it fairly obvious, however, that we can trace such offended reactions to certain internalized normative judgments (for instance, there is a *behavior* that is being implicitly morally judged in both cases, viz., the *cooking* and *eating* of, respectively, sentient beings and “filthy” creatures), and as I shall argue shortly, these reactions can be evaluated under the Reasonableness Condition*.

reaction, i.e., it is not a reaction for which there are no reasons that can be given, either for or against it. Rather, there *are* reasons against his being offended, reasons stemming from his own moral outlook; it's just that he lacks the capacity to react appropriately to these reasons. And as Thomas Nagel points out, "[T]he capacity to accept certain theoretical arguments is thought to be a condition of rationality,"⁵² so Bob's reaction is not non-reasonable; it is, rather, *irrational*.

But an irrational offended state – i.e., a persistent negative reaction to some action/event in the face of good reasons *not* to react in such a way – ought to be revealed for what it is: a phobia. Note the similarities, for example, between the kind of offended state described and that of the self-aware acrophobe, who says, "Yes, I understand that this huge fence stands between me and the edge of the building and that there's no way I'll fall down over it. Nevertheless, I am terrified of even going near the edge to look over." Or consider the phobic reaction reported on a radio show several years ago by a white woman, who said that she could not bring herself to get into a public pool when black people were in there, because she was terrified that their "color" would somehow wash into her body. Bob's reaction is akin to these sorts of irrational, phobic reactions. Indeed, we have a word for it: homophobia.

If, then, offended states that persist in the face of good reasons to react otherwise are actually phobic states, it seems intuitively clear that arguments based on them for state coercion against the offending action/event should be given no weight. This is not to say, however, that phobic offendees should receive no *consideration* whatsoever. We do not, for example, simply ignore acrophobic and agoraphobic citizens. Rather, the emphasis at that point should be on providing psychological help to them so that they may either eliminate, or learn to live with, their phobic reactions (such help perhaps to be construed as a Rawlsian primary good for them). But this is a state response that focuses on the phobic person, and not the agent/event that gives rise to the phobic reaction, and so treatment of phobic offendees should also not involve coercive legislation against the "offender" in such cases.

⁵² Thomas Nagel, *The Possibility of Altruism* (Princeton, NJ: Princeton University Press, 1970), p. 3.

THE “BARE FACT” OF OFFENSE AND
THE REASONABLENESS CONDITION*

There remains a second important objection to consider here, one that is related to VanDeVeer’s but is perhaps more subtle and powerful. Let us return to the case of the billboard depicting the kissing interracial couple in the town comprised mostly of racists. For the sake of argument, let us grant that the offended reaction of the citizens is unreasonable, depending as it does on the idiotic belief that blacks are inferior to whites. But let us also suppose that the offense taken by these people is quite profound. They are extremely troubled by this image they must run across involuntarily in the center of town every day. Feinberg himself maintains that in such a case, the townspeople’s complaints, despite being unreasonable, should still carry some weight: “Provided that very real and intense offense is taken predictably by virtually everyone, and the offending conduct has hardly any countervailing personal or social value of its own, prohibition seems reasonable even when the protected sensibilities themselves are not.”⁵³

Indeed, Feinberg might make use of the some of the Rawlsian arguments I have given here to buttress this position, hoisting me with my own petard, as it were. Suppose, for example, the townspeople were to argue as follows:

The simple fact that so many of our citizens are profoundly offended by this display constitutes a blow to their freedom. In order to develop our moral powers and pursue our conception of the good, certain basic conditions must be met, one of which is that we are not subjected to intense and long-lasting offenses.⁵⁴

⁵³ *Offense to Others*, p. 36.

⁵⁴ One might very well draw such an argument from the later Rawls himself. See his “The Priority of Right and Ideas of the Good,” in Samuel Freeman, ed., *John Rawls: Collected Papers* (Cambridge, MA: Harvard University Press, 1999), pp. 454–455. There he suggests that, given certain precautions, we could expand the list of primary goods (goods needed by all free and equal persons for their pursuit of their individual conceptions of the good) to include things like leisure time “and even certain mental states such as the absence of physical pain” (p. 455). So our townspeople in this case might draw an analogy between the absence of physical pain and the absence of intense and enduring offense to the extent that both involve an involuntary focus of attention on matters that distract one from the development of one’s moral powers and the pursuit of one’s conception of the good.

