

REGIONAL ETHICS BOWL CASES

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1. Should We Keep Kosher?

Last year, the two main regions of Belgium passed laws prohibiting the slaughter of unstunned animals, joining several other countries such as Denmark, Switzerland, and New Zealand that already ban the practice. The laws will go into effect in 2019. These laws effectively prohibit slaughtering animals in accordance with Jewish kosher as well as Islamic halal standards, which require an animal to be fully conscious at the time it is quickly killed with a single cut to the throat so that its blood can be completely drained. These practices are an essential aspect of the Muslim and Jewish religions.¹ Once the laws go into effect, Belgian Muslims and Jews who want meat produced in accordance with their religious beliefs will have to have it imported.² Belgium's population is predominantly Catholic, and the laws enjoy wide support. As Ben Weyts, regional minister of animal welfare, puts it: "Unstunned slaughter is outdated... In a civilized society, it is our damn duty to avoid animal suffering where possible."³ An interesting variety of figures and groups support banning unstunned slaughter, from defeated far-right French presidential candidate Marine Le Pen to the British Veterinary Association. The campaign director for the National Secular Society has said that "in 21st-century Europe, there is no good reason why animal welfare should be subservient to religious dietary rules." And, predictably, animal rights activist groups like PETA are staunchly against unstunned slaughter.⁴ Muslim and Jewish groups have filed lawsuits challenging the Belgian laws. They claim that the laws target religious minorities and violate their right to freedom of religion guaranteed under the European Union's Charter of Fundamental Rights. Yohan Benizri, the president of one of the organizations that filed suit, argues that "[a] ban on kosher meat production sends a message to Belgian Jews that they can choose between living in Belgium and practicing their religion, but they cannot do both. It sends a clear message to Belgium's Jewish and Muslim communities that they are not welcome here."⁵

Moshe Kantor, the president of the European Jewish Congress, feels similarly. He says "[t]his decision, in the heart of Western Europe and the centre of the European Union, sends a terrible message to Jewish communities throughout our continent that Jews are unwanted... It attacks the very core of our culture and religious practice and our status as equal citizens with equal rights in a democratic society. It gives succor to anti-Semites and to those intolerant of other communities and faiths." Calling for the laws to be repealed, Kantor went so far as to say that they were "the greatest assault on Jewish religious rights in Belgium since the Nazi occupation of the country in World War II."

¹ Samuel Osborne, "Belgium just banned kosher and halal slaughter in its biggest territory," *The Independent*, May 8, 2017, <http://www.businessinsider.com/belgium-banned-kosher-and-halal-slaughter-in-its-biggest-territory-2017-5>; "Lawsuits filed against Belgium halal slaughter ban," *Arab News*, updated January 18, 2018, <http://www.arabnews.com/node/1227556/world>

² Erasmus, "The debate surrounding religious rules for slaughtering animals," *The Economist*, May 18th, 2017, <https://www.economist.com/erasmus/2017/05/19/the-debate-surrounding-religious-rules-for-slaughtering-animals>

³ "Belgian region's plan to ban ritual slaughter upsets religious minorities," *Reuters*, March 30, 2017, <https://www.reuters.com/article/uk-europe-religion-belgium-slaughter/belgian-regions-plan-to-ban-ritual-slaughter-upsets-religious-minorities-idUSKBN17126N>

⁴ Logan Scherer, "The Cruelty Behind Muslim Ritual Slaughter," *PETA*, December 8, 2009, <https://www.peta.org/blog/cruelty-behind-muslim-ritual-slaughter/>; "PETA Reveals Extreme Cruelty at Kosher Slaughterhouses," <https://www.peta.org/features/agriprocessors/>.

⁵ Lianne Kollrin, "Legal fight starts for Belgian kashrut," *The JC*, November 30, 2017, <https://www.thejc.com/news/world/legal-fight-starts-for-belgian-kashrut-kosher-1.449313>

On the other hand, the writer and Nobel laureate Isaac Bashevis Singer, a Jewish vegetarian, has said that: “As long as human beings go on shedding the blood of animals, there will never be any peace. There is only one little step from killing animals to creating gas chambers.” And at least one Muslim organization, the Halal Food Authority, insists on animal welfare grounds that animals be stunned before slaughter. As the organization’s president explains, “[t]he Koran says use your brain, ponder about things and that's what we are doing. . . . It's a question of animal welfare.”

Animal welfare advocates believe that kosher and halal slaughtering practices are cruel because without stunning, animals suffer more pain and distress. For example, according to the Farm Animal Welfare Council, evidence suggests that slaughtered chickens and turkeys were likely conscious for about 20 seconds while their blood drained.⁶ But opponents of the bans point out that kosher and halal slaughtering practices were developed in part to cause animals the least amount of pain possible and have been serving that purpose for centuries. They suggest that it is unclear whether modern methods of stunning animals is an improvement in terms of the animals’ welfare.⁷

⁶ Martin Hickman, “End ‘cruel’ religious slaughter, say scientists,” The Independent, June 22, 2009, <https://www.independent.co.uk/news/uk/home-news/end-cruel-religious-slaughter-say-scientists-1712241.html>

⁷ Jonathan Romain, “Walloon’s decision to recommend a ban on kosher and halal slaughter is misguided,” The Independent, May 10, 2017, <https://www.independent.co.uk/voices/walloon-belgium-kosher-meat-halal-meat-stunning-animal-rights-a7727626.html>

2. Voting Rights for Felons

In ten states, felons are barred from voting even after they've served their prison time. This adds up to approximately six million people who would otherwise be eligible to vote—2.5% of the potential voters in the country. Even in states where felons' right to vote can be restored, suppressive voting rules can make it difficult. In 48 states incarcerated people cannot vote, and in 33 states that extends to those on parole or probation.⁸ Recently, however, the movement to restore former felons voting rights has been picking up steam.⁹

Marc Mauer of the Sentencing Project—an organization that has been working on this issue for decades—explains: "The trend on felony disenfranchisement policy nationally has been solidly in the direction of reform over the past 20 years. Two dozen states have enacted reforms designed to scale back the categories of disenfranchisement, enhance voter registration, and ease rights restoration."¹⁰ For example, in Florida the Second Chance Voting Restoration Amendment will be on the ballot in the November 2018 election. The amendment provides that a person's voting rights will be automatically restored upon completion of a felony sentence, including parole, probation, and restitution. People convicted of murder or sexual offenses are excluded from the measure. In Alabama, the legislature passed a law that allowed many people convicted of lesser felonies to be eligible to vote again.

Also worrisome is the racist history of many of these laws, especially the ones in the South, which were enacted with the specific intent to disenfranchise African Americans and were based on the noxious belief that black people are innately prone to criminality. The Mississippi Supreme Court stated in an 1896 decision upholding such a law, "[r]estrained by the federal constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone." These laws continue to disproportionately affect African Americans as well as other minorities. Indeed, on a national level, African Americans are disenfranchised at three times the rate of the population as a whole.¹¹ This is just one symptom of a criminal justice system that is biased against black people, as evidenced by the fact that they are significantly more likely than white Americans to be arrested, convicted once they are arrested, and sentenced to long prison terms once they have been convicted.¹²

Against this backdrop, advocates argue that restoring voting rights to former felons would help remedy this imbalance. Moreover, voting is a key element of citizenship in a democratic government. Former felons, as citizens, should not be deprived a voice in their government.

