

Article

# Philosophical Reflections on “the Filthiest, Dirtiest, Nastiest Word in the English Language”<sup>1</sup>

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**Abstract:** When, if ever, is it morally permissible to utter the word “joker”? (NB: The word “joker” is a placeholder for another word, the mere utterance of which certain people find unsettling or offensive. See the prolegomenon of this article for an explanation.) After drawing some relevant distinctions (such as that between use and mention), I provide counterexamples to two extreme theses: first, that it is always wrong (i.e., never morally permissible) to utter the word; and second, that it is never wrong (i.e., always morally permissible) to utter the word. It follows that it is sometimes right and sometimes wrong to utter the word. I then examine three plausible principles for distinguishing between those utterances of the word that are right and those that are wrong. Each principle, I maintain, succumbs to counterexamples. I therefore advocate (i) abandonment of a principled (monistic) approach to the matter and (ii) adoption, instead, of a non-principled (pluralistic) approach. The pluralistic approach that I develop is inspired by the work of William David Ross (1877–1971).

**Keywords:** race; language; speech acts; offensive speech; n-word; ethics; use and mention; pluralism; William David Ross (1877–1971)

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## 1. Prolegomenon

**onomatophobia** n. An abnormal dread of certain words or names because of their supposed significance.<sup>2</sup>

Just as one can talk about a hammer without using it (e.g., “This hammer, which I purchased at Home Depot in 2012, cost \$23”), one can talk about a word without using it

<sup>1</sup> Christopher Darden, quoted in Kenneth B. Noble, “Issue of Racism Erupts in Simpson Trial,” *The New York Times* (14 January 1995).

<sup>2</sup> Dictionary.com, accessed 26 February 2022, <https://www.dictionary.com/browse/onomatophobia>.

(e.g., “The word ‘hammer’ has six letters”). But how does one talk about a word without *uttering* it (as I just did in the case of “hammer”)?<sup>3</sup> To put the problem in perspective, consider that one can talk about a hammer without uttering the word “hammer.” All one needs to do is gesture. I might say, for example (while pointing to a particular hammer), “It cost \$23.” Since a word is not a physical object (like a hammer), one cannot point to it; and if one cannot point to it, then one must utter it—i.e., speak it or write it—in order to talk about it. We are back where we began: how does one talk about a word without uttering it?

The word that I wish to talk about in this article is a six-letter English word that begins with the letter “n.” It is sometimes referred to as “the n-word,” or typed with certain of its letters blotted out: “n—” or “n—r.” I am sure you know which word I have in mind.<sup>4</sup> The mere sight or sound of this word unsettles or offends people (not everyone, of course, but some). It is understandable that *use* of the word unsettles or offends, for it has a long history of use as an epithet<sup>5</sup> to demean, humiliate, insult, intimidate, and terrorize dark-skinned people (henceforth, “blacks”). The primary offendees (if I may coin a term) are those to whom the word is directed, but even some of those who merely *observe* its use are unsettled or offended by it. (The offense in such a case is vicarious or secondary.) What is *not* so understandable is why the mere *sight* or *sound* of the word—its very utterance—unsettles or offends.

I share the view of certain scholars, such as UCLA law professor Eugene Volokh, that it is legitimate (i.e., permissible or defensible, morally) to talk about this word, especially (but not exclusively) in professional, scholarly, or pedagogical contexts. There is much to say about it, after all. I may wish to ask and answer certain questions, such as:

- What is the origin of the word? (Etymological.)
- What does the word mean? (Semantic.)
- How, if at all, has the meaning of the word changed over time? (Lexicographical.)
- How is the word used? (Linguistic.)
- When and why did the word become unsettling or offensive? (Historical.)

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<sup>3</sup> The word “utterance,” as commonly used, means “an uninterrupted chain of spoken or written language.” Angus Stevenson and Christine A. Lindberg, eds., *New Oxford American Dictionary*, 3rd ed. (New York: Oxford University Press, 2010), 1909 (hereafter cited as *New Oxford American Dictionary*). The word is not limited to spoken language, as the word “utter” (used as a verb) might suggest. This article, for example, is an extended utterance.

