



John Stuart Mill Cup

2021 Regionals Case Set

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1. Homophobic Discrimination and Freedom of Speech

In Switzerland, on March 7, 2013, Mathias Reynard, a member of the Swiss national council (which represents the Swiss population), proposed a parliamentary initiative to include sexual orientation as one of the characteristics protected under an already existing law, art. 261*bis* of the Swiss penal code. This law protects a person's or a group's racial, ethnic and religious membership from discrimination and incitement to hatred. Reynard and advocates for lesbian, gay and bisexual people's (LGB) rights in Switzerland argue that the modification will help reduce violence against LGB people as well as encourage acceptance of LGB people¹. In November 2018, the Federal Council (the executive body of the Swiss government) approved the modification of the penal code in the following way² (a translated extract is presented here):

Art 261bis

Discrimination and Incitement to Hatred

Whoever, who publicly, incites to hatred or to discrimination against a person or a group of people due to their racial, ethnic or religious membership or due to their sexual orientation; Whoever, who publicly, propagates an ideology aiming at downgrading or denigrating in a systematic manner this person or group of people;
(...)

*Is punished by a custodial sentence of maximum three years or a monetary penalty.*³

Inside the Federal Council, two political parties (the PLR and the UDC), and a canton (Schwytz) argue that this law is a threat to freedom of speech and information and a threat to freedom of conscience and belief. This view is shared by the FDU, a Christian party, who initiated a successful referendum against the modification of article 261*bis*, leading to the suspension of the application of the modified article. This is until a vote by the Swiss population on February 9, 2020 (which is in the future, as of this writing) decides whether the penal code will include the modification in article 261*bis* or will remain without it. The main arguments by the FDU are like the ones given by the PLR and the UDC. They also add that this law would give more rights to LGB people compared to other people, especially those who condemn homosexuality⁴.

Study Questions

1. Is there a difference between homophobic discrimination/incitement to hatred and expressing negative opinions towards homosexuality? If so, what is the difference?
2. Would this law prevent debates over the defensibility of homosexuality?
3. Regarding the parliamentary initiative, do you think that such a modification of the article 261*bis* could be effective in the long-term at preventing homophobia and biphobia?

¹ <https://www.shortlist.com/news/switzerland-lgbtq-gay-trans-law-crime-homophobia>

² <https://www.admin.ch/opc/fr/federal-gazette/2018/5327.pdf>; https://www.swissinfo.ch/eng/erweiterung-der-antirassismus-straftorm_copy-of-schweiz-hat-neuen-gesetzesartikel-gegen-homophobie/44595810

³ <https://www.admin.ch/opc/fr/federal-gazette/2018/5327.pdf>

⁴ <https://contre-les-discriminations-oui.ch/de-quoi-sagit-il>; https://www.swissinfo.ch/eng/lgbtiq-rights_why-one-party-is-opposing-the-criminalisation-of-homophobia/44670950

2. A Right to Public Nudity?

When you're born, you're naked. But most people spend the vast majority of their lives wearing clothes. If they want to wear clothes, this doesn't look like a problem! However, some people do not want to. These people face certain difficulties, because public nudity is often prohibited. One figure who has gained some notoriety as a public nudist is Stephen Gough, also known as the 'naked Rambler'. Gough likes to walk around naked, but has on several occasions been charged with indecent exposure.⁵

Gough might seem like an unusual case. But while public nudism does seem to be a minority pursuit, large numbers of people do enjoy it. In a 2011 poll by Ipsos Mori it was found that even in Britain almost a quarter of people had partaken in some public nudity in the previous year.⁶

For the most part liberal democracies give their citizens a great deal of freedom when it comes to behaviour that doesn't harm anyone else. Nudist groups claim that public nudity is a behaviour of this sort. However, among the general public there are various negative associations with nudists. It is sometimes worried that nudists are sexual deviants, or that exposing children to naked bodies would be damaging to their development. However, many such beliefs seem to be based on prejudices rather than any evidence. In fact, children who are exposed to parental nudity growing up exhibit some *positive* effects, including lower risk of contracting sexually transmitted diseases and higher levels of social acceptance.⁷ Still, one could argue that it is legitimate to ban public nudity for the same reason that it is legitimate to ban walking around screaming expletives: people find it offensive.

Study Questions

1. Is there anything offensive about public nudity?
2. Should nudity be tolerated in public?
3. Where public nudity is tolerated as matter of policy, should the policy offer any concessions to people who are offended or scared by it?