When our attention is focused involuntarily on things like this billboard (which we cannot help but see every day in the center of town), we are irritated, embarrassed, and thus distracted from what should be our freedom both to develop our moral powers and to pursue our conception of the good (which includes creating and living in a community where sinful/immoral behavior is absent). Our very political autonomy as citizens, then, is hampered by such displays. So even if you consider our reasons for being offended to be publicly unreasonable, *the bare fact* that so many of us are deeply offended over a long period of time should itself provide a publicly reasonable reason for banning the offending billboard.

This seems a powerful argument indeed.⁵⁵ But does it provide any justification for banning the billboard? I am tempted here simply to suggest that the deep and profound reaction of the townspeople might better be construed as a *harm* and then shuffle this complaint off to the Bureau of the Harm Principle. But let us go ahead and consider the harder matter of whether or not the townspeople have a case before the Bureau of the Offense Principle. Do they? On the model of the well-ordered liberal society I have drawn from Rawls, the answer is no. First of all, note that “the bare fact that” lots of people are offended by X alone cannot provide a publicly reasonable argument for the banning of X in a liberal democracy. To see why, fill in X with “black people speaking with white people” or “women working outside the home.” A ban on such activities would constitute a violation of certain basic rights and liberties and so would clearly be publicly unreasonable, failing as it would to square with the freedom and equality of all citizens. Just because the complaining citizens constitute a *majority*, that does not mean their complaints should receive any consideration on such questions of basic justice. With respect to certain issues, the number of complainants just doesn’t matter.

Nevertheless, isn’t there something to be said for the claim that, *no matter* the number of affected citizens, if they are forced to view certain persistently offensive actions/events that detract from their pursuit of their conceptions of the good, this alone constitutes a reason for their complaints to carry *some* weight in a liberal state (which is, after all, in the business of providing the conditions necessary for such pursuits to take place unhindered)? Indeed, we may

⁵⁵ I am grateful to an anonymous referee at *Law and Philosophy* for articulating this objection so forcefully.

suppose that the citizens in our fictional community are not trying to take away the rights of the town’s few interracial couples to kiss one another in private (or even briefly in public, for that matter). They just don’t want the act emblazoned forever on their skyline as a depiction of something “normal,” as an advertisement for an act that profoundly offends them (however unreasonably, according to “you left-wingers”).

The glib reply here is that the liberal state is more accurately in the business of securing for its citizens “equal opportunity to advance any *permissible* conception [of the good].”⁵⁶ But as I have already discussed, certain conceptions of the good are ruled out as impermissible for pursuit if they do not respect the principles of justice: “the claims citizens make to pursue ends that transgress [these] limits have no weight.”⁵⁷ So if the offended reactions in our townspeople stem from a conception of the good in which blacks are viewed as intrinsically inferior to whites, their complaints about being distracted by the billboard in their pursuit of the end of ridding their town of any depictions contrary to their view of the significant moral difference between the races should rightly fall on deaf ears. To take a more clear cut case, if I believe I am the messiah, my being offended at your failure to bow down to me in the street does not give me any legitimate ground for complaint, despite the continual and profound offense I may experience. Here is where the requirement of reasonableness at the level of comprehensive doctrines plays an important role.

Nevertheless, to be as fair as possible to the objection, let us suppose our majority of townspeople do subscribe to a *reasonable* comprehensive doctrine, from within which it is perfectly reasonable to be offended by the sight of interracial couples kissing (which, quite frankly, I am not sure could be pulled off). Nevertheless, they have no good public reasons (independent from the reasons provided by their comprehensive doctrine) to justify the banning of the billboard. Still, it does greatly offend them. Should their complaints *really* carry no weight?

The answer now depends on whether their argument for the ban makes reference to reasons *all* the town’s remaining (reasonable)

⁵⁶ Rawls, “The Priority of Right and Ideas of the Good,” p. 459; emphasis mine.

⁵⁷ *Ibid.*, p. 449.

citizens could endorse. Suppose, then, that I am in the minority in this town: I do not share the comprehensive doctrine shared by the majority and I happen to believe that interracial romance is perfectly acceptable. The billboard bothers me not at all. I may very well sympathize here with the majority, however, accepting that *in this instance* the bare fact that so many people are offended constitutes sufficient grounds for the banning of the billboard.