<sup>4</sup> An anonymous referee for this journal worries that “[not] everyone knows what the N-word refers to.” The referee recommends “mentioning it [the six-letter English word that begins with the letter ‘n’] once in the paper so as not to presuppose [‘unfairly’] that everyone across the globe is up to date about North American taboos.” I admit that this is a problem, but it is easily solved without my having to utter the word (which I am determined not to do, for reasons explained in the text). If you don’t know which word I’m discussing in this article, then you should—*provided that you are willing to risk being offended*—visit the following website, which contains an image of a book by Harvard law professor Randall Kennedy: <https://penguinrandomhousehighereducation.com/book/?isbn=9780593316757>. The title of Kennedy’s book is the word that I am discussing in this article. Professor Kennedy, who has thought long and hard about the word in question, and who has interesting things to say about the moral permissibility of uttering it, will be quoted in a subsequent section of the article.

<sup>5</sup> The English word “epithet” (noun) has two uses, or senses. It is used as “an adjective or descriptive phrase expressing a quality characteristic of the person or thing mentioned,” as in “old men are often unfairly awarded the epithet ‘dirty’.” *New Oxford American Dictionary*, 584 (italics omitted). It is also used more narrowly, “as a term of abuse,” as in “the woman begins to hurl racial epithets at them.” *Ibid.* (italics omitted). An epithet in the second (narrower) sense is “a slur or an abusive term.” Bryan A. Garner, *Garner’s Modern English Usage*, 4th ed. (New York: Oxford University Press, 2016), 340. The word that forms the subject matter of this article is an epithet in both senses (broad and narrow).

- To whom, precisely, is the word unsettling or offensive, and why? Are there variants of the word that are more (or less) unsettling or offensive? If so, what are those variants and why are they more (or less) unsettling or offensive? (Sociological.)
- *How* unsettling or offensive is the word, compared to other unsettling or offensive words? Why are some people unsettled or offended by the word and others not? (Psychological.)
- Is the word *taboo*; and, if so, what are the sanctions for its violation? (Anthropological.)
- Is it permissible for some people but not others to use the word? If so, who may (or may not) use it and why? (Moral.)
- What is the legal status of the word or its utterance (in a particular jurisdiction)? (Legal.)
- Are those who utter the word in the United States of America deemed to have engaged in constitutionally protected speech? If not, under what heading of *unprotected* speech does it fall? (Jurisprudential.)
- *Should* use of the word be deemed to be protected speech? If so, why? If not, why not? (Moral.)

Given the negative reactions that some people have to the mere sight or sound of the word (i.e., to encountering the word in written or oral form),<sup>6</sup> one wonders whether it is worth it to stand on principle and talk about it. I believe that it is, but will not argue as much in this article. To avoid needless distraction, I will not only not *use* the word (which would be scandalous), but will not *mention* it (a decision which is, in my judgment, supererogatory). The word in question does not, accordingly, appear in this article. (Do a word search if you do not believe me.)

Just to be clear, my decision to eschew mention of the word (i.e., to refrain from uttering it) is practical rather than prudential or moral. It is not prudential because I do not do it out of self-interest. I am not afraid of controversy, and I am certainly not afraid of self-righteous (but misguided) mobs whose members are bent on “cancellation” of those they deem politically incorrect or insufficiently “woke.” It is not moral because, as I said in the previous paragraph, there is nothing wrong (in my judgment) with talking about a word, especially in scholarly contexts such as this. My decision, rather, is practical (perhaps “instrumental” is the better word); it is to avoid needless distraction, of which controversy is but one type.<sup>7</sup> I wish to make a number of philosophical points about the word and its uses. Why risk unsettling, offending, or frightening people, and thus diverting their attention from what I have to say, when I can make my points without uttering the word?

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<sup>6</sup> For a compilation of negative reactions, see Randall Kennedy and Eugene Volokh, “The New Taboo: Quoting Epithets in the Classroom and Beyond,” *Capital University Law Review* 49, no. 1 (2021), 1–65, at 1–5. Anyone who is disposed to be unsettled, offended, frightened, upset, discomfited, or traumatized by the mere sight of the word in question would be well advised not to read—or even to glance at—the cited article. By my count, the authors utter the word (or a variant) 157 times. That is an average of 2.41 utterances per page (157 utterances divided by 65 pages). The word itself, singular or plural, but without variants, appears 125 times, which is an average of 1.92 utterances per page (125 utterances divided by 65). The squeamish reader is particularly well advised to avoid page 61, where the word (or a variant) appears 11 times.

<sup>7</sup> See, e.g., the controversy that erupted after publication of Alberto Giubilini and Francesca Minerva, “After-Birth Abortion: Why Should the Baby Live?” *Journal of Medical Ethics* 39, no. 5 (May 2013): 261–63. The controversy had the unfortunate effect of diverting attention from the substance of the article.