⁸ ProCon.org, "State Felony Voting Laws" (last updated 4/23/18), <https://felonvoting.procon.org/view.resource.php?resourceID=000286>; ProCon.org, "Number of People by State Who Cannot Vote Due to A Felony Conviction" (last updated 10/4/17), <https://felonvoting.procon.org/view.resource.php?resourceID=000287>

⁹ Amy Sherman, "Understanding felon voting rights restoration," Politifact, April 25, 2018, <http://www.politifact.com/truth-o-meter/article/2018/apr/25/understanding-felon-voting-rights-restoration/>

¹⁰ Miles Rapoport, "Movement in the Fight for Voting Rights Restoration," The American Prospect, February 5, 2018, <http://prospect.org/article/movement-fight-voting-rights-restoration>

¹¹ Daniel Nichanian, "The Case for Allowing Felons to Vote," The New York Times, February 22, 2018, <https://www.nytimes.com/2018/02/22/opinion/new-jersey-voting-rights-felons.html>

¹² The Sentencing Project, "Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System," April 19, 2018, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

Allowing former felons to vote would also help them re-enter society and become contributing members of their community. And finally, it is unfair to continue to punish ex-felons by stripping them of their right to vote even after they've served their time and thereby paid their debt to society.¹³

However, others maintain that it is perfectly reasonable to limit felons' right to vote. People who have committed serious crimes have demonstrated that they lack good judgment and are not trustworthy. Laws preventing children and mentally incompetent people from voting serve a similar purpose and are generally not controversial. Ex-felons have committed crimes, violating not only the rights of the individual victims but the social contract as a whole. People who are not willing to follow the law should not be involved in deciding what the law should be. Accordingly, it makes sense to bar ex-felons from voting.

Views also vary widely on not only if ex-felons' right to vote should be restored in the first place but also, if so, when.¹⁴ While some believe that ex-felons' right to vote should be automatically restored, others argue that voting rights should only be restored on a case-by-case basis. Considering high rates of recidivism, some argue there should be a period of time after release during which the ex-felon can show that he or she has turned over a new leaf. One author suggests that the right to vote could be restored in a courthouse ceremony before friends and family, which would celebrate the ex-felons' full re-entry into society.¹⁵ At the other end of the spectrum, a couple of states permit felon voting during incarceration.¹⁶

¹³ Jerry Shaw, "Voting Rights: Six Reasons Ex-Felons Should Vote," Newsmax, April 15, 2015, <https://www.newsmax.com/fastfeatures/felons-voting-rights/2015/04/15/id/638738/>

¹⁴ Jerry Shaw, "Voting Rights: Six Reasons Ex-Felons Shouldn't Vote," Newsmax, April 15, 2015, <https://www.newsmax.com/fastfeatures/felons-voting-rights/2015/04/15/id/638743/>

¹⁵ Roger Clegg & Hans A. Von Spakovsky, "There are Good Reasons for Felons to Lose the Right to Vote," National Review, April 8, 2018, <https://www.nationalreview.com/corner/there-are-good-reasons-for-felons-to-lose-the-right-to-vote/>; Roger Clegg, "Our Amicus Brief in a Felon Voting Case," Center for Equal Opportunity (last accessed 6/15/18), <http://www.ceousa.org/voting/voting-news/felon-voting>

¹⁶ ACLU, Felony Disenfranchisement Laws (Map) (last accessed 8/12/18), <https://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map>

3. The 100+ Year Life

In 2018, two people had remarkable birthdays. Masazo Nonaka, a former sumo wrestler, turned 112 years old and Violet Brown turned 117 years old.¹⁷ As remarkable as this is, neither is considered to have been the longest living human. Jeanne Calment holds the official title having lived to 122.¹⁸ Mbah Ghoto was believed to have been born in 1870 and to have been 146 years old.¹⁹ However, there are no official records of his birth. The average 10 year old today has a 50% of living to 104.²⁰

Recent research finds that more than one in six (17 percent) of Americans who work (full-time or part-time) provide care and assistance for an older family member or friend. While more than half of these working caregivers are women (54 percent), men make up 46 percent of the workforce with eldercare responsibilities.²¹ Employed caregivers often defer preventive health screenings and are more likely to report missed days of work. The “MetLife Study of Working Caregivers and Employer Health Care Costs” estimated that the average additional health cost to employers is eight percent more for those with eldercare responsibilities. This eight percent differential is estimated as costing U.S. employers \$13.4 billion per year. Lost productivity of employee caregivers to employers is as high as \$34 billion.²² Younger caregivers (ages 18 to 39) demonstrated significantly higher rates of cholesterol, hypertension, chronic obstructive pulmonary disease (COPD), depression, kidney disease, and heart disease. The cost to U.S. employers of workers with eldercare responsibilities breaks down as follows:

¹⁷ “Jamaican Woman at 117 Is the World's Oldest Human Alive.” *YouTube*, YouTube, 18 Apr. 2017, www.youtube.com/watch?v=g5eUm0NAgwQ%2C.

¹⁸ “The Key To Longevity For The World's Oldest Person Alive? Sumo Wrestling And Hot Springs | TIME.” *YouTube*, 11 Apr. 2018, www.youtu.be/lxw0QbpskMU.

¹⁹ Holmes, Oliver. “Man Heralded as Oldest Human Dies in Indonesia 'Aged 146'.” *The Guardian*, Guardian News and Media, 2 May 2017, www.theguardian.com/world/2017/may/02/oldest-human-dies-in-indonesia-aged-146

²⁰ Brownstein, Joseph. “Most Babies Born Today May Live Past 100.” *ABC News*, ABC News Network, 1 Oct. 2009, <https://abcnews.go.com/Health/WellnessNews/half-todays-babies-expected-live-past-100/story?id=8724273>

²¹ Williams, Joan C., et al. “Protecting Family Caregivers From Employment Discrimination.” AARP Public Policy Institute, Aug. 2012, www.aarp.org/content/dam/aarp/research/public_policy_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf.

²² MetLife Mature Market Institute® “National Alliance for Caregiving July 2006 The MetLife Caregiving Cost Study: Productivity Losses to U.S. Business.” <http://www.caregiving.org/data/Caregiver%20Cost%20Study.pdf>

Total Estimated Cost to Employers of All Full Time Elder Caregiving Employees ²³		
	Cost per Employee	Employer Cost (Billions)
Replacing Employees	\$414	\$6.6
Absenteeism	\$320	\$5.1
Partial Absenteeism	\$121	\$5.1
Workday Interruptions	\$394	\$6.3
Eldercare Crisis	\$238	\$3.8
Supervisor Time	\$113	\$1.8
Unpaid Leave	\$212	\$3.4
Full Time to Part Time	\$299	\$4.8
Total	\$2,110	\$33.6

Some employers believe that given the already generous leave required by the Family Medical Leave Act of 1993 (FMLA), which provides for up to 12 workweeks of unpaid leave to care for a parent,²⁴ workers with eldercare responsibilities do not need any additional legal protections. Others suggest that the FMLA centers on children rather than the elderly and favors women as the care givers. They also assert that the requirement that the parent have a “serious health condition” in order to take unpaid leave under the FMLA, ignores the realities of the aging process and only allows employees to care for their parents at the end of live. So those with eldercare issues may not be eligible for leave under the FMLA and not protected from employment discrimination when they take time off of work to care for an elderly parent or friend.

