

Freedom of Speech and Democracy

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Abstract

In recent years 'freedom of speech' has been hotly contested, at times weaponised in political debates. Policies of 'no-platforming' and at times strong reactions, even protests, against certain speech have led some to worry about what they call 'cancel culture'. In addition to the explicit fight over freedom of speech seen, for example, in current feminist debates, the last 18 months have seen a rise in the popularity and presence of conspiracy theories, including theories about Covid vaccinations and the Covid pandemic. Mixed in with the so-called 'anti-vaxxers' are a medley of conspiracy theorists ranging from climate change deniers, supporters of 'ethnic replacement conspiracy theories' through to the astonishingly long-lived, antisemitic myths about child sacrifice and world domination. The spread of such conspiracy theories is problematic if they directly or indirectly cause harm. Anti-vaccination conspiracy theories are harmful if they facilitate the spread of a deadly disease, or if they spread misinformation and thereby vilify (marginalised) individuals or groups and undermine the trust necessary for peaceful coexistence and cooperation in democratic societies.

However – while concern about such harms is important – freedom of speech is often regarded as such a basic right that any infringement has been considered harmful in itself.

In this article I will look at two examples that pose challenges to freedom of speech and analyse them with reference to what I take to be the most plausible account of the grounds and scope of freedom of speech, a democratic defence of freedom of speech. Seeing freedom of speech as primarily grounded in democracy has important implications in situations when speech can be seen as harmful in a relevant sense and in consideration of what we can or should do about harmful speech. In the end I will suggest a possible way of weighing up value and dangers with respect to the cases and also in a broader sense.

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Anti-vaxxers, conspiracies and gender

Even before the current pandemic there seems to have been an increased uptake of various conspiracy theories – some more, some less dangerous. During the pandemic some of these conspiracy theories have mixed with fear of vaccination in potentially harmful ways. This fear of inoculation, along with various anti-vaccination ‘movements’, also predates the current pandemic.¹ In the pandemic the term ‘anti-vaxxers’ has been coined to refer to individuals who oppose the different Covid vaccinations. I want to draw a distinction here between ‘anti-vaxxers’ and other individuals who are cautious or anxious about Covid vaccinations, whether because of historical experiences or for other reasons. I use ‘anti-vaxxers’ to refer exclusively to individuals who advertise their position in order to convince others and remain unresponsive to evidence or argument. Even with that restriction in mind anti-vaxxers are a diverse bunch. They range from those who claim that Covid vaccinations are ineffective to those who deem them downright dangerous. The danger of the vaccination is either seen in its potential to cause physical harm or in its association with social control. Many of the fears about the perceived inefficiency or about health risk are based on a misunderstanding of how vaccines work. Some antivaxxers subscribe to conspiracy theories about ‘big pharma or social control, which prevent them from trusting information received from well-recognised scientists or medical experts.

A surprisingly resilient belief among some anti-vaxxers is the idea that the vaccine is a cover for chipping individuals. These chips are injected through the Covid vaccine and either track our movements or actively control our behaviour. This belief is so widespread that businesses that sell special chip detectors have sprung up on the internet. At times tales of social control draw on old antisemitic tropes about world domination. In some right wing circles, the anti-vaccination position is based on the myth of ‘ethnic replacement’. According to this fiction, Covid vaccinations aim to

make white Europeans infertile in order to replace them with other ethnic groups. Some anti-vaxxers are not just suspicious of the vaccines but claim that Covid is a hoax ('Covid deniers') used to justify population control and political domination by giving governments a narrative to justify the abolition of rights such as rights of assembly and freedom of movement. Conspiracy theories are not, of course, automatically problematic. In fact, some theories about conspiracies are true and even some untrue ones are completely harmless. Some false beliefs about the world are harmless (Cívik and Hardoš, 2020). The problem with varieties of anti-vaxxers mentioned above is that the conspiracy theories they spread are anything but harmless. Some of these theories – for example, those reviving antisemitic tropes – vilify certain individuals or groups. Theories that spread misinformation about the efficiency or dangers of the vaccine can contribute to the numbers of people refusing to be vaccinated and thus increase chances of infection and dangerous mutations of an already lethal virus. These theories could thus lead to deaths and hospitalisations.

Such potentially harmful consequences seem to justify restricting the expression of these opinions to curb their spread. It seems that mainstream media outlets do not have to see themselves obliged to give a forum to anti-vaxxers. Whatever the case might be with mainstream and public media, more niche outlets are instrumental in spreading those conspiracy theories. 'Independent' online news channels, blogs and podcasts transmit misinformation of various types. Rare moves by mainstream social media, such as Facebook, to counteract misinformation on their sites only seems to increase the credibility of the conspiracy theories among their followers.ⁱⁱ In light of the danger of false anti-vaccination claims and stories, should spreading them be criminalised? Or should these alternative media sites that are so instrumental for conspiracy theorists be shut down – if practical and possible to do so? There are good reasons to oppose such moves. The value of freedom of

speech and the harm of restricting this freedom are among the chief considerations here.

