

The Understanding Censor

Robert Mark Simpson

Text of a talk at an online conference on ‘Themes in the Work of Les Green’, March 2021.

Abstract. Some authors claim that censorship expresses a condemnation of the way of life that gives rise to the censored speech – either that such condemnation is part of the social meaning of censorship, or that a condemnatory attitude provides part of the impetus for such censorship. Given that much bad speech arises out of a good way of life, and given that the state should refrain from expressing condemnation for good ways of life, these claims about the condemnatory character of censorship generate a *prima facie* compelling argument against censoring (some) bad speech. In this paper I address that argument, by showing how the attempt to understand a particular way of life can temper or counteract the condemnatory potential of censorship that restricts speech arising out of that way of life.

1. Bad Speech and Good Ways of Life

In his paper “Free expression and personal identification”, Joseph Raz argues that freedom of expression serves an important public good, related to the validation of different ways of life. A way of life is validated when people use public forums to speak about it, or to portray it, or to engage in other expressive acts that somehow embody it. There are several facets to validation as Raz conceives of it. Validation is partly about other people becoming familiar with a given way of life. It’s also partly about a way of life receiving “the stamp of public acceptability”, and about people in that way of life being reassured that they aren’t fundamentally estranged from the larger society (Raz 1994: 155). The further benefits of this validation are likewise multifaceted. Lifestyle validation promotes the well-being of people in the validated lifestyle, it helps that lifestyle to stand as a live option for

others, and it supports the ongoing transmission-cum-rejuvenation of traditions and customs (Ibid: 156).

What I want to discuss here is a problem that arises under this sort of theory of free expression, in terms of how it deals with certain types of bad speech. I think Raz is right that there is no problem to speak of in cases where bad speech is giving expression to a correspondingly bad way of life. Groups like the Westboro Baptist Church have a debased way of life, and the kind of public speech that this group engages in – picketing funerals with signs that say “God Hates Fags” – is as debased as the form of life from which it arises. Most societies will want to treat this kind of speech as a crime or a tort or both. After all, our commitment to free speech isn’t a license for vicious verbal attacks, and it isn’t necessary to allow such attacks in order to have a society in which public issues can be openly debated.¹ The fact that this group’s way of life will be robbed of validation, in restricting such speech, is nothing to regret.

The problem lies in the fact that not all bad speech comes out of a bad way of life. “Bad speech is often a part of a good way of life”, or in any case, if not a downright good one, then at least “one which should not be condemned by society through its official organs” (Ibid: 161). Raz suggests two examples of expression that fits this description: benighted religious apologetics, and excessively loud music. There are *pro tanto* good reasons to restrict these types of expression. The first encourages false beliefs and superstition. The second detracts from music’s aesthetic value (and, presumably, damages people’s hearing). But if the state restricts these forms of expression, it “condemns, and impedes the existence of, good ways of life of which the acts of bad speech are parts” (Ibid: 161). And you don’t have to be too full-bloodedly liberal, in your political sensibilities, in order to regard state inhibition and condemnation of good ways of life as a problem from the point of view of justice.

To Raz’s two examples I would add another slightly more controversial example of bad speech arising out of a good way of life. Some anti-vaccination messages come from people who have fallen into rabbit holes of misinformation online. In those cases anti-vaccination speech is not an expression of a good way of life, it’s just a dismal reflection of people becoming lost. But in other cases anti-vaccination speech gives expression to a way of life that is, on balance, basically decent. I’m thinking of people with a neo-Hippy-ish, “natural and healthy” way of life. This sort of lifestyle revolves around activities like gardening, organic cookery, spending time outdoors, staying physically fit, and the pursuit of well-being practices like meditation. In its emphasis on a ‘natural’ approach to well-being, this lifestyle can breed a degree of suspicion toward the health care establishment,

¹ These statements about the limits of free speech are paraphrasing passages from Justice Alito’s lone dissent in *Snyder v Phelps*, 562 U.S. 443 (2011). This was a US Supreme Court decision which found that speech like the Westboro Baptist Church’s picketing at funerals, irrespective of its intentional offensiveness, cannot, under the First Amendment, be the basis of liability for the tort of infliction of emotional distress.

and in particular, the potential corruption of medical science by pharmaceutical industry lobbying. And in some cases this slides over into vaccine hesitancy. Anti-vaccination messages in public forums – particularly those that involve patent falsehoods – are bad speech, by any reasonable standard. But in some cases they give expression to a decent way of life.