But suppose I am part of an interracial couple and that I am the one sponsoring the billboard, doing so in an attempt to show my bigoted neighbors that it *is* perfectly okay for blacks and whites to kiss. Is the “bare fact” of the majority’s being offended a reason I could also endorse? No, for what banning the billboard would do is put the state’s stamp of approval on the silencing of the expression of *my* (reasonable) conception of the good, and this is unreasonable if I am to be considered just as free and equal a citizen of the town as my neighbors. Suppose that the townspeople put up a billboard directly across from mine, with a depiction of (their conception of) Jesus, wagging his finger and saying, “Just say ‘NO’ to interracial romance!” It seems I would now have analogous grounds for objecting to this billboard: “The bare fact that I am profoundly offended by it should count for something, shouldn’t it?” Again, the answer is no. When it comes to coercive legislation with respect to the public expression of various reasonable conceptions of the good, the default position of the liberal state is to secure the *liberty* of the expresser, *unless publicly reasonable arguments otherwise are provided*. In the end, the Reasonableness Condition* as stated must be met. Unless *all* reasonable citizens could endorse the reasons given, the billboard stays, no matter how vast the opposing majority. Their complaints carry no weight. Here it is *Feinberg’s* suggestion to the contrary that is illiberal. I suppose that there might occur a case in which all reasonable citizens of a particular community could endorse the “bare fact of offense” argument, but in that case I would wonder how such a billboard could have come to be built in the first place. At any rate, given what Rawls terms “the fact of pluralism”⁵⁸ in the United States (and

⁵⁸ See, e.g., John Rawls, “The Idea of an Overlapping Consensus,” in Freeman, p. 425: “This diversity of [comprehensive] doctrines – the fact of pluralism – is not

other liberal democracies), I suspect such cases would be rare to non-existent.

It will be worthwhile for me to pause here and briefly summarize both what I have and what I have not shown. I have argued that the Reasonableness Condition* should be an essential part of any set of conditions for the application of the Offense Principle in the justification of coercive legislation. The reasons against its use are spurious, and the reasons for its use are perfectly compatible with (as well as a requirement of) liberal principles. What this means is that justifications for legislation against actions/events that are taken to be offensive are to be given no weight if they are unreasonable from the standpoint of public reason. That is, if the justifications one gives for banning what one takes to be offensive stem solely from one’s own comprehensive moral/religious doctrine or if they do not meet the minimal constraints on ways of reasoning for public discourse, they may safely be ignored for purposes of public policy. But I have certainly *not* shown that justifications failing to satisfy these conditions render the original offended reactions *themselves* unreasonable. There may still be very good reasons *from within the domain of one’s own moral/religious perspective* to be offended by any number of things. And there may also be numerous justifications for legislation stemming from certain offended reactions that can meet the *public* demands of reasonableness. All I have shown is that it is perfectly within the jurisdiction of the liberal state to make such demands. I turn now to a case study of how the Reasonableness Condition* might play a role regarding so-called offensive language in the public media.

DIRTY WORDS AND THE REASONABLENESS CONDITION*

My purpose in this section is to conduct an extremely limited examination of the public reasons one might give for the banning of certain “offensive” words in certain public forums. My contention will be that there are no good reasons to be found, and thus, according to the Reasonableness Condition*, no good reasons for the a mere historical condition that will soon pass away; it is, I believe, a permanent feature of the public culture of modern democracies.”

state's banning the use of such words in public media such as radio and television. In assessing the public reasonableness of arguments stemming from offended reactions to such words, I will first appeal to a very basic principle of acceptable ways of reasoning, viz., what I will call the *Principle of Consistency*:

The judgment that X is offensive and thus should be banned is unreasonable if it is inconsistent with the simultaneously-held judgment that Y is inoffensive and should be legally permissible, where Y is just like X in all relevant respects.

If we accept this principle as a minimal requirement of ways of public reasoning, then my conclusion readily follows.