²³ Ibid.

²⁴ Wikipedia Contributors, “Family and Medical Leave Act of 1993.” Wikipedia, The Free Encyclopedia, August 8, 2018, https://en.wikipedia.org/w/index.php?title=Family_and_Medical_Leave_Act_of_1993&oldid=854069938, *Fact Sheet 28*, U.S. Department of Labor, 2012, www.dol.gov/whd/regs/compliance/whdfs28.pdf, and Guerin, Lisa, “What Is a Serious Health Condition Under the FMLA?” *Www.nolo.com*, Nolo, 24 Oct. 2014, www.nolo.com/legal-encyclopedia/what-is-serious-health-condition-under-the-fmla.html.

4. Felony and Me

The Golden State Killer was linked to numerous murders and rapes through the 1970s and 1980s. Though the case had been cold for decades, law enforcement recently arrested a suspect. Investigators linked the suspect to the crimes by uploading his DNA profile under a pseudonym to a genealogy website that uses DNA samples to match relatives. A distant relative of the suspect uploaded a profile, and the familial match led law enforcement to the suspect.

This process took months. Investigators worked with genealogy consultants to construct numerous family trees, tracing the suspect's family back to the 1800s. They also used traditional police methods, looking through census and death records. They finally narrowed their focus to one man who lived in the vicinity of the crimes, fit the killer's physical description, and was about the right age. A surveillance team was sent to observe the man and collect a discarded item for DNA testing. It was a match.²⁵

But the relative submitted his or her DNA for the purpose of genealogy—not to help catch criminals. A lawyer for the genealogy site reiterated: “The purpose [of the site] was to make these connections and to find these relatives. . . . It was not intended to be used by law enforcement to identify suspects of crimes.” However, the lawyer admitted that it did not technically violate the site's policy to join for the purpose of catching criminals.²⁶ Indeed, most similar sites state that if presented with a warrant, the site will turn customers' genetic information over to law enforcement.²⁷

Many find this a worrisome invasion of privacy, especially considering how popular genealogy services have become. As one ethicist who studies DNA forensics puts it: “This is really tough. . . . He was a horrible man and it is good that he was identified, but does the end justify the means?” One law professor agrees that this is problematic, especially because so much information can be learned about an entire family through a single family member's DNA. In other words, “[i]f your sibling or parent or child engaged in this activity online, they are compromising your family for generations.” We cannot predict how this information may be used in the future.²⁸

It is also important to remember that DNA tracing is not infallible, and sometimes it can lead to mistakes. For example, one woman's DNA showed up at numerous crime scenes throughout Europe, leading detectives to believe that they were on the trail of a serial killer. But it turned

²⁵ Tim Arango, “The Cold Case That Inspired the ‘Golden State Killer’ Detective to Try Genealogy,” *The New York Times*, May 3, 2018, <https://www.nytimes.com/2018/05/03/us/golden-state-killer-genealogy.html>; see also Tim Arango, Adam Goldman, and Thomas Fuller, “To Catch a Killer: A Fake Profile on a DNA Site and a Pristine Sample,” *The New York Times*, April 27, 2018, <https://www.nytimes.com/2018/04/27/us/golden-state-killer-case-joseph-deangelo.html>

²⁶ Gina Kolata and Heather Murphy, “The Golden State Killer Is Tracked Through a Thicket of DNA, and Experts Shudder,” *The New York Times*, April 27, 2018, <https://www.nytimes.com/2018/04/27/health/dna-privacy-golden-state-killer-genealogy.html>

²⁷ Rebecca Robbins, “The Golden State Killer Case Was Cracked with a Genealogy Web Site,” *Scientific American*, April 28, 2018, <https://www.scientificamerican.com/article/the-golden-state-killer-case-was-cracked-with-a-genealogy-web-site/>

²⁸ “The ethics of catching criminals using their family's DNA,” *Nature*, May 2, 2018, <https://www.nature.com/articles/d41586-018-05029-9>

out that it was the DNA of a woman who worked in the factory that manufactured the cotton swabs that the police used to collect samples.²⁹

On the other hand, considering the seriousness of the Golden State Killer's crimes, it is hard to argue against using any available information to find the perpetrator of such heinous acts. And the investigators only used the genealogy site after checking with a FBI lawyer who gave them the go-ahead, advising them it was legal. The lead detective, who had been looking for the Golden State Killer for over twenty years, was "blown away" with what the genealogy site could offer their investigation. It is easy to see the great potential these sites have for helping law enforcement identify and catch criminals. Protecting the public from these offenders may justify using genealogy sites and outweigh the privacy concerns involved.

²⁹ Sara Chodosh, "Consumer DNA tests can't tell you much, but they sure can get your relatives arrested," Popular Science, May 2, 2018, <https://www.popsci.com/consumer-dna-tests-golden-state-killer>

5. Fake News

In 2017, news outlet Aljazeera.com disabled comments on its stories. This move was in response to what Aljazeera perceived to be the racism, maliciousness, and false information that some users regularly spread through its comments section. Ideally, the comments section for online news sources should be, as Al Jazeera put it, to “serve as a forum for thoughtful and intelligent debate that would allow our global audience to engage with each other.” However, Aljazeera.com argues that while discussion is important, it was spending too much of its resources policing behavior in the comments section and that the “vitriol, bigotry, racism, and sectarianism” the comments produced precluded “the possibility of having any form of debate.”³⁰ Critics of the move decried the decision as censorship, which is particularly disturbing coming from a media company.

Al Jazeera has joined a growing number of online news sites that have disabled their comments in recent years due to the perception of trolling and abusive content. One of the first to do so was Popular Science in 2013, in response to a study showing that comments can “have a profound effect on readers’ perceptions of science.”³¹ Another disturbing effect of such comments is that they appear to discourage marginalized and targeted individuals from engaging in discussions. One of the ideals of online comments is to provide a voice to those whose perspectives and opinions are underrepresented in public conversations. The internet can be a haven for marginalized groups to share their perspectives, but that opportunity is missed when they are subjects of the same antagonism and hostility that they experience in the offline world.³² Thus, it is tempting for many online news outlets to disallow all comments, rather than make choices about which comments contain the hate and prejudice they want to avoid.

Other criticisms of the move to disable comments include claims that it 1) prohibits readers from challenging journalists who might include bias, misrepresentations or false information in the original news articles, and 2) affects advertising revenue, since the majority of people who spend the most time on news sites, renew their subscriptions, and return most often are those who leave comments.³³ According to *Wired*, “*The Financial Times* found that its commenters are seven times more engaged than the rest of its readers. *The Times of London* revealed recently that the 4 percent of its readers who comment are by far its most valuable.” Statistics from this article indicate that disabling comment sections may adversely affect online readership. Thus, critics argue, in the effort to prevent trolls from having a platform, news sites are actually abandoning one of their most valuable assets.