Now, you might be willing to grant Raz's framing of these issues, while thinking that there is still no real problem to speak of. We can still restrict bad speech that we have good reasons to restrict, we just have to ensure that we don't overreach in doing so. The censorship has to focus narrowly on the speech, and not censure the underlying lifestyle. "The censoring government can say that it does not intend to condemn the style of life as a whole, that it rejects only the censored aspect of it" (Ibid: 162). But this won't do, according to Raz. And it's his reasons for thinking that it won't do that I'm particularly interested in. When we censor bad speech,

What is condemned is an objective matter, which does not altogether depend on the government's intentions. The perceived significance of the act is more sweeping. For reasons which are not hard to seek, it is reasonably seen as a condemnation of that way of life as it is. Given that this is the social significance of such acts of censorship, that they are perceived as condemning the way of life as a whole, such censorship constitutes condemnation. The defence 'we did not intend to condemn' is of no avail. What counts is what the government did, not what it intended to do. (Raz 1994: 162)

Another way of putting it would be to say that the social meaning of censoring some type of speech, S, is an official condemnation of the way of life out of which S arises. And so, given that some bad speech gives expression to a good way of life, and given that the authoritative condemnation of a good way of life is not justifiable, the upshot of all this, for Raz, is that we have good reason to protect some bad speech. We should recognise a constitutional right which enacts that protection, if and insofar as that is the institutional arrangement that's best suited to fulfilling this task.

Raz surrounds these conclusions with a series of measured caveats. Time, place, and manner-type restrictions on bad speech are not called into question by this line of argument, because they don't express condemnation of the underlying way of life, even though they limit the range of cases in which the expressive validation of that way of life can take place (Ibid: 158). The public good of validation isn't a license for some people to disrupt other people's day-to-day business, or demand that their expression of their way of life be attended to by particular audiences. Nor – to reiterate – do we have any reason to refrain from censorship on the basis that it's condemning a way of life with no redeeming features (Ibid: 163). Moreover, this whole lifestyle-validation-type argument for free speech isn't meant to override other free speech justifications. Free speech serves some public goods

besides validating ways of life, most notably, the good of our living in a democracy (Ibid: 151-53).

Even with these and other caveats, though, Raz's conclusion is a controversial one. Censorship insults the way of life whose manifestation it restricts, and "almost every content-based criminalization or prior restraint [of speech] is perceived as expressing in part official condemnation of the content of expression" (Ibid: 159). We should not censor bad speech that comes from a good way of life, then, even in cases where there are *pro tanto* strong reasons to do so. "Only extraordinary circumstances will justify overriding" this precept (Ibid: 163, note 33). This precept isn't merely about trying to foster a general social ethos of toleration, as per the essential rationale of Lee Bollinger's (1986) argument for free speech. Under the auspices of that line of argument, the good that's being fostered is just one among others – a good that is therefore subject to adjudication and balancing among competing goods. The public good that Raz sees as being imperilled by censorship is to be approached in a more categorical spirit. Acts of censorship that insult and condemn decent ways of life "cannot be justified". Even if they are enacted without insulting or condemnatory intentions, all the same, "they are wrong in themselves" (Raz 1994: 163).

2. Mixed Motives

I am going to argue against Raz on this – specifically, his claim that the *We-Didn't-Intend-to-Condemn* line of argument doesn't suffice for defending restrictions on bad speech. I think we can impose restrictions on bad speech that comes out of a good way of life. Subject to a range of moderate caveats (e.g. disallowing the sort of regulatory over-breadth that gives rise to chilling effects), I will want to defend the permissibility of laws that regulate deafeningly loud music, laws that impose restrictions on certain forms of false or manipulative religious propaganda, and laws that penalise the dissemination of misinformation around vaccines. And while I agree with Raz's premise, that the speech restricted by such laws can be an expression of a good way of life, I don't think it's true that such laws necessarily amount to a condemnation of those ways of life, in a way that renders them (the laws) unjustifiable.

But before I defend this, I want to introduce a line of argument that's adjacent to Raz's, and which, *prima facie*, reinforces his conclusions. This argument is interesting in the way that it extends some of the worries that Raz's argument is gesturing towards. But ultimately I'm going to suggest that both arguments – Raz's, and the one that I'm about to discuss – can be rebutted via the same kind of response.

This second argument comes from Ronald Dworkin's paper "Is there a right to pornography?" (1981). The core idea behind Dworkin's argument is that legal restrictions on pornography infringe upon the right to moral independence, that is

A person's right not to suffer disadvantages in the distribution of social goods and opportunities, including disadvantages in the liberties permitted to them, just on the grounds that their officials or fellow-citizens think their views about the right way for them to lead their own lives are wrong. (Dworkin 1981: 194, slightly paraphrased)

The broader thematic point that Dworkin is trying to defend, in light of this, is that a right to free speech is there in part to protect the moral independence of people whose values and ways of life are in the minority. Instances of censorship which advance the preferences of the community, taken as a whole, can at the same time transform people in the minority into *de facto* second class citizens, by virtue of them not sharing the values or lifestyle of the community around them. A right to free speech is therefore demanded by our basic commitment to moral equality.

