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**Speaking bigotry to power:
Sticks, stones and the bounds of free speech**

Kyle Sandilands broadcasts every morning from behind a gold-plated microphone. Several miles across the Pacific, Rush Limbaugh does the same. The golden microphone is studio lore, presented to a host by his network when he ranks number one in the local market¹. Sandilands earned his by profiting off bigotry; he has at various points in his career said part-polish actress Magda Szubanski “could be skinny if you put her in a concentration camp”, outed a 19 year old gay staffer on air, and called journalist Alison Stephenson “a fat slag” and “a piece of shit”. But when the predictably outraged public demands his show’s cancellation, he takes shelter in freedom of speech. “I’m sorry to you,” he said to the allegedly fecal Stephenson, “but we live in a country of free speech. You’re allowed to say what you want and so am I.”

When we think about the bounds of free speech we tend to take “bounds” in its normative sense: we talk about when free speech *should* be subject to boundaries. And then we have conversations about white people who use the n-word and white people who don’t want to have to say “the n word”, or religious fundamentalists who don’t want their God to be called names by atheists who retort that there is no right to be free from offence². These conversations are by now so familiar that I doubt I can be much use to them.

Instead I want to take “bounds” in its practical sense and talk about when free speech *is* subject to boundaries. How socially useful can free speech be in a world of Sandilandses and Limbaughs, of gold-plated microphones and ratings bait? I want to convince you that the answer is “not very”; that parts of the media have learned to use bigotry as a

¹Austereo gave Sandilands his mic in 2006. The aureate object itself is kind of unremarkable in person, stubby and undeniably microphoney in its inelegance. It’s not one of the rectangular soapcake-shaped microphones you might have seen Sinatra wrap a hand around, it’s shaped like an ice cream cone, and still has switches and mesh and rudely arterial ridges that look all wrong wrapped in gold, a bit like a microwave covered in diamonds would look exactly like a microwave covered in diamonds. The gold itself is flat and unshiny, and when gold isn’t burnished it takes on a vaguely third world dictatorial feel. Sandilands’ co-host called it a “Sadaam Hussein looking piece of crap”, though this may be because Austereo gave her a tea set. Not a gold one. I know all this because I used to work on the floor below Kyle and The Mic and I once peeked.

² Richard King, *On Offence: The Politics of Indignation* (Scribe Publications, 2013), 4.

publicity strategy, and that since this sort of bigotry is motivated by profit and not by a desire to express a genuine belief, it is a serious challenge to the view that free speech is always socially useful. There are three parts to this essay: what socially useful things usually follow from free speech, why some media organisations use bigotry to increase their ratings, and why the principle of free speech struggles to find any of its usual social utility in cases of bigotry-for-ratings.

1. Free Speech as socially useful

One of the first arguments for thinking of free speech as socially useful appears in Chapter II of JS Mill's *On Liberty*, and if it's not the first it's certainly one of the most quoted, so it deserves a bit of time. Mill did not, as it's often thought, argue that freedom of speech was innate to mankind or inviolable unto itself³. He argued that we should have freedom of speech because it was socially useful. He starts Chapter II like this: "if the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of discussing...any doctrine, however immoral"⁴. All of the arguments that follow are about the *social usefulness* of freedom of speech.⁵

The social benefits he proposes are roughly these: first, the view we would suppress if it weren't for freedom of speech might turn out to be true or to contain a portion of the truth. If it does, we won't have a chance to start believing the truth unless we hear the offending idea. So silencing particular views hurts the truth-seekers of the world by robbing them of exposure to an idea they might turn out to find persuasive; we need "the collision of adverse opinions" to get at the whole truth. Second, allowing free speech means that the people who believe 'immoral' ideas get to express their deepest beliefs, which makes them feel brave and true to themselves. Finally, even if the

³ Australia's current Attorney-General George Brandis has this faulty view of Mill. Brandis described himself as "a John Stuart Mill man" when he came under fire for telling the Senate that "people have a right to be bigots". Brandis is not wrong in thinking Mill would have defended the freedom to say bigoted things, but he errs in thinking Mill would approve of the way he thinks of rights. In an article in *The Australian* Brandis wrote "human rights are innate, not vouchsafed by laws". This sort of argument was well known to Mill and his mentor Jeremy Bentham, only they would have called it a 'theory of natural rights', and they thought it was 'nonsense on stilts'.