In the remainder of this article, since I need some way to talk about the offensive word without uttering it, I will use “joker” as a placeholder. Whenever you see the word “joker” (or a variant), you should mentally substitute the offensive word for it.<sup>8</sup> It might be objected that this forces you (the reader) to *think* about the objectionable word. This is true, but I operate on the principle of assumption of risk.<sup>9</sup> If you proceed beyond this point, you thereby assume the risk of being frightened, unsettled, upset, enraged, discomfited, or offended—not because I *use* the word (because I don’t), and not because I *mention* it (again, I don’t), but because I employ a different and innocuous word (“joker”) that *reminds* you of a word that *you* fear or find unsettling or offensive. In short, if you wish to avoid even *thinking* about the word (never mind seeing or hearing it), stop reading (now!) and do something else.

## 2. How to Do Things with Words<sup>10</sup>

If we adopt illocutionary point as the basic notion on which to classify uses of language, then there are a rather limited number of basic things we do with language: we tell people how things are, we try to get them to do things, we commit ourselves to doing things, we express our feelings and attitudes[,] and we bring about changes through our utterances. Often, we do more than one of these at once in the same utterance.<sup>11</sup>

Before discussing—and illustrating—the all-important philosophical distinction between using a word and mentioning it, we would do well to reflect on the purpose of words, sentences, and other units of discourse. Words are tools, no different in principle from hammers, knives, and can openers. Like some tools, such as claw hammers, they have more than one use. (A claw hammer can be used to pound nails, pull nails, open paint cans, hold paper down [on a windy day], and kill people.) Let us discuss five of the main uses of words. My discussion is indebted to John Searle, who is one of the pioneers in the field of speech acts.

Searle distinguishes between the (oral or written) *utterance* of a sentence (or some other linguistic entity, such as a single word or morpheme) and *what one does* with it, or by

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<sup>8</sup> I chose this word not because of any similarity of meaning (obviously), but because, like the word in question, it has two syllables and ends with “er.” In other words, it has the same “shape” as the word that forms the subject matter of this article. I considered using the neologism “reggin,” which is the offensive word spelled backward, but decided against it for various reasons, among which is that it doesn’t have the “er” ending. When the offensive word appears within a quotation, I replace it with a bracketed “joker,” like this: “[joker].”

<sup>9</sup> “The doctrine of assumption of risk, also known as *volenti non fit injuria*, means legally that a plaintiff may not recover for an injury to which he assents, *i.e.*, that a person may not recover for an injury received when he voluntarily exposes himself to a known and appreciated danger.” Henry Campbell Black, *Black’s Law Dictionary*, 5th ed. (St. Paul, MN: West Publishing Company, 1979), 113 (italics in original) (hereafter cited as *Black’s Law Dictionary*).

<sup>10</sup> This is the most theoretical section of the article. Readers who wish to get to the normative sections more quickly may skip it, perhaps coming back to it later (after reading to the end). I thank an anonymous referee (for this journal) for pointing out that some readers may be reluctant to wade through material on speech-act theory. The referee recommended “cut[ting] some of this part,” but I believe that it is of interest to readers who have little or no familiarity with speech-act theory, so I have left it in. Here, as elsewhere in philosophy, theory informs practice.

<sup>11</sup> John R. Searle, *Expression and Meaning: Studies in the Theory of Speech Acts* (Cambridge: Cambridge University Press, 1979), 29.

means of it. For example, in uttering the sentence, “Sam smokes habitually,” I am *making an assertion* (that Sam smokes habitually). In uttering the sentence, “Does Sam smoke habitually?,” I am *asking a question*. In uttering the sentence, “Sam, smoke habitually!,” I am *giving an order*. In uttering the sentence, “Would that Sam smoked habitually,” I am *expressing a wish or desire*. The utterances have a common core. In all four, something (namely, Sam) is being picked out, designated, or referred to, and something (namely, being a habitual smoker) is being predicated of that thing. I perform a number of distinct speech acts when I utter any of these sentences. In the case of the first utterance (“Sam smokes habitually”), I do the following:

1. utter a sentence (formed of words in the English language);
2. refer to Sam;
3. predicate the expression “smokes habitually” of Sam; and
4. make an assertion (namely, that Sam smokes habitually).

What the examples show is that “the same reference and predication [namely, Sam + smokes habitually] can occur in the performance of different complete speech acts.”<sup>12</sup> Searle, following his teacher J. L. Austin, calls these complete speech acts “illocutionary acts.”