Now, Dworkin's whole framework of analysis in this paper has justifiably been taken to pieces by feminist critics, most notably Catharine MacKinnon and Rae Langton. Dworkin initially sets up the problem by suggesting that the case in favour of restricting pornography is a fundamentally utilitarian one. Most people would prefer that pornography be subject to strict controls. They regard it as disgusting and sleazy, they think it degrades the cultural atmosphere, and so on. Strict controls on pornography would give the community the kind of social environment that the community (interpreted through a majoritarian lens) prefers. Dworkin's worry with this, roughly, is that in appealing to the prevalence of these preferences to justify strict controls, we are ostensibly ratifying a derogatory, moralistic judgement about the preferences and way of life of the thwarted pornography-users. The preferences that we are translating into policies aren't merely about the type of lifestyle that each citizen wants for him- or herself. These preferences also involve an element of moralistic disdain towards the pornography-user's lifestyle and ideals. Basing policies around those preferences thus infringes upon the right to moral independence.

Or so Dworkin argues. The problem is that this framing of the debate – as hinging on the ethics of moral majoritarianism – totally warps the feminist argument for restricting pornography. MacKinnon titled one of her papers "Not a moral issue" (1984) to get this point across. Dworkin writes as if all those in favour of restricting pornography are morality-policing busy-bodies, when the feminist critics are actually just egalitarians, striving to actualise social equality for women, and seeking ways to legally combat social practices that stand in the way of women's equality, of which (they argue) pornography is an important one. The irony, as Langton (1990) in particular emphasises, is that Dworkin grounds his defence of the right to moral independence in an egalitarian principle, while simultaneously

ignoring and mischaracterising the egalitarian foundations of the feminist anti-pornography argument.

Still, as much as Dworkin's framing of the anti-pornography position is inadequate, one part of his argument against the restriction of pornography merits attention in connection with the issues from Raz that I canvassed above. The part of the argument I'm alluding to is Dworkin's claim about mixed motives. Dworkin grants that when a person calls for strict controls on pornography, there doesn't *have* to be a moralistic judgement underpinning her view. Whether her 'official' reason for her position is the kind of motive Dworkin discusses (e.g. she finds pornography tawdry), or whether it's the kind of motive that Dworkin obtusely downplays (e.g. she believes pornography to be inimical to women's equality), "none of these different opinions and complaints *must* be the product of some conviction that those with other opinions or tastes are people of bad character" (Ibid: 196, emphasis in original). In other words, one can be in favour of legally restricting pornography, *in principle*, without wanting to denounce pornography's producers or consumers as moral reprobates. However, *in practice*, Dworkin doesn't think we can defend a non-moralistic interpretation of the anti-pornography critic's motives. That's because

We encounter, in peoples' motives for objecting to the advertising or display of pornography, at least a mix and interaction of attitudes, beliefs, and tastes that rule out any confident assertion that regulation justified by appeal to these motives would not violate the right to moral independence. We simply do not know whether, if we could disentangle the different strands of taste, ambition, and belief, so as to winnow out those that express moral condemnation or would not exist but for it, the remaining strands would justify any particular scheme of regulation. (Dworkin 1981: 197)

Moreover, the fact that we can't tell what's driving people isn't just because of the difficulty of getting the relevant information. It isn't, Dworkin says, a problem of figuring out how to gauge whether people's avowed preferences for restricting pornography ground out in motives that are 'clean' or ones that are moralistic.

The problem is more conceptual than that: the vocabulary we use to identify and individuate motives (our own as well as those of others) cannot provide the discrimination we need. (Dworkin 1981: 197).

Now, I think in this final segment of the argument, just quoted, Dworkin overplays his hand. After all, we do have words and concepts that we can use to describe and differentiate the elements of people's motivations. Suppose I'm refereeing a paper that makes a clever argument for a viewpoint I find repugnant. I can ask myself "am I rejecting this paper because I morally object to its conclusion, or do I really think that it falls below the requisite standards to warrant acceptance?" And while it's of course fairly likely that, being human, I may slip into some form of motivated reasoning or self-deception at this point, it's still at least

possible for me to unravel my motives, and make an accurate assessment as to whether the moralistic tail is wagging the philosophical dog. I have ways of articulating these concerns to myself, and the conceptual vocabularies that I use for this – as limited as they may be – are not so useless as to guarantee that my motives will remain totally opaque to me.