⁴ John Stuart Mill, *On Liberty* (Nabu Press -Reprint, 2010) 18.

⁵ This is because Mill was what philosophers call a 'utilitarian': he thought things were morally good if they created utility. Utilitarians stand in opposition to a later school of thought called 'deontology', which holds that morality is a matter of principles which are obligatory even if they don't create any good for anyone. John Stuart Mill, *Utilitarianism*, 2 edition (Indianapolis: Hackett Pub Co, 2002) p34-37; Stephen Darwall, *Deontology*, 1 edition (Malden, MA: Wiley-Blackwell, 2002) 2-3.

offending idea is totally truthless and irredeemably wrong, at least when we hear it we are forced to refute it. Refuting it forces us to explain the ‘rational grounds’ for our own beliefs, which prevents them from lapsing into hollow dogmas that we verbally echo but don’t understand.

Lots of early arguments for free speech share Mill’s utilitarian thinking; they are about the importance of debate for discovering the truth. John Milton’s *Areopagitica* argues against parliamentary restrictions on printing on the grounds that free speech lets men refute heretical ideas and therefore become more learned⁶, Thomas Paine’s *Age of Reason* is all about how free thought and speech advances society by letting reason triumph over religious superstition⁷, even Judge Oliver Wendell Holmes’ famous remark that free speech should not extend to vexatiously shouting “fire” in a crowded theatre is couched in social usefulness: permitting this sort of speech would cause all sorts of dangerous bedlam and tripping on petticoats and would save precisely no lives⁸,

Notice that all these accounts hold that free speech is useful if the speaker has a genuine belief in what he is saying. As long as people who say “I think apples are just painted pears” really *do* think that, we get hearty arguments about the evidence for both cases, apple-truthers get the alignment of their inner and outer selves, and we come away with a better insight into why we think what we do about apples – and shouting “fire” is instantly permissible if the speaker really thinks he’s seen a fire. This reasoning is fair enough in a world where the most common motivation for saying something is believing it, which was in fairness probably the only world Mill and his musketeers ever knew. But in the centuries since *On Liberty*, another motivation for ‘immoral’ speech has emerged: to make money.

⁶ John Alvis, *Areopagitica and Other Political Writings of John Milton* (Indianapolis: Liberty Fund, Inc., 1999) 3-10. *Areopagitica* is named for the Areopagus, the site of debates and tribunals in 5th Century BC Athens.

⁷ Which is odd, because Paine called free speech a “natural right”, but then goes on to make his argument in fifty shades of utilitarianism. Thomas Paine, *The Age of Reason* (Merchant Books, 2010) x-xvii.

⁸ *Schneck v. United States*, 249 U.S. 47 (1919); Irene Ten Cate, “Speech, Truth, and Freedom: An Examination of John Stuart Mill’s and Justice Oliver Wendell Holmes’s Free Speech Defenses,” *Yale Journal of Law & the Humanities* 22, no. 1 (May 8, 2013)

2. The outrage complex and bigotry for profit

Some tranches of contemporary media use bigotry as a business model. In this section I explain why, and what sorts of economic forces are at play when audiences and markets reward what Mill would have called ‘immoral’ speech. Before going any further it’s worth saying something we all know but often forget: In media, audience size is a harbinger of profit. Networks and publishers get their money from advertisements, and advertisers pay based on the size of the audience⁹. That means there isn’t just a financial incentive for media organisations to increase audience share - cookies and Christmas bonuses are incentives. Networks need viewers to *survive*. They need ratings through a nasogastric tube. Media organisations tend to do two things to chase ratings: use ads to attract individual viewers, and then get those people to hook their family and friends¹⁰. This second step is sometimes called the Network Effect¹¹, and since it outsources marketing to the customer it costs barely anything; though broadcasters would probably pay through every orifice for the exponential ratings growth it creates when done well.¹²