According to Searle, “there are five general ways of using language, five general categories of illocutionary acts.”<sup>13</sup> These acts are summarized in the following chart:

Illocutionary Act	Point or Purpose	Direction of Fit	Sincerity Condition (i.e., Psychological State Being Expressed)	Felicity (Success) Condition	Examples
Assertives	Telling people how things are	Word to world	Belief	Truth (or interlocutor’s acceptance)	1. “It’s raining.” 2. “The cat is on the mat.” 3. “Do you really think the Dallas Cowboys will win the Super Bowl this season?” (rhetorical question)
Directives	Trying to get people to do things	World to word	Desire	Interlocutor’s compliance	1. “I command you to stand at attention.” 2. “Please remove your hat.” 3. “What time is it?” (question)
Commissives	Committing ourselves to doing things	World to word	Intention	Utterer’s compliance	1. “I promise to pay you the money.” 2. “I pledge allegiance to the flag.” 3. “I’ll get you!”

<sup>12</sup> John R. Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969), 23.

<sup>13</sup> Searle, *Expression and Meaning*, viii.

Illocutionary Act	Point or Purpose	Direction of Fit	Sincerity Condition (i.e., Psychological State Being Expressed)	Felicity (Success) Condition	Examples
Expressives	Expressing our feelings and attitudes	None	Whatever psychological state is being expressed	Emotional release (by utterer) or evocation of the expressed emotion (in interlocutor)	<ol style="list-style-type: none"> <li>1. "Congratulations on winning the race." (expresses delight or joy)</li> <li>2. "Thank you for giving me the money." (expresses gratitude)</li> <li>3. "I apologize for stepping on your toe." (expresses regret or remorse)</li> </ol>
Declarations	Bringing about changes in the world through our utterances	Both world to word and word to world	None	Appropriate institutional authority (of utterer)	<ol style="list-style-type: none"> <li>1. "I resign."</li> <li>2. "You're fired."</li> <li>3. "I christen this vessel the battleship Missouri."</li> <li>4. "War is (hereby) declared."</li> <li>5. "I pronounce you husband and wife."</li> </ol>

## 2.1. Illocutionary Point

Each type of illocutionary act has a "point or purpose,"<sup>14</sup> which Searle calls its "illocutionary point."<sup>15</sup> The point or purpose of an assertive, for example, is "to commit the speaker [i.e., the utterer] (in varying degrees) to something's being the case, to the truth of the expressed proposition."<sup>16</sup> The point or purpose of a directive is "to get the hearer [i.e., the interlocutor] to do something."<sup>17</sup> The point or purpose of a declaration is "to bring about changes in the world through our utterances."<sup>18</sup>

## 2.2. Direction of Fit

The direction of fit of an illocutionary act has to do with whether the utterer (i.e., the speaker or writer) is trying to get his or her words to match the world ("word to world") or to get the world to match his or her words ("world to word"). Directives and commissives have the same direction of fit: world to word. They differ with regard to who—utterer or interlocutor—is to bring about the change. Expressives have no direction of fit. Declarations have both directions of fit. As Searle explains, "declarations do attempt to get language to match the world. But they do not attempt to do it either by describing an existing state of affairs (as do assertives) nor [*sic*] by trying to get someone to bring about a future state of affairs (as do directives and commissives)."<sup>19</sup> If I say "I appoint you chairperson" in appropriate conditions (e.g., with appropriate institutional authority),

<sup>14</sup> Ibid., 12.

<sup>15</sup> Ibid., 3.

<sup>16</sup> Ibid., 12.

<sup>17</sup> Ibid., 13.

<sup>18</sup> Ibid., viii.

<sup>19</sup> Ibid., 19.

I both describe the (newly created) world (in which you are the chairperson) and get the world to match my words (by virtue of my utterance, you *become* the chairperson).

### 2.3. Sincerity Condition

The sincerity condition of an illocutionary act is the psychological state that is characteristically associated with it. In an assertive, for example, I am sincere when I *believe* what I say, i.e., when I believe that the proposition I express through my utterance is true. In a commissive, I am sincere when I *intend* to do what I commit myself to doing. In an expressive, I am sincere when I *am actually in the psychological state* that I express. The sincerity condition for the utterance “I apologize for stepping on your toe” is regret or remorse; the sincerity condition for the utterance “I thank you for giving me the money” is gratitude; the sincerity condition for the utterance “I send my condolences” is sympathy; and so on.

### 2.4. Felicity Condition

The felicity (“happiness”) condition of an illocutionary act is the condition in which the act succeeds in doing what the utterer intends for it to do. In an assertive, for example, I succeed when my assertion is *true* (or perhaps when my interlocutor comes to believe or accept it). In a directive, I succeed when *my interlocutor* (the person to whom the utterance is directed) *complies* with it. In a commissive, such as a promise, pledge, or vow, I succeed when *I* (the utterer) comply with it (i.e., when I keep my promise, fulfill my pledge, or honor my vow).