The same goes when I'm trying to gauge what's going on with other people's motives. Different difficulties crop up in trying to ascertain my own motives and trying to ascertain other people's motives. But in either case it's at least possible for me to assess what's going on, to an accurate enough standard. Dworkin's latter claim only enters the ballpark of plausibility if we understand him as saying that our conceptual vocabularies are not fine-grained enough that they enable us to *completely* decompose somebody's motivational psychology into *all* of its constituent elements, and to describe how they all combine and interact with each other. But we don't need that level of comprehension in order to get out of the corner that Dworkin is trying to paint us into. We just need to judge whether, when someone offers a non-moralistic justification for restricting bad speech, their support for those restrictions is grounded to some non-trivial extent in moralistic disdain for the way of life to which the bad speech gives expression. We are not so badly served by our folk psychological concepts that we must regard such assessments as impossible guesswork.

Still, having said all that, if we set aside the hyperbolic final step in Dworkin's argument, I think there is something to the general idea he's driving at. Often we cannot be sure that disdain for other people's way of life isn't playing a significant motivational role in someone's favouring the suppression bad speech. I say often, not always. I don't think this is a serious concern in the feminist anti-pornography case, for one thing. Do feminist critics of pornography disdain the lifestyle of pornography's makers and consumers? Usually, yes. But the question is: would they still find their argument for restricting pornography compelling if this disdain were not in play? And the answer to this is surely also 'yes'. They would push for women's equality even if they had no interest in the pornography-consumer's moral character.

The motivational stew seems to me a little murkier in other debates, though. As I have suggested elsewhere (e.g. Simpson 2019), I think we might want to interrogate the motives that are lying behind mainstream progressive attitudes around laws restricting racist hate speech. Most people on the centre-left today will say they are in favour of such restrictions for anti-racist reasons. But at the same time, the centre-left's views of the policy reforms that would likely be needed in order to transform racist social hierarchies – first and foremost, radically egalitarian redistribution of property and wealth, in order to counteract the ingrained material inequalities that underwrite racist social hierarchies – are at best lukewarm if not downright hostile. Viewed from a certain (slightly cynical) angle, the whole thing starts to look like a form of misdirection, with a dose of moral grandstanding

mixed in. What the centre-left wants isn't to upend the foundations of racialised inequalities, but to performatively deplore the vulgar plebs who don't share our cosmopolitan ideals.

I'm overstating things for effect. The point I'm driving at is that Dworkin's worries about mixed motives have at least some bite, if not in debates around pornography, then still in cases like the ones in §1, where we are purporting to restrict bad speech that comes out of a good (or non-heinous) way of life. The Razian thought was: it doesn't ultimately matter that the censor does not *intend* to condemn a decent way of life. The social meaning of such censorship is still condemnation, regardless of the authority's underlying intentions. So we should refrain from censorship in these kinds of cases. The adjacent Dworkinian thought is this: even if the censor does not *consciously* intend to condemn a decent way of life, condemnatory motives may still be a major part of the motivational impetus for censoring speech that gives expression to that way of life. So this is a further reason to refrain from such censorship. Censorship can be unconsciously motivated by a condemnatory attitude toward the way of life that the speech gives expression to, and in any case the social meaning of censorship is to condemn the way of life that the speech gives expression to.

If these ideas all seem a bit abstract, here are a few brief remarks to help concretise them. People who are on the receiving end of censorship in contemporary liberal societies often appear to feel disdained and condemned in their way of life. This is just what the Razian and Dworkinian analyses predict. And being in this position doesn't seem to lead people to change their way of life, but rather to adopt an antagonistic stance towards the society that deplores them. Now, when dealing with groups whose way of life really is beyond the pale of decency, it's hard to see a way to neatly resolve this. This is just a perennial problem for non-ideal political theory: how to deal decently with indecent people. But when it comes to groups whose way of life *isn't* beyond the pale, censoring their bad speech comes with social costs, like polarisation, mistrust, and democratic entropy. Both Raz and Dworkin emphasise abstract issues of right in making the case against censorship. But the abstract issues of right interact with these social costs. Treating decent ways of life with disdain is unjust in its own right, and it is liable to foment these and other problems.

3. Toleration and Understanding

Is the solution to refrain from censorship in all but the extreme cases of bad speech, then, as Raz and Dworkin both conclude, in different ways? That's one response to the problem, but it's a response that comes with its own range of downsides, both in terms of social costs *per se*, and in terms of the unfair distribution of those costs. In what remains I will defend another response. I will do this

by arguing against the contention that censorship inevitably involves condemnation, either as a matter of its social meaning, or as a matter of underlying (perhaps unconscious) motives.