⁵ <https://www.bbc.co.uk/news/uk-england-29800016>

⁶ <https://www.bn.org.uk/news/news/nearly-4-million-naturists-in-the-uk-r97/>

⁷ This and other positive effects of nudism are noted by Bouke DeVries, <https://link.springer.com/article/10.1007/s11158-018-09406-z>, e.g., p. 413.

3. Private Schools

7% of the UK's pupils currently attend fee-paying schools.⁸ In 2019, Labour Party delegates voted in favour of abolishing private schools.⁹ Private schools are seen as providing an unfair advantage to those who already benefit from significant privilege.

Some of them charge huge sums, which many parents are willing to pay, in order to give their children the best start in life. Private schools that include boarding, like Dulwich (£44,346¹⁰), Eton (£42,501¹¹) and Harrow (£42,600¹²), charge truly staggering amounts. Because of these costs, these institutions are not accessible to the vast majority of pupils. Despite their size, the fees might deliver good value for money. Of the fifteen prime ministers who have served since the Second World War, five have been educated at Eton. Furthermore, 42% of Oxbridge places go to private school students.¹³

Defenders of private schools have suggested that they are actually a force for good. The head of Eton, Simon Henderson, for example, was heavily critical of Labour's plans. He claimed that independent schools saved the state schools system £3.5 billion per year, and made significant contributions to the economy, generating £4.1bn in annual tax revenues and supporting about 303,000 jobs.¹⁴ It is also claimed that allowing private schools gives parents greater freedom of choice in how they decide to raise their children.

Study Questions

1. Is Labour's policy ethically right?
2. Regardless of how you answered Question 1, what is the best argument for Labour's policy?
 - that private schools exacerbate socio-economic stratification?, or
 - that private schools are so expensive that not every child has a fair chance of gaining the advantages a private education confers?In other words, is the moral problem the quality of what private schools provide or the fact that not every child has access to that quality provision? Or is neither one a moral problem?
3. Based on your answer to the previous question, would you say that private schools have an ethical case to answer? If so, what would a sufficient answer look like?

⁸ <https://www.theguardian.com/education/2016/feb/24/privately-educated-elite-continues-to-take-top-jobs-finds-survey>

⁹ <https://www.theguardian.com/education/2019/sep/22/labour-delegates-vote-in-favour-of-abolishing-private-schools>

¹⁰ Full boarding fees for one academic year: <https://www.dulwich.org.uk/admissions/fees>

¹¹ Per academic year: <https://www.etoncollege.com/CurrentFees.aspx>

¹² Full academic year: <https://www.harrowschool.org.uk/admissions/fees-and-deposits>

¹³ <https://www.bbc.co.uk/news/education-46470838>

¹⁴ <https://www.theguardian.com/education/2019/sep/23/head-of-eton-hits-back-at-labour-plans-to-abolish-private-schools>

4. The “Right to be Forgotten” on the Internet

In 1982, a spectacular murder happened on board the sailboat “Apollonia”: a man shot and killed two of the crew members in a fight, seriously injuring a third one. Back in Germany, the man was convicted and spent 20 years in prison. He was released in 2002.

The Apollonia murders did not go unnoticed by the media: some of the largest German magazines, including “Der Spiegel”, reported extensively about the case. In 1999, “Der Spiegel” uploaded these reports to its freely accessible online archive.¹⁵

The man noticed the availability of these reports, which included his full name, in 2009. He sued the magazine, arguing that the availability of the reports about his case constituted a violation of his privacy rights and his capacity to freely develop his personality. Initially, Germany’s Federal Court of Justice dismissed his case. In November 2019, however, the Constitutional Court upheld his complaint and obliged the magazine to retroactively anonymize the reports about the Apollonia murders.¹⁶

Study Questions

1. In its pronouncement of judgement, the German Court explicitly appealed to European legislation: Thus far, the European Union is the only judicial area in the world that has formally enshrined a “right to be forgotten” on the Internet.¹⁷ Should people have such a right? If so, do they have this right regardless of what they have done in the past, or is it possible to forfeit it in certain cases (for example when they got sentenced for rape or murder)? How much time needs to pass before the right to be forgotten, if there is one, comes into effect?
2. Under what circumstances does the right to be forgotten outweigh other basic rights, especially the freedom of speech and the freedom of the press?