As Searle points out in the epigraph of this section, we often perform more than one illocutionary act in the same utterance. Suppose I utter the words “You’re standing on my foot” while occupying a crowded bus. I am simultaneously (i) *asserting* that my interlocutor is standing on my foot (he or she may not know), (ii) *directing* the interlocutor to get off my foot, and (iii) *expressing* pain, discomfort, annoyance, or some other psychological state (or some combination of states). I may even be *committing* myself to taking further action (such as pushing the interlocutor off my toe) should he or she not comply with my directive. We will see that the word “joker” can be used to perform more than one illocutionary act on a given occasion.

## 3. Using the Word “Joker”

[jok-er] n. *offensive* a contemptuous term for a black or dark-skinned person.<sup>20</sup>

The word “joker” can be used to perform any of the aforementioned illocutionary acts—or even more than one of them (on a given occasion). To show this, I will use an actual example.

In August 2014, Michael McCargo, a parking enforcement officer for the town of New Canaan, Connecticut, issued a parking ticket to David Liebenguth, whose car was improperly parked in a courthouse parking lot. Having placed the ticket on Liebenguth’s vehicle, McCargo was in the process of writing a ticket for another vehicle when Liebenguth approached him. According to the Connecticut Supreme Court,

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<sup>20</sup> *New Oxford American Dictionary*, 1185 (bracketed item added).

The defendant [Liebenguth] said to McCargo, "not only did you give me a ticket, but you blocked me in." Initially believing that the defendant was calm, McCargo jokingly responded that he didn't want the defendant getting away. When the defendant then attempted to explain why he had parked in the lot, McCargo responded that his vehicle was in a metered space for which payment was required, not in one of the lot's free parking spaces. McCargo testified [at Liebenguth's trial for breach of the peace in the second degree] that the defendant's demeanor then "escalated," with the defendant [having said] that the parking authority was "[fucking] [un]believable" and [having told] McCargo that he had given him a parking ticket "because my car is white. . . . [N]o, [you gave] me a ticket because I'm white." As the defendant, who is white, spoke with McCargo, who is African-American, he "flared" his hands and added special emphasis to the profanity he uttered. Even so, according to McCargo, the defendant always remained a "respectable" distance from him. Finally, as the defendant was walking away from McCargo toward his own vehicle, he spoke the words, "remember Ferguson."<sup>21</sup>

The Court continued:

McCargo also testified that, "[a]fter both men had returned to and reentered their vehicles, McCargo, whose window was rolled down . . . thought he heard the defendant say the words, "fucking [jokers]." This caused him to believe that the defendant's prior comment about Ferguson had been made in reference to the then recent [and highly publicized] shooting of an African-American man by a white police officer in Ferguson, Missouri [on 9 August 2014, approximately three weeks earlier]. [McCargo] thus believed that the [defendant's reference to Ferguson was a "threat"] meant to imply that what had happened in Ferguson "was going to happen" to him. McCargo also believed that, by uttering the racial slur and making reference to Ferguson, the defendant was trying to rile him up and [to] escalate the situation [by "taking it to a whole other level"].<sup>22</sup>

The Court concluded its recitation of the facts as follows:

McCargo further testified ... that, "[s]hortly thereafter ... as [McCargo] was driving away, the defendant [cut through the parking lot in his vehicle, approached McCargo, and then] drove past him." As the defendant was driving past McCargo, "the defendant turned toward him, looked directly at him with an angry expression on his face, and repeated the slur, "fucking [jokers]." McCargo [also] noted in his testimony that the defendant said the slur louder the second time than he had the first time.<sup>23</sup>

In uttering the words "fucking jokers," Liebenguth performed a number of distinct illocutionary acts. First, he asserted (indirectly) that McCargo is "a black or dark-skinned person."<sup>24</sup> Second, he tried to get McCargo to fight (a directive). This is known in law as

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<sup>21</sup> *State v. Liebenguth*, 336 Conn. 685–746 (2020), 690 (all brackets except those around the word "Liebenguth" in original), accessed 26 February 2022, [https://www.jud.ct.gov/lawjournal/Docs/CTReports/2021/24/cr336\\_8249.pdf](https://www.jud.ct.gov/lawjournal/Docs/CTReports/2021/24/cr336_8249.pdf).

<sup>22</sup> *Ibid.*, 690–91 (all brackets except those around "jokers" in original).

