Polluting Words: Is There a Coasean Case to Regulate Offensive Speech?

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Introduction

Economist Ronald Coase devoted an article in the 1974 edition of the *American Economic Review* to an idea he had observed to be common among his academic colleagues:

> (I)n the market for goods, government regulation is desirable whereas, in the market for ideas, government regulation is undesirable and should be strictly limited.[1]

He found the idea strange because, as he argued in the paper, the two markets are not relevantly different. The case for regulation is no weaker in the market for ideas than in the market for goods. After all, it is usually easier for a consumer to know when ordinary goods are faulty than when ideas are bogus. Anyone can tell when a television doesn't work. It takes unusual dedication to figure out, for example, that Hegel was wrong when he said that "absolute form and absolute content [are] identical — substance is in itself identical with knowledge."[2]

Coase hoped that devotion to consistency would inspire his peers to adopt a more skeptical attitude toward regulation of the market for goods. He got half of what he hoped for. Academics arguably have become more consistent, but rather than favor *laissez-faire* in the market for goods, they favor regulation in the market for ideas. This goes to show that consistency is not always something you should seek in your opponents.

Many professors are now keen to restrict the ideas their students hear; or, at least, they are willing to go along quietly with the enthusiasts for such restrictions. They do not seek to protect their students from the incoherent abstractions of 19th century German philosophers or from any other kind of intellectual error. Rather, they seek to protect them from encountering ideas that will offend them or otherwise make them feel uncomfortable, especially when the topics concern race, sex, sexuality, or some other aspect of "identity."

Universities are not national or state governments, of course. Their regulatory powers stop at the campus gates. But that doesn't change the point, which is that many academics appear no longer to believe that the benefits of a free market in ideas are worth the harms that accompany it.

Some outside of universities take the same view, not always drawing the line at private organizations being able to constrain the speech of those with whom they have voluntarily entered contracts. Rather, they want governments to protect consumers of ideas by restricting what can be said. Just as government regulation ensures that only cars meeting certain safety

[1] Coase (1974) p.384

[2] Hegel (1892) p.550

standards are offered for sale, so too should government regulation ensure that only ideas meeting certain safety standards are expressed.

Of course, the market for ideas is already constrained by some safety regulations. For example, an American may not advocate violence or other illegal activity when directed at "producing imminent lawless action."[3] But beyond this and a few other constraints established by legislation and the courts—such as those entailed by defamation law—the First Amendment to the U.S. Constitution guarantees Americans the freedom to say all manner of harmful things. Some see this as a problem. For example, Richard Stengel, a former managing editor of *Time* magazine, argued in a 2019 *Washington Post* op-ed that the United States should follow the lead of other developed nations and develop a hate-speech law.[4] Harvard University law professor Cass Sunstein proposed in his 2021 book *Liars* that speech deemed by the government to be false and harmful should lose its constitutional protection.[5]

Section 230 of the Communications Decency Act of 1996, which protects "interactive computer services" from being treated as publishers or speakers of the content they host, is also becoming unpopular among those who worry about excessive freedom in the market for ideas. Some of its critics, usually from the political right, think it gives social media firms such as Facebook and Twitter too much freedom to indulge their political biases when moderating content. Other critics, usually from the political left, think it gives such firms too much freedom to host harmful content. Both President Joe Biden and former President Donald Trump have been critical of Section 230, if for very different reasons.[6]

The fashion for private-sector speech prohibitions and proposals for more restrictive legal regimes agitate those who prize freedom of speech. It's a hot topic in newspaper columns and on talk radio shows. Organizations have even been established to defend free speech, such as the Free Speech Project at Georgetown University and the U.K.'s Free Speech Union.

But defenders of free speech are generally doing their job poorly. Too many merely assert that "you should not have a right not to be offended," when this is precisely what is at issue. Others follow the 19th century English philosopher John Stuart Mill and claim that being offended, or suffering hurt feelings more generally, does not count as harm.[7] Again, most seem to simply take this for granted, offering no reason why the offended are unharmed.

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[3] *Brandenburg v. Ohio,* 395 U.S. 444 (1969), *available at* https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395444/usrep395444.pdf.

[4] Richard Stengel, *Why America needs a hate speech law*, THE WASHINGTON POST (Oct. 29, 2019), https://www.washingtonpost.com/opinions/2019/10/29/why-america-needs-hate-speech-law.

[5] Sunstein (2021) p.72

[6] The Online Safety Bill before the U.K. Parliament aims to achieve simultaneously what Trump and Biden want from Section 230 reform. On threat of fines of up to 10% of global revenues and criminal prosecution of senior managers, the bill requires online platforms to remove legal content deemed by the government to be harmful, and not to remove content that the government deems legitimate political commentary. *See* Draft Online Safety Bill (May 2021), *available at* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf.

[7] Mill (1859)

The right way to understand harm is economic. Something harms someone if he would pay to avoid it. Since offense and other hurt feelings can pass this test, they can be genuine harm (Section 1). And since speech can cause this harm—and most people believe that legal restrictions on causing harm are generally justified—we have a *prima facie* case for the regulation of speech.[8]

Indeed, standard economics seems to provide more reason to regulate speech than ordinary goods. If a new car is defective and harms its drivers, people will be reluctant to buy it and its producer will suffer losses. Because the same goes for most goods, regulations that impose product standards are arguably unnecessary (at least, for this reason). Suppliers already have good reason to make their products safe. Speakers, by contrast, often do not bear the cost of the hurt feelings they cause. In other words, hurt feelings are an "external cost" of offensive speech. When someone doesn't bear all the costs of an action, he tends to do it too much. That is to say, he does it even when the total social cost exceeds the total social benefit.

In his famous 1960 paper "The Problem of Social Cost," Coase showed that one party holding a legal right not to suffer the external cost of some activity—such as being disturbed by noisy neighbors—needn't stop it from happening.[9] Nor would giving the neighbors the right to make noise guarantee that the noise continued. This is because, when certain conditions are met, the legally disfavored party will pay the favored party not to enforce his right (Section 2). When this happens, the outcome is efficient: in other words, it maximizes social welfare. Alas, the conditions for such rights trading are rarely met. When they are not, the initial allocation of rights determines the outcome. Which party's interests should be protected by law therefore depends on who can avoid the harm at the lower cost. The efficient outcome will be produced by giving legal protection to the party facing the higher cost.