Before beginning my analysis, however, I need to make explicit two important restrictions on the scope of my investigation. First, in what follows I will focus only on justifications for coercive legislation against offensive words that do *not* derive solely from people's private comprehensive doctrines. As mentioned previously, such justifications do not involve reasons that could be endorsed by all other (reasonable) citizens consistent with their freedom and equality, so they are rendered weightless by the Reasonableness Condition*. Thus, while some people might argue that certain words ought to be banned solely because they offend certain groups' religious or moral sensibilities, these complaints will rightly be ignored by the liberal state, and I will not discuss such obviously publicly unreasonable arguments. Instead, I will discuss offended reactions to certain words for which reasons justifying a ban might be given that do *not* stem solely from any particular moral or religious view, reasons that, on their face, all other reasonable citizens might *potentially* be able to endorse. Let us call such reasons "public reasons," for short. These would then be justifications that pass one of the tests of the Reasonableness Condition*. The question now is whether or not they meet the other minimal public requirement of consistency in ways of reasoning.

I also want to restrict my analysis to the class of words known technically as vulgarities,⁵⁹ words usually having scatological or sexual derivations/connotations. Of these words, the ones usually generating the strongest reaction are "fuck" and "shit," and I will

⁵⁹ Here I follow the exhaustive classification provided by Feinberg in *Offense to Others*, pp. 205–208.

concentrate on these, although I will occasionally mention others in passing. My discussion will focus simply on the use of these words as descriptives, intensifiers, or exclamations, as opposed to their use in insults (such as “Fuck you!”) or as part of hate speech, for these latter may raise special problems. What I have in mind, then, are vulgarities used in contexts such that the offense claimed to be taken is *only to the use or mention of the words themselves*, and not to, say, the circumstances surrounding, or the consequences of the use of, the words.

That said, there are three possible public reasons one might give for banning the public use or mention of a particular word: (1) the *sound(s)* of the word offends; (2) the *meaning* of the word offends; or (3) the *historical use* of the word carries with it offensive baggage. Let us then examine each reason in order.

First, one might say that vulgarities are offensive and thus should be banned from the public media because the sounds of the words themselves are objectionable. “Fuck,” for example, is a nasty-sounding word and that particular sound may be offensive to any reasonable citizen’s auditory sensibilities; they “hurt” one’s ears, so to speak. And the same might be said for “shit,” “tit,” “cock,” “prick,” “pussy,” “bitch,” and “ass.” These are clearly words with a bite, full of short, sharp sounds, and perhaps these are the sounds of offense.⁶⁰

⁶⁰ Although newspapers are outside the purview of the FCC, they also attempt to maintain “standards of public decency,” and while they do not have to worry about providing any offensive *sounds*, they sometimes act as if their readers need to be protected from the very *sight* of offensive words, insisting on not even mentioning (let alone using) certain words. As a result, we get such coy stories as the following, reported in *The Los Angeles Times*, June 10, 1998. Apparently, during the broadcast of the Tony Awards, Irish actor Tom Murphy used, as the report put it, “the ‘F-word,’” but he “pronounced the word as the Irish do – with an E as the second letter, and no G at the end.” Apparently, “feckin’” is too offensive a word even to print. Humorously enough, during the broadcast itself the word was left in, simply because the network censor “was not familiar with the pronunciation and ‘decided to give the benefit of the doubt on it because she didn’t want to disrupt the acceptance speech.’” The report goes on to say that it “is believed to be one of the few times the word, or even a close approximation, has found its way into a network broadcast, except for sports events at which microphones are placed on the sidelines near players.” I suppose we should consider Irish athletes to constitute double threats.

Nevertheless, putting the matter in this way plainly reveals the absurdity of such a position, an absurdity based on an inconsistency. It cannot be that these *sounds* are the source of offense, simply because the exact same sounds are entirely inoffensive in certain contexts. We hear – without being offended – that Jesus rode into town on an “ass,” that the “cock” crowed three times, that the doctor will “prick” your finger, that the warring nations played “tit-for-tat,” that the little boy left milk out for the “pussycat,” and that there are “bitches” all over the place at the Westminster Kennel Club Dog Show. As for the “more” offensive terms “shit” and “fuck,” we hear these sounds as part of longer words without being offended in the least. For instance, we read in the Bible that the wood made to build the tabernacle was “shittimwood”,⁶¹ also called wood from the “shittah tree”. Perhaps you would like to purchase a Shih Tzu dog? And unleash *it* in “Norfolk” (pronounced “nor-fuck”), Virginia? The point should be clear. If the reason one cites for banning the “dirty words” is their offensive sound(s), then one violates the Principle of Consistency by arbitrarily exempting these other identical-sounding words and phrases from the ban as well. And assuming no reasonable person would want to ban the other words cited on the basis of *their* sounds, the Principle of Consistency demands that the sounds of the “dirty words” themselves cannot constitute a good basis for banning *them*.⁶²