<sup>23</sup> *Ibid.*, 691 (first ellipsis added; citation omitted; all brackets except those around "jokers" in original).

<sup>24</sup> This is the literal meaning of "joker"; see *New Oxford American Dictionary*, 1185.



“incitement”<sup>25</sup> or “provocation.”<sup>26</sup> Third, he vowed to assail McCargo should the latter take the bait (a commissive). Fourth, he expressed frustration, disgust, anger, rage, resentment, contempt, hatred, or some other powerful emotion, or cluster of emotions (an expressive). Fifth, he used his “white privilege,” or exalted status as a white person (see below for an explication of the concept), to demean, debase, devalue, diminish, degrade—perhaps even to dehumanize—McCargo (a declaration).

Let us discuss these illocutionary acts in turn, using the Liebenguth case as an illustration.

### 3.1. Assertive Speech

When people use the word “joker” as an epithet or slur, as Liebenguth did, they are predicating something of someone. They are saying, *at a minimum*, that the interlocutor, or someone other than the interlocutor,<sup>27</sup> is “a black or dark-skinned person,” but also, invariably (as the dictionary definition suggests), that the person in question is contemptible. “Contemptible” (adjective) means “deserving contempt; despicable.”<sup>28</sup> “Contempt” (noun) is “the feeling that a person or a thing is beneath consideration, worthless, or deserving scorn.”<sup>29</sup> When someone calls another person a “joker” (with or without the intensifier “fucking”), he or she is asserting that the other is, *as a matter of fact*, beneath consideration—simply and solely because of the color of that person’s skin. To say that this is an “insult” is an understatement.

### 3.2. Directive Speech

If, in uttering the words “fucking jokers,” Liebenguth had been attempting to start a fight with McCargo (and only he would know whether this is the case), his utterance had directive force: he was trying to get McCargo to do something (namely, fight). Fighting is not the only possibility, however. Liebenguth may have been trying to *intimidate* McCargo, or make him timid (docile, submissive).<sup>30</sup> Perhaps Liebenguth thought that if McCargo were frightened enough by his (Liebenguth’s) aggressive language and bodily movements, he (McCargo) would “stand down” and either apologize to Liebenguth for issuing the ticket or, at the extreme, rescind the ticket. It must be kept in mind that one can perform a directive either by trying to get another to *do* something (e.g., fight) or by trying to get another to *refrain* from doing something (e.g., stand up for oneself). Perhaps

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<sup>25</sup> “Incite” (verb) means “To arouse; urge; provoke; encourage; spur on; goad; stir up; instigate; set in motion; as, to ‘incite’ a riot. Also, generally, in criminal law to instigate, persuade, or move another to commit a crime; in this sense nearly synonymous with ‘abet’.” *Black’s Law Dictionary*, 686. Incitement is a criminal offense.

<sup>26</sup> “Provoke” (verb) means “To excite; to stimulate; to arouse. To irritate, or enrage.” *Black’s Law Dictionary*, 1103. Provocation is a criminal *defense*. Liebenguth may have been hoping so to enrage McCargo that the latter physically attacked him, at which point he (Liebenguth) could “defend” himself from the attack by using force. In other words, Liebenguth’s utterance, “fucking jokers,” may have been a pretext for physical engagement.

<sup>27</sup> Compare “You’re a joker” (second-person singular), “You’re jokers” (second-person plural), “He or she is a joker” (third-person singular), and “They’re jokers” (third-person plural). All are assertive uses.

<sup>28</sup> *New Oxford American Dictionary*, 374.

<sup>29</sup> *Ibid.*

<sup>30</sup> “Intimidate” (verb) means “frighten or overawe (someone), esp. in order to make them [*sic*] do what one wants.” *New Oxford American Dictionary*, 911. The word derives from the Medieval Latin *intimidat*, meaning “made timid.” *Ibid.*

Liebenguth was open to either of these possibilities at the time of his utterance—though they would seem to be logically exclusive, for how can one simultaneously fight and submit? When Liebenguth said “fucking jokers,” he may have been directing McCargo *either* to fight *or* to submit (i.e., stand down). Either way, his speech act would constitute a directive.

### 3.3. Commissive Speech

Although it might be a stretch to say this, Liebenguth’s utterance of the words “fucking jokers” may have been a way of committing himself to taking action against McCargo for issuing him a parking ticket. It may have been a way of saying, “I’ll get you for this!” The words can be construed as a vow of revenge, retribution, or retaliation, directed either to McCargo in particular or to blacks in general. A vow is a particular type of commissive, but there are others, such as resolutions, threats, and warnings. What is important, for present purposes, is not so much the *type* of commissive speech act being performed, but the fact that Liebenguth performed a commissive speech act at all. Arguably, he did.