The Make Them Bring Their Kin strategy is by no means unique to the media - you’ve probably seen gyms or airlines trying to engage the network effect by offering customers discounts or rewards for signing up a friend. But media organisations do something that gyms and airlines can’t; they inject their make-them-share strategies directly into their product. They produce content that *by itself* makes people want to hit ‘share’, content that is funny or interesting enough that people want to pass it on. The viral sharing site *Upworthy* recently dubbed this sort of self-spreading material “click and share” content, and called it the holy grail of going viral.¹³ It’s a minor point, but I submit that the

⁹ James T. Hamilton, *All the News That’s Fit to Sell: How the Market Transforms Information into News* (Princeton, N.J.: Princeton University Press, 2006) 4-7.

¹⁰ Andy C. Pratt, “New Media, the New Economy and New Spaces,” *Geoforum*, 31, no. 4 (November 2000): 425–36.

¹¹ The terminology of ‘network effect’ appears in company memos as far back as 1877, when the Bell Telephone Company worked out that people were most likely to buy a telephone if someone they wanted to contact had a telephone. Daniel Birke, *Social Networks and Their Economics: Influencing Consumer Choice*, 1 edition (Chichester, West Sussex, United Kingdom ; Hoboken: Wiley, 2013).

¹² Perhaps this explains why Neetzan Zimmerman, former editor of the newssite *Gawker*, had this advice for journalism students: “Don’t bother, unless you are learning how to craft the perfect story for the viral web. If a person is not sharing a news story, it is at its core not news ... it doesn’t matter any more if a story is true, what matters is that people are clicking.” Zimmerman pulled 30 million pageviews a month in his time as editor. “Internet Killed the Newspaper Star”, *The Daily Show with Jon Stewart*, July 2014.

¹³ This is from Adam Mordecai’s “You Will Not Believe How Easy It Is To Make Something Go Viral!”

epidemiological terminology of going ‘viral’ is no accident. Content is designed to spread like a pathogen from one exposed audience member to everyone around her.

This is where bigotry comes in. Bigotry is perfect click and share material, because bigotry outrages, and we engage with and share outrageous things.¹⁴ This might feel intuitively untrue, since nobody would say they enjoy the feeling of remote-control-hurling anger that goes with listening to bigotry, or that they want to inflict that unpleasantness on those they love best. But something has to explain the millions of hits on the Westboro Baptist Church shrieking homophobic slurs at another soldier’s funeral, or on the aspirationally evil, cartoonishly misogynist rant Elliot Rodger filmed before shooting six women and then himself. And if you doubt that we can enjoy our own deliberate and sustained immersion in something we claim to find unpleasant, spend an afternoon studying a child watching a horror movie through the gaps between her own fingers. Don’t show me! *Show me.*

There are lots of psychological explanations for why we seem to seek the managed induction of rage. One is that sharing bad things with the people we love and trust lessens the horror. We pass hateful things around our network looking for confirmation that everybody else shares our moral indignation. Standing around tutting ‘how could he think that?’ gives us the comfort that nobody in our circle *does* think that; the echo chamber is a comfort when it calls back what we need to hear.¹⁵ A second more cynical explanation is that we share outrageous things for our own social benefit. People like to feel that they’re similar to their peers¹⁶, and standing with Justice and Other Good Things against something uncontroversially bad like bigotry earns us social approbation from a pack we want to be part of – the smart, bighearted pack. On this sort of view, we play Neo-Nazi vlogs for each other so we can have the social togetherness of saying ‘goodness that’s vile’ as one. Whatever the psychological cause, it is beyond debate that

Upworthy, March 19, 2013, which has itself gone viral.

¹⁴ Natalie Kitroeff, “Why That Video Went Viral,” *The New York Times*, 19 May 2014; Angela Dobele et al., “Why Pass on Viral Messages? Because They Connect Emotionally,” *Business Horizons* 50, no. 4 (July 2007): 291–304.