³⁰ “Why we’re disabling comments on Aljazeera.com,” Medium.com, August 30, 2017,

<https://medium.com/@AJEnglish/why-were-disabling-comments-on-aljazeera-com-a9ffbac61f10>

³¹ Matthew Green, “No Comment! Why More News Sites Are Dumping Their Comment Sections,” KQED, January 24, 2018 <https://www.kqed.org/lowdown/29720/no-comment-why-a-growing-number-of-news-sites-are-dumping-their-comment-sections>

³² Tauriq Moosa, “Comment sections are poison: handle with care or remove them,” *The Guardian*, September 12, 2014, <https://www.theguardian.com/science/brain-flapping/2014/sep/12/comment-sections-toxic-moderation>

³³ Andrew Losowsky, “Actually, do read the comments—they can be the best part,” *Wired*, October 6, 2017, <https://www.wired.com/story/actually-do-read-the-commentsthey-can-be-the-best-part/>

Alternatives to disabling comments (e.g., moderation and algorithms) are also problematic because not every outlet has the money or resources to be effective. Al Jazeera stated in a *Medium* post that, “We feel that rather than approaching the problem with a collection of algorithms and an army of moderators, our engineering and editorial resources are better utilized building new storytelling formats that resonate with our audience.” One option could be to force commenters to use real names. However, one wonders if forcing commenters to use their real names will effectively discourage expressions of racism, sexism and bigotry.

6. Trolley Problems?

The trolley problem was introduced in 1967 by philosopher Phillipa Foot at Oxford University to defend the doctrine of double-effect by testing which kinds of intentions pre-theoretically seem to matter to us. Its two best-known versions were formulated by philosopher Judith Jarvis Thomson at Massachusetts Institute of Technology.³⁴ It has since been re-imagined by so many philosophers and instructors that there are now almost countless variations. The classic formulation presents you with a moral dilemma: a runaway street-car is about to run over five oblivious railroad workers, but by pulling a lever you can change its course so that it only runs over one worker. It is, in other words, a type of Kobayashi Maru; there are no good choices, and the point of the experiment is not to test your ability to choose correctly, but to provide insight into our strongest intuitions about what is ultimately morally required.

Critics of using trolley problems to teach ethics or morality argue that the situations are horrific, unrealistic, and teach students little about morality or moral decision-making in the real world. For example, Brianna Rennix and Nathan J. Robinson write, “It’s not just that, as the additional conditions grow, there are not any obvious right answers. It’s that every single answer is horrific, and wild examples like this take us so far afield from ordinary moral choices that they’re close to nonsensical.”³⁵ No matter what you do, even if you do nothing at all, death is certain, and you are either directly or indirectly responsible for that death. Since few (if any) students believe they will ever find themselves in situations even closely resembling such fantastical and macabre dilemmas, teachers often find that the exercise is met with ridicule rather than serious consideration. Critics of trolley problems argue that students would gain a better understanding of morality using examples that are applicable to their lives.

On the other hand, supporters of trolley problems claim that they are a useful tool for teaching students how to examine their own moral intuitions and distinguish the differences between two popular moral theories: utilitarianism and deontology. If students decide to sacrifice one railroad worker to save five, teachers often say they are focusing on the consequences and the minimization of suffering, thereby making a utilitarian calculation. If they instead argue that killing is always wrong, even if it is to save more lives, then teachers often suggest they are adhering to deontological justifications where adherence to duty is more important than consequences.

One troubling extension of the way that trolley problems are often used in the classroom is the suggestion that similar thought experiments may be used to set rules in real life. Researchers at MIT have created an online interactive trolley problem style website that gathers data about how people report they would decide a range of difficult moral dilemmas. Some have suggested that this data could be used to implement human-style morality in autonomous machines such as self-driving cars. This proposed application is disconcerting in part because the people taking the

³⁴ Lauren Cassani Davis, “Would You Pull the Trolley Switch? Does it Matter?” The Atlantic, October 9, 2015, <https://www.theatlantic.com/technology/archive/2015/10/trolley-problem-history-psychology-morality-driverless-cars/409732/>

³⁵Brianna Rennix and Nathan J. Robinson, “The Trolley Problem will tell you nothing useful about morality,” Current Affairs, November 3, 2017 <https://www.currentaffairs.org/2017/11/the-trolley-problem-will-tell-you-nothing-useful-about-morality>

online quiz in a spare moment surely are not grappling with the significance of their choices in a robust way. Further, this sort of self-report, especially of hypothetical values, is highly unreliable. It is also far from obvious that a democratic approach to the morality of autonomous vehicles is desirable—perhaps some principles should override the wishes of the majority.

Referring to the newest application of the old thought experiment, Lauren Cassani Davis from *The Atlantic* writes, “[a]s human agents are replaced by robotic ones, many of our decisions will cease to be in-the-moment, knee-jerk reactions. Instead, we will have the ability to premeditate different options as we program how our machines will act...this is the perfect example of where theory collides with the real world—and thought experiments like the trolley problem, though they may be abstract or outdated, can help us to rigorously think through scenarios before they happen.”³⁶ Unfortunately, it is far from clear that trolley problem thought experiments help us to think rigorously about real world situations.

³⁶ Davis, *supra* note 34

7. Rachel Identity Disorder

A new Netflix documentary *The Rachel Divide* delves into the life of Nkechi Amare Diallo, best known by her former name, Rachel Dolezal. Diallo was the subject of much controversy in 2015 when it was revealed that her biological parents were white even though she claimed to be (and had passed as) black for ten years. While many resent any further attention being paid to someone accused of both exploiting white privilege and appropriating black culture, one aspect of the issue has sparked an especially incendiary and divisive debate: Diallo's claim that being transracial is relevantly similar to being transgender. On the one hand, philosophers and social scientists argue that both race and gender are social constructs, and it seems to follow that, as such, both concepts can change over time to be more or less inclusive. On the other hand, critics of the comparison argue that there are relevant dissimilarities between being transgender and claiming to be transracial that render the comparison a false analogy.

When asserting her sincerity about her racial identity, Diallo uses language that mirrors the experiences described by the transgender community: "I feel that I was born with the essential essence of who I am, whether it matches my anatomy and complexion or not...I've never questioned being a girl or woman, for example, but whiteness has always felt foreign to me, for as long as I can remember. I didn't choose to feel this way or be this way, I just am."³⁷ While no one except Diallo can know whether her claims are indeed sincere or true, it seems theoretically possible that a person could legitimately identify as a race different from the one they were categorized as at birth. If the types of feelings described in the above quote would validate a person's gender identity, then could they also validate a person's racial identity? Rebecca Tuvel, assistant professor of philosophy at Rhodes College in Memphis wrote a provocative, and ultimately divisive, article in the philosophy journal *Hypatia* where she argues, basically, that if we accept some of the arguments supporting transgendered people and identity and we confer rights and respect based on those arguments, then if the arguments supporting transracial people and identity are relevantly similar, "there's little apparent logically coherent reason to deny the possibility of genuine transracialism."³⁸

Tuvel and Diallo's critics argue that to compare being transgender to being transracial is to overlook or diminish the unique lived experiences, histories, and perspectives of both groups. Some appeal to the lack of parity in claims of transracialism. For example, while access to resources varies, there are still a wide variety of non-surgical options available to people who want to pass as a different gender or sex (but who may not want, or cannot afford, gender confirmation surgery). Such is not the case with race. It is far easier for any white person to pass as black or mixed-race than it is for a black person to pass as white; as Tre'vell Anderson states, "black people can't identify as white and move through the world as such. Our skin doesn't allow us such privilege and ability, like Dolezal's does."³⁹ Thus, some claim that transracialism is yet another expression of white privilege.