Coase's conditions for trading rights aren't met in the case of offensive speech (Section 2). We must therefore consider the costs faced by the offenders and by the offended when trying to avoid the offense. This appears to favor speech restrictions. After all, being offended is expensive, keeping your mouth shut is cheap, and each offensive speaker usually offends many hearers. For these reasons, Coasean analysis would seem on first impression to favor revisions to Section 230 that oblige social media platforms to be more assiduous in their moderation of offensive content. A post that would offend millions of the platform's users can be removed at a low cost to the platform.

But that is merely a first impression. In this paper, I argue that the Coasean case for legal restrictions on offensive speech collapses when confronted with three facts: that being offended is often a masochistic pleasure; that most of the offensive speech that concerns would-be censors occurs on privately owned platforms; and that the proposed restrictions would impose large costs on society. Neither the First Amendment nor Section 230 of the Communications Decency Act should be weakened to remove protection for offensive speech.

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[8] Feinberg (1985)

[9] Coase (1960)

Before answering the *prima facie* Coasean case for restrictions on offensive speech, however, we need to appreciate its force, which begins with recognizing that offense can be a real harm.

I. Words Can Harm

John Stuart Mill's *On Liberty* remains the classic defense of free speech. In that 1859 essay, Mill claims that society may properly restrict a person's liberty to prevent him from harming others, but not otherwise. This is the so-called harm principle. The principle is general, but Mill is especially concerned with how it applies to "thought and discussion." It explains, for example, why the law rightly prohibits speech that incites violence or defames someone. Such speech harms others. You might think that it also justifies prohibitions on offensive speech but, according to Mill, offense isn't harm.

Why not? Before we get to Mill's answer, it is worth noting how common this idea is. Many defenders of free speech simply take it for granted that offense isn't harm. Others offer weak arguments. For example, some claim that the offended have suffered no injury.[10] This would be true if "injury" refers only to bodily damage, but it doesn't. Purely psychological events can be injuries. If I give you a drug that induces terrifying hallucinations, I injure you. And even if we arbitrarily restricted the application of "injury" to bodily harm, that would just show that not all harm is injury.

Others argue backward from their disapproval of speech restrictions. That is, they make roughly this argument:

1. If offense is harm, then we have grounds to prohibit offensive speech.
2. But prohibiting offensive speech is a bad idea.
3. Therefore, offense is not harm.

This is the thrust of journalist Jonathan Rauch's argument in Chapter 5 of his 2014 book *Kindly Inquisitors*:

> If you are inclined to equate verbal offense with physical violence, think again about the logic of your position. If hurtful opinions are violence, then painful criticism is violence. In other words… *science itself is a form of violence*. What do you do about violence? You establish policing authorities – public or private – to stop and punish the perpetrators. You set up authorities empowered to weed out hurtful ideas and speech. In other words, an inquisition (italics in original).[11]

Rauch here captures (an extreme form of) the speech prohibitionists' argument. But elucidating an argument does not show it to be unsound. Yes, the prohibitionist will say, offense is harm, offensive speech is therefore violent, and this violence should be prohibited.

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[10] See, for example, Hirsh (1986)

[11] Rauch (1993) p. 131. Elsewhere in the book, Rauch recognizes that people suffer genuine harm when they are upset by hearing ideas that offend them. So, this passage is confusing—to this reader, at least.

Those who argue along these lines commit the "argument to the consequence" fallacy. You may think that belief in some idea will have unfortunate consequences, and perhaps it really will. But that doesn't show the idea to be false. Believing yourself to be unusually stupid probably has mostly unfortunate consequences. Nevertheless, some people really are unusually stupid. Similarly, the idea that offense is harm may lead people to do unfortunate things, such as over-regulate speech. But that doesn't show that offense is not harm.

Another peculiar argument for denying that offense is harm is that people take offense only when they have certain beliefs. For example, you will be offended by a visual depiction of the prophet Mohammed only if you are a Muslim (or sufficiently sympathetic with Muslims). According to the philosopher Robert Simpson, this means that an offended person "bears some responsibility for her own feelings" and, therefore, is not harmed.[12] If people choose what they believe (which is implausible), Simpson may be right about responsibility. But so what? Suppose Jack chooses to go for a walk during a thunderstorm and is struck by lightning. Will we conclude that his death does not harm him because he bears some responsibility for it? Should I tell my children never to take precautions because it is impossible to be harmed by events for which you are partly responsible? As Cicero said, there is nothing so absurd that some philosopher has not said it.

Alas, it isn't only philosophers. Many claim that censorship at universities is a consequence of the current generation of students being "snowflakes": that is, people who melt in the slightest heat of controversy.[13] And they say this as if it shows the censorship at universities to be unjustified. But if current students really are snowflakes, then offensive speech is now more harmful than it used to be, and the case for prohibitions is stronger. Imagine that the current generation of students had higher rates of asthma than previous generations (as, in fact, they do). Would anyone argue that air pollution does not therefore harm them?

You may wish that fewer students had asthma and that fewer were snowflakes, but that is irrelevant. If they really are asthmatic, then they really are harmed by air pollution. And if they really are snowflakes, then they really are harmed by offensive speech.

To understand harm, we need to identify what the great variety of harmful things have in common that makes them harmful. The analysis must also be consistent with the fact that what harms you might benefit me. When I was a boy, cauliflower benefitted my mother but harmed me. Now that I am an adult, it benefits me but harms my daughter. Horror films benefit my daughter but harm me. And so on. Fortunately, standard welfare economics provides us with a ready answer. Something is good for you if you would be willing to pay for it and bad for you if you would pay to avoid it. Or, to put it the other way around, something is good for you if you would need to be paid to forgo it, and bad for you if you would need to be paid to have it. What's harmful is what you want to avoid. And the test of genuine want is willingness to pay.

When I was a boy, I would have paid $1 not to eat cauliflower. Now I happily pay that for the pleasure of eating cauliflower. That means cauliflower has gone from harmful to beneficial for

[12] Robert Simpson, *Prevent harm, allow offence?,* FREE SPEECH DEBATE (Jan. 8, 2013), https://freespeechdebate.com/discuss/prevent-harm-allow-offence.

[13] This use of "snowflake" seems to have been introduced by Fox (2016)

me. Physical pain during sex harms most people. They would pay to avoid it. But not sexual masochists. They would pay to experience it, and some of them in fact do. When a masochist is involved, pain during sex can be beneficial. I pick this example not for the sake of prurience but to make clear that harm is a matter not of the intrinsic features of the experience, but of the individual's valuation of them.[14] Even pain is no exception.