The gist of my position is that the condemnatory aspects of censorship can be moderated or nullified – enough to undermine the case against censorship – when there is a good faith attempt at understanding the way of life that gives rise to the speech being censored. Why does an attempt at understanding temper censorship’s condemnatory social meaning? In short, because the social meanings of acts are conditioned by the larger cultural context in which they occur. An act that would otherwise mean *lifestyle L is condemnable*, can mean something else – something less disparaging – in a context where the actor evinces a sympathetic understanding of L.

Good faith attempts at understanding can also temper worries about the condemnatory urges that partially motivate censorship. We can’t be *certain* that in trying to understand L, some agent will rid themselves of all disdainful attitudes towards L, along with any related motives. But we can make sensible, balance-of-considerations judgements on this. It seems suspicious in the extreme to believe that someone who has taken steps to try to understand lifestyle L, and who feels no conscious disdain for L, but who judges that some speech issuing from L should be censored – for reasons that are not premised on disdain for L – is nevertheless, in taking this pro-censorship stance, actually just manifesting unacknowledged disdain for L.

In short, we can legally restrict bad speech that arises from a good way of life (subject to ordinary caveats, which also apply to other legal restrictions on speech), so long as we make a good faith effort to understand the way of life in question, thus moderating or nullifying censorship’s potential condemnatory motives and meaning.

The notion of *understanding* I have in mind in the claims I’m making here is the one that Leslie Green characterises in his paper “On Being Tolerated”. Green’s account of understanding is worked out in the course of an inquiry as to why being tolerated can feel like an affront to the tolerated, and how tolerators might try to lessen that affront (2008: 277). Being tolerated is unpleasant, on Green’s view – even when it is done in the right spirit, and with the appropriate scope and grounds – because to be tolerated is to stand on the disempowered side of an asymmetric relationship. It’s similar in this regard to being pitied or shown mercy. “Toleration does not cause or legitimate [the] difference in power, but it does reflect it”, and that’s what makes toleration, even well-executed toleration, an affront to the tolerated (Ibid: 284).

Having isolated the pathogen, Green then explains why two *prima facie* promising remedies cannot ultimately be used to treat it. One of the inadequate remedies is *acceptance*. To be tolerated is to be subject to an adverse judgement – one that the

tolerator refrains from acting upon. To this the tolerated party might want to say: “how about you (the tolerator) don’t just refrain from acting on your adverse judgement of me, how about you withdraw the judgement itself?” The plea makes sense, but it’s also inevitably futile. If I didn’t already adversely judge L, then there would be nothing for me to tolerate vis-à-vis L. I am in a situation that calls for toleration precisely because I judge that L does merit an adverse judgement. Asking me to stop it is about as efficacious as asking one’s interlocutor in a debate whether they might just abandon their view and adopt yours instead. Maybe what is needed, then, so Green suggests, isn’t acceptance, but *recognition*. To recognise a person’s L-hood you don’t have to pretend that you don’t adversely judge L. But you do need to somehow figure out what it means to belong to L. You need a way of relating to L that’s as if you’re inhabiting the life-world of L, not standing outside of it in judgement.

The idea is not that I need to share your values but that I need to know your identity. I do not need to accept Christ as my saviour in order to interact with you on the basis that you do. But, the argument continues, in order to properly represent this fact about you – a fact which may in some complex way also prove crucial to the shape of my own, different identity – I must also get it right. (Green 2008: 290, emphases in original)

The problem with this, though, as with acceptance, is that the demand is ultimately too demanding. The demand for recognition does not require me to take leave of my own judgement. But it does require me to evince a degree of imaginative empathy that’s beyond most of us, especially given the huge diversity of recognitive demands that we may be faced with in culturally diverse societies. As Green says, by way of a relatively low-stakes example, most of us will struggle to develop a sense of recognition as to what another culture’s culinary practices are like from the inside – especially those practices that conflict with our own cultural standards, e.g. eating dogs – because in any attempt (in real life or imagination) to get inside those practices, our experience is still mediated through our own consciousness and interpretative framework. “Our imaginations seem endemically limited”, Green says, “and our prospects for authentic recognition proportionately poor” (Ibid: 291).

The turn towards an ideal of understanding follows from these worries about over-demandingness that Green raises around the ideals of acceptance and recognition. Attempting to understand some way of life is *prima facie* similar to trying to extend recognition to people within that way of life, at least insofar as both of these things aim at occupying some kind of internal point of view.² But under-

² Green likens understanding to both (i) adopting the internal point of view on a practice, in the sense that Hart invokes in his argument against reductivist theories of law, and (ii) a *Verstehen* approach to sociology, i.e. one that seeks to interpret the significance cultural practices by emulating a cultural insider’s perspective.

standing is meant to be more achievable than recognition, by virtue of several differences. (And note: this term *understanding* is best taken as a term of art. We are looking to describe an ideal which, when instantiated by the appropriate actors, serves to moderate the feeling of affront that comes with being tolerated. The following claims about what this ideal consists in, and how it differs from an ideal of recognition, are not meant to hinge on what *understanding* is usually taken to mean in ordinary discourse.)