Questions about restricting speech also occur in a different context, for example in debates about gender and gender identity. On 7 July 2020 *Harper's Magazine* published an open letter with signatories including Margaret Atwood, J.K. Rowling, Salman Rushdie – among others. In the letter, they warn of a 'ensorious culture'. The signatories of the open letter fear the creation of a climate where opinions are silenced not through censorship but by means of social pressure or social sanctions. The claim is that reactions that have so far included protests, de-platforming and no-platforming – often but not always taking place on university campuses – instils fear among some people to openly express their opinions. The letter has met with a variety of reactions, with some pointing out that the signatories have hardly been silenced themselves. Others point out that it is part and parcel of free speech that reactions to speech are also free (speech). Freedom of speech is not a right to freedom from criticism. Moreover, in some cases protesters see themselves as reacting to hate speech. Definitions of hate speech are to some extent contested, but UK law offers some guidance. Accordingly, it is speech that:

- either intends to or is likely to incite hatred,
- and/or incites violence,
- and/or is threatening abusive or insulting such that it causes distress to a target, based on the targets race, ethnicity, sexual orientation, religion, disability or transgender identity constitutes hate speech.

Notably, any such speech that is motivated by misogyny does not seem to constitute hate speech since misogyny is not included under the hate crime legislation (Crown Prosecution Service, 2017). Also notable is an emphasis on how the behaviour affects the target in current UK hate crime legislation, while 'hatred' and 'hostility', for example, remain

underspecified. I will say more about the specific harms of hate speech below.

Trans-exclusionary views deny some individuals the recognition of their identity or a fundamental aspect of their identity. Thereby they undermine equal dignity; they single out some individuals as objects of misrecognition or non-recognition. *Their* identity can be publicly questioned and doubted. Such trans-exclusionary views can also damage self-confidence and trust in others (for theories about the link between recognition, confidence and trust see Honneth, 1995; 2007; for the link to hate speech see Seglow, 2016). Altogether, prevalence of such views coupled with certain behaviours such as public refusal of recognition affects the ways that people can live a life according to their conception of what is meaningful and good and 'theirs'. A recent blog post by a nonbinary student outlines the effect that publicly expressed trans exclusionary views and their defence in the name of freedom of speech have on some students (see nbphilosopher, 'A nonbinary philosopher's perspective on the cis philosophers' letter', 2021).

There are consequences from misgendering or failed recognition for society as a whole. For one, misrecognition constitutes an injustice. Insofar as people have an interest in living in a just society, such misrecognition should be prevented. Misrecognition is also an epistemic mistake and so relates to lack of knowledge and it might prevent access to knowledge – perhaps in this case emancipatory knowledge, or knowledge about how to overcome oppression or marginalisation.

However, debates about 'gender' as a concept have been an important part of the theoretical work of feminists since the 1960s and these theoretical explorations and analyses of the concept have always informed activism. How to understand gender and what role it plays and should play are open questions in feminism and as such there must be a way to

talk about these theoretical issues. The worry of some philosophers and other academics is that protests against hate speech are not limited to such speech, which should be opposed, but extend to any debate about gender and so undermine freedom of speech and academic freedom.ⁱⁱⁱ Apart from genuine theoretical interest in the concept and its role there might other reasons for not restricting such speech, even of those who hold harmful views that deny others the fundamental recognition of their identity. Many of those with trans exclusionary views ultimately see their stance linked to questions about how to organise their communities. Presumably, in a democracy all views on matters about the community need to be heard and need to be addressed. The way to respond to fear that is based on misinformation is to show it up as inappropriate, that is to publicly disseminate and prove underlying assumptions wrong. Public disputes about gender identity are inevitably hurtful and injurious, yet they might be necessary for a while. In Western democracies we have had decades of disputing sexual orientation, which have also been deeply hurtful and injurious for those questioned, denied or judged. But this has arguably led to greater freedoms and understanding, even though there has always a danger of regression and homophobic violence has been on the rise again.

Exactly how one should deal with harmful speech in all the above contexts partly depends on the value of freedom of speech and the grounds for its value. I want to investigate this aspect of free speech more in the following sections. This analysis will hopefully help to guide thinking around these issues.

The value of freedom of speech

Freedom of speech is a social good, in at least two senses: it is valuable for societies, and it is achieved only collectively, within societies. The unhindered expression and exchange of opinions, criticisms, questions,

claims and arguments is essential for knowledge and social progress (including scientific and technological gains), though by itself it does not guarantee progress. Both the liberal 18th century English philosopher John Stuart Mill and the Marxist 20th century philosopher Herbert Marcuse attest to the importance of free speech for the pursuit of knowledge and truth (see Mill, 1962; Marcuse, 1965). Both are primarily concerned with truth in relation to human flourishing. Mill appreciates individual differences and holds that free speech offers individuals different opinions and lifestyles and allows them to test their opinion in debate, thus enabling them to find a way to live that is fulfilling for them (Mill, 1962). For the pursuit of truth, false opinions are as important as true opinions if false opinions provoke discussion and so ‘keep alive’ our knowledge and deepen our understanding of truth. For Marcuse the purpose of freedom of speech is to find truth about human freedom and ultimately to find a way to organise society so that human beings live together freely and without fear (Marcuse, 1965). In societies that are permeated by inequalities – especially power asymmetries, where some individuals are marginalised, exploited or otherwise oppressed – tolerance can be damaging and prove an obstacle to human flourishing. According to Marcuse in these societies, absolute tolerance tends to maintain the status quo; that is, it will help to maintain power hierarchies. Until absolute equality within a society is achieved, Marcuse advocates repression of those opinions that defend or normalise inequality and speech that calls for more oppression. Marcuse’s argument about free speech is similar to arguments against liberal neutrality of the state (see Taylor, 1994). For Marcuse, censoring speech that furthers marginalisation or undermines dignity, and giving a bigger platform to the hitherto marginalised views of oppressed, is a step towards more equality (Marcuse, 1965).