The natural rejoinder to such a point, I’m sure, would be to claim that the words’ semantic nature is what is offensive and so is what provides a reason for banning them from the public media. The meaning of the words, on this justification, is what distinguishes them in terms of offensiveness from the identical-sounding words and phrases just discussed. But this will not do, again for reasons of inconsistency. Consider, for example, euphemisms of the word in question. It is usually – if not always – possible to provide an

⁶¹ Exodus 25:10.

⁶² Indeed, attempting to block the broadcast of certain “offensive” words solely based on their sounds can lead to quite hilarious consequences. The *Memphis Commercial-Appeal* ran a story in September 1998 about a new gadget intended to delete words or phrases deemed offensive from TV broadcasts by reading the closed-captioning signal encoded into various shows and replacing the offensive-sounding words with inoffensive euphemisms. On a trial run of the device, however, the famous name “Dick Van Dyke” came out “Jerk Van Gay.”

inoffensive euphemism in place of the “offensive” vulgarity, a word that means the same thing as the taboo word but is for some reason (no reason?) more acceptable. For example, in place of “shit” (in its most straightforward referring mode) we might substitute (in increasing order of acceptability) “crap,” “turd,” “poop,” “doo-doo,” “excrement,” and the always colorful “fecal matter.” If the meaning is the same in each case, then it seems quite inconsistent to object to one word on the list while allowing for public broadcast of the others.⁶³

What, though, of “fuck”? I believe at least one of its many meanings can be captured in an inoffensive way by a longer string of words, e.g., “to have sex with another entity primarily (solely?) as a means to one’s own physical gratification.” One might even make a case for the now-acceptable (in the light of the Austin Powers movies) “shag” as being a perfectly good substitute. And while these particular translations may not capture everything connoted by “fuck” in some circumstances, it seems clear that *some* inoffensive string of words could be found to do the trick. So once more the point should be obvious: if there are unobjectionable strings of words that *mean* the same thing as “fuck,” then one violates the Principle of Consistency by arbitrarily exempting such strings from any proposed ban if it is truly the *meaning* of the word that is cited as its justification.

Now a good Fregean might interrupt here to point out that reference is not the only form of meaning that matters; there is also the *sense* of the word/phrase to contend with. So while “shit” and “fecal matter” may have identical referents, they differ in sense. If this is the case, then, perhaps it is the *sense* of the vulgarity that is offensive and is what provides the significant distinction between it and its inoffensive euphemisms.⁶⁴

⁶³ Harry Frankfurt provides a delightful analysis of the term “bullshit,” concluding that it is generally meant to refer to a claim that is “produced without concern for the truth.” See “On Bullshit,” in his *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988), p. 129. If he is right, then the phrase “Your claim was made with no concern whatsoever for the truth” would provide an inoffensive (albeit far less succinct) substitution for the exclamation “Bullshit!”

⁶⁴ I am grateful to Eric Cave for drawing my attention to this objection.

But even this rejoinder fails. To see why, consider how the vulgarities in question are treated in the media to render them “inoffensive.” A basketball coach may say, “The other team beat the shit out of us tonight,” but when the exchange is broadcast on the news that evening, the viewer will hear, “The other team beat the sh(*bleep*)t out of us tonight.” In merely pausing for a moment on any broadcast of The Jerry Springer Show, one will be treated to a torrent of bleeps, many of them apparently only meant to block the dastardly “u” sound between the “f” and “ck” sounds. A radio deejay is perfectly allowed to say, “Shut your *frigging* mouth,” or “How often do you *eff* your husband?” But in all of these cases, *it is precisely the sense of the offensive word that is being broadcast*. What else could it be? In each case, the full-blown sense of the dirty word is being made abundantly clear. What is somehow rendering the word inoffensive in each censored case is that we are not being permitted to hear the full-blown word, yet this suggests again that it is the *sound* of the word, and not the sense of the word itself, that provides the reason for banning it. But as we have already seen, that is an unreasonable justification.