### 3.4. Expressive Speech

Liebenguth, like any utterer in any context, was in a particular psychological state when he uttered the words “fucking jokers.” Among the possible states he was in are frustration, disappointment, disgust (at being ticketed), anger, rage, resentment, contempt, and hatred. The words he chose expressed whatever emotion (or cluster of emotions) he was feeling at the time of utterance. It is well known that the word “joker” is used to display contempt for one’s interlocutor (indeed, this is part of its literal meaning), so it is likely that Liebenguth used the word to express that powerful emotion (especially since he used the intensifier “fucking” as well). Some people consider “joker” the consummate form of “hate speech,” which one dictionary defines as “speech expressing hatred of a particular group of people.”<sup>31</sup> Given the utterance (“fucking jokers”) and its context, Liebenguth likely expressed hatred both toward McCargo as an individual and toward the larger group (blacks) of which he believed McCargo to be a member.

### 3.5. Declarative Speech

Let us assume, for the sake of analysis, that there is such a thing as “white privilege.”<sup>32</sup> The idea is that whites, as a class, have certain privileges, perquisites, prerogatives, entitlements, immunities, liberties, or advantages simply by virtue of being white (and not

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<sup>31</sup> *Merriam-Webster.com*, accessed 26 February 2022, <https://www.merriam-webster.com/dictionary/hate%20speech>. The term “hate speech” is ambiguous. It means either “speech intended to incite hatred or violence” (a directive use of language, in Searle’s terminology) or “speech expressing hatred” (an expressive use of language). See, for example, William M. Curtis, “Hate Speech,” *Encyclopaedia Britannica*, accessed 26 February 2022, <https://www.britannica.com/topic/hate-speech>.

<sup>32</sup> For a seminal account of the concept, see Peggy McIntosh, “White Privilege: Unpacking the Invisible Knapsack,” *Peace and Freedom* (July/August 1989): 10–12; see also Stephanie M. Wildman, “The Persistence of White Privilege,” *Washington University Journal of Law & Policy* 18 (2005): 245–65. For a “mild” critique of the concept, see Lawrence Blum, “‘White Privilege’: A Mild Critique,” *Theory and Research in Education* 6, no. 3 (November 2008): 309–21. McIntosh defines “white privilege” as follows: “an invisible package of unearned assets which I can count on cashing in each day, but about which I was ‘meant’ to remain oblivious. White privilege is like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks.” McIntosh, “White Privilege,” 10.

because they have earned them or done anything else to deserve them).<sup>33</sup> The corollary of this is that non-whites (including blacks), as a class, labor under certain disadvantages simply by virtue of being non-white (and not because they have done anything to deserve them). If we think of these privileges or advantages as forming a system, or institution, then certain behaviors can either reinforce the system/institution or undermine it. In the case we have been discussing, Liebenguth *reinforced* the system/institution of white privilege by calling McCargo a "joker."

We might go further than this and say that, by using the epithet, Liebenguth *degraded* McCargo, in the sense of lowering his (McCargo's) social status. The term "joker," when used by a white person such as Liebenguth, functions to degrade (i.e., to bring it about that the hearer's status is reduced), just as the words, "I pronounce you husband and wife," when uttered by a licensed minister, function to marry (i.e., to bring it about that there is a marriage). Declarative speech is speech that changes someone's legal, moral, or social status (or relations to others).

It may seem odd that a single white person, such as Liebenguth, who possesses no legal or other formal authority, can *make it the case* that a black person's grade (i.e., social status) is lower than it otherwise is or would be; but if we take the concept of white privilege seriously (as we are doing for the sake of analysis), *every white person* has this power, and every non-white person is subject to it. It is a privilege of whiteness (so it is said) that one who possesses this property gets to alter the social status of those who lack it. Speech, in short, is a powerful tool of degradation. It is used not merely to insult, frighten, and intimidate, but to *put down*. Liebenguth's epithet was arguably intended to put McCargo down by reminding him (McCargo) of his (socially inferior) status as a black person. Liebenguth was saying, in effect, that even though McCargo occupied a position of authority as a parking enforcement officer, he was *still black*, and, as such, inferior to whites such as Liebenguth.<sup>34</sup>

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<sup>33</sup> One might wonder how whites, who constitute either 60% or 76% of the United States population (depending on whether one counts Hispanics/Latinos as white), could be privileged, for, according to philosopher Alan R. White, the concept of privilege implies that "There can be a privileged few, but not a privileged many." Alan R. White, "Privilege," *The Modern Law Review* 41, no. 3 (May 1978): 299–311, at 299. With all due respect to White, whom I consider to be a great philosopher, I think he is conflating "Not everyone can be privileged" (which is necessarily true, i.e., true in virtue of the concept of privilege) and "Only a few can be privileged" (which is false). Those who believe that whites are privileged (remember, we are assuming as much for the sake of analysis) maintain that whites, though a majority of the population, have powers, liberties, immunities, chances, opportunities, and rights (see *ibid.*, 300) that non-whites lack.