In the literature there has always been a strong link between autonomy and free speech (Mill, 1962; Dworkin, 1996), sometimes cited by anti-vaxxers. Freedom of speech is an essential aspect of respecting another

person's agency. Part of recognising another as an independent agent, a person in their own right, is to hold them accountable for their opinion. Freedom to express one's opinion and having to take responsibility for one's speech are testament to a person's power and ability to form and articulate an opinion (Honneth, 1995; 2007). Silencing an opinion denies an important aspect of agency. In some cases such denial might come close to what Miranda Fricker calls epistemic injustice, that is a person is unjustly denied the status as knower and knowledge giver on the basis of (false) prejudicial beliefs about a person's competence or sincerity because of their social identity (Fricker, 2007).

Freedom of speech is also an essential democratic good. Being able to hold to account those who govern ('in our name'), being able to question, protest and to exchange ideas, opinions and experiences is fundamental to any democracy. In addition to the need to have a voice against those in power, it is important for members of a democratic community to receive feedback from each other about the effects of social cooperation. The 20th century pragmatist philosopher John Dewey understands democracy as the way to create and maintain real community. According to Dewey, democracy is the response to issues that arise from social cooperation, where individuals recognise and appreciate the importance of others for the community and for themselves. In a situation where my flourishing depends on the cooperation of others and where such a cooperation causes burdens as well as privileges for a wide variety of individuals in different locations (and times), it matters that we find a way as a community to distribute burdens and privileges that allows everyone to benefit from cooperation. This also requires that everyone in the community is respected and feels respected as valuable members of the community. To these ends communication is essential. Communication here also includes public debate about solutions to the problems of social cooperation (Dewey, 2016).^{iv}

Theorists of deliberative democracy, who emphasise the importance of public discourse for democracy, continue to develop ideas about just and inclusive communication (see for example Fraser, 2003; 2005; Young, 2010; Habermas, 1984; 1987; 1992; 1994). The philosopher Nancy Fraser, for example, holds that ‘participatory parity – equal opportunity to contribute to public discourse – is the fundamental principle of justice. Iris Marion Young focuses on different forms of communication to enhance inclusiveness in the context of pluralism. Freedom of speech itself is an important constituent of public discourse. Philosopher and sociologist Jürgen Habermas, for example, argues that individual autonomy, aims and projects are what democratic states must protect and promote. Individual autonomy and the related demand that individuals can formulate and realise their own conception of a good life provide the content of discourse (Habermas, 1994; Taylor, 1994). The projects and beliefs of individuals determine how (their) society ought to be organised.’ The point of this form of democracy is to find a way to organise society that allows people to lead lives that are fulfilling and valuable to them. In this sense the freedom of speech defence in Mill finds its way into a democratic defence of freedom of speech.

Impediments to freedom of speech can take various forms. One, there is censorship directed and enforced by governments (or other institutions with political power to enforce, such as churches). Individuals are forbidden from expressing certain opinions and can be fined, imprisoned or worse. For example, such hard censorship takes place currently for example in Afghanistan under the new Taliban regime.

However, those who fear for free speech in the UK, the US or Germany have something different in mind. They are concerned with so-called ‘cancel-culture’; they are essentially worried about the effects of the social repercussions that some individuals would face when expressing their opinion. They fear that reactions to some speech might be so

extreme that fear of them effectively silences individuals. John Stuart Mill has already recognised that social sanctions can have a detrimental impact on freedom of speech. It seems indeed plausible that some social repercussions might deter individuals from voicing their opinion, which can be an issue for freedom of speech. Sometimes that might be the desired effect.

‘Cancel culture’ refers to the variety of different reactions to an ‘unwanted’ opinion. It includes ‘no-platforming’ and ‘de-platforming’, which aims to not to provide a forum for individuals or certain opinions by not inviting them to give (more or less) public speeches or by withdrawing previous invitations. Another form of withholding a platform is to prevent individuals from entering buildings or banning them from certain types of social media (such as Twitter, Facebook or blogs). This becomes a problematic interference with freedom of speech if and when it significantly limits the way an individual can make themselves heard. Banning an individual who has access to international media networks from Twitter might not constitute a problematic infringement of their freedom of speech, but banning an individual from Twitter – and all other social media platforms – who has no access to other ways of reaching an anonymous public may well constitute a problematic and significant restriction.

Restrictions can apply in a different way too. Even when someone has been able to express an opinion publicly, the nature of reactions could discourage the individual and others to voice like opinions. Reactions range from the mild to the severe and notably include protest and social ostracism. However, protest can itself be an expression of an opinion and therefore fall within the domain of freedom of speech. Indeed, it is a feature of respect for someone as an agent that we hold them accountable for their opinion. Not engaging with an individual, even ostracising an individual, also seems a matter of basic free choice. It seems implausible to

think that individuals could or should be forced to engage – that is, to speak – with an individual. However, if such reactions create an atmosphere that prevents some people from speaking their opinion, or questioning a dominant opinion, this could be problematic.