Two objections to this analysis might still be raised, however. First, it could be the case that indeed some people *are* offended by certain of these substitutions, e.g., “eff,” just because they are so close in sense to “fuck.” I have certainly run across people who are surprised and dismayed that “eff” is permitted in certain broadcasts for precisely this reason. If so, then a case still might be made for banning both “fuck” and its sense-substitutes without violating the Principle of Consistency. This objection fails, though, when we consider just how many other words might be (and actually are) used to get across the same sense as “fuck.” A radio host might even simply stipulate that, for the remainder of the broadcast, the word “Flimpernozzle” is going to be used as a substitute for “fuck” (or “eff,” if you will), clearly intending to express the full sense of the word being censored while getting around the FCC restrictions. And even well-timed grunts can do the trick (e.g., “How often do you and your spouse *hunh*?”). Unless this objector is willing to try and ban the use of all such possible words or sounds (a seemingly impossible

procedural task), he would be inconsistent to focus arbitrarily on just “fuck” and its more popular sense-substitutions.⁶⁵

On the other hand, one might argue, even if the word “eff” and other sense-substitutes for “fuck” are *not* generally found to be offensive, there may yet be no inconsistency involved in distinguishing between them because part of the conventional meaning of “eff,” say, is “an inoffensive word to use in place of the word ‘fuck.’” In other words, perhaps it is part of the *meaning* of these substitute words that they are appropriate to use when one is inclined to use “fuck.”

This move is problematic, however, for it strikes me as mistaken to claim that the offensive/inoffensive status of a word may be somehow “built in” to its meaning. Instead, its status is separate from the meaning (even though that status is often based on the meaning). To hold otherwise would be to suggest that the people just discussed who *do* find “eff” offensive are incompetent language users – they must not understand what the term means. But of course they *do* understand what the term means. Indeed, that is why they claim to find it offensive. Consequently, the basic premise of this objection seems false.

My general point about meaning is driven home even further, though, when we move away from the use of vulgarities as referential descriptions and consider their use as intensifiers or exclamations. For example, the person who cries out “Oh shit!” is certainly not making a reference to fecal matter, just as the surfer who cries out “Great fucking wave, dude!” is not making a reference to the sexual proclivities of oceanic formations. The meaning (reference *or* sense) of the “offensive” word in this case is not even an issue; rather, the speaker wishes to express some emotion or other, and this emotion may just as easily have been expressed in alternate, “inoffensive” ways, e.g., by a scream or by some enthusiastic pointing.⁶⁶ Again, any particular meaning the word might have in other contexts is entirely irrelevant in such cases; the word itself is being

⁶⁵ And if someone could actually articulate the meaning whose expression (in any form) he wished to restrict in public, would his own articulation fall under the list of banned phrases?

⁶⁶ Comic strip artists will often resort to a string of symbols found on the top row of a computer keyboard to get this type of exclamation across, e.g., “@#%*!!!”

used here without any meaningful referent. But if such inoffensive expressions as “Shoot!” and “Freaking!” are doing the same expressive work as “Shit!” and “Fucking!”, then it remains inconsistent to distinguish one from the other for purposes of public policy.

If it is neither the sound nor the meaning of a word that could provide the basis for a publicly reasonable argument banning it, then what is left? Some might claim that a word’s offensive nature is rooted in its history within a particular community of language-users. For example, a word may have been used for so long to demean a particular group within the community that the word itself has come to be synonymous with an act of prejudice or hatred or threat, and so perhaps no reasonable citizen concerned with upholding the freedom and equality of all citizens would object to its being banned as a result.

This is an important point, and perhaps (if suitably spelled out) it could provide at least a partial justification for banning the use in public media of racial epithets and certain words denigrating women *in certain contexts*.⁶⁷ But in terms of the limited domain of vulgarities at issue in this paper, this justification is irrelevant. Once more, I am interested only in the use of the *scatological and sexual vulgarities* banned from the public airwaves, and these words simply do not have the type of negative historical associations described above. True, they may have been used as intensifiers for certain racial or gendered epithets, but as a matter of linguistic fact they are simply not words historically used to demean or degrade particular groups or individuals within our language-community.⁶⁸ Con-

⁶⁷ Although I should point out that in some contexts such words might best be treated as harms, falling under the rubric of the Harm Principle, insofar as they may constitute a type of threat that goes beyond mere offense in their effect.