¹⁵ Joseph E. Phelps et al., “Viral Marketing: Examining Consumer Responses and Motivations” *Journal of Advertising Research* 44, no. 04 (2004): 333–48.

¹⁶ Robert Cialdini noticed this during his early work on social psychology in advertising. By investigating the peculiar success of Tupperware Parties, he found that products were more successful if their marketing suggested ‘people you like buy this’. ‘Liking’ appears as the fifth principle of persuasion in Cialdini’s book *Influence: The Psychology of Persuasion*, New York: Harper Business, 2006, 167-173.

bigoted speech is both clickable and shareable. This means that through the alchemy of outrage, bigotry represents profit. Well-placed public indignation becomes a vehicle for free publicity. This isn't a new strategy, either, calculatedly inciting outrage has been part of PR strategies since the sixties: the Black Panthers posed for *TIME* toting shotguns; Bob Dylan said he saw some of himself in Lee Harvey Oswald, Public Enemy's Professor Griff once asked nobody in particular "why do you think it's called *jewellery*?"¹⁷

And the free publicity for the speaker doesn't stop with the bigoted speech act, the resultant notoriety is itself a publicity generator. Think of how outragers position themselves in coverage of how many awful things they've said: Kyle Sandilands posing for an article that called him "the king of crass" by lying naked on a cowskin covered in grapes like a Rococo odalisque, Derryn Hinch using the supposedly insulting moniker "the human headline" as own website's URL, Rush Limbaugh glaring over a cigar on the *New York Times*' front page in a deliberate allusion to the archetype of a Hollywood villain¹⁸. Then there's the condemnation complex that clings to bigoted speech a bit like scalpers and hot dog sellers barnacle onto sports stars. One piece of bigoted speech creates concentric ripples of ratings opportunities; we'll engage with anyone condemning it, anyone defending it, and we'll engage if the original network or publisher runs a retort or apology. And so media personalities and organisations fire outrageous speech and outraged reactions back and forth between each other with the unerring accuracy and mutual certainty of path you usually only see between the ball-flicking arms of a pinball machine. Sworn public enemies depend on each other for content, and if this sounds too reductive or cynical to be true, think about this: *Fox News* has for twenty years been one of the biggest donors to the Clinton campaign.¹⁹

Are we supposed to believe that this is an accident? That the ratings generated by these sorts of back-and-forths are a pleasant and profitable side effect of a proud defence of a genuinely held belief? I suggest we should go the simpler route, and believe that the

¹⁷ These examples come from David Foster Wallace's *Signifying Rappers* (New York: Back Bay Books, 2013), 88. Only one displays the all-out bigotry of contemporary outrage chasing, but the seeds of the strategy are there.

¹⁸ Jeffrey M. Berry and Sarah Sobieraj, *The Outrage Industry: Political Opinion Media and the New Incivility* (Oxford; New York: Oxford University Press, 2014) 12-16; Ryan Holiday, *Trust Me, I'm Lying: Confessions of a Media Manipulator* (Penguin, 2012) 20-22.

¹⁹ "LOTFI: Fox News One of Hillary Clinton's Biggest Donors for Better Part of Two Decades," *Truth In Media*, July 8, 2014.

cultivation of ‘shocking’ ‘controversial’ and flat-out bigoted speech has little to do with what the speech expresses, and much more to do with the profits it creates.

3. The outrage complex: woodrot to the usefulness of free speech

I want to stress that this isn’t an argument about whether it is *right* to apply the principles and laws of free speech to for-profit bigotry. There are lots of ways to justify a principle of free speech that aren’t about its social usefulness, and what you conclude about for-profit bigotry will depend on how persuasive you find those arguments²⁰. If you think free speech is justified only by being socially useful, then you’re going to have to conclude that useless free speech is unjust free speech. If you think free speech is justified by something else – maybe it comes from the fact that we are human, or maybe it comes from the social contract – then you can hold that there are some sorts of free speech that are at once utterly useless and totally justified. I’m afraid which position you choose is a matter for you and your spare time. Since I take ‘bounds’ in its practical sense, I am interested in whether free speech is *useful* when applied to bigotry-for-ratings, not whether it is justified to apply it at all.