First, understanding can be more piecemeal in its objects than recognition. I can understand individual practices or activities. I can understand what someone means when they say certain phrases. Whereas recognition aims at the accurate knowledge of some person or people qua the bearers of a social identity, we can understand behaviours in a way that makes no necessary reference to a social identity that imparts meaning or significance to those behaviours (Ibid: 295). Second, understanding merely aims at acquiring ‘ballpark’ knowledge of its object. In trying to forge a sense of recognition of some cultural identity, I’m seeking to know what it’s like to belong to that culture’s way of life. Any inaccuracy is a problem in respect of this aim. By contrast, when I’m trying to understand a behaviour or practice, I’m mostly aiming to rid myself of wildly *inaccurate* ideas. I’m trying to avoid the kind of gross misinterpretations of other people’s behaviour that are liable to come when I unreflectively project my own context of understanding onto their behaviour. It is less about coming to a rich and comprehensive interpretation of the significance that some action has, for the actor, and more about avoiding a blatant misinterpretation, which is likely to profoundly misguide my own stance towards that action.³ Third, to adopt an ideal of understanding is to place more ethical emphasis on the empathic journey, than on the empathic destination. Green doesn’t bake this into his account of what differentiates understanding from recognition – in theory, you could believe that what matters is *trying to recognise* other identities, even if you don’t get very far – but I think it’s a crucial part of what he is getting at in recommending understanding over recognition, as a remedy for toleration’s ills. He says

The knowledge that tolerators are making good faith efforts at understanding, that they are at least trying to grasp the stakes as they seem to the tolerated, provides some reassurance to the tolerated that they are indeed being addressed as members of our fellowship. (Green 2008: 293)

³ In the following passage Green gives us an example of what he has in mind. “I am sure that I do not fully understand what it is like to feel the need to veil one’s face in public; but I do know that it is not normally a fashion statement (and I also know, that those for whom it is only a fashion statement have rather different stakes in tolerance than do most Muslim women). What I know almost certainly involves misrecognition: there are aspects of its significance that elude me, perhaps necessarily. Nonetheless, I think I have some idea about the interaction among beliefs about personal modesty, the place of sexuality, and the value of tradition that inspires such a view, and therefore some idea of the *sort* of things that are at stake if we do not tolerate it, or if we tolerate it as if it were no more significant than a teenager’s fashion crimes.” (Ibid: 292).

As this passage makes clear, on Green's account, understanding isn't supposed to replace toleration. Rather, understanding is supposed to supplement toleration, in a way that robs toleration of its sting. It isn't pleasant to live by other people's grace and favour. But this becomes a little easier if those people are showing some sense of curiosity about why you live your life the way you do. Nor is it pleasant to know that those by whose grace and favour you're living take a negative view of your way of life. But this is likewise made a bit easier if people's adverse judgments aren't based on them turning your whole way of life into a figment of their own imagination, borne of projection or an interpretative caricature. So tolerators should try to understand the tolerated. And this isn't premised on the idea that we're obliged to make other people's lives pleasant. It's premised on the idea we have reasons to try to neutralise the sources of fragility and instability that threaten to break pluralistic societies apart. The 'unpleasantness' of being tolerated is one of these sources.

4. The Imperative to Understand

I believe that Green's proposal, as to how we might take the sting out of toleration, can be repurposed as a proposal for how a government can take the tacit condemnation out of censorship, in those cases where the bad speech being censored comes out of a good way of life. I don't know how to formalise this as a prescriptive criterion, such that we can say how much understanding is needed – or what quantity and quality of attempts at understanding are needed – in order for a given instance of censorship to be made permissible, in the face of Razian or Dworkinian objections. But if nothing else this suggestion gives us a different way to conceptualise the available options, for responding to cases in which the censorship of bad speech is tacitly condemning a good way of life. Rather than repealing the censorship, we can engage in projects of understanding that nullify or moderate its condemnatory potential. In cases where we have strong *pro tanto* reasons in favour of some particular form of censorship, this option will ordinarily be the lesser of two evils.

One worry you might have about this suggestion pertains to the considerable differences in the experiences of being tolerated and being censored. Being tolerated is unpleasant, but being censored is surely more unpleasant, other things being equal. Where toleration marginalises, censorship leans toward excommunication. So even if it's true that understanding can take the sting out of toleration, it doesn't follow that it will be able to counteract the condemnatory aspects of censorship.