Of course, some things cannot be bought and sold: the respect of our peers, for example. But even here, willingness to pay remains a measure of benefit or harm. If I could pay for the respect of my peers—or rather, I hope, pay to avoid the loss of it—I would. That means their respect benefits me. Similarly, I would pay to be relieved of feelings of personal worthlessness the morning after a big night out, if only I could. So, these feelings harm me.

With this economic understanding of harm, it should be clear that offense can be harm. The offended experience unpleasant feelings that they would pay to be relieved of, if only they could. And they often bear costs to avoid the harm of offense, avoiding potential sources of offense with which they might otherwise wish to engage. If they were not so easily offended, snowflake students might spend more time at fraternity parties and less time hugging teddy bears in the campus safe spaces. Of course, as with everything else, feeling offended *needn't* be harm. As we will soon observe, some people enjoy it and pay for the experience. But that is not what matters here, which is that offense *can* be harm and that there is, therefore, no easy way to forestall the harm-based argument for prohibitions on offensive speech.

This is the kind of straightforward utilitarian approach you might have expected to appeal to Mill. After all, until it drove him to despair, Mill devoted his life to defending utilitarianism. But, as already noted, Mill thought that offense was not harm. Before moving on, we should consider his reason, if only because doing so allows us to frame the issue in terms of external costs.

Mill is not entirely clear on the matter, but he seems to think a person is harmed only when his rights are violated. For example, he believes that the losers in competitive markets are not harmed by those who run them out of business, because they have no right to commercial success. There are, of course, alternative legal and rights-based notions of harm, but these cannot be invoked to settle the matter when harm is being used to decide the issue of which legal rights people should have in the first place. Imagine a country where assault is legal. The legislature is debating a bill to criminalize it and an advocate invokes the harm principle. It would be absurd to tell him that assault is harmless because, as things stand, no one has a right not to be assaulted. Nor will it do to say that something is a harm only if someone *should* be legally protected from it. When the issue at hand is determining what people should be legally protected from, this simply begs the question.[15]

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[14] Menger (1871) and Jevons (1871)

[15] "Begs the question" is now so commonly used incorrectly to mean "raises the question" that some readers may not know what it really means. Begging the question is the error of making an argument that assumes what it is supposed to show.

Mill is right, of course, that the law should not protect someone from being run out of business by his competition. But the reason is not that it isn't harmful, because it *is* harmful. The reason is that the gains to his competitors and to consumers more than offset the loss to the loser. A law that protected the businessman from his loss would inflict greater harm on other members of society. It would be net harmful. The harm principle is against it.

To put the matter in the terms of 20th century economics rather than 19th century political philosophy, we must distinguish between pecuniary and non-pecuniary externalities. As noted, an externality is a cost or benefit of an action that is borne not by the person who performs it, but by others. Pecuniary externalities are those where the cost or benefit is caused by prices. Springfield Jack is trying to sell his Ferrari. Springfield Jill is also trying to sell her similar Ferrari. Jill thereby imposes a cost on Jack. By increasing the supply of used Ferraris in Springfield, she lowers the price Jack can get. But that loss to Jack is perfectly offset by the gain to whomever buys Jack's Ferrari. High prices benefit sellers. Low prices benefit buyers. If externalities are mediated by prices, they are socially neutral. The external cost to Jack is offset by the external benefit to the buyer of his Ferrari. Such pecuniary externalities create no problem of social cost for which we need a legal remedy.

This is not the case where non-pecuniary externalities are concerned. The external harm they cause is offset by no external gain to anyone else—or, at least, unlike in the pecuniary case, there is no reason to assume it will be. Jack starts a brewery in his backyard. The production process belches out a foul smell. His neighbors suffer an external cost and no one gets an offsetting external benefit. This is the kind of external cost that, if larger than the (internal) benefit to Jack, harms society, and the kind for which there is a *prima facie* case for government intervention.

Offense is this kind of external cost. Jack says that women do not have penises. Jill is a person with a penis who considers herself—or himself, depending on the truth of the matter—to be a woman, and is offended by Jack's comment. Someone else *might* get an external benefit that offsets this loss to Jill. For example, someone might delight in knowing that Jill has been upset. But unlike the case of pecuniary externalities, nothing guarantees this. So offensive speech, like other activities with non-pecuniary external costs, is a *prima facie* candidate for governmental intervention aimed at restricting it.

II. Coase and Speech Externalities

When someone does not bear all the costs of an activity, he does too much of it. This makes it sound like external costs are created by a perpetrator, whose activities must be somehow curtailed—by a prohibition, perhaps, or by a tax on the activity that internalizes the external cost. But as Coase (1960) showed, this is wrong. External costs are created by the "victim" as much as the "perpetrator." Consider the case Coase starts with: *Sturges v Bridgman* (1879). Bridgman had for many years made candy commercially in the kitchen of his London home. Sturges was a doctor who lived around the corner. They got along fine until Sturges built a consulting room in his backyard at the boundary of Bridgman's property and near to the kitchen. Upon its completion, Sturges discovered that Bridgman's candy-making operation made so much noise that his consulting room was unusable. Sturges sued Bridgman to shut down his business.

Yes, Bridgman's noise was the source of the nuisance. But so was the fact that Sturges had built his consulting room within earshot. If Bridgman hadn't manufactured candy in his kitchen, there would have been no nuisance. If Sturges hadn't treated patients in his backyard consulting room, there would have been no nuisance. There is no good reason to assume that one party and not the other is the source of the problem. Similarly, trains that pass by farms cause sparks that sometimes start fires and burn crops. This cost to the farmer is created not just by the train but by the fact that the farmer plants crops beside the railway track. It is the coincidence of the trains and the crops that creates the problem. As Coase put it, externalities are a "reciprocal" problem.[16] Offense is no exception. It is created not only by someone saying something but by someone else hearing it and finding it offensive. Robinson Crusoe could not be offensive until Man Friday turned up.