In some cases such restrictions to freedom of speech may be justified. Even Mill, one of the most fervent defenders of freedom of speech, accepts ‘harmfulness’ as a reason to censor or restrict speech. The so-called harm principle is highly contested, but it remains influential in debates about ‘hate speech’ and current debates about the anti-vaccination movements and gender critical feminists.^{vi} Concerns about the harmfulness of these opinions drives moves to limit exposure. It is noteworthy, in this context, that Mill distinguishes between harm to others – which sets limits to freedom – and mere offense, which may be regarded as distasteful but covered by freedom of speech (Mill, 1962). What constitutes a relevant harm, whether offence might be a reason to restrict speech and how to address the problems introduced above depends on why one thing freedom of speech is valuable. To me the most comprehensive defence of freedom of speech can be found in its importance for democracy, which in many ways includes considerations of personal autonomy, and the pursuit of knowledge.

Democratic defence of freedom of speech

The first obstacle to a democratic defence of free speech is the fact that there are different, competing accounts of democracy. Rather than defending any particular account, I will start here from three basic assumptions, which will be sufficient to sketch a broad idea of democracy I can use to address the problem cases introduced above.

First, human beings are essentially vulnerable and dependent beings. As human beings we are all vulnerable to accidents, illness and other

processes that affect our bodies and limit our abilities in certain ways. We are also vulnerable to harmful influences on our psyche and mental wellbeing. Important attitudes to oneself such as self-respect, self-esteem and self-worth can be harmed and even destroyed. I follow the social philosopher Axel Honneth and understand self-respect as a view we have of ourselves as capable of forming judgments, maintaining opinions and formulating a conception of a good and meaningful life; we learn to respect ourselves in that way as a result of being treated as individuals capable of forming judgements by others.

Self-worth refers to one's appreciation of one's needs, which are regarded as worthy to be satisfied; to some extent regarding one's needs as worthy depends on having this worth reflected in the behaviour of others. Self-esteem describes the awareness of an individual's value (especially social value), based on their skills, with its importance reflected back to the agent through the esteem of others (Honneth, 1995; 2007). Human interactions that undermine these ways of relating to oneself have debilitating consequences for individuals, undermining their agency (Honneth, 1995; 2007). Human beings can thus suffer severe psychological injuries.^{vii} When I say that human beings are vulnerable, this means they can be affected (irrespective of their will) by the external environment and by other people in ways described above. Being vulnerable renders humans dependent on others, but it also allows us to enter meaningful and rewarding relations with others (see Assiter, 2020; 2021; Petherbridge, 2016). If another's actions and attitudes can undermine my self-confidence, presumably different actions and attitudes might be able to strengthen my self-confidence. The psychological effect of others' actions on an individual's fundamental view of themselves is evidence of a certain way in which others 'matter'. We are vulnerable to their actions because we 'care' about them (Honneth, 2012).^{viii} And so, in addition to our bodily vulnerability we are psychologically fragile such

that others can deeply impact our psychological wellbeing and our abilities and agency.^{ix}

The second assumption is that due to our shared vulnerabilities we depend on cooperation with others and live in communities for our survival and basic psychological wellbeing.

Third, all accounts of democracy share a commitment to equality, at least to equal worth, equal humanity and equal dignity. No one has a natural or God-given authority over any other (adult) individual, and all are equally entitled to basic justice. This view of equality is often linked to a commitment to some form of autonomy. In light of the first two assumptions the most fitting conception of autonomy is one that acknowledges our social dependence (see for example Honneth, 2007). Such accounts conceive of autonomy as facilitated through and limited by our relations to others. Conflicts between different conceptions of human autonomy and different ideas of what equality demands are rightly subject to public debate and contest. For example, different political positions on state welfare, national health or nationalisation versus privatisation are based on different views of autonomy and equality.

While competing accounts of democracy respond to equality and autonomy differently, all of them aim to guarantee that each citizen has a voice in the political decision-making process. Governments, whether as mere executors of public wills (direct democracies) or the mediators of public wills (parliamentary or representative democracies), are ultimately accountable to citizens. This means that citizens at least must be able to publicly question and criticise governments and so need to be free to express political opinions in that sense. Free speech is essential for democratic public debate for other reasons too; these relate to the purpose of public debate. Although the specific role public debate plays in a democracy varies it is valuable for the three reasons discussed below.^x

First, public discourse is a means to finding a distribution of the burdens and privileges of cooperation that respects the equality and freedom of all affected.^{xi} As previously mentioned in regard to Dewey, for example, communication between members of a community is important to ascertain the effects of policies on individuals. The best way to learn about the effects of a policy is to listen to the individuals affected by it. Increased communication between members of a society will increase knowledge of problems and possible solutions. Dewey envisages public debate as a type of scientific enquiry into the best way to organise society for all (Dewey, 2016).

