Contents

1.	Introduction: Philosophical Preliminaries						
	1.1	Weak	k Absoluteness versus Strong Absoluteness	2			
	1.2	1.2 Moral Conflicts, Permissibility, and Stringency					
	1.3	Deor	ntology versus Consequentialism	5			
	1.4	Physi	ical Freedom versus Deontic Freedom	7			
	1.5	The F	Hohfeldian Analysis	9			
		1.5.1	Claim-Rights and Duties	10			
			Liberties and No-Rights	11			
		1.5.3	Powers and Liabilities	13			
		1.5.4	Immunities and Disabilities	15			
	1.6 The Causal/Constitutive Distinction						
	1.7	1.7 A Terse Conclusion					
2.	Co	mpor	nents of a Theory of Freedom of Expression	20			
	2.1	Wha	t is Expression or Communication?	20			
		2.1.1	The Structure of Expression or Communication	21			
			2.1.1.1 Communications without Addressors	22			
			2.1.1.2 Communications without Other Addressees	23			
	*	2.1.2	The Distinctiveness of Communication or Expression	25			
		2.1.3	Low-Value Expression?	29			
		2.1.4	A Trichotomous Distinction	31			
	2.2	The Ambiguity of Some Key Phrases					
	2.3	The Principle of Freedom of Expression					
		2.3.1	Types of Neutrality	35			
			2.3.1.1 Communication-Neutrality	35			
			2.3.1.2 Two Types of Content-Neutrality	37			
			2.3.1.2.1 Subject-Neutrality	37			
			2.3.1.2.2 Viewpoint-Neutrality	38			
			2.3.1.3 Speaker-Neutrality	39			
			2.3.1.4 The Upshot of Neutrality	40			
		2.3.2	Restrictions and Disadvantages	43			
			2.3.2.1 Legal Prohibitions and Restrictions	43			
			2.3.2.2 Physical Obstructions and Constraints	45			
			2.3.2.3 Subsidies and Assistance	47			
		2.3.3	How are Purposes Ascertained?	48			
			2.3.3.1 Not a Search for Mental States	48			
			2.3.3.2 Surfaces, Contexts, and Statements	50			
			2.3.3.3 Implementation and Purposes	52			

X CONTENTS

	2.3.4	Private Parties	53
		2.3.4.1 Hecklers and Hostile Audiences	53
		2.3.4.1.1 Straightforward Points	54
		2.3.4.1.2 A More Difficult Matter	56
		2.3.4.2 Large Organizations	57
		2.3.4.2.1 Public Fora	58
		2.3.4.2.2 Hiring and Retention of Employees	60
3.	Legitimat	e Restrictions	65
	3.1 What	is Communication-Independence?	66
	3.2 Prohil	oitable Misdeeds	69
	3.2.1	Solicitation to Commit a Crime	69
		Perjury	72
	3.2.3	Restrictions on Malicious or Reckless Pre-Trial Reporting	77
		Defamation	81
		Fraudulent Statements	87
		Advertising of Illegalities	89
	3.2.7	Disclosure of Military or Governmental Secrets	93
		3.2.7.1 Newspapers and Broadcasters	94
		3.2.7.2 Whistleblowers	96
		True Threats	99
		Negligent Misstatements	101
		Child Pornography .	107
		Hate-Crime Laws versus Hate-Speech Laws	111
	3.3 A Pith	y Conclusion	113
4.	Governm	ental Self-Restraint and Individual Self-Respect	114
	4.1 A Cor	spectus of Some Previous Justifications	115
	4.1.1	A Focus on Potential Addressors	115
	4.1.2	A Focus on Potential Addressees	118
		4.1.2.1 Communicative Freedoms and Democratic Self-	
		Governance	118
		4.1.2.2 A Few Queries about the Addressee-Centered	
		Justifications	120
	4.1.3	A Focus on the Good of Society	122
		A Focus on Governmental Power	125
		Ioral Foundation of the Principle of Freedom of Expression	128
	4.2.1	The Paramount Moral Responsibility	129
		4.2.1.1 Warranted Self-Respect	129
		4.2.1.2 A Government's Responsibility to Promote Warranted	
		Self-Respect	131
		4.2.1.2.1 Edificatory Perfectionism Rejected	132
	122	4.2.1.2.2 Aspirational Perfectionism Championed The Paramount Responsibility and the Principle of Freedom of	132
	1.4.4	Expression	134
		4.2.2.1 Shakespeare on Self-Restraint and Strength	135