Noting the reciprocal nature of the problem was only the first step towards Coase's (then) more startling conclusion: namely, that when the parties can negotiate at negligible cost, the decision of the court about who has the law on their side will make no difference to the allocation of resources. Consider Bridgman and Sturges. Suppose Bridgman earns $1,000 a week from his candy business and Sturges can earn $2,000 from his medical practice. If the court finds in favor of Sturges (as it did), the community gets more medical services and less candy. If the court instead rules in favor of Bridgman, the community gets the same result. That's because, after the judgment, Sturges can offer to pay Bridgman $1,500 a week to halt operations. This leaves Bridgman $500 better off than he was making candy. Sturges is also $500 better off, relative not to the $2,000 he would have made if the judgment had gone his way, but to the $0 he would make without the deal. In short, Bridgman shuts down his business *regardless of the court's decision*. The decision matters to Bridgman and Sturges, because it determines who pays whom, but it doesn't matter to how resources are allocated to activities. Or, in other words, it doesn't matter to economic efficiency. If the earnings were the other way around—if Bridgman earned more than Sturges—then we would get the opposite result, again, regardless of the court's decision. And in both cases, we get the more efficient outcome: the one in which resources are put to their more valuable use. The courts have contributed to this efficiency by clarifying the entitlements of the parties, which can then be traded. But, after that, the outcome depends on the value of the activities.

As noted, it also depends on the ability of the parties to negotiate at negligible cost. By "negligible," I mean at a cost less than the combined potential gains to the parties. If the cost is greater, they cannot negotiate a deal that benefits them both. Alas, this condition is rarely met. Often, the problem is the large number of parties involved. Not only does this drive up the process cost of the negotiation, but it makes reaching an agreement more difficult. Some of the many parties may be tempted to hold out and refuse to sign unless they are given a share of everyone else's gains, which is likely to lead to an impasse. Global warming caused by greenhouse gas emissions is a case where the billions of people involved, both as emitters and victims, makes private negotiation impossible.

[16] Coase (1960)

In these cases, the initial allocation of rights—by a court or a legislature—does determine the allocation of resources. If Bridgman and Sturges could not negotiate at a negligible cost, then whether the community got candy or medical services would depend on whether the court says Bridgman has a right to make his noise or Sturges has a right to a quiet consulting room. If the court wants its decision to be efficient, it should award the right to whomever faces the higher cost to avoid the externality. If mitigation is not an option, and one of them will have to shut down his business, the court should give Sturges the right to quiet, because his business is the more valuable to society, earning $2,000 a week compared to Bridgman's $1,000 from candy. If mitigation is possible, and Sturges can shift his consulting room at a lower cost than Bridgman can dampen the sound of his production, then Bridgman should get the right to make noise.

Sturges v. Bridgman is a useful starting point when looking at offensive speech through a Coasean lens because, as the legal theorist Joel Feinberg has argued, offense looks a lot like nuisance. The victim is not physically injured but is annoyed, shocked, humiliated, or similar.[17] You might think offensive speech is nevertheless quite different because, whereas Sturges was unable to run his medical business because of the nuisance of Bridgman's noise, being offended involves no monetary loss. But losing $100 in cash is no worse than suffering something that you would pay $100 to be rid of. Both make you worse off by $100.

No, the significant point of difference is the number of parties. With only two involved, and the nuisance suffered in a private property, *Sturges v. Bridgman* is a case of private nuisance—a tort in English and American law. Public nuisance, which is a crime in English and American law, occurs when the nuisance is caused not to a particular individual but to an open-ended group of people ("the public").[18] When protestors block a highway, they are being a public nuisance. The foul stench that covers the entire town when Jack brews beer is a public nuisance.

Offensive speech *can be* like private nuisance in this regard. For example, Jack might be in the habit of yelling obscenities across the fence at his neighbor Jill. In this case, offensive speech would not merely be similar to private nuisance, but an example of it. Jill could sue Jack to make him stop. And, as with *Sturges v. Bridgman*, whether he did stop would depend not on the court's decision, but on how much the parties valued the activity. Suppose the court finds in favor of Jill. Suppose also that Jack loves yelling obscenities at Jill so much that he is willing to pay $100 a week for the pleasure, and that, though she dislikes it, Jill is willing to put up with the abuse for anything above $50 a week. Then they should be able to come to a mutually beneficial arrangement whereby Jack pays Jill something between $50 and $100 a week and keeps on yelling at her.

Such cases are rare. More often, offensive speech resembles public nuisance. When the comedian Dave Chappelle causes offense by doing a televised stand-up routine in which he tells jokes at the expense of transgendered people, no single identified person is the victim. Rather, an open-ended group of people are injured: namely, those who take offense at such jokes. Hate-speech

[17] Feinberg (1985), Chapter 7. According to Feinberg, the analogy rests not only on the kinds of harm involved but in the balancing of interests that the court must consider in order to arrive at the right decision.

[18] Public offense can also be a tort, but the claimant needs to show that he suffered more than other members of the public.

laws and other proposed prohibitions of offensive speech are supposed to cover cases like this. And, in these cases, it looks like rights trading is impossible. When he can never know if he has identified every offended party, with whom should Dave Chappelle negotiate? And when Dave Chappelle is only one of an open-ended group of people who might make jokes at the expense of transgendered people, with whom should the offended negotiate?

Offensive speech thus looks like one of those cases where rights trading cannot ensure an efficient outcome, regardless of who is favored by the law. Or, to put it the other way around, it is one of those cases where the outcome, and whether or not it is efficient, depends on the initial assignment of rights: on whether people have a right to say offensive things or a right not to be subject to speech they find offensive. In such cases, efficiency is achieved by legally favoring the party with the lower cost of avoiding the harm. Our question then becomes whether it is cheaper not to say something offensive or not to hear it.

This will vary not only from case to case, but from case type to case type. This variation could be the basis of laws that restrict offensive speech in some circumstances but not others (just as indecency laws make criminal liability depend on the circumstances of the indecent act). But before getting to these variations, we should consider who the "relative costs" approach seems to favor in the kinds of cases that concern those who favor hate-speech laws and similar restrictions on speech: people posting racist, homophobic, or misogynistic content online; comedians making jokes at the expense of transgender people; or, perhaps, street preachers fulminating against the sin of sodomy.[19]

At first blush, avoiding giving offense would appear to cost less than avoiding taking it. Consider offensive content on Twitter, Facebook, and the like. Not posting the offensive content costs the poster next to nothing. How much would Jack pay to be allowed to tweet "women do not have penises"? If he were willing to forgo a Big Mac Meal or a pint of beer at the pub for the pleasure—that is, if he valued it at about $5—this would surely make him an unusually enthusiastic tweeter of those 25 characters. Suppose 50,000 Twitter users would be offended to see this tweet. What does it cost them to make sure they won't see it? We needn't make any serious attempt to answer this question because if it costs each of them on average anything more than 1% of a penny, then it would cost them more than it costs Jack not to tweet the offending words. In other words, if it costs them even the tiniest amount, then it costs them more than Jack's silence costs him. The Coasean approach seems to tell us that Twitter users should have a right not to be offended by Jack's tweet and that he should have no right to make it.