Second, the relationship between autonomy and democracy further grounds the value of public discourse: individuals care about the way in which their communities are governed and organised because they have an interest in leading a life that is meaningful to them (see for example Habermas, 1994). This does not have to be construed in an individualistic manner. Meaningful life might essentially involve others both within and outside the communities an individual belongs to (see for example Taylor, 1994). In public debates that are open to all members of a community, with the aim to form and articulate public wills, it is important that individuals can express their opinion on matters in line with their conception of the good life and their experience. In fact, public debate and voting become essential only because there are different opinions and experiences – hence, expectations, needs and desire – to begin with. As a response to the value of autonomy and a way to organise society so everyone is equally respected as a valuable member and agent of the community (and within it), democracy must give equal weight to everyone. Certainly, freedom of expressing one's stance should not be restricted just because of difference or even conflict between opinions and values.

Lastly, public discourse that is open to all equally can itself be an expression of mutual recognition and appreciation between members who

contribute to each other's wellbeing. Being heard and taken seriously in public can make people feel recognised and respected as valuable, equal and autonomous members of a society (Honneth, 2007). Such public participation can – and often does – lead to public disagreements.

Therefore, in a democratically organised community freedom of speech is necessary for public discourse to fulfil its epistemic and recognitive roles. The value of freedom of speech derives from the role it plays in honouring and promoting the fundamental values of equal respect and dignity. Censoring or otherwise limiting someone's speech can constitute a violation of equal respect, signalling that either an individual (or group of individuals) or an opinion is not valued equally (Dworkin, 1996; 2011). However, censorship is not the only way someone's ability to participate as equal in public discourse can be undermined. Fraser, for example, argues that economic or cultural inequality, political misrepresentation can be obstacles to participatory equality (Fraser, 2003; Fraser, 2005).^{xii} Speech can contribute to cultural subordination, so some speech acts might themselves threaten or even damage equal respect and participatory equality, undermining the epistemic and recognitive aims of discourse. Jeremy Waldron, for example, holds that hate speech undermines the dignity of individuals who are targeted by it (Waldron, 2012). Others suggest that hate speech might also affect the self-confidence of targeted individuals (Seglow, 2016; Honneth, 1995). As outlined above, self-confidence is essential for agency and so hate speech undermines the agency of its targets. On both accounts, it violates the equal standing of individuals in a community, their trust to be taken as equals and thus their participatory parity. Participatory parity is undermined even more by speech that claims members of targeted groups are insincere and ignorant because of prejudices or myths that attach to their social identity. In such cases obstacles to equality are multiplied.^{xiii} Equality can also be undermined if individuals are not taken seriously because of their communication style (Young, 2010). The harm of this

inequality is twofold: it undermines the sense of belonging and community. By restricting information – perhaps even excluding some points of view – it might prevent communities from finding the best possible solutions to the problems of social cooperation.^{xiv}

Restrictions based on democracy

The value and role free speech plays in a democracy helps to outline its limits. By limits of free speech I mean the limit of special protection that is owed to expressions because of the value of free speech. Speech that is not covered by free speech need not be censored or limited. There might be good reasons to allow such speech. However, such reasons must then go beyond reference to the value of free speech. To sum up: for democracy free speech is valuable but its value depends on the role it plays in honouring and promoting other values. It derives its value from these other values. It is a 'dependent good' or an 'instrumental good'. The ends of free of speech are epistemic and recognitive, which entails finding good solutions to problems of social cooperation as well as expressing an appreciation of the value and dignity of individuals and their autonomy. The value of freedom of speech derives from the value of communication, equality and autonomy.^{xv}

Speech that undermines communication, inclusion, equality recognition or autonomy might not be valuable and so restricting it might not be problematic *as* restrictions.^{xvi} It is helpful to clarify the different ways in which speech can be problematic and no longer be covered by a commitment to free speech:

1. Speech that can perpetuate and therefore worsen the effect of cultural subordination.
2. Speech that violates or diminishes dignity or self-confidence.
3. This is quite apart from the potential of some speech acts – especially those calling for violence or those that spread specific

types of misinformation – to facilitate physical harm.

The first point covers speech that either reiterates or elicits negative and false stereotypes or prejudices about members of some groups, affecting the chances that members of these groups have to be heard or taken seriously in discourse (Fricker, 2007).

Prejudice that pertains to competence and sincerity takes many forms: imputed selfishness, ridicule of cultural or religious beliefs or outright conspiracy theories. Moreover, speech does not directly have to refer to such prejudices for it to be damaging. If we follow Fricker in thinking that stereotypes work as social images that can be elicited, then different forms of speech can stimulate the relevant imagery in audiences, either intentionally or unintentionally (Fricker, 2007). Current research on implicit bias and internalisation of biases and prejudices – so-called self-stereotyping – suggests that this imagery influences speakers and audiences against their will and below the threshold of consciousness (Saul, 2013; Holroyd, 2012).