³⁷ Denene Millner, "Why Rachel Dolezal Can Never Be Black," NPR, March 3, 2017,

<https://www.npr.org/sections/codeswitch/2017/03/03/518184030/why-rachel-dolezal-can-never-be-black>

³⁸ Jesse Singal, "This Is What a Modern-Day Witch Hunt Looks Like," New York Magazine, May 2, 2017,

<http://nymag.com/daily/intelligencer/2017/05/transracialism-article-controversy.html>

³⁹ Tre'vell Anderson, "Four takeaways from 'The Rachel Divide,' Netflix's new documentary about Rachel Dolezal," Los Angeles Times, April 27, 2018, <http://www.latimes.com/entertainment/movies/la-et-mn-rachel-dolezal-netflix->

Another objection to parity between identifying as someone from a different race or culture and identifying as a different gender claims that to be a part of a culture is to have participated in, or been affected by, that culture's lived experiences and historical roots. These arguments imply that if one has not, by virtue of their privilege, been a target of the oppression and marginalization of a culture, and if oppression and marginalization is a necessary (but not necessarily sufficient) criterion for membership in that culture, then one cannot claim membership in that culture. Thus, Zeba Blay writes, "[t]ransracial identity is a concept that allows white people to indulge in blackness as a commodity, without having to actually engage with every facet of what being black entails — discrimination, marginalization, oppression, and so on. It plays into racial stereotypes and perpetuates the false idea that it is possible to "feel" a race."⁴⁰ And to those who argue that transwomen (male-to-female) are appropriating "woman-culture," Evan Urquhart, in a blog on *Slate*, replies that while women will normally have lived an experience of oppression earlier in their lives, "there's also the very real fact that being openly, visibly trans is a far riskier proposition than openly appropriating aspects of black culture is for a white person... Being identifiably trans, however, brings with it some of the most intense and unrelenting stigma, prejudice, and vulnerability to violence in our culture, particularly for people perceived to be dressing as women."⁴¹

[documentary-20180427-story.html](http://www.latimes.com/entertainment/movies/la-et-mn-rachel-dolezal-netflix-documentary-20180427-story.html) <http://www.latimes.com/entertainment/movies/la-et-mn-rachel-dolezal-netflix-documentary-20180427-story.html>

⁴⁰ Zeba Blay, "Why Comparing Rachel Dolezal To Caitlyn Jenner Is Detrimental To Both Trans And Racial Progress," Huffington Post, June, 12, 2015, https://www.huffingtonpost.com/2015/06/12/rachel-dolezal-caitlyn-jenner_n_7569160.html

⁴¹ Evan Urquhart, "It Isn't Crazy to Compare Rachel Dolezal With Caitlyn Jenner," *Slate*, June 15, 2015, http://www.slate.com/blogs/outward/2015/06/15/rachel_dolezal_caitlyn_jenner_how_transgender_is_different_from_transracial.html

8. Firearm Permits

The Second Amendment to the U.S. Constitution reads, “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” The United States Supreme Court has addressed this right several times in the past in cases such as *United States v. Miller*, 307 U.S. 174 and *District of Columbia v. Heller*, 554 U.S. 570, which helped provide some of the guiderails under which most Second Amendment legislation is approached, but some matters remain undecided. For instance, while outlawing handguns was found unconstitutional, the court signaled that states should generally give some latitude in how they license and regulate guns, within constitutional boundaries.

Massachusetts in particular has drawn some fire over the manner in which it has enacted regulations on the licensing of firearm use and according to some analysts has enacted one of the most restrictive licensing regimes in the country.⁴² Massachusetts law requires gun buyers to get a permit before owning most firearms.⁴³ “Each applicant must complete a four-hour gun safety course, get character references from two people, and show up at the local police department for fingerprinting and a one-on-one interview with a specially designated officer. Police must also do some work on their own, searching department records for information that wouldn’t show up on the official background check.”⁴⁴ These requirements have been used to keep folks who don’t have obvious background check red flags like psychiatric hospitalization or prior criminal history, but may have had police visits for domestic disturbance or some other indication that the potential gun buyer may not have the decision making skills and emotional stability the state would hope to see in a potential owner of lethal force.

This outcome may sound like just the sort of outcome sought by survivors of gun violence and politically left-leaning voters would want to see, but some unintended consequences have arisen that may actually give such groups pause. Members of the “Black Lives Matter” (BLM) movement already decry the lack of boundaries to police power, and by giving such institutions even greater power over what Americans have deemed a fundamental constitutional right to anti-government conservatives who fret over government overreach, many citizen groups with concerns about the power of the state may now worry about the growing police powers this policy puts the exercise of one's Second Amendment rights in the hands of the police.⁴⁵

⁴² See e.g. “This Is The Toughest Gun Law In America,” Jonathan Cohn, HuffPost Politics, May 6, 2018, https://www.huffingtonpost.com/entry/toughest-gun-law-america_us_5aeb27a9e4b041fd2d23d3f7; “These States Have the Most Restrictive Gun Laws in America,” Trisha Phillips, Culture CheatSheet, June 22, 2018, <https://www.cheatsheet.com/culture/these-states-have-the-most-restrictive-gun-laws-in-america.html/> (listing MA as #6 strictest state gun laws); “10 states with the strictest gun laws,” Matthew Hartvigsen, Deseret News, April 17, 2013, <https://www.deseretnews.com/top/1428/0/10-states-with-the-strictest-gun-laws.html> (listing MA as #3 strictest state gun laws).

⁴³ “Apply for a firearms license,” Mass.gov, <https://www.mass.gov/how-to/apply-for-a-firearms-license>.

⁴⁴ “This Is The Toughest Gun Law In America,” Jonathan Cohn, HuffPost Politics, May 6, 2018, https://www.huffingtonpost.com/entry/toughest-gun-law-america_us_5aeb27a9e4b041fd2d23d3f7

⁴⁵ See also, “Permit-to-Purchase Licensing for Handguns,” Johns Hopkins Bloomberg School of Public Health, March 2015, https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/FactSheet_PermittoPurchaseLicensing.pdf.

9. MeToo Far

Sexual harassment law was initially envisioned to encompass a limited scope - it was not aimed to enforce civility code, but to redress actual measurable harms upon people based upon their sex and came at a time when women were often frozen out of entire industries or harassed so strongly/frequently that meaningful participation in the workforce was prevented. Massive strides have been made over the last 30-40 years, but work remains to be done and sexual harassment and even sexual abuse in some industries still festers.

However, with the recent #MeToo movement, some worry that what the U.S. Supreme Court wanted to avoid - the civility code, may now be emerging and impeding personal freedom—one author has termed this more recent #MeToo trend a moral panic, like the Salem Witch Trials (or a more McCarthyism may also be an apropos comparison).⁴⁶ While much good can come from this moral panic insofar as we push the window of acceptable behavior to a more appropriate place, a minority worries that the sanitization of workplaces can sap a lot of the fun out of human interactions and harm the ability of some who are limited in their socialization opportunities of the chance of meeting Mr. or Mrs. Right.