Remember that the social utility Mill and his companions found in the principle of free speech depended on the assumption that the people who say bigoted things believe bigoted things. The peculiar feature of bigotry-for-ratings is that lots of its speakers aren’t interested in defending its content; they fail the Mean What You Say criterion. That means that the principle of free speech slides off them like oil slick on water. We can’t wring any of the usual usefulness out of the shows and stars who use bigotry for publicity because they don’t use hateful words as foils in a clash of wits, or to express what they genuinely believe. They use them to make a wave of controversy and then surf it yelling *comabunga*. It is auditory trolling, and even they don’t believe it²¹.

²⁰ For a good overview of non-utilitarian arguments for free speech see C. Edwin Baker, *Human Liberty and Freedom of Speech* (Oxford University Press, 1992), 47-61 and David Richards, “A New Paradigm For Free Speech Scholarship,” *University of Pennsylvania Law Review* 139, no. 1 (November 1, 1990): 271.

²¹ ‘Trolling’ refers to the online practice of saying something inflammatory and contrary to the speaker’s beliefs in order to start an argument and make other users feel foolish when they find out they ‘got trolled’. A moment of etymological fun: Best guesses from the OED about why early-90s online gaming communities chose the word ‘troll’ to describe the practice suggest that it has nothing to do with the 16th Century noun meaning little ugly bridge guard, and everything to do with the verb ‘troll’, which describes recreational fishing practice of slowly dragging a baited fish on a line behind a boat - not to be confused with ‘trawling’, which is the more common baitless practice of dragging a net. Trolling, in both senses of the word, requires bait.

Take Jerry Springer, host of the notorious *Jerry Springer Show*, which televises personal confrontations usually of the form ‘I’m pregnant by a giant transsexual’ or ‘I’m possessed by a gay demon’²². The show features racist and sexist cursing with such regularity that it is bleeped at three times the rate of its nearest competitor, and guest-to-guest violence was once so common that the set designers had to make the chairs wider and heavier so as to preclude their use as projectiles. Springer has been called ‘the ringmaster of the lumpenproletariat’ and was once named Bigot of the Year for using gay and trans people as ‘modern bearded ladies’ and letting KKK members shout slurs at his mostly-black audience. The show attracts 12 million viewers.²³

Springer is utterly clear that he thinks *The Jerry Springer Show* is “a stupid show”. In 2000, he said to *Reuters*: “I would never watch my show. [It] is just silly.” He told *This American Life* “I create this persona for the show, and that’s what it is, I’m an act”²⁴, and when he ran for an Ohio senate seat his parting blessing to every crowd was “may you never be on my show”²⁵. His producer Richard Dominick is even less interested in defending the content of the show; in 1999 he told the *Chicago Tribune* “let’s face it, we’re in it for the ratings”. But even though neither host nor producer think that what the show expresses is useful or even true, they use freedom of speech as a defence. Springer once used a guest anchor spot on *WMAQ*’s nightly news to say he exercised the sort of freedom of speech his father dreamt about when fleeing the holocaust, and when quizzed about the social effects of the show Dominick said “I would never tell someone to watch it, but I would give the First Amendment as to why we shouldn’t have any censorship.”²⁶

This isn’t an aberration. Lots of the people who make money off bigotry and then claim ‘freedom of speech’ have been remarkably up front about their true motivations.

²² These are real episode titles from seasons 15 and 17. “He’s Possessed by a Gay Demon,” *The Jerry Springer Show* (NBC Universal, February 8, 2007); “I’m Pregnant by a Giant Tranny,” *The Jerry Springer Show* (Chicago: NBC Universal, May 4, 2006).

²³ Ian Markham-Smith and Liz Hodgson, *The Outrageous Jerry Springer* (Blake, 1999).

²⁴ “Springer’s ‘Silly’ Show,” *BBC*, October 6, 2000.; “Leaving the Fold,” *This American Life*, January 30 2004.