Or consider Dave Chappelle and his jokes about transgender people. How much would it have cost him not to include them in his three 2017 Netflix specials? The answer is not the $60 million Netflix paid him. Even if the trans jokes were the most amusing to Chappelle's audience, he could have replaced them with cis jokes that made the show only slightly less entertaining. His fee might have been lower, but only a little. Yet many people were upset by his trans jokes.

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[19] *See, e.g.*, Lily Wakefield, *Street preacher, 71, arrested for 'distressing' public with 'homophobic' rants*, YAHOO NEWS (Apr. 28, 2021) https://uk.news.yahoo.com/street-preacher-71-arrested-distressing-165917717.html (a 71-year-old "street pastor" was arrested in the United Kingdom for violating the Public Order Act while preaching that God designed families to have a mother and a father, rather than two parents of the same gender).

Columns in *The Guardian* were devoted to condemning them.[20] Of course, it may seem that they could avoid the offense at no cost. When you wouldn't like a TV show, it costs you nothing not to watch it. But this misses the real source of harm for those who wish Chappelle wouldn't make trans jokes. They are upset by the idea that *anyone* is hearing them. The knowledge that people are laughing at trans jokes offends them. Avoiding this knowledge would be very expensive, requiring the potentially offended to cut themselves off from potential sources of the information, including *The Guardian*. In that avoidance process, the millions of potentially offended would become ignorant of many other facts as well, the total cost of which would surely exceed the cost Chappelle would incur by not doing trans jokes. In fact, it is practically impossible to avoid knowing that others are doing things that you wish they wouldn't.

That's the *prima facie* case for allocating speech rights in favor of the offended rather than the offender. But, as I will argue in the next four sections, it is only *prima facie*. When we think a little harder about the alleged harm suffered by the offended, about the fact that speech platforms are privately owned, and about the external costs of censorship, the case for speech regulation collapses.

III. Enjoyable Offense

In Section 1, I argued against those who resist speech prohibitions aimed at avoiding offense on the grounds that the offended are not harmed. Offense really can be harmful. But that doesn't mean it always really is harmful. Consider pain. Few things are more obviously harmful. People pay to avoid it, for example, by buying aspirin when they have a headache. But not everyone always wants to avoid pain. Sexual masochists pay to experience it. In the right context, physical pain benefits a sexual masochist. Masochism is not only a sexual phenomenon. For example, I get very agitated when I watch certain news channels on television. I often yell at the screen. Someone who doesn't know me might think that I am having a bad time. And in a way, I am. But it is a bad time that I like to inflict on myself. I forgo what I might watch on another channel, or the good book I might read instead, for the sake of watching a show that I know in advance is likely to make me yell at it. And I do it over and over again.

Similarly, not everyone complaining about speech they find offensive is being harmed. You can tell they are not, because they actively seek out the sources of their suffering. They enjoy being offended. They pay for it by forgoing the inoffensive comedy specials they might have watched or the pleasant hour in the garden or any of the other countless inoffensive options they had. They are genuinely offended, but the offense isn't harming them, just as the sexual masochist really is in physical pain but isn't harmed by it. Indeed, real pain and real offense are required, respectively, for the satisfaction of the sexual masochist and the offense masochist. Similarly, I wouldn't watch those news channels if they didn't really enrage me.

How many of the offended are offense masochists? Where the offensive speech can be avoided at minimal cost, the answer must be most. Why follow Jordan Peterson on Twitter when you

[20] Brian Logan, *Dave Chappelle's 'reckless' #MeToo and trans jokes have real after-effects*, THE GUARDIAN (Jan. 4, 2018), https://www.theguardian.com/stage/2018/jan/04/dave-chappelle-comedy-standup-transgender-netflix.

find his opinions offensive unless you enjoy being offended by him? Maybe some are keeping tabs on the dreadful man so that they can better resist him, and they take the pain for that reason rather than for masochistic glee. But how could a legislator or judge know? For all they know, most of those offended by Jordan Peterson are offense masochists and the offense he causes is a positive externality.

But what about the offense that cannot be avoided? As noted in Section 2, some are offended not by hearing the speech concerned (which they can easily avoid) but by its mere existence. And knowledge of its existence is next to impossible to avoid. They might be suffering great harm. They might be willing to pay a lot to be rid of the speech whose existence pains them so much. They might. But, again, how should we know? Those offended to know that Dave Chappelle makes jokes at the expense of trans people could perhaps club together and raise enough money to buy him out of his right to make offensive jokes—that is, they could pay him not to make such jokes in public. The difficulty is not enforcement. It is easy to know when Chappelle is making comedy performances. The problem is that other comedians would soon add transphobic jokes to their repertoire in the hopes of getting bought out by the anti-transphobic joke fund. Even if Chappelle stops making transphobic jokes, the total quantity of such jokes is only likely to increase. Thus, no such offer will be made to Chappelle and we will have no idea how much the offended would be willing to pay to know that his jokes have stopped. Maybe it is a pittance. Indeed, when unable to observe their willingness to pay, we cannot know if those offended by the simple existence of Chappelle's joke are not also offense masochists. Just as some people enjoy being offended by listening to his jokes, some surely enjoy being offended by knowing that the jokes exist. Contemplating the sinfulness of the world was an enjoyable pastime for 19th century Christian moralists. Why assume that contemporary moralists enjoy it any less?

IV. Private Offense Regulation

We don't know whether offense is, in aggregate, a negative or positive externality. A blanket prohibition on offensive speech is therefore unwarranted. We have no reason to believe that it will serve efficiency.

This doesn't mean that narrower restrictions on speech are unwarranted. They are likely to be efficient when the offense is material and the offended cannot easily avoid its source. This is the principle applied in laws that ban grossly indecent acts, such as openly masturbating on a bus.