Of course, as exhibited at the funeral services for Aretha Franklin, #MeToo still appears to be an essential movement given the distance women have to go.⁴⁷ Singer, Arianna Grande performed at the services, but found herself the target of jokes about her name and familiar touching by the officiant at the funeral, but many commenting on the services found more to complain about with regard to Ms. Grande's costume choice than the actions of her male colleague, visible to a national audience, and apparently outside the bounds of normal decorum.

Notably, the minister involved in the service apologized and claimed not to have realized where his hand was placed. His actions by no means approach the level of gross misconduct perpetrated by other famous figures like Harvey Weinstein, Bill Cosby, Matt Lauer, and others, but nevertheless, the public was torn between accusing Ms. Grande of failing to comply with the unwritten code for funerary fashion, whereas others focus on the actions of her male colleague in getting familiar with the young singer.

⁴⁶ "The Warlock Hunt," Claire Berlinski, The American Interest, December 6, 2017, <https://www.the-american-interest.com/2017/12/06/the-warlock-hunt/>

⁴⁷ "Bishop Apologizes to Ariana Grande For 'Too Friendly' Grope During Aretha Franklin Funeral," Jem Aswad, Variety, September 1, 2018, <https://variety.com/2018/music/news/bishop-apologizes-to-ariana-grande-for-grope-aretha-franklin-funeral-1202924472/>.

10. Poverty in Paradise

The so-called "Paradise papers" revealed the vast scope of some small tropical nations roll in international money laundering and tax evasion. The impact of these tax havens includes funding terrorist violence, drug dealing, government corruption, etc. However, these small, generally poor nations find these banking practices useful for luring lucrative investments. France has publicly called for tax haven nations to be cut off from financial development and humanitarian support.

In 2016 the world's wealthiest nations spent 142.6 billion dollars in development aid. Aid includes refugee resettlement, grants, grant-assisted loans, and the provision of technical assistance to nations with per-capita yearly incomes under 12,000 dollars. These programs aim to ease the pains of colonialism, alleviate poverty, and, provide for economic growth. However, development aid still represents an average of less than .4% of Development Assistance Committee member countries gross national incomes.⁴⁸

Despite development aid in the hundreds of billions, a recent analysis of net resource transfers between wealthy and poor nations shows there is an imbalance favoring the wealthy. According to the report from US-based Global Financial Integrity (GFI) and the Norwegian School of Economics "developing countries have effectively served as net-creditors to the rest of the world."⁴⁹ The Guardian reports "The usual development narrative has it backwards. Aid is effectively flowing in reverse. Rich countries aren't developing poor countries; poor countries are developing rich ones."⁵⁰

Capital outflow from developing countries is complex but according to the GFI report consists primarily of three dominant streams of loss. First, development loans need to be repaid with interest—these payments have totaled more than \$4.2tn since 1980. Second, resource extraction from developing nations in the form of copper, gold, diamonds, oil, etc. provides benefits primarily for corporations in developed nations. Finally, earnings in developed nations are regularly siphoned off through false invoicing to evade taxation and housed in tax haven countries. This sheltering of earnings reportedly costs developing nations trillions of dollars per year—many times the amount of foreign aid.

In the context of rampant poverty, limited development aid, and, widespread capital flight many nations have found control over domestic tax laws to be a lucrative opportunity. Small nations like Panama, the Bahamas, the Cayman Islands and protectorates like the British Virgin Islands, the Isle of Man, and Guam have little control over global financing. However, these states can legally control their domestic tax policy and often do so in ways that are beneficial to foreigners.

⁴⁸ Organization for Economic Cooperation and Development (2018), Net ODA (indicator). <https://doi.org/10.1787/33346549-en>

⁴⁹ "New Report on Unrecorded Capital Flight Finds Developing Countries are Net-Creditors to the Rest of the World", Global Financial Integrity; December 5th, 2016 <http://www.gfintegrity.org/press-release/new-report-on-unrecorded-capital-flight-finds-developing-countries-are-net-creditors-to-the-rest-of-the-world/>

⁵⁰ Jason Hickel, "Aid in reverse: how poor countries develop rich countries." The Guardian, Jan 14, 2017 <https://www.theguardian.com/global-development-professionals-network/2017/jan/14/aid-in-reverse-how-poor-countries-develop-rich-countries>

This allows wealthy individuals and companies to avoid higher tax rates at home and provides a much need resource for such nations.

11. Terms of Service

Cambridge Analytica, a British based data analytics consulting firm co-founded by Steve Bannon, was at the heart of a scandal surrounding the 2016 Brexit vote and the US Presidential election. During the campaigns Cambridge Analytica acquired personal data on approximately 87 million Facebook users through a third-party app called “This is Your Digital Life.” This data was subsequently used to target voters with advertising and engagement tailored to user specific psychographic data. Users never consented to provide this information to Cambridge Analytica and some watchdogs worry that voter manipulation skews the democratic process. The Former president of Facebook says the platform was “designed to exploit human vulnerabilities.”⁵¹ In response to criticism Facebook maintains that developers behind “This Is Your Digital Life” breached Facebook’s terms of service by sharing personal data with an outside consulting firm. However, in British Parliamentary hearings Facebook’s chief technical officer reported that Facebook had only limited vetting of third-party apps; saying “We did not read all the terms and conditions.”⁵² Following up on promises to crackdown on malicious users and fake accounts Facebook has disabled over 1.3 billion accounts in the last six months. At the same time Facebook has seen significant user decline and has lost approximately 120 billion dollars—around 20% of its market value.

Despite recent losses in revenue Facebook continues to have an enormous amount of personal information about users and seemingly little in the way of regulation on the use of that information. Some have suggested regulating Facebook in ways similar ways to media companies such as radio and television stations. Facebook has publicly responded to calls for regulation by emphasizing that it is not a media company but, rather, a technology company. It has also voluntarily introduced political advertising disclosure rules which will “require all election-related ads and many issue-related political ads placed on its platform and on Instagram to disclose the buyer’s identity, the advertising budget, how many people saw the advertisement and their demographic information — age, location and gender.”⁵³

Facebook’s internal guidelines go farther toward disclosing “soft-money” contributions than is required by campaign finance laws. However, some worry that entrusting private entities with campaign finance disclosure and personal information gives tech giants like Facebook too much power. Worries about the monopolistic power of tech companies have also been discussed at the highest levels of government. In this environment the General Data Protection Regulation has provided some data privacy protections for EU users but does little to secure fair elections. One wonders what terms of service might be necessary for safeguarding democracy?

⁵¹ <https://www.axios.com/sean-parker-facebook-was-designed-to-exploit-human-vulnerability-1513306782-6d18fa32-5438-4e60-af71-13d126b58e41.html>

⁵² Erica Pandey, “Sean Parker: Facebook was designed to exploit human "vulnerability" Axios, Nov. 9th 2017. https://www.washingtonpost.com/news/the-switch/wp/2018/04/26/facebook-didnt-read-the-terms-and-conditions-for-the-app-behind-cambridge-analytica/?noredirect=on&utm_term=.cd8934703ebc

⁵³ Paul Blumenthal, “Facebook’s New Ad Rules Prove It’s Basically In Charge Of Regulating Elections Now” Huffpost, May 25th 2018. https://www.huffingtonpost.com/entry/facebook-ad-disclosure_us_5b070d61e4b05f0fc8463453

12. Amish Midwives

The Amish are a traditionalist religious community in the US with roots in Protestant Anabaptism. As part of their religious commitment so-called “old order” Amish live simply and tend to avoid the conveniences and technologies of modern life. In part what this means is that pregnant old-order Amish women favor home births attended by unlicensed traditional midwives without the medical interventions common in US hospital births. While individual liberty rights protect the choice to eschew modern medicine, when traditional midwives employ the tools of modern medicine they risk overstepping their legal rights.