The first thing to say to this is that in respect of social meanings, the corrective we are looking for isn't primarily about mollifying the hurt feelings of those who are censored. No matter how much understanding they receive, they may still feel

that in being censored they have been disdained. The *perceived significance* of censorship – to reintroduce Raz’s phrase – shouldn’t primarily be seen a matter of the perceptions of the censored. It is a matter of how reasonable observers would interpret what has transpired in an instance of censorship, based on the publicly available record. Consider: when I receive a rejection letter from a journal, the editor may send me detailed explanations as to why my work wasn’t suitable for publication in their pages. The fact that these explanations are cogent (supposing they are), won’t necessarily be enough to stop me from taking the rejection as a sign that the philosophical establishment has taken against my views, and that people are giving me grief as a supporter of those views. Does it follow that the social meaning of that act of gatekeeping by the journal was to disparage my views? Obviously not. Or at any rate, not unless there are a range of other things going on around this that would lead a reasonable person – as opposed to me, the aggrieved recipient of a rejection letter – to perceive some kind of pattern of derision and exclusion, of which this rejection was a part. In a similar way, laws that regulate sharing of misinformation about vaccines will probably be felt as disdainful by some of the neo-Hippy types I mentioned earlier. But the social meaning of such regulations is more of a function of what a disinterested third party would make of them, as opposed to what the thwarted anti-vaxxer would make of them. If a well-evidenced public health argument for restricting vaccine misinformation has been presented, as the ‘official’ justification for the regulation, then that by itself casts considerable doubt on an interpretation that equates regulation with condemnation. If, in addition, there has been a good faith effort at understanding the neo-Hippy way of life that’s the source of (some) vaccine misinformation, that further undermines this interpretation.

We have to think of the social meanings of government acts in something like this way, i.e. with some sort of ‘reasonable observer’ condition built in, because if we don’t, then a crucial premise in Raz’s argument – namely, that social meanings of government acts ought to be factored into responsible government action – starts to generate implausible consequences. Suppose that the majority of people in a particular society were persuaded by a charismatic public intellectual that inheritance taxes are morally tantamount to grave-robbing. Given that everyone agrees that the state should not engage in grave-robbing, would it follow that this society’s government should abolish inheritance taxes, insofar as the social meaning of levying such taxes is equivalent to the social meaning of grave-robbing? Presumably not. But if we don’t impose a reasonable observer constraint on social meanings, then it seems like such counterintuitive implications are going to follow from the premise that the social meanings of government acts should be factored into responsible government action. Our choice is either to abandon that premise, or instead – the better option, I think – to allow that social meanings should be factored in, while changing what we mean by social meanings from something purely sociological, to something that adjoins sociological observation to independent normative judgement.

Raz may be right that censorship of speech that comes out of lifestyle L is naturally taken to mean *lifestyle L is condemnable*. But as I said above, the social meanings of acts are conditioned by the wider context in which they occur. So acts of censorship can come to mean something less disparaging, when the censoring government has made a good faith attempt at understanding L. In order for this shift to work it isn't essential that adherents of L cease to feel disparaged. What's needed is some public evidence that they are not in fact being disparaged. Raz is right that what counts, *vis-à-vis* the social meanings of censorship, is what a government did, not what it intended to do. By that same token, though, what matters isn't what the censored party *takes* the government to have done, but – just as Raz says – what it did.

The natural question remains as to how a government might implement the imperative to understand. A series of borderline-absurd possibilities immediately suggest themselves. We can imagine elected officials being sent out on assignment to spend time trying to understand various ways of life from the inside, like early 20th century anthropologists. Or maybe we could set up a dedicated government agency – call it the Federal Bureau of Understanding – with specially-trained officials doing something similar. But how do we translate the imperative to understand into an institutional form that doesn't simultaneously serve as a *reductio* of the whole idea?

The place to focus, I think, is on government activities that have an essentially consultative function. One form that this takes in the UK is the publication of Green Papers, i.e. consultation documents produced by government departments, aiming “to allow people both inside and outside Parliament to give the department feedback on its policy or legislative proposals”.⁴ Similar institutions exist in other Commonwealth countries and in the European Commission. The very institution of the Green Paper already betrays a sensitivity to the imperative to understand. A parliamentary democracy could just tell citizens who want to voice their opinion on policy initiatives to contact their MPs, or to form a civil society advocacy group. The Green Paper system more overtly signals an interest in hearing from the public, and in that respect it at least gestures towards an institutionalised ethos of understanding.