¹⁵ <https://www.bbc.com/news/world-europe-50579297>

¹⁶ <https://www.dw.com/en/germanys-top-court-upholds-murderers-right-to-be-forgotten/a-51436980>

¹⁷ <https://www.reuters.com/article/us-eu-alphabet-privacy/you-have-the-right-to-be-forgotten-by-google-but-only-in-europe-idUSKBN1W90R5>

5. Expiration Dates

On average, every person in the UK wastes 156kg worth of food per year.¹⁸ A lot of the food that goes into our bins is still edible.

Some people argue that the labelling of food packages contributes to this problem. In the UK, different kinds of food have different kinds of date on them: some come with a “use by” date, others (for example frozen, dried, and tinned foods) with a “best before” date. The former is about safety: eating something past its “use by” date may cause food poisoning. The latter, however, is merely about quality: food past its “best before” date can still be eaten for days and sometimes weeks; it might only be slightly beyond the peak of its quality.¹⁹

Many consumers, however, do not seem to be aware of the distinction between the different dates on food packages. They tend to throw out all food whose “best before” date has passed, although there is no need to do so.

The labelling practices of producers might contribute to the problem. Often, food comes with extremely conservative “use by” dates. Regardless whether the intentions behind this are good (maybe producers just want to make extra sure that we don’t eat anything that is a danger to our health) or bad (maybe producers just want to sell as much as possible, and the more food consumers throw away, the more they buy) – the consequence of this practice is a “waste mountain.”²⁰

Study Questions

1. The problem here seems to be about the right amount of information: giving consumers too much information (that they can potentially misinterpret) might cause a lot of unnecessary waste. Providing them with less information (for example by abandoning the “best before” date), however, might frustrate their legitimate interest in knowing when their food is at its best. How can this conflict be reconciled? How could the labelling on food packages be reformed to mitigate the problem of food waste without imposing undue risks or inconveniences on consumers?
2. Who bears the main responsibility for the problem of food waste: consumers or producers?

¹⁸ <https://wrap.org.uk/sites/files/wrap/Food-surplus-and-waste-in-the-UK-key-facts-Jan-2020.pdf>

¹⁹ <https://www.food.gov.uk/safety-hygiene/best-before-and-use-by-dates>

²⁰ <https://www.theguardian.com/food/2019/apr/17/the-truth-about-expired-food-how-best-before-dates-create-a-waste-mountain>

6. Repatriation of Foreign Fighters/Participants (FFPs)

It is estimated that over 40,000 citizens from over 100 countries travelled to Iraq and Syria between 2011-2016 to join the group variously known as ISIL/ISIS/Islamic State/Daesh ('IS').²¹ While many served as fighters, others worked in administrative (e.g., tax collection, municipal services) and domestic roles. Since the territorial defeat of IS in 2019, thousands of FFPs are being held in prison facilities in Iraq and Syria.

Several governments have expressed reluctance to repatriate FFPs, partly based on security concerns, but also due to widespread public opposition; for example, a survey in France found that 89% of respondents opposed repatriation of fighters and 67% opposed repatriation of fighters' children.²² Also, many people hold that fighting for IS means giving up the right to citizenship in one's country of origin. International and domestic courts have provided mixed rulings on states' legal obligations regarding repatriation, in part due to the lack of clear legal frameworks for addressing terrorism-related offenses.²³

A variety of legal, pragmatic, and moral arguments for repatriation have been provided. For example, that citizenship is unconditional; that domestic criminal justice systems in Western countries are better equipped to discriminate between types of offenses and facilitate monitoring and deradicalization; that leaving FFPs in the Middle East burdens certain countries there with potentially dangerous actors and inadequate resources to deal with them.²⁴

Study Questions

1. Which should have priority: The interests of domestic populations in not being exposed to potential security risks if FFPs are repatriated or the interests of FFPs in being repatriated and deradicalized?
2. Which should have priority: The interests of domestic populations in not being exposed to potential security risks if FFPs are repatriated or the interests of the Iraqi and Syrian people in avoiding the potential security risks of FFPs *not* being repatriated?

²¹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf#page=17

²² <https://foreignpolicy.com/2019/09/15/they-left-to-join-isis-now-europe-is-leaving-their-citizens-to-die-in-iraq/>

²³ <https://www.clingendael.org/publication/debate-around-returning-foreign-fighters-netherlands>

²⁴

https://www.ecfr.eu/publications/summary/beyond_good_and_evil_why_europe_should_bring_isis_foreign_fighters_home

7. Rehabilitation versus Retribution

Criminal justice systems typically have both a retributive and a rehabilitative aspect. Retributive justice focuses on (proportional) punishment of offenders and/or compensation for victims.²⁵ The death penalty, which is practiced in parts of the United States, is a clear case of retribution. In contrast, rehabilitative justice focuses on treating offenders in order to facilitate their becoming law-abiding members of their community, and is the predominant focus of punishment in Scandinavian countries.²⁶ Though these aims can be compatible they can also come into conflict, because, e.g., punishing an offender may make them more likely to reoffend, or rehabilitation may fail to satisfy the community's sense of justice.