Two experienced Amish midwives, Sylvia C. Eicher and Lydiann S. Schwartz, were arrested after providing care for two pregnant Amish women.⁵⁴ One woman under Eicher’s care came to her at 33 weeks pregnant presenting with symptoms including a severe headache and high blood pressure. Eicher recommended that she seek further treatment at a local hospital and once admitted the woman disclosed to staff that Eicher had previously administered two injections. Upon investigation authorities learned that Eicher had administered veterinary medication to support fetal development.

In a separate incident Schwartz provided prenatal, postnatal, and, delivery care for an Amish family. In this case the infant was delivered in late April 2017. During the delivery Schwartz administered Pitocin (a synthetic form of oxytocin used to progress stalled or inadequate contractions.) The delivery went normally, and Schwartz monitored the infant for several hours. Several days later the infant returned to Schwartz for an enzyme test which involved a heel stick blood draw. Fourteen days later the infant died of a congenital heart defect in a local hospital. Schwartz reports having heard no swishing or heart murmur during postnatal examination with a stethoscope.

Although the clear majority of deliveries in the United States occur in hospitals, there is no evidence that this is the best practice for pregnancy. Most deliveries can be safely conducted in low tech environments. The Dutch, for example, rely on hospitals for delivery in only approximately one third of cases. There is also evidence from at least one long-term study of old order Amish showing that rates of infant mortality in these communities are on par with the outcomes produced by the surrounding modern medical community.⁵⁵

Both women were subsequently charged with practicing medicine without a license. They pled guilty to the lesser charge of practicing midwifery without a license and accepted two years of probation.⁵⁶ The women admit to the actions in question but say they have delivered thousands of babies and have religious grounds for rejecting standard medical training and interventions. Eicher and Schwartz left school in 12th and 6th grade respectively, but they claim to have

⁵⁴ “Amish women plead not guilty during court appearance” Wane.com, May 4th, 2018.

<https://www.wane.com/news/crime/amish-midwives-charged-with-illegally-practicing-medicine/1157556452>

⁵⁵ “Perinatal, Infant, and Child Death Rates among the Old Order Amish” American Journal of Epidemiology, Volume 139, Issue 2, 15 January 1994, Pages 173–183. <https://academic.oup.com/aje/article-abstract/139/2/173/197031?redirectedFrom=PDF>

⁵⁶ “2 Adams County Amish Woman Get Probation in Midwifery Case” U.S. News and World Report, August 24th, 2018. <https://www.usnews.com/news/best-states/indiana/articles/2018-08-24/2-adams-county-amish-woman-get-probation-in-midwifery-case>

received instruction on some modern techniques and medicines from local physicians. The local Amish community has been supportive of the traditional midwives and their practices.

13. It's Personal

After a six-year ordeal in the courts, Balal Gheisari, who came from northern Iran, was convicted of killing 18 year old Abdollah Hosseinzadeh by an Iranian Court and sentenced to die by hanging. He walked up to the gallows and a noose was placed upon his neck. Under a literal interpretation of a part of Sharia Law called *qisas* or retribution, the victim's family was allowed to participate in the execution by pushing the chair out from under his feet. Instead of this happening, however, the mother of the victim climbed the stairs to the gallows, slapped Balal across his face, and forgave him. Hosseinzadeh's father took the noose from his neck and effectively spared his life. Instead of hanging, he would go to jail because the victim's family opted for mercy.⁵⁷

The above scene could not happen in an American death penalty case. Victims do not have the power to commute a convict's sentence because it is the state that condemns the person to die or live according to the law. In criminal cases in general, victims do not have much say in the carrying out of a sentence. However, the American justice system does allow a fact-finder involved in sentencing (such as a judge or jury) to hear victim impact statements during the penalty phase of a trial, before sentencing even in capital cases. While the judge or jury does not have the power to deviate from the parameters of sentencing guidelines under the law, victims' statements are frequently cited in the harshness or leniency of the sentence.⁵⁸

The relationship between criminal proceedings and the voice of victims can be complicated. Some philosophers and criminal justice scholars believe the influence of victims on the court dilutes the impartiality of justice.⁵⁹ The duty of impartiality idealizes a lack of emotion in trial or sentencing. Proponents of impartiality argue that people who are convicted of similar crimes deserve similar punishments. One should not get a lighter punishment if, say, one's victim lacks connections to the community that would give rise to more victim impact statements from friends, family, and cohorts. Put another way, it seems unjust to weigh the hurt of a loner victim with no social supports in place (to help them recover after victimization) less than a victim who has friends and family to support him or her through additional victim impact statements – if anything, the loner victim may deserve a legal system that values and supports him when no one else does. Similarly, more emotion on the part of a victim may lead to a harsher sentence for one guilty party than another.

Others argue that the purpose of justice cannot wholly be impartial application of the law but should also consider the needs of victims. Victims' advocates deem the victim to be in a particularly knowledgeable position with regard to the crime committed and its intensity. They argue that an ideal of impartial application of the law may cause further harm to a victim by failing to account for the severity lived by the victim, as some victims will see more trauma and thus, the actual result of the crime imports more harm on the community and should be punished accordingly. Such victims may look to the justice system as part of their healing process, and a

⁵⁷ "Iranian killer's execution halted at last minute by victim's parents" The Guardian, April 16th, 2014.

<https://www.theguardian.com/world/2014/apr/16/iran-parents-halt-killer-execution>

⁵⁸ Dubber, Marcus. "The Victim in American Penal Law: A Systematic Overview". *Buffalo Criminal Law Review*. 2000.

⁵⁹ Paul Cassell and Edna Erez (2011), "Victim Impact Statements and Ancillary Harm: The American Perspective". *Canadian Law Review*, 15(2): 150-204

denial of their need to “feel that justice has been done in their case” may require a stronger or more lenient punishment in one case vs. another, and the victim’s rights to see the system aid in their recovery, as well, should be considered. Most immediately these advocates think that handing down a sentence the victim sees as unjust would pose the greatest risk of harm to a victim, although the needs of victims are complex. Some victims who are opposed to harsher punishments, particularly the death penalty, can endure great emotional pain knowing that a killer is going to be put to death.⁶⁰

⁶⁰ Erez, E., Kilchling, M. and Wemmers J.(eds).((2011) Therapeutic Jurisprudence and Victim. Participation in Justice: International Perspectives Carolina Academic Press.