Some of the speech of anti-vaxxers and some of the speech of gender critical feminists tap into such stereotypes, perpetuating antisemitic prejudice or prejudice against mainstream media or misrepresenting trans women as especially dangerous and predatory. The latter misrepresentation is partly achieved through bias in the media focus on stories that support the stereotype and evoke fear by wrongly implying a higher proportion of violent, predatory individuals in this specific social group or by furthering an association between members of this group and violent behaviour. This undermines the equality of individuals, biasing audiences against them based on perceived insincerity ('ulterior motives'). I should emphasise that the problem is not that violent and predatory behaviour is reported but the focus on these stories and exclusion of other stories and experiences of trans people that would paint a more balanced and differentiated picture. Some anti-vaxxers also aim to undermine the

credibility of experts with reference to competence, while trans exclusionary views sometimes undermine the status of trans woman as knowers and knowledge givers. Those women are then not seen as knowledgeable (enough) about experiences of sexism. Of course the response here is that not all women experience sexism in the same way but that different groups of women experience varied kinds of sexism in distinctive ways. Furthermore, the different types of sexism do not map onto the cis-trans distinction. Moreover, since it seems likely that all forms of sexism are interrelated, all experiences of sexism offer important insights into sexist oppression. However, while speech that perpetuates, reaffirms or elicits prejudices is harmful to participatory parity it is not obvious that such speech should be prohibited, silenced or restricted. It could be more efficient for combatting cultural subordination to allow those speech acts so that they can be called out and criticised publicly. Fraser, for example, demands a process of cultural re-evaluation as a solution to cultural subordination. According to her, we should deconstruct assumed cultural differences and attributes, dismiss those that are false and re-evaluate actual differences between groups or members of groups (Fraser, 2003). Combatting implicit biases requires different long-term approaches, beginning with building awareness to implementing environmental changes (see Holroyd, 2012).^{xvii} Publicly countering misrepresentation and misinformation might be helpful for both purposes. Moreover, it might be advantageous for a democratic community to allow speakers who advocate obnoxious views to be heard and addressed. However, it does seem implausible for anyone to claim that they have a right to undermine the equal standing of others in the way outlined above, and the effectiveness or inefficiency of public discussion must be weighed against potential further (other) harms as well.

The second point stresses that speech can also undermine the dignity or self-confidence of others. Jeremy Waldron, for example, analyses the

wrong of hate speech in terms of the dignity of citizens. Equal dignity, according to Waldron, is an 'assurance good' (Waldron and Seglow). Starting from a Rawlsian idea of a well-ordered society, Waldron expounds his idea. A well-ordered society is characterised by certain reciprocities between all members, specifically a shared commitment to the fundamental grounding principles of justice. In the liberal thought of Waldron and Rawls, these principles are minimal. Waldron focuses on the commitment that every member in societies recognises the equal humanity of every other. Dignity is something all humans possess as human beings and it grounds the right to just treatment. Dignity is thus, in Waldron, a 'civic status' that must be protected (Waldron, 2012: pp. 82-83). Hate speech undermines the 'assurance' that everyone is committed to equal dignity in that hate speech itself undermines or calls for undermining dignity of some members (Waldron, 2012). This can take different forms, but everyone is familiar with racist hate speech that explicitly denies the equal humanity of some fellow humans. Prohibiting such speech is a reassurance that societies are bound by those very fundamental assumptions.

As Seglow points out, dignity is not only a reason to censor hate speech but also a basis for freedom of speech (Seglow, 2016). It is partly due to the dual role of dignity as reason to allow and restrict speech that Jonathan Seglow argues that hate speech violates self-confidence. As outlined above, self-confidence is a basic (though fragile) self-relation that is a pre-requisite for autonomous agency, which must be afforded to all members of a society equally in their status as human agents. I am primarily interested in understanding the different ways speech can harm those goods fundamental to a democracy and for this purpose I can treat Waldron's and Seglow's analyses as complimentary. Speech that is usually classified as hate speech can undermine either or both of two fundamental goods in a democracy: dignity and self-confidence.

Speech that vilifies or ridicules trans people threatens to undermine dignity, as does persistent and obstinate misgendering and deadnaming. Where such attacks on identity are internalised, it affects the self-confidence and agency of targeted individuals. The effects of some blogs and tweets on dignity and self-confidence have been well documented and it is those effects that have fed recent protests (see nbphilosopher, 2021). It seems important here to emphasise that accidental misgendering might also have adverse effects on individuals, and should therefore be avoided. However, genuine mistakes should not qualify as problematic speech in the sense outlined here.

Actions such as the use of antisemitic tropes and hounding politicians, journalists and scientists – done by some anti-vaxxers in Germany, for example – also aim to undermine the dignity and self-confidence of targeted individuals. Meanwhile, the antisemitism clearly qualifies as hate speech.

Apart from the harms of hate speech discussed above, speech can also lead to the *physical* harm of individuals in different ways. Often it is difficult to track the relation between speech and harms allegedly caused by speech, since other factors (decisions made by other agents) play an essential role. But it might well be that in some cases speech has helped to create a situation or a climate where certain acts become increasingly acceptable. Former USA president Donald Trump's perpetual claims of election fraud and his calls to defend democracy are seen by many pundits to have facilitated the march and assault on Capitol Hill. There is also good historical evidence of the efficiency of propaganda.

In the German context, some anti-vaxxers, together with other 'Covid sceptics', have called for violence and even issued death threats against politicians, journalists and scientists (see for example Berlin Direkt from 12/12/2021 [Berlin direkt vom 12. Dezember 2021 - ZDFmediathek](#)).

Aggressive spread of conspiracy theories and Covid denial has already helped to create an atmosphere and heat tempers to such a point that a 20-year-old pupil was shot in Idar Oberstein in September 2021 over anti-Covid measures (see for example release from German Press Agency: www.zeit.de/news/2021-11/16/anklage-nach-tankstellen-mord-noch-dieses-jahr).

