

ON RACISM

DANIEL R. VINING, JR.

ABSTRACT

The first part of this paper contrasts the two dictionary definitions of “racism” given by *The Standard College Dictionary* (1963) and Random House’s *Webster’s College Dictionary* (1991). They are quite different and yet separated by a mere twenty-eight years. The first stresses the scientific worthiness of any statement about racial difference. The second stresses the statement alone, omitting science altogether. The second part of the paper summarizes the legal aspects of “racist” speech in Europe, Canada, and the U.S. While we weren’t looking, “racist” speech has become indictable in every country of Europe plus Canada. The First Amendment still protects “racist” speech in the U.S., but that amendment is always open to a new interpretation by the Supreme Court. The nine persons who comprise it know which way the wind is blowing. Random House’s *Webster’s College Dictionary* tells them.

INTRODUCTION

In the first part of this paper, I explore the dictionary definitions of “racism” and “racist.” I also talk about some other things having to do with that topic. In the second and final part, I lay out some legal aspects of “racism” in various countries of Europe and North America.

THE DICTIONARY DEFINITIONS OF “RACISM”

Racism and its derivative, racist, are oft-used words; and so we ought to know what they mean. Often, we don’t, and we just fling them at each other, hoping they will wound, if not kill, the offensive person. Where should we turn for the meanings of words? Why not the dictionary?

One of my dictionaries (the *Standard College Dictionary*, published in 1963) defines racism this way:

1. An excessive or irrational belief in or advocacy of the superiority of a given group, people, or nation, usually one’s own, on the basis of racial differences having no scientific validity.
2. Social action or government policy based upon such assumed differences.¹

Another dictionary (Random House's *Webster's College Dictionary*, published in 1991) defines it this way:

1. a belief or doctrine that inherent differences among the various human races determine cultural or individual achievement, usually involving the idea that one's own race is superior.
2. a policy, system of government, etc., based on such a doctrine.
3. hatred or intolerance of another race or other races.²

Notice how the definition of racism has changed between 1963 and 1991. Gone from the 1991 definition is any notion of rationality or scientific validity, which are virtually the same thing.

By the 1991 definition, the way I read it (please note its use of the word, *usually*; it doesn't say *always*), if I note in speech or writing that sickle-cell anemia is likely to emerge in the black population, *because* the black race harbors genes for this disease, but is virtually absent from the white population, *because* the white race does not harbor these genes, then I will be guilty of racism and am a racist; that if I observe that about 80 percent of the National Basketball Association's players are black and that there are genetic reasons for this, then I am a racist; or that none of the finalists in the Olympic 100-meter dash are ever East Asians and that there is a genetic reason for this; or that out of the top hundred 100-meter runners in the U.S., only one (or is it two or none?) is white; that the vast majority of the running backs and wide receivers in the National Football League are black; that whites dominate the throwing events in track and field, etc.; and that there are genetic reasons for these differences, then I am a racist. And if I note that almost all the serial killers, mass murderers, and political assassins (e.g., Bundy, Dahmer, Oswald, Son of Sam, Bremer, McVeigh) are white, and that these facts are genetic in origin, then I am being a racist. And the guy who told me when I was an undergraduate that all the professors in the mathematics department were either Jewish or Japanese, with the implication that this was inherent, he was a racist. And when Martin Peretz wrote in *The New Republic*, as he did, "The number of American Ph.D.s in mathematics...fell from 619 in 1978 to 341 ten years later...Of these only one was black," and he understood that many readers would read this to say that this was due to some inherent deficiency in blacks, he was a racist.³

Note that all of the above might be studied in a scientific manner, involving observation and hard numbers, that they do not imply the superiority or inferiority of any race, but that they would still be labeled racist statements by the 1991 dictionary definition of racism given above.

So, in effect, our usage (as reflected in the definition in the Random House's *Webster's College Dictionary*, which reflects current usage pretty well) of the word *racism*, is directly opposed to the mission of the university, which is to make scientific statements about any phenomenon under the sun (and some beyond). So what do we do? In 1984, the historian, William McNeill, wrote as follows:

[P]olyethnic lamination—clustering different groups in particular occupations and arranging them in a more or less formal hierarchy of dignity and wealth—is again asserting itself in the Soviet Union as much as in France, Germany, Great Britain, and the United States.

This constitutes a reversion to the civilized pattern of the deeper past when the world's great empires comprised a small ruling group— itself often recruited from a multiplicity of ethnic backgrounds—presiding over a hierarchy of specialized occupations, each of which tended to be dominated by a particular ethnic group. Such social arrangements do not accord well with liberal theory. When such differences do in fact exist, theory gets into difficulty.