Of course, one doesn't have to be overly jaded to see that in practice, today, governments use Green Papers in a way that doesn't really reflect this ethos. They use them the way newly appointed university Provosts use their initial period of consultation with staff, students, and stakeholders – namely, figuring out how to sell the rollout of an agenda whose essentials they've already decided upon, and gauging the forms of pushback they are going to have to neutralise in order to achieve this. But all the same, it's open to us to ask how a government, acting in

⁴ See www.parliament.uk/site-information/glossary/green-papers for further information. I was tempted to call this piece of writing “Green on Green Papers”, but in the end that title seemed like a stretch.

good faith, could modify or extend an institution like the Green Paper system, in a way that better operationalises the imperative to understand. There are all kinds of possibilities: making a concerted effort to identify, and to invite submissions from, groups likely to be aggrieved by a proposal; offering in-person consultative sessions with government officials, as an alternative or supplement to the opportunity to provide written submissions; prioritising replying to submissions, after the fact, with explanations as to how invited feedback was factored into policy proposals that were formulated in the wake of the Green Paper process. These are sketchy suggestions, but they're enough to see that institutionalising the imperative to understand isn't pure fantasy.⁵

Suppose that some national government – reeling from the impact of the Covid-19 pandemic, and eager to combat vaccine hesitancy in fighting it – planned to implement a raft of new media regulations, imposing stiff penalties on media companies that transmit patent falsehoods about the dangers of vaccines.⁶ Such laws could be taken as a tacit condemnation from people in the kind of neo-Hippy-ish way of life that I described earlier. But they should be implemented all the same, notwithstanding the fact that at least some of the neo-Hippies who preach an anti-vaccination gospel do so under the aegis of an otherwise decent way of life. The government in question could initiate some sort of beefed-up Green Paper process, in which people in those groups were offered meaningful opportunities to convey the bases of their vaccine hesitancy, and to explain how that position relates to the other parts of their way of life and belief system. Something like this process would, I think, thoroughly nullify complaints that the regulations – assuming they still seemed like the correct policy in the wake of the process, and were subsequently implemented – were expressing condemnation or disdain for the relevant lifestyle. To paraphrase Green, the knowledge that the state is making a good faith effort at understanding – that it is at least *trying* to get a sense of what is at stake in these regulations, as it appears from the neo-Hippy perspective – provides reassurance that neo-Hippies are seen as members of our community, who are following a decent way of life. And that seems like a better way forward than dropping the regulations and wearing the costs.

As it goes for this example, so it goes for other examples of bad speech which arise out of a good way of life, but which nevertheless ought to be restricted on balance of considerations. And again, the rationale in favour of this needn't stand entirely on the notion that it would be wrong in itself to engage in forms of censorship that tacitly condemn decent ways of life. Whatever its inherent wrongness may

⁵ And moreover, there is no limit to the novel consultative practices that governments might devise, in order to facilitate understanding of ways of life, not all of which seem as farcical as setting up a Federal Bureau of Understanding. One example: in 2008 Australia's newly-elected Labour government organised a convention – *The Australia 2020 Summit* – inviting one thousand delegates, drawing from a diverse pool of lifestyles and communities, to discuss and submit proposals on a range of critical areas of government policy.

⁶ Similar to what the UK Labour Party was recently calling for; see [bbc.co.uk/news/uk-politics-54947661](https://www.bbc.com/news/uk-politics-54947661).

amount to, such tacit condemnation exacerbates various forms of democratic instability. In the worst case scenario it may contribute to a full-blown crisis of government legitimacy with respect to certain segments of the population. Institutionalising the imperative to understand can be a way of addressing these concerns, but which doesn't force us into a libertarian stance on free speech, with all its attendant downsides.

References

- Bollinger, Lee C. (1986), *The Tolerant Society* (Oxford: Clarendon Press).
- Dworkin, Ronald (1981), "Is there a right to pornography?", *Oxford Journal of Legal Studies* 1 (2): 177-212.
- Green, Leslie (2008), "On being tolerated" in Matthew H. Kramer, Claire Grant, Ben Colburn, and Anthony Hatzistavrou (Eds), *The Legacy of H. L. A. Hart: Legal, Political, and Moral Philosophy* (Oxford: Oxford University Press): 277-97.
- Langton, Rae (1990), "Whose right? Ronald Dworkin, women, and pornographers", *Philosophy & Public Affairs* 19 (4): 311-59.
- MacKinnon, Catharine A. (1984), "Not a moral issue", *Yale Law & Policy Review* 2 (2): 321-45.
- Raz, Joseph (1994), "Free expression and personal identification" in *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: Clarendon Press): 146-69.
- Simpson, Robert Mark (2019), "Won't somebody please think of the children? Hate speech, harm, and childhood", *Law and Philosophy* 38 (1): 79-108.