Transphobic speech that calls for or threatens violence against trans and nonbinary people could contribute to a situation that has seen increased reports of hate crimes against trans people and an increased sense of threat (Chapple, 2020).^{xviii}

It seems to me that democracies not only have a right but a duty to restrict speech that threatens the physical integrity and life of citizens and residents and so such speech acts are rightly criminalised in the UK. Bodily safety and wellbeing are concerns that lie at the root of shared communal life and cooperation.

Especially anti-vaccination conspiracy theories pose an additional threat to democracy in as far as their myths undermine the trust in political personnel, political institutions, experts and fellow citizens (who are misguided). Trust is the glue of democracies. Democracies can survive distrust in specific political personnel, but democracies do not function well if citizens do not possess some trust in the institutions and processes of a society. Trust in fellow citizens is fundamental to any well-functioning society.

Conclusion

Having distinguished different ways in which speech can be harmful, I want to emphasise once again that harmfulness does not mean that such speech ought to be restricted in all cases. Within a democracy it is up to

members to come to a decision of how to react to such speech. Different considerations must be weighed up, but special consideration needs to be given to the harms discussed above as they threaten the fundamental values of democratic societies.

While it seems implausible to claim a right to perform speech acts that violate fundamental goods and values, there are different ways one can remedy the harms done by speech and deal with problematic speech. Dignity, self-confidence and equality can be secured by other means, indeed they *need* to also be secured by other means. Publicly addressing problematic speech might itself be a way to reassure people of their dignity and equality, which in turn also could positively affect self-confidence. However, when it comes to speech that threatens life or physical integrity – through incitement to violence or otherwise – one might consider regulating such speech. Life is a fundamental good and risking it by trying out other responses may seem an inappropriate gamble. Regulation of speech too can take different forms. Usually, regulation of speech implies a legal response, for example criminalising certain speech (censorship). But especially in cases of a more indirect threat to life (such as the spread of dangerous misinformation that does not actually vilify groups or incite hatred or violence), state censorship may neither be practical nor desirable. It might be better to leave it to civic institutions (including universities) or private businesses (such as social media platforms and operators) to choose to withhold a platform. There are, however, other problems associated with giving private businesses so much influence over who can participate – and how – in debate with anonymous others. Therefore, further careful in-depth debate is needed.^{xix}

Regulating speech may sometimes be appropriate and in other situations social sanction, protests and de-platforming and no-platforming may be used to protect fundamental goods. However, it must also be possible for individuals to voice concerns, disagreement and doubt even in the

contexts under consideration here. One example would be individuals who are fearful of vaccination – possibly the result of the spread of conspiracy theories and misinformation or because of historical experiences. They must be able to articulate their concerns in order to address and resolve these issues. A distinction needs to be made between the anti-vaxxers who spread dangerous conspiracy theories and misinformation and those affected by the misinformation.^{xx} There seem to be two criteria that can be used for such a distinction, which are then also applicable to other contexts.

One, we can distinguish the degree and quality of spread of misinformation. While people who communicate about their fears and worries might sometimes cause others to be concerned, their influence differs quantitatively from those who take to the streets and online forums to spread misinformation. So, one distinction focuses on the whether or not communication seeks to influence anonymous others, or if it uses *means* likely to influence the behaviour of anonymous others.

Second is something I would call ‘good faith’.^{xxi} Someone who questions, doubts or disagrees in good faith is responsive to evidence, arguments and experiences. Engaging in good faith means different things in different contexts of debate. It can mean aiming at truth or consensus, or finding the best solution for all affected, but it usually involves a collective goal shared by those who engage in debate together. It thus comes with a certain attitude also towards those we disagree with. It seems reasonable that respect for the other, as someone who contributes to the shared aim also involves sensitivity to the effect that our own speech or position has more generally on others. This also requires an awareness of the general political and social context. Someone who argues in good faith must consider whether their speech impacts individuals who are already unsafe, for example because they are vulnerable to hate crimes. The form of expression and the language used does matter.

Wilful or gratuitous offensiveness are not merely distasteful, as Mill claims, but might have material impact on others and can be seen as a sign that a speaker does not act in good faith. This is an important aspect of good faith especially in debates that touch at the core of individuals' identity, where speech can impair agency. Further, good faith extends to interpreting the speech of others. If I engage in debate in good faith I should give my opponent the benefit of doubt and assume they too are good faith participants – until I have good reason to doubt that (for example, if my interlocutor chooses to be gratuitously offensive, and proves unresponsive to experiences or evidence). The idea of good faith outlined here excludes cases of incitement to hate or violence or speech that vilifies, but at the same time secures room for genuine debate in difficult areas, where different positions have social and political ramifications and can affect wellbeing deeply.^{xxii}

I want to emphasise that my suggestion is that these two criteria might help to identify speech that must be protected as free speech in sensitive contexts. This does not mean that speech failing to meet these criteria should always be restricted. Rather, all the considerations previously outlined apply to such speech.

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ⁱ Among the best publicised were the fears surrounding MMR vaccine and opposition to compulsory measles vaccines.

ⁱⁱ One worry about making vaccinations compulsory (penalising people who refuse the vaccination although they are medically fit) is that it might throw oil into the fires of various vaccination myths.

ⁱⁱⁱ The sheer variety of position on the nature and role of gender and "woman" in current feminist debates shows that it still is a contested concept.