Surely, the gap between theory and practice is growing among us with respect to migration and the status of ethnically diverse immigrants. It is high time we thought about it carefully.⁴

McNeill's obvious argument is that very little careful thought has been given to the racial and ethnic question in the West, but most particularly to this question *and* the fact that all the races and ethnic groups of the world are well represented in the United States, indeed, uniquely so among the major countries of the world, as far as I know. My argument here has been that our current usage of the words *racism* and *racist* is taking us away from the objective of careful thought about race and ethnic group.

When George H. W. Bush nominated Clarence Thomas to the Supreme Court to replace Thurgood Marshall, who was retiring, he said that Thomas was the best legal mind in the country, or something to that effect, which both he and we knew to be untrue. More recently, there has been a debate in the U.S. about affirmative action. This has almost always revolved around the elite universities, which generally supply the leaders of this country, though it must be immediately pointed out that three of our post-World War II presidents (Johnson, Nixon, and Reagan) went to quite obscure colleges and one (Truman) did not go to college at all, leaving us with seven who went to well-known undergraduate and graduate schools (Eisenhower [West Point], Kennedy [Harvard], Ford [Michigan, Yale Law School], Carter [Annapolis], Bush [Yale], Clinton [Georgetown, Oxford, Yale Law School]) and Bush [Yale, Harvard Business School]). Only three went to elite boarding schools (Kennedy, Bush, and Bush). Why did George H. W. Bush lie to us? Why is our debate about affirmative action so misinformed? Why can't we just say, with McNeill, that a small ruling group should be recruited from the different nationalities and groups that comprise this country? This country is multiracial, and eventually we'll have to accept McNeill's words.

THE LEGAL ASPECTS OF RACE AND RACISM

Let us now turn to the legal aspects of race and racism: hate speech, speech codes on college campuses, crimes which are racially motivated, etc. I think the legal situation with respect to freedom of speech can be fairly summarized as

follows. While democracies of Western type share their basic values, they differ in the order of importance attributed to these values. Each society determines the position of freedom of expression according to its own history, institutions, sense of security, and tolerance of dissent. Although in the United States the reach of freedom of expression has not been static, the contemporary Supreme Court speaks of this freedom in almost absolute terms (just how absolute is proven by the 1997 attempt by Sen. Arlen Specter (R-PA) to amend the U.S. Constitution to allow Congress to set “reasonable limits” on the amount of money that could be raised and spent “by, in support of, or in opposition to” a candidate for federal office, an attempt that was overwhelmingly defeated by the Senate, on the grounds that such an amendment would, in Senator Mitch McConnell’s words, carve “a huge chunk out of the First Amendment” by limiting political spending, which McConnell sees as a limit to free speech) and attributes to it a commanding priority over the other competing liberties.

The First Amendment (Article 1 of the Bill of Rights) of our federal constitution, with which all laws in the country have to be consistent, is quite straightforward and simple:

Congress shall make no law respecting an establishment of religion; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

I have italicized the part of it that is relevant to our discussion here. The italics, of course, do not appear in the original.

The UN Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1963 by the General Assembly of the United Nations. Although the United States signed the convention, it did so with the following caveat:

The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America.⁵

Congress ratified this convention on October 21, 1994, with even more reservations.⁶

The United Kingdom also ratified it on March 7, 1969.⁷ In 1965, Parliament (whose acts are the law of the land — the UK has no written constitution, though Parliament does try to pass laws within certain unwritten constraints, e.g., it tries to preserve freedom of expression) passed section 6 of the Race Relations Act, 1965.⁸ Under section 6, a person is guilty of incitement to racial hatred if

with intent to stir up hatred against any section of the public in Great Britain distinguished by color, race or ethnic or national origins: (a) he publishes or distributes written matter which is threatening, abusive or insulting; or (b) he uses in any public place or at any public meeting words which are threatening, abusive or insulting, being matter or words

likely to stir up hatred against that section on grounds of color, race or ethnic or national origin.⁹

Section 6 of RRA 1965 is notable in several respects, the most important of which is that it reverts back to the seditious libel standard (in fact, the First Amendment of the U.S. Constitution was created in direct response to the British sedition laws which make criticism of the government illegal) in that it requires that the speaker have the "intent" to stir up hatred. The intent requirement made it very difficult for the Crown to win convictions under the RRA 1965. For example, it proved impossible to convict the publishers of a newspaper which declared as its goal the "return of people of other races from this 'overcrowded island' to 'their own countries,'" the defendants arguing that their newspaper had educational value as a means for addressing important social issues and the prosecutors unable to prove that the defendants had the intention to instill in the populace any hatred of immigrants.¹⁰ In an effort to strengthen the incitement laws, Parliament passed Part III of the Public Order Act 1986 (POA 1986). Under Section 18, the "use of threatening, abusive, or insulting words" is an offense if the speaker: a) intends thereby to stir up racial hatred, or b) having regard to all the circumstances, racial hatred is likely to be stirred up thereby. Now, a person can be punished for either the intent to stir up racial hatred or for using words likely to stir up hatred.¹¹ John Tyndall, the editor of *Spearhead*, which was published by the British National Party, a far-right party, was convicted under this act and served six months in prison.