²⁵ If you’re surprised to hear Springer ran for Senate, you might be among the people who don’t know about his past life as a Democrat and news anchor. Springer was mayor of Cincinnati before he was 33, went ten years without losing an election, and hosted a local news show that went on to win five Emmys. The first season of *The Jerry Springer Show* featured appearances from Jesse Jackson and in-depth conversations about gun control and homelessness, but Multimedia threatened to cancel if ratings didn’t pick up. The producer was fired, another brought in, and the rest, as they say, is history.

²⁶ “Springer Blasts Away At Marin In Wmaq Debut,” *Chicago Tribune*, May 06, 1997; “To Executive, Show’s Influence Is Misunderstood,” *Chicago Tribune*, 17 June 1999.

Take Glenn Beck, who once told two pro wrestlers they'd given the Tea Party a bad name by standing in front of a Gadsden flag²⁷ and filming a racist anti-immigration rant, only to have them patiently remind him "what you saw was a scene, and we are performers"²⁸. For somebody who didn't see through in-character ratings-chasing bigotry when it was dressed in a unitard and a handlebar moustache, Beck is dead frank about his own show, on which he has called Jews 'radical Islamists' and climate scientists 'Gore-worshipping psychos'. He told *Forbes Magazine* "I could give a crap about the political process. We're an entertainment company" and "if you take what I say as gospel, you're an idiot"²⁹. Then there's Rush Limbaugh, who once told his 13-million strong audience that women who received government financial assistance for contraception were 'sluts' and 'prostitutes' who should post their sex tapes online for taxpayers. Limbaugh told *Today* that most of what he did was "to satisfy the audience so they come back the next day", and "I know how to yank [the media's] chain. I know how to make them spend the next two days talking about me."³⁰

The point is this: lots of broadcast bigots don't believe what they say on air. That means that when they use the legislative and philosophical armour of 'freedom of speech' to defend the bigotry they disseminate, we don't get the social usefulness we usually would. The truth seekers don't get the vigorous clash of opinions that would establish the truth, either because the apparent champions of the bigoted view choose not to elaborate – *especially* not in a forum owned by a rival network or publisher - or because the bigoted view is retracted before any serious conversation can happen. The people voicing the bigotry don't get the gentle glow of self-actualisation that comes from proudly defending one's most sincere beliefs, since these aren't their sincere beliefs, and we don't come out of these interactions with stronger or better insights into the reasons for our own beliefs. In fact I wager that we are now so subliminally used to for-profit bigots and the uselessness of engaging with them that we shout back a set of knee-jerk justifications for our beliefs that are exactly as hollow and unthinking as Mill feared, not because we are

²⁷ The Gadsden flag is the yellow one with the rattlesnake that says "don't tread on me". It was designed in the revolution and is now used by the American right to express solidarity with the founders' values.

²⁸ "Zeb Colter and Jack Swagger Address Glenn Beck", *WWE*, 2013, February 23 2013 .

²⁹ An almost touching aside: after a lot of foot shuffling, Beck also confessed to using eco-friendly lightbulbs in his home and thinking 'you'd have to be an idiot not to notice the [global] temperature change'. "Does Glenn Beck Believe His Own Words?," *Forbes*, August 2010; "Glenn Beck Inc.," *Forbes*, August 2010.

³⁰ Michael Inbar, "Rush Limbaugh: I Love to 'yank Media's Chain'," *TODAY.com*

starved for confrontation but because we have gorged on it. A media culture that constantly prods at and profits off our rage reflexes has given us a discourse that isn't so much white noise as white keening, and against that backdrop, why bother? When your opponent barely believes what he says he does, when no serious response or defence will be forthcoming, and when the social joy of condemning him needs no more than 140 characters, why hold anything other than the atrophied orthodoxies Mill thought free speech would stave off?

JS Mill knew some people would use his principle of free speech to justify voicing bigoted, immoral ideas. But he and utilitarians like him defended it, convinced that the social usefulness of free speech would endure even in bigotry, and the liberal democracies of the world lined up to adopt what he had crafted, comforted by the fact that very few people would believe what the immoral speakers had to say. Nobody predicted that one day they wouldn't believe it either.

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