

Book Review. D.F.B. Tucker, **Law, Liberalism and Free Speech**, (Totowa: Rowman and Allanheld, 1985), 212 + viii pages. \$US32.50 hardback and \$US13.50 paperback.

Reviewed by M.W. Jackson¹

The purpose of this closely argued book is "to find a principled focus for accommodating many of our strongly felt judgements" about free speech. David Tucker bases his ingenious study on the premise of democratic commitment. According to this commitment, political institutions and the processes they engender must embody an equal respect for persons. One conclusion from this premise is that different people may have to be treated differently. Political institutions may have to favour the pauper somehow to compensate for the social advantages that a millionaire enjoys.

Tucker explicitly adopts the methodology of John Rawl's A Theory of Justice. The development of principles of justification is conceded to a committee in the original position behind the veil of ignorance. This committee will jealously respect the equality of persons. Tucker's interpretation of Rawls in this book is as distinctive as his account of Karl Marx in his earlier book Marxism and Individualism.

From beyond the veil of ignorance Tucker argues that the conventional justification for free speech is functionalist. As John Stuart Mill wrote in On Liberty, free speech may be productive. A vigorous market of ideas may stimulate new and valuable ideas. If it does, fine. The problem would be that if it were the case that free speech was not productive then it could be suppressed. It may be difficult to imagine such a case being proven, but it is easy to imagine it being made. Indeed it has always been made by those who have advocated censorship of, say, matters related to sex. These advocates of censorship have claimed that unconstrained talk about sex is not productive, but rather destructive.

The main alternative to Mill's justification that Tucker identifies is John Locke's grant of absolute liberty. (Tucker does not remind us that Locke declared two limitations of liberty: God owns us and we must leave enough of like for others.) In a completely unregulated free market based on such absolute rights

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Rupert Murdoch might end up owning all of the print and broadcast media in the world! This is not an eventuality Tucker would take lightly, I suspect.

In place of the Mill's and Locke's justifications Tucker turns to Rawls and his claimed Enlightenment forebearer Immanuel Kant to steer a middle course. Free speech is acknowledged as crucial right, but in some cases it must give way to other rights, like privacy. Tucker then proceeds to demonstrate how the principle of equal respect can be applied to a number of hard cases precisely "to determine ... whose claim, if any, has legitimacy". The cases covered concern access to media, reputation, defamation, privacy, offensive speech, and the like. Tucker's research has been assiduous and his selection sure in the details presented. There is much more here than I can do justice.

Tucker's account of defamation is very sensible. He reasons mainly from the American experience of reflective equilibrium. It would have been intriguing to see what sense he could bring to the Australian situation which is so different from that of the United States.

The book succeeds admirably in its purposes. It accommodates the intuitions and reflective equilibrium with a rational, consistent and universal principle, though I confess to being less convinced than Tucker that the purpose of philosophy is "to find a principled basis for" our intuitions. One of my intuitions is that principles are a handy rhetorical weapon of argument, but they are not real. Intuitions are real, most of all the ones that resist the straight lines of principle.