There is nothing like the First Amendment of the U.S. Constitution in any other country. And in those European countries having formal, written constitutions, e.g., Germany, Italy, and France, there is no equivalent clause. Therefore, in other Western democracies, certain kinds of speech can be illegal. In Israel, a kind of Western, democratic insertion into the Middle East, the far-right Kach party, founded by the late Rabbi Meir Kahane and espousing the removal of all Arabs from Israel, has been outlawed. In Germany, likewise, certain far-right parties have been outlawed. In addition, certain insignia, like the swastika, and gestures of the National Socialist (Nazi) party are illegal. *Mein Kampf* cannot be bought, sold, or owned. Holocaust denial is also illegal. In France, a person can go to jail and be fined for denying the Holocaust or certain aspects of it, such as the use of gas chambers. In Canada, certain types of speech involving the Holocaust have proved to be indictable.

This is not the case in the United States. Thus, we have the American Nazi Party (it goes by a different name now). The swastika is freely displayed. *Mein Kampf* is widely available, and you won't get arrested for selling it or for buying and reading it. Holocaust denial, in its many forms — some involving the gas chambers, others involving the number of "extra deaths" (a term often used in the debate over the mortality of the Russian population due to the various depredations and catastrophes of the Stalin regime (1928–1953) over and above what is normally to be expected) of Jews in Europe between 1933

and 1945 – is not an indictable offense. As a matter of fact, the U.S. has become a major source of “hate material” for Europe and Canada.

What kinds of speech and press are proscribed in the U.S.? Speech that incites imminent violence (like crying “Fire!” in a crowded movie theater), pornography that involves minors, harassing speech in the workplace, and “fighting” words (like yelling “nigger” at a black or “kike” at a Jew). That’s it in the United States. For this reason, speech codes at universities have proved impossible to maintain. Speech codes at great public universities, like the University of Michigan and the University of Wisconsin, banning certain kinds of racially offensive speech, have been found unconstitutional. As a consequence, these speech codes have been thrown out, and such private universities as the University of Pennsylvania have followed suit. For this reason also, it has proved impossible to regulate the speech of Professor Leonard Jeffries of CCNY, Minister Louis Farrakhan and his former aide, Khalid Muhammad, as well as numerous white supremacists, though their speech contains many willful errors and deliberate distortions regarding race and ethnicity and definitely incites racial and ethnic hatred.

CONCLUSION

Our usage of the word *racist* is definitely on a different course from the attitudes reflected in the law. One wonders how long this can go on.¹² The Founding Fathers certainly didn’t intend the First Amendment to protect neo-Nazis marching into towns full of Holocaust survivors or makers of neo-Nazi propaganda for sale in Canada or Europe, any more than they intended the Second Amendment to protect the owners of submachine guns. The legal situation in Europe and Canada regarding speech inciting racial hatred, though the racial laws there are proving difficult to prosecute, is a warning shot across our bow.

This article is a revised version of a paper presented at the annual meeting of the European Sociobiological Association (now defunct) and published in its proceedings, Ghent, Belgium, July 7-9, 1997.

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ENDNOTES

1. Funk and Wagnalls, *Standard College Dictionary* (text edition), (New York: Harcourt, Brace & World, 1963), 1109.
2. *Webster’s College Dictionary* (New York: Random House, 1991), 1110.
3. Martin Peretz, “Game Theory: Cambridge Diarist,” *The New Republic* (Feb. 10, 1992): 41.

4. William McNeill, "Human Migration in Historical Perspective," *Population and Development Review* 10 (1984): 18.
5. United Nations, *Multilateral Treaties Deposited with the Secretary General—Status as at 31 December 2004* (New York: United Nations, 2005), 143.
6. United Nations, *Multilateral Treaties Deposited*, 136, 143.
7. United Nations, *Multilateral Treaties Deposited*, 136.
8. Thomas David Jones, "Human Rights: Freedom of Expression and Group Defamation under British, Canadian, Indian, Nigerian and United States Law — A Comparative Analysis," *Suffolk Transnational Law Review* 18 (1995): 427-588.
9. Jones, "Human Rights": 439.
10. Jones, "Human Rights": 445-6)
11. Jones, "Human Rights": 448-52)
12. T. Jones obviously hopes it won't go on much longer. See his *Human Rights: Group Defamation, Freedom of Expression and the Law of Nations* (The Hague: Martinus Nijhoff, 1998) as well as the article cited above.

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