⁶⁸ A case *might* be made that the word “fuck” indeed does have such baggage attached to it, perhaps insofar as it has been used as a word connoting a violent attitude toward women or having something to do with rape. I certainly don’t disagree that the word has been used in such contexts. The question is whether or not it has been used enough in those contexts such that it carries with it primarily *that* offensive baggage. This is an empirical matter, but I sincerely doubt that it does. The word “fuck” has been, and can be, used in too many different ways and in too many different contexts for it to have garnered a single, dominant connotation. On this general point, see Timothy Jay, *Cursing in America* (Philadelphia: John Benjamins Publishing Company, 1992), and Geoffrey Hughes, *Swearing*

sequently, no justification is found here either for legislation against them.

I can think of only one more type of claim someone might present against the public use of such words, and it might run as follows: "Such words are just offensive to me, period. I realize I have no good reasons for being offended; indeed, I recognize reasons from within my own comprehensive doctrine for *not* being offended by them. Perhaps this reaction is merely a residue from my strict childhood upbringing. Nevertheless, I can't do anything about it. Whenever I hear or see these words, I am profoundly offended. Consequently, I appeal to the government to make it so that I never have to run across them in the public media." But this is the type of irrational reaction I have likened to a phobia, and I believe I have already shown why such a response should carry no weight for questions of coercive legislation. Rather, any onus for change is on the offended person, and, if anything, the state should do what it can to enable such a person to get rid of, or cope with, the reaction involved.

Thus, I can see no good public reason for why the use or mention of the vulgarities in question should be, in effect, banned from public broadcasting. Arguments for a ban derived from offense taken to them clearly do not meet the Reasonableness Condition (insofar as they either violate the Principle of Consistency or are irrelevant with respect to the specific vulgarities at issue), and thus such arguments should bear no weight in public discussions of coercive legislation having to do with the Offense Principle.⁶⁹

(Oxford: Blackwell Publishers, 1991). Of course, one might maintain that there are *still* certain contexts in which the word "fuck," when targeted directly at a woman, carries with it the truly offensive historical baggage in question. Two points may be made in response. First, while this may be true, it seems that such usage would constitute a threatening or harassing action, an action that should obviously be covered under the Harm Principle. But the more important point is this: I am concerned solely with the use of such words in public media, and in *those* contexts, the words are *never* (or very rarely) *directed at people in the listening audience*. Rather, they are directed to other characters or people within the context of the broadcast. So the worry is (for the most part) moot.

⁶⁹ I should note here that, despite our contrary positions throughout most of this paper, Feinberg and I are actually in agreement regarding what the state's view on vulgar public language ought to be. As he writes in a lengthy and fascinating treatment of obscene words in *Offense to Others*, "The offense principle . . . cannot justify the criminal prohibition of the bare utterance of obscenities in public places

SOME FINAL AESTHETIC CONSIDERATIONS

Thus far I have established merely that arguments in favor of banning the use of certain so-called vulgar language in public media are publicly unreasonable. But just because there is no good reason to legislate *against* the use of such language in public media based on the Offense Principle, that does not mean that there is yet any reason for such language to be broadcast in the first place. It might be argued, for instance, that vulgarities simply are not “proper” English, and they lower the quality of public dialogue by being low-class, inappropriate, or merely titillating words that have no redeeming social value and whose use undermines and cheapens the overall beauty of the language. Their use, on this line, is akin to such idiomatic or ungrammatical constructions such as “ain’t,” “fixin’,” and “He be . . .” or “She be . . .”