It is not the mere act that is illegal. You are allowed to masturbate in the privacy of your bedroom. You may not masturbate on a bus because those who are offended by the sight of it cannot easily avoid it. That's why it is illegal to express obscenities about Jesus on a billboard erected across the road from a church but not at a meeting of the Angry Atheists Society.[21] The laws that prohibit offensive speech in such circumstances—laws against public nuisance, harassment,

[21] *Krystal Johnson v. Jesse Quattlebaum*, No. 15-2133 (4th Cir. 2016), *available at* https://cases.justia.com/federal/appellate-courts/ca4/15-2133/15-2133-2016-11-02.pdf?ts=1478113236 (unpublished opinion upholding a South Carolina law that prohibited profanity near a church or school).

public indecency, etc.—are generally efficient. The cost they impose on the offenders is less than the benefits to the offended.

But they are unnecessary when the giving and taking of offense occur within a privately owned place. Suppose no law prohibited masturbating on a bus. It still wouldn't be allowed on buses owned by a profit-seeker. Few people want to masturbate on buses and most people who ride on buses seek trips that are masturbation-free. A prohibition on masturbation will gain the owner more customers than it loses him. The prohibition is simply another feature of the product offered by the bus company. Nice leather seats, punctual departures, and no wankers (literally). There is no more reason to believe that the prohibition is inefficient than that the leather seats are inefficient. And no more reason, therefore, for the state or judges to tell the bus company whether it may or may not impose the prohibition.

Or suppose that the building rented by the church and the billboard across the road from it have the same owner. He will want to maximize his combined earnings from renting these two spaces. If those who want to say obscene things about Jesus are willing to pay a lot to do so on the billboard, and those who want to attend the church aren't put off by the billboard, then efficiency will be served by posting the obscenities. The profit-seeking owner will allow them. If the law prohibited them, it would be not merely redundant but counterproductive. It would require an inefficient allocation of rights that would have been avoided by a profit-seeking owner.

This is why all privately owned places should be treated as private places, provided the activities that go on in them do not spill into genuinely public places. The law in most Western countries and U.S. states allows smoking in a private place, such as your home, but not in privately owned businesses, such as restaurants. Restaurants are not treated as private places. This is inefficient, because it prevents restaurant owners from offering a product that would suit many voluntary consumers.

External costs (or a difference between private and social costs) are taken by many to show that there is something wrong with the neoclassical model on which perfectly competitive markets lead to efficient allocations of resources. They don't show this. The neoclassical model assumes all resources to be privately owned. Yet in all the cases where private cost and social cost come apart, the contested resources are either unowned or state-owned. They do not therefore meet the condition of the neoclassical model.[22] Prior to the court's decision, neither Bridgman (the candymaker) not Sturges (the doctor) had legal control of the decibels at the boundary between them. That's why the inefficiency arose, and why it disappeared once the court assigned the right to Sturges. Had control of the decibels been owned by someone else—a private company that owned the neighborhood, let's suppose—no inefficiency would have arisen in the first place. The company would charge for the right to make or to prevent noise and the party to whom the right was more valuable would pay more, delivering the efficient outcome. Or, if the cost of negotiation were too high, the owner of the neighborhood would apply a general rule about

[22] See Demsetz (2011). Demsetz shows that adding the positive cost of providing a price system to the neoclassical model does not undermine the claim that competitive markets where all resources are privately owned are efficient. Critics may complain that, by assuming all resources to be privately owned, the neoclassical model is absurdly unrealistic. But that is a different complaint.

noise that maximizes its rental income from properties in the neighborhood. If transacting were cheaper, individual deals might earn the owner more than the rule. But given the transaction cost, which is no less real than any other cost, the rule is efficient. As with restaurants and smoking, different neighborhood companies might impose different noise rules that suit different groups of customers.

V. Online Content Moderation

Those who want the law to do more to protect people from offensive speech are concerned primarily about what is said online and, especially, on social media platforms such as Facebook, Twitter, Instagram, and the like. Insofar as they seek efficiency, their concern would seem to be misguided. Because these social media platforms are privately owned, we can feel confident that their "content moderation"—the rules and *ad hoc* decisions by which they allocate speech rights to users on the platform—are efficient.

This is implied by the general principle I proposed above: namely, that there is no problem of social cost when the contested resource is privately owned in a competitive market. But it may be worthwhile to explain how the principle applies in the particular case of social media platforms.

Assume for the moment that the owners of a platform seek nothing but to make as much money as possible. They are interested only in financial returns. The platform's content-moderation policy is a feature of their product. It will attract some users and repel others. If all customers paid the same to use the platform, the owners would seek moderation rules that maximized the number of users. This may seem to reflect the current situation, since the business model employed by most platforms requires customers to pay nothing. But this is not quite right. Customers pay by being exposed to advertisers on the platform. And some users are more valuable to advertisers than others. If John is worth more to advertisers than Brett and Derek combined, then a content-moderation policy that attracts John while repelling Brett and Derek will make the platform more money than a policy with the opposite effect. Provided such effects can be recognized at less cost than they are worth, the owners will take account of them and adopt the profit-maximizing policy (which also depends on the cost of operating the policy, a matter I will set aside for the sake of simplicity). In other words, the owners will favor a content-moderation policy that maximizes the value of the resource at issue: namely, the right to say things on the site. There is nothing about social media platforms and speech rights that makes them an exception to the general rule that privately owned resources are used efficiently in competitive markets.

Of course, harms suffered by people who would not use the site (at any profitable marketing cost) will be disregarded by the owners. This may seem to undermine my claim that private owners will make efficient content-moderation rules. They might profit by bestowing small benefits on many of their users—for example, by allowing scurrilous gossip—at the expense of non-users who suffer greater harm. But this is not an issue with regard to offensive speech (which is our concern)

because only users can be directly offended and, as argued above, we have no reason to believe that any net harm is done to those offended by the mere knowledge that some speech exists.[23]

I have so far assumed that the owners of social media platforms aim to maximize their monetary income. That might not be true. The owner of a platform may be willing to forgo income for the sake of prohibiting content that he personally finds offensive. He might, for example, ban some popular politicians and commentators from his site and thereby forgo advertising he would otherwise have earned. Does this possibility not undermine my argument that speech rights will be allocated efficiently on a privately owned platform?

It doesn't. Suppose the owner forgoes $10 million in advertising revenue for the sake of banning the offending speakers. That reveals the owners' valuation of the personal offense he has avoided through the ban. Provided he has made no error of estimation, the outcome is efficient. Allowing the speech would have cost more by way of the owner's unhappiness than the lost advertising would have been worth.