^{iv} This can also be seen as a reason to broaden the scope of those who need to engage in public discourse, since our wellbeing does not only depend on fellow citizens but all residents and possibly individuals outside our borders.

^v Undemocratic projects or such that seek to violate other people have always posed a problem.. Arguably, one might think that hate speech falls within this class. Only a few theorists believe that democracies must be tolerant of such projects.

^{vi}(Mill, 1962). Mill's harm principle is highly problematic because it manages to seem too narrow in one respect and too broad in another. It is too broad because there are many speech acts that cause harm that one might still not want to prohibit. Think of the conversation with a friend that went so wrong that it caused the friend to suffer. Unless one wishes to strongly regulate conversations among friends or the occurrences of arguments, causing direct or indirect harm itself would not be considered a sufficient reason to censor speech. For example, Scanlon points out that the harm of causing someone in private conversations to hold false beliefs and act on those false beliefs should not constitute a reason for restricting speech (Scanlon, 2006, p. 213). However, Brison locates the harm of hate speech exactly in the fact that it causes false beliefs and actions result from these beliefs. In the case of hate speech, Brison holds that it leads victims to falsely believe that they are not worthy of respect (Brison, 1998, p.326.).

^{vii} These injuries can manifest themselves in diagnosable illnesses such as anxiety disorders, post-traumatic disorders and depression.

^{viii} The precise nature and basis of this fundamental caring is a question I cannot address here.

^{ix} By distinguishing between psychological and bodily vulnerabilities I do not propose a mind-body dualism but only wish to highlight different aspects of our human condition. Taking the psychological harms seriously would, on the contrary, strongly suggest a materialist position because conditions such as depression and anxiety are also bodily processes.

^x In deliberative democracies the consensus reached in public debates (if any) will guide governments; in other democratic set-ups, public debate might be an indirect way to influence the political agenda of governments.

^{xi} Within democratic theory the question of the boundaries or scope of democracy is of vital importance: who gets to have a say. The "all-affected principle" suggests that state boundaries should not apply (many people outside of the USA are affected by decisions of its government). However, for the sake of this paper I will again set this question aside. I will assume what is actual practice: citizens of a state will have their say, only if they are deemed competent according to democratically decided rules (which could be determined by age, among

other things). Again, these notions of competence could be contested as they are vulnerable too – prejudice and bias against some groups and they have changed throughout history, often in the context of overcoming social prejudices. In a functioning democracy these rules themselves are subject to public and inclusive debate.

^{xii} The idea of political misrepresentation as an injustice is important and Fraser's account of it is insightful and helpful for feminists, especially those combatting the misrepresentation of women. Unfortunately, this is not the place to engage with this in depth.

^{xiii} Of course, such obstacles arise not just because of hate speech. Prejudices and implicit biases attach to other aspects of individuals too and might even become institutionalised in the way debates are undertaken – for example, if debates prefer or demand certain argumentative styles. Iris Marion Young suggests ways to broaden the scope of what counts as argument in a public debate to create inclusive democratic publics (Young, 2010).

^{xiv} Again, the real test case involves exactly those views that seek to exclude or undermine others.

^{xv} Parity and inclusive communication are valuable because/if democracy is valuable. Democracy itself derives its value from equality and autonomy, to which it is a response. It is of course possible to derive the value of freedom of speech differently: J. S. Mill thinks that freedom of speech is crucial because of its contribution to overall happiness or flourishing; H. Marcuse claims that the value of freedom of speech is linked to its role in finding truth about human freedom. In all cases, however, the value of freedom of speech depends on some other values, which are more fundamental.

^{xvi} Even when one thinks speech should be restricted to honour or promote fundamental values, the practicalities of such restrictions might be highly problematic – especially the question of who should have the power to restrict speech and how such power can be limited.

^{xvii} Environmental changes aim to prevent eliciting negative prejudices at the very least and might even manage to build new associations. There are many other measures suggested in the literature. While overcoming the effects of self-stereotyping is partly linked to actively avoiding eliciting stereotypes or prejudices, it is a different question whether this should amount to prohibiting such speech in public discourse (Saul, 2013; Holroyd, 2012).

^{xviii} The data around transphobic hate crimes in the UK is hard to interpret for various reasons, including the fact that only a small number of trans people live in the UK (see for example an explanation of the difficulties of data interpretation by channel 4 news: <https://www.channel4.com/news/factcheck/factcheck-how-many-trans-people-murdered-uk> but see also the research briefing to parliament for 2021, <https://researchbriefings.files.parliament.uk/documents/CBP-8537/CBP-8537.pdf> and the official numbers from ONS 2018-19 <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Hate-Crime-Annual-Report-2018-2019.PDF>). However, it is well-documented that transphobic crimes still happen in the UK and throughout the world.

^{xix} I do not have the space to engage in discussion about this very pressing issue here.

^{xx} Similarly, we must be able to distinguish genuine discourse about the nature and role of gender from transphobic speech, which aims at violating fundamental recognition of the identity of others or worse.

^{xxi} 'Good faith' is originally a legal notion but the way I use it is only very loosely related to its legal meaning.

^{xxii} This notion of good faith is vague but it seems appropriate, in a democratic society, that we trust each other to be capable of judging when individuals argue in good faith.