This is of course an aesthetic argument. It is not an argument having anything to do with the offensiveness of such words; rather, it is essentially an argument about what words belong to the domain of a particular language in the first place. An analogous aesthetic argument about art, regarding the appropriateness of public funding for a controversial work like Andres Serrano’s “Piss Christ,” say, might run as follows: “No, it’s not that I don’t want federal funding for the piece because the sight of a crucifix in a bottle of urine is offensive. Rather, I simply think it’s not properly construed as *art*, so there’s no reason either for it to receive federal *arts* funding or for it to show up in a gallery or museum regardless of its funding source.” With respect to vulgar language, then, the argument would be that these words are simply *bad*, or improper, English, and they shouldn’t trip off anyone’s tongue in the public arena.

even when they are used intentionally to cause offense” (p. 277). I hasten to add, however, that Feinberg and I take very different paths to this conclusion. Indeed, one of the reasons his treatment of the topic is so lengthy (nearly 100 pages) is that he must take the time to discuss the relevance of his four conditions (discussed earlier in this paper) for the various types of obscene words that might be publicly used. I believe my treatment of the topic is superior, however, insofar as it is both simpler (because none of the arguments for banning the words passes the Reasonableness Condition*, there is no need to move on to Feinberg’s other four conditions) and theoretically more in keeping with the ideals of a liberal state with respect to certain other potential candidates for application of the Offense Principle (e.g., the billboard discussed at length earlier).

Leaving aside the (probably spurious) comparison of network television to an art museum, I think a case can be made for the use of vulgarities in the public media, and I here offer merely a sketch of how such an aesthetic response to this argument might go. For one thing, such words can be quite colorful, adding a certain undeniable rhythm and spice to one's pronouncements.⁷⁰ Here it may actually be the *sound* of the words, ironically enough, that provides their positive aesthetic value. It has often been remarked that Richard Pryor's use of vulgar words turned his comedy into a kind of poetry. Of course the flip-side to this point can be found in the many cheap imitators of Pryor who mistakenly thought "vulgar = funny" and ended up drowning out any points they might have made with dirty words. But it is no objection to vulgarity's occasionally delightful use to claim that vulgarity can be *overused*. We do not, for example, eliminate the use of the valuable phrase "you know" from the language simply because many students seem to use it three or more times per sentence.

Second, so-called vulgar words can often express more succinctly a desired meaning than any of their "inoffensive" substitutions.⁷¹ It is generally well-known that there is no single, active, present-tense verb referring to the act of sexual intercourse that is neither taboo nor slang.⁷² In fact, the words "fucking" or "screwing" actually connote elements of the sex-act that take quite a long string of words to describe fully otherwise (e.g., just see my own tortured translation of "fuck" above). The same might be said for the word "bullshit." No other word that I know of is as succinct and clear as

⁷⁰ Alan King, the long-time comedian and Abbot of the Friar's Club, echoed these remarks recently in his capacity as introducer for the Friar's Club Roast of Drew Carey. In defending the amount of vulgar language that he knew was to come from the various roasters of Carey (and which he knew would be bleeped out during the broadcast), he said, "The English language is very limited, and words that color a sentence, or a situation, should be welcome." Broadcast on the cable channel Comedy Central, October 28, 1998.

⁷¹ I do not at all mean to suggest that the substitutions mean or connote something *different* than the vulgar word, only that the vulgar words may occasionally be more efficient to use if one wants quickly to express such meanings/connotations.

⁷² "Copulating" might work here, but it remains too dry and technical a word to connote what is usually meant by "having sex" or "fucking." It actually does better at conjuring up images of, say, the mating of dung beetles.

a response to what one takes to be an outrageously false claim (or, better, a claim that is presented without any regard for the truth).⁷³ And this word's equally syllabically succinct euphemisms – “B.S.” and “Bullcrap” – even though they mean the same thing, simply don't equal it in – for lack of a better word – *zing* (and again, this probably has to do with the particular *sound* of “bullshit”).

The point, then, is that I think there are good, positive aesthetic reasons for the public use of the vulgarities I have discussed. We may object to their public *overuse*, of course, but not for reasons having to do with their offensive nature. There are *no* good public reasons, I maintain, for that.⁷⁴

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⁷³ Again, see Frankfurt on this topic.

⁷⁴ I am greatly indebted to Eric Cave, Mark Timmons, audience members at both an April 1998 Social & Political Philosophy Conference in Columbia, Missouri and an October 1998 University of Memphis Research in Progress Colloquium, and an anonymous referee at *Law and Philosophy* for their extremely helpful remarks on earlier drafts of this paper. My thinking on these matters was also greatly sharpened through several enjoyably combative conversations with Josh Glasgow.