Such powerful feelings in the owner of a platform create an opportunity for competitors who do not share his feelings. They can offer a platform that does not ban the offensive speakers and, if enough people want to hear what they have to say, attract users and the advertising revenue that comes with them.

In short, given that social media platforms are privately owned and are not monopolies, we have every reason to believe that they allocate resources efficiently and that they allow neither too much nor too little offensive speech. Why, then, do people call for governments to regulate online speech? Or, in other words, why do people call for imposing content-moderation policies on private social media companies?

Mark Zuckerberg has recently called for social media companies, including his own Facebook, to be regulated.[24] It is an apparently strange request. If Zuckerberg or the other owners or managers do not want Facebook to host any given content, they do not need to. Regulation can only force them to remove content they would otherwise want to host (or force them to host what they would prefer not to). Why would they seek to be subject to compulsion on these matters?

The assumption of self-interest suggests two possible answers. One is that regulation reduces the cost of enforcing a content-moderation policy. The authorities will do it for you. It also reduces the cost of convincing consumers that you are a trustworthy content moderator. They know that you have a significant commercial incentive to apply the declared moderation rules. Or it may appeal as an anti-competitive measure. Developing the algorithms or artificial intelligence

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[23] *See, e.g., Zeran v. America Online, Inc.*, 958 F. Supp. 1124 (E.D. Va. 1997), https://caselaw.findlaw.com/us-4th-circuit/1075207.html (defamed party Kenneth Zeran was not a user of the America Online (AOL) platform; 4th Circuit found that, although Zeran was defamed, AOL was protected by Section 230 of the Communications Decency Act of 1996).

[24] *See, e.g.,* Mark Zuckerberg, *Big Tech needs more regulation*, FINANCIAL TIMES (Feb. 16, 2020), https://www.ft.com/content/602ec7ec-4f18-11ea-95a0-43d18ec715f5; Monika Bickert, *Charting a Way Forward: Online Content Creation*, Facebook Inc. white paper (Feb. 2020), https://about.fb.com/wp-content/uploads/2020/02/Charting-A-Way-Forward_Online-Content-Regulation-White-Paper-1.pdf.

techniques to apply the mandatory content-moderation policy is a fixed cost. This favors large incumbent firms against smaller competitors, and any would-be competitors. The expense creates a barrier to entry and thus protects the incumbents from competition. Mandatory content-moderation policies would also protect the large incumbent firms from competition on the basis of product design. Competitors' ability to differentiate themselves will be diminished and consumers will have less reason to switch from the large incumbent firms. By working with the regulators to develop the rules, as large incumbents do in all industries, they can make sure that the product they already offer is close to compulsory.

In short, Zuckerberg's enthusiasm to be regulated may not be as surprising as it seems. Whatever his motivation (which I cannot know), regulation will not promote efficiency, for the reasons explained above. On the contrary, it will restrict innovation and competition and thereby promote inefficiency.

Of course, the politicians who promote the idea of regulating online content do not seek to further enrich Zuckerberg or the other owners of Facebook. Nor, however, do they seek to promote efficiency. Some, such as former President Trump, say that social media platforms should be obliged to show political balance in their content moderation, believing that they now show unfair bias against certain politicians or political ideas. Others, such as President Biden, say that social media platforms should be obliged to remove disinformation and misinformation posted by users, believing that citizens are misled by falsehoods they read online.[25] Both camps have become hostile to Section 230 of the Communications Decency Act of 1996, which protects "interactive computer services" from being treated as publishers or speakers of the content they host. They want it to be abolished or reformed.[26]

Abolishing or diminishing the protections provided by Section 230 will not, on its own, create political balance. Social media firms would be exposed to such great risk of being sued for defamation that they would need to apply content-moderation algorithms that are hyper-cautious. It is difficult to know in advance what the effect would be on the political balance of speech that passed through the filter.

Some on the political right have advocated amending Section 230 such that its liability shield would extend only to those social media platforms that demonstrate they are politically balanced in their content moderation. But it is difficult enough even to distinguish between speech that is political and speech that is not, let alone to determine whether the political speech on a platform is, in aggregate, balanced. Suppose a platform hosts one communist statement promoting communism and two statements supporting Hilary Clinton. It also hosts three statements lamenting the fact that Ted Cruz did not win the presidency in 2016. Is this politically

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[25] *See, e.g.*, The Editorial Board, *Joe Biden: Former vice president of the United States*, THE NEW YORK TIMES (Jan. 17, 2020) https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html?smid=nytcore-ios-share (quoting candidate Joe Biden as saying: "Section 230 should be revoked, immediately should be revoked, number one. For Zuckerberg and other platforms. It should be revoked because … it is propagating falsehoods they know to be false.").

[26] See, *infra*, n. 6. The Online Safety Bill would place a "duty of care" on social media firms to show political balance in their content moderation and to remove disinformation and misinformation posted by users.

balanced, skewed to the political left, or skewed to the right? The idea that social media companies and, ultimately, the courts should decide such matters is absurd.

In fact, it is worse than absurd. It is sinister, for the same reason that legally obliging social media firms to remove misinformation would be sinister. It would allow the authorities to take control of political debate.

Consider Cass Sunstein's proposed principle for the regulation of misinformation:

> False statements should be constitutionally protected unless the government can show that they threaten to cause serious harm that cannot be avoided through a more speech-protective route.[27]

The serious harms that worry Sunstein are things like continuing to smoke because you have read that smoking doesn't cause cancer or refusing a vaccination because you have heard it is dangerous.[28] And he is worried about political harm being caused by false ideas, such as the idea that Hilary Clinton is less than perfectly honest.[29]

Applying Sunstein's proposal would require government officials to decide which outcomes are harmful, including political outcomes (since the proposal is aimed at political misinformation). When candidates with significantly different policies are running for president, serious harm is threatened if the candidate with the better policies is not elected. Falsehoods supporting the lesser candidate should then be prohibited, while falsehoods favoring the better candidate retain their constitutional protection. For "when falsehoods are banned, it is not only because they are falsehoods but also because they threaten to cause real harm."[30] To apply Sunstein's principle, government officials will need to determine which presidential candidate is better.