This tension has fueled debates about the proper role of each aspect in criminal justice systems.²⁷ The rationale for a dominant role for retributive justice is typically based on the idea that offenders deserve punishment in virtue of their choosing to undertake unacceptable actions, and/or that punishment will deter others from acting similarly.²⁸ Advocates of a dominant role for rehabilitation argue that offenders' choices are frequently related to circumstances that render them less than wholly culpable for their actions (e.g. poverty, addiction, mental illness), and/or that rehabilitation more effectively prevents re-offense.²⁹

Study Questions

1. What should be the aim(s) of criminal justice? Is there one overriding aim (e.g., retribution or rehabilitation) or should the aim vary according to the offense(s) and facts about the offender?
2. Are there offenses or patterns of offenses that should disqualify offenders from a chance at rehabilitation, or is there an absolute right to rehabilitation?
3. There are likely to be cases in which retribution points toward one kind of punishment and rehabilitation points toward a different kind. In such cases, how should it be decided what punishment to inflict?

²⁵ <https://www.britannica.com/topic/retributive-justice>

²⁶ <https://www.britannica.com/topic/punishment/Rehabilitation>

²⁷ See <https://chicagounbound.uchicago.edu/uclrev/vol70/iss1/1/> for an historical overview of this debate in the United States.

²⁸ <https://www.britannica.com/topic/retributive-justice>

²⁹ <https://www.apa.org/monitor/julaug03/rehab>

8. Campus No-Platforming

In recent years university campuses have experienced a surge of no-platforming, which is when a person who otherwise would have been invited to give a speech on campus is barred (usually via a student union policy) from being invited or is invited but then, because of student protests, uninvited or physically prevented from actually delivering the speech. The National Union of Students, a confederation of about 600 students' unions, has since 1974 advocated a limited form of no-platforming as a matter of official policy.³⁰ There is little debate over whether no-platforming is acceptable when the speaker in question is likely to speak in a way that directly incites violence or hatred (against, e.g., women, trans people, people of colour, or Jews). But the practice of no-platforming has spread well beyond this limited remit—with Peter Tatchell, Germain Greer, and Julie Bindel among those recently no-platformed—and therefore new questions are being asked regarding both the effectiveness and the ethics of this broader use of it.

In this broader guise, no-platforming is a way of preventing the airing of views that are “dangerous or unacceptable”.³¹ Some argue that the very act of a university inviting a person to air their views on a certain topic confers some credibility on those views and that this counts in favour of no-platforming people whose views are dangerous or unacceptable.³² On the other side, no-platforming opponents argue that the only way to defeat dangerous or unacceptable views is to argue against them, and that by no-platforming a speaker the speaker's opponents pass up a great opportunity to make an argument against their view in a highly visible way.³³

As to the ethics, some argue that no-platforming is an infringement of freedom of speech, and in fact the Equality and Human Rights Commission has issued guidance warning against placing bans against the airing of certain political views.³⁴ Meanwhile, some advocates of no-platforming argue that pushing for a certain speaker to not be allowed to speak is *itself* an exercise of freedom of speech,³⁵ while others maintain that no one has a right to be invited to give a speech.

Study Questions

1. Is no-platforming an effective way to impede the spread of dangerous and unacceptable views?
2. Is no-platforming an ethically acceptable way to impede the spread of dangerous and unacceptable views?
3. Are there important ethical considerations regarding no-platforming not mentioned above? If so, do they argue in favour of or against no-platforming?

³⁰ <https://www.nusconnect.org.uk/resources/nus-no-platform-policy-f22f>

³¹ <https://aeon.co/ideas/why-no-platforming-is-sometimes-a-justifiable-position>

³² See note 2; also <https://theboar.org/2019/11/no-platforming/>

³³ <https://www.newstatesman.com/2019/01/i-was-no-platformed-here-s-why-it-s-counterproductive>

³⁴ <https://equalityhumanrights.com/en/publication-download/freedom-expression-guide-higher-education-providers-and-students-unions-england>

³⁵ <https://www.independent.co.uk/voices/if-you-dont-like-no-platforming-maybe-its-you-whos-the-special-snowflake-a6884026.html>