14. Fuck the Taboo

George Carlin famously made fun of the seven words that you couldn't say on television in the United States: shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. For the most part, those prohibitions are still in effect. However, things may be changing somewhat up north. In March of 2018, the Canadian Broadcasting Standards Council (CBSC) decided to relent. The phrase in question was “baise-moi”, which translates into English as “fuck me.” And the CBSC ruled that the French phrase (Canada's national languages are both French and English) had become so commonplace that it did not have the same vulgar connotation as its English translation. Thus, it no longer made sense to censor it from broadcasts.⁶¹

In the United States, there are laws against obscene, indecent, and profane content and as such, the Federal Communications Commission regulates it on public broadcasts, but not subscription services.⁶² Some deride such new standards as a compromise of decency and an unfortunate new light of day for these “bad” words. Historically, censorship of obscenity and indecent material can be traced back to the Comstock Acts⁶³, passed by Congress in 1873 due to worries that the proliferation of pornographic materials after the Civil War led to premarital sex and either contraception, abortion, or children born out of wedlock.⁶⁴

Modern reasons for prohibiting obscene words hold that sexual intercourse, fecal matter, or private body parts are vulgar, and using such words bends minds to think of these things. Human minds, they argue, shouldn't be dwelling on these things as a part of daily living and the more vulgarities are used the more minds will be drawn to what these words represent. Others focus on the assumed “laziness” in using such words to express emotions, charging that where options are constrained to avoid obscenities and slang, our linguistic skills improve because of the creativity required to express emotions in a more precise manner. They also argue that vulgar words like “baise-moi” are prone to be used as “fighting words;” not to describe things but to intentionally hurt other people.⁶⁵

Shifting standards on slang have even made their way into academic work as of late with philosopher Harry Frankfurt turning an article on what counts as “bullshit” vs. “humbug” into a bestselling short book.⁶⁶ Frankfurt's book was closely followed by Aaron James' book-length analysis of what counts as an “asshole” (as opposed to just a jerk) in *Assholes: A Theory*.⁶⁷ Others reject any slippery slope to bad consequences, arguing that the words are so commonly used that they now lack their original referents. Instead, words like “shit” now more often refer to a feeling of disappointment rather than conjuring an image of fecal matter. The original

⁶¹ “Canada decides the F-word is not taboo for radio listeners' ears” The Guardian, November 8th, 2017. <https://www.theguardian.com/science/2017/nov/09/baise-moi-canada-decides-that-the-french-f-word-is-not-taboo-for-listeners-ears>

⁶² Federal Communications Commission Consumer Guide “Obscene, Indecent and Profane Broadcasts” September 13th, 2017. <https://www.fcc.gov/consumers/guides/obscene-indecent-and-profane-broadcasts>

⁶³ The Comstock Act 17 Stat. 598

⁶⁴ Dennet, Mary Ware. *Birth Control Laws: Shall we keep them, change them, or abolish them* New York, Grafton Press, 1926. p. 9.

⁶⁵ Greenwalt, Ken. *Fighting Words: Individuals, Communities, and Liberties of Speech*. Princeton University Press. 1996.

⁶⁶ Frankfurt, Harry. *On Bullshit*. Princeton University Press. 2005

⁶⁷ James, Aaron. *Assholes: A Theory*. Doubleday Books. 2012

definitions will eventually be lost to history in the way that “scumbag” (which once was slang for a used condom) now simply means “bad person.” Still more argue that the “seven words” never really deserved their place in the doghouse to begin with since, among other things, “shit” simply means fecal matter (which is relatively common) and “fuck” simply refers to sex (which is also relatively common). The animus against mentioning these objects or activities is an outdated application of prudish norms, according to this view. And if the norms are outdated, then our prohibition of the words should also be seen as outdated.

15. Day of Absence

At Evergreen College, students created a tradition to emphasize the lack of inclusion of people of color: each year they took one day to be a Day of Absence, in which students and faculty of color leave campus and meet elsewhere to participate in programs and discussions.⁶⁸ After the Day of Absence, a “Day of Presence” follows in which campus groups are reunited.⁶⁹ About 200 of the College’s 4800 staff and students participated each year. The goal of the exercise was to battle racism and emphasize the importance of minority voices to the campus community.⁷⁰ In 2017, however, minority groups on campus upped the stakes. Instead of removing their presence from the campus community for a day, they asked white students and faculty who wished to participate to leave campus and participate in programs and discussions.

The request, according to the Director of the college’s First People’s Multicultural Advising Services program, was designed to allow white students to show solidarity with minority students. Echoing a frequently cited talking point, one former Evergreen student argued that part of dismantling white supremacy was giving up white spaces to people of color.⁷¹

The proposal was controversial. Most notably, Bret Weinstein, a history professor at Evergreen, challenged the request in a widely distributed email. He argued that asking white students to leave campus went too far in the other direction and promoted exclusion rather than inclusion. He distinguished between the previous form of the Day of Absence which he called a “call to consciousness” and the new request as a “show of force” and an “act of exclusion.”⁷²

After the Day of Absence and the Day of Presence took place without incident, word of Professor Weinstein’s email got out. Some students called for Weinstein’s firing and accused him of racism. Weinstein refused to back down, citing demonstrations and campus police’s inability to keep him safe from student groups that were supposedly searching for him demanding his ouster.⁷³ When word of the controversy made it into the media, it caused national attention (including an interview by Weinstein on Fox News), bringing a firestorm of online threats and harassment to Weinstein as well as the student activists who set up the Day of Absence. Many saw the issue as being about more than race and inclusion. They saw the attacks on Weinstein as evidence that Evergreen students did not support the freedom of speech for those who disagreed with their tactics. Threats to bomb the campus even caused the closure of the campus.

In 2018 the Day of Absence was cancelled, according to school officials, because people mischaracterized the event. In its place, the College is considering “different and expanded”

⁶⁸ WALKER ORENSTEIN, “Read the email exchange that sparked protests against an Evergreen professor” The Olympian, June 1st, 2017. <https://www.theolympian.com/news/politics-government/article153826004.html>

⁶⁹ <https://www.insidehighered.com/news/2017/05/30/escalating-debate-race-evergreen-state-students-demand-firing-professor>

⁷⁰ Scott Jaschik, “Who Defines What Is Racist?” Inside Higher Ed May 30th, 2017. <https://www.facebook.com/events/2240072412884080/>

⁷¹ @NorthwestNina, Former Evergreen Student’s Public Letter. https://drive.google.com/file/d/0B1d1t1z_127eZG9kZW9naGJlVDA/view

⁷² “DL on the Faculty DL: Update on the Email Chain” Cooper Point Journal, April 10th 2017. <http://www.cooperpointjournal.com/2017/04/10/dl-on-the-faculty-dl-update-on-the-email-chain/>

⁷³ Bret Weinstein, Public Comments, May 24th, 2017. <https://twitter.com/BretWeinstein/status/867584422941384705>

ways to have conversations about race and inclusion.⁷⁴ However, students later organized a Day of Absence independently of the school.⁷⁵

⁷⁴ Lisa Pemberton, “Evergreen cancels annual ‘Day of Absence’ event that sparked backlash and protests” February 27th, 2018. <https://www.theolympian.com/news/local/article202266074.html>

⁷⁵ Nina Godlewski, “‘DAY OF ABSENCE’ AT EVERGREEN STATE COLLEGE CONTINUED BY STUDENTS AFTER SCHOOL CANCELED EVENT” May 16th, 2018. <http://www.newsweek.com/evergreen-state-college-protest-day-absence-2018-canceled-928693>