They will also need to decide which ideas are false. Sunstein acknowledges that government officials might not always know what is true and what is false. Indeed, they might even say that something is true when they know it isn't, because saying so serves their purposes.[31] But Sunstein has a solution. The truth will be determined not by government officials but by an "independent tribunal [of judges who have] concluded that there is no reasonable doubt on the matter."[32] The history of what judges have concluded is beyond reasonable doubt does not inspire complete confidence in this proposal. But the more compelling objection is Sunstein's remarkable political

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[27] Sunstein (2021) p.72. The "more speech-protective" routes Sunstein has in mind are things like requiring social media platforms to tell users that a statement they are hosting is false.

[28] Ibid p.106

[29] Ibid p.74. Readers may suspect I am misrepresenting Sunstein regarding Clinton. I quote: "It follows that if you are told that some public official is a liar and a crook, you might continue to believe that, in some part of your mind, even if you know that she is perfectly honest. (In 2016, the sustained attacks on Hilary Clinton worked for this reason, even when people were aware they were lies.)"

[30] Ibid p.62

[31] Ibid p.56

[32] Ibid p.60

naiveté. The independence of a tribunal with such astonishing political influence would soon be subverted.

Sunstein is refreshingly clear and open about the speech he wants banned: not just any old falsehoods but speech that people like him deem false and harmful. Not everyone calling for content-moderation laws is equally open, but they surely have the same goal. They seek to replace the free-for-all of social media with an online "conversation" constrained by rules that embody their own sensibilities and their own views about what is true or false and what is harmful. That won't promote efficiency. On the contrary, as I argue in the next section, it is likely to do great harm to society.

VI. Censorship Externalities

In the case of *Sturges v Bridgman*, the parties contended for control of a resource—namely, the amount of noise at the boundary of their properties—that was not yet owned. As noted, this is not so in the case of offensive speech online. The social media platforms on which offenders and the offended interact are already privately owned. As argued in Sections 4 and 5 above, this means that we have good reason to expect that the amount of offense they allow arises from an efficient allocation of speech rights.

But this is not the only significant difference between offensive speech and the case of *Sturges v Bridgman*. In Section 2, I said that efficiency is served if the party that can earn more from the contested resource gains control of it, either directly from the court or by purchasing control after the court assigns the right to the other party. Because Sturges' medical practice makes $2,000 a week and Bridgman's candy-making business makes only $1,000 a week (we pretended), efficiency is served if Sturges gains the right to peace and quiet. But this reasoning is correct in the case of *Sturges v Bridgman* only because their business activities create no positive externalities. Suppose one of them did. Suppose that Bridgman's candy-making produced a lovely aroma that wafted across the neighborhood. If Bridgman's neighbors combined would be willing to spend anything more than $1,000 per week to experience the aroma, then efficiency would be served by Bridgman gaining control of the decibels at his boundary with Sturges. Though Bridgman faces a lower cost in avoiding the externality than Sturges does, society faces a higher cost if Bridgman shuts down his business.

Most speech is not remunerated. Hence, most of the benefits it creates are external. Even paid speech, such as the research output of scientists and other academics, often benefits people who did not pay for it. Those who produced the knowledge on which the astounding prosperity of modern society is based received a tiny fraction of its value, which means that knowledge is underproduced. Speech is required not only for the communication of knowledge but for its production. For, as Matt Ridley has memorably put it, innovation comes from "ideas having sex." And if ideas are not allowed out, they cannot meet and have children.[33]

[33] I am not here defending the idea from Mill (1859) and, before him, Milton (1644) that truth will always beat falsity in a "free and open encounter." The benefit of free speech is not that it eliminates error but that it helps inquirers discover important new truths. The great growth of knowledge over the last 500 years has been accompanied by the persistence of error.

Laws that prohibit offensive speech thus threaten to impose large costs on society by impeding the progress of knowledge. This is not simply because any limitation on the ideas that can be expressed risks impeding inquiry. A prohibition on expressing ideas people find offensive is especially dangerous, because big new ideas often strike people as offensive. Galileo's idea that the Earth orbits the sun offended the religious sensibilities of 16th century Roman Catholic clerics, who imprisoned him for asserting it. Darwin's idea that humans evolved from more primitive creatures through a process of natural selection offended many in the 19th century. We have no reason to believe that those who are nowadays so easily offended will prove any less hostile to important discoveries. Given that the benefits of speech are mainly external, it is likely to be undersupplied even in a perfectly free market for speech. When it comes to speech, we have a "problem of social benefit," which prohibitions on offensive speech can only exacerbate.[34]

Speech also benefits those who do not pay for it by constraining those who wield power. Free political speech is an integral part of the democratic process by which we avoid tyranny. Indeed, even without democracy, freedom of speech constrains the worst tendencies of those in power. Why else would the rulers of undemocratic countries so consistently impose legal constraints on political speech (or arbitrary constraints, such as murdering journalists)? The rulers of undemocratic countries are still constrained by the willingness of the population to accept their rule. If the lives of citizens get sufficiently bad, the rulers will face a bloody uprising in which they may well lose more than their jobs. Even without voters, rulers are threatened by a population that despises them. This gives them a strong incentive to control the information available to the population.

Again, a prohibition on offensive speech is especially hostile to this external benefit of speech. The kind of speech that is required to expose corruption and to inspire resistance to it is often offensive. Those who want to be free from the constraints placed on them by scathing public criticism can only welcome laws that prohibit offensive speech. And if they can appoint the people who decide what is offensive (or otherwise harmful), they will like the law even more. The First Amendment makes such a power grab next to impossible in the United States. Nevertheless, as noted, eminent American politicians, scholars, and commentators say that the government should be able to censor political speech. And in the U.K., which lacks such a constitutional protection of free speech, a bill that will give the government the power to control what is said online is before Parliament.

VII. Conclusion

The external benefits of speech are extraordinarily large. Speech has played a central role in freeing people from tyranny and in bringing about the great gains in knowledge and prosperity of the past 500 years. And much of that valuable speech has been offensive. The doctrinaire commitment of American judges to a strict interpretation of the First Amendment is justified by this fact. Especially when the harms caused by offensive speech are so trifling in comparison.

[34] Farber (1991) argues that the First Amendment's protections of speech, which do not apply to similarly harmful activities, are justified by the fact that the benefits of speech are external and it would otherwise be (even more) undersupplied.

Indeed, as noted in Section 3, for all we know, offense may more often be a positive externality than a negative one. Add to this the fact that most of the speech targeted by the new would-be censors occurs on privately owned social media platforms, where we have good reason to believe that the quantity of offensive speech is efficient, and the *prima facie* Coasean case for prohibitions on offensive speech collapses.

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