				4.2.2.1.1	The Eagle and the Little Birds	135
				4.2.2.1.2	Bird-Bolts and Cannon-Bullets	135
			4.2.2.2	The Dyna	amic of Self-Aggrandizement and Self-Abasement	136
				4.2.2.2.1	A Government-Focused Justification	137
				4.2.2.2.2	Overweeningness and Demeaningness: Lessons	
					from Olivia and Tamora	138
				4.2.2.2.3	Overweeningness and Demeaningness: The	
					Quidnunc Mentality	139
				4.2.2.2.4	Overweeningness and Demeaningness: Harmful	
					Communications	142
			4.2.2.3	The Con	nection to Warranted Self-Respect	147
			4.2.2.4	Return to	a Troubling Thought-Experiment	153
5.	Por	nogra	aphy, S	ubordina	ation, and Silencing	160
			_ ,	Clarificat		161
					of Speech-Act Philosophy	165
				•	dination of Women by Pornography	166
		_			dition of Authority	167
				•	Authority versus Morally Binding Authority	168
					ity versus Epistemic Authority	171
		0.0.0			e Facto Practical Authority from Putative	_ / _
			0.0.0.1	*	c Authority?	172
				-	The Capable Doctor	173
					The Inept Doctor	176
			5.3.3.2		olic Church as a Point of Contrast	177
					ons of Epistemic Authority and Practical Authority	
		5.3.4			he Pragmatics of Discourse	183
				•	ositions and Accommodation	183
					mmodation of Presuppositions of Authority	185
					The Racist Diatribe	185
					The Political Poster	192
					The Burning of the Cross	193
					The Teacher's Helper	195
					The Presumptuous Student	196
					The Organizer of a Hike	197
					The Director of Traffic	199
		5.3.5	Subord		ithout Special Authority through the Pragmatics	
			of Disc			201
					ssibility versus Inappropriateness	202
				-	rsation without Interlocutors	205
					he Conversation	208
	5.4				ing of Women by Pornography	210
	5.4.1 Illocutionary Disablement				211	
	5.4.2 A Contemporary Application					213
				atter of Up		214
					ifications	216

		5.4.3.2 In Search of a Justification	217			
		5.4.3.2.1 Reciprocity in General	217			
		5.4.3.2.2 Jacobson's Example Redux	221			
		5.4.3.2.3 The Ethical Upshot	222			
	5.4.4	A Conflict within the Principle of Freedom of Expression?	224			
		5.4.4.1 "Freedom of Expression" as a Principle of				
		Political Morality	225			
		5.4.4.2 "Freedom of Expression" as Deontic Liberties and				
		Normative Immunities	228			
		5.4.4.3 "Freedom of Expression" as Physical Freedoms	229			
	55 Porr	nography and Freedom of Expression	233			
		Easterbrook's Inadequate Rationale	233			
		Directness and Proximity versus Diffuseness and Remoteness	234			
		The Status of Pornography	237			
		Points of Contrast	238			
		Back to Pornography	240			
6.	Hatred,	Dignity, and Freedom of Expression	244			
		ts Not in Controversy	245			
	6.1.1	Fighting Words and True Threats	245			
	6.1.2	Acts of Discrimination	247			
	6.1.3	Targeted Harassment	249			
	6.1.4	The Protectedness of Offensive Communications	251			
		6.1.4.1 A Genuine Distinction	252			
		6.1.4.2 A Different Justification	253			
		6.1.4.3 The Pragmatics of Communications	254			
	6.1.5	Political Parties	256			
	6.1.6	Hiring Decisions	257			
	6.1.7	Unfitness for Employment	258			
	6.1.8	Incitement	260			
		Philosophy Rather Than Constitutional Theory	262			
		dron's Case in Favor of Hate-Speech Laws	265			
		rst Rejoinder to Waldron: Not Doing Nothing	269			
	6.4 A Se	econd Rejoinder to Waldron: The Demeaningness of				
		e-Speech Legislation	276			
		Group Libel versus Individual Libel	279			
	6.4.2	The Robustness of a Liberal-Democratic Ethos	282			
		6.4.2.1 An Impression of Precariousness	282			
		6.4.2.2 Waldron in a Different Key	284			
		6.4.2.3 Philosophy Rather Than Social Science	286			
	6.5 Ridi	ng Roughshod over Freedom of Expression	289			
7	. Conclusion: The Principle of Freedom of Expression in Practice					
		eral Democracy and the Scalar Character of Compliance	296 299			
		nedies for Contraventions	302			
		Individual Wrongdoing by Officials	302			
		Contraventions at the Level of General Laws	304			
	a de la lace de lace de la lace de lace de la lace de					

	CONTENT	rs xiii			
	7.2.3 The Avoidance of Contraventions through Anticipatory Measures	306			
7.3	Overdemandingness?	307			
	7.3.1 Drawing the Apt Conclusion	308			
	7.3.2 Moral Conflicts and the Principle of Freedom of Expression	308			
7.4	Prescinding from Details of Implementation				
	7.4.1 Burdens of Proof	313			
	7.4.2 Who Decides?	314			
Ref	erences	319			
Ind	Index				