<sup>34</sup> Liebenguth was charged with, and convicted of, breach of the peace in the second degree. One wonders whether he would have been charged with that crime (or any other) had he said "fucking pigs" or "fucking assholes" rather than "fucking jokers." If he *had* been charged with a crime for uttering either of those epithets, then one wonders whether he would have been convicted (perhaps not). If he *had* been convicted, then one wonders whether the Connecticut Supreme Court would have ruled (as it did in the actual case) that his utterances constituted "fighting words," which is a type of unprotected (by the United States Constitution) speech. One wonders, in other words, whether it was the *racist nature* of Liebenguth's utterances that rendered them constitutional unprotected.

## 4. Mentioning the Word “Joker”

**use/mention distinction** The distinction between using a word, such as “cat”, to talk about cats, and mentioning the word, as one would if pointing out that “cat” has three letters. <sup>35</sup>

We have now discussed various uses of the word “joker”: assertive, directive, commissive, expressive, and declaratory. There are others (as Searle acknowledges). The word is versatile. I have not myself *used* the word, which, as I said earlier, would be scandalous in a scholarly article. I have not even *uttered* the word, lest I divert attention from the philosophical issues that I wish to discuss. What I *have* done is talk about the (unsettling or offensive) word by replacing it with “joker” and asking you (the reader) to make the mental substitution. If anything I have said so far offends, upsets, or frightens you, then it is your own fault for failing to heed my advice to stop reading. Stop reading now! Proceed further at your own peril!

I began this article with a discussion of a hammer. Everyone knows what it means to use a hammer (i.e., what is involved in using a hammer). This morning, for example, I used one of my hammers (a claw hammer) to straighten some metal stakes that hold fencing together. Later today, I may use the same hammer to open a paint can. Yet later in the day, I may use the hammer to pull a nail from a board. Tonight, while seated at a picnic table outdoors, I may use the hammer to hold down a stack of papers so that the sheets don’t blow away. (I have not, to date, used it to kill anyone.) Suppose, having used the hammer in these ways, that I wish to talk about it. Here are some things I might say:

- I purchased it [the hammer] at Home Depot in 2012, for \$23.
- A friend borrowed it, but has yet to return it.
- It has many uses.
- It weighs 20 ounces.
- It served me well as a paperweight.

As should be obvious (by now), there is all the difference in the world between using an object (such as a hammer) and talking about it. Since words, whatever else they may be, are objects, they too can be both used and talked about. For example, just as I can *use* the word “joker” (to assert, direct, and so forth), I can *talk about it*. I can say any of the following:

- The word “joker” has six letters. (This is false, obviously, but I might say it nonetheless.)
- “The word [**joker**] was used as an adjective denoting a black person as early as the 17th century and has long had strong offensive connotations. Today it remains one of the most racially offensive words in the language. Also referred to as ‘the n-word,’ [**joker**] is sometimes used by black people in reference to other black people in a jocular or disparaging manner, or some variant in between (in somewhat the same way that *queer* has been adopted by some gay and lesbian people as a term of self-reference, acceptable only when used by those within the community).”<sup>36</sup>
- Many people find the word “joker” offensive.

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<sup>35</sup> Simon Blackburn, *The Oxford Dictionary of Philosophy*, 2nd ed. rev. (New York: Oxford University Press, 2008), 374 (boldface in original).

<sup>36</sup> *New Oxford American Dictionary*, 1185 (bracketed items added; boldface and italics in original).

- Professor Jones was fired for using the word “joker” in her classroom.
- Professor Jones was fired for uttering the word “joker” in her classroom.
- “The word [‘joker’] occurs in the text of the novel [*Adventures of Huckleberry Finn* (1884)] 212 times, including one occurrence in the generic word for a type of tobacco, ‘[joker]-head,’ one loafer is reputed to have returned in place of ‘store tobacker.’ Make the count 211.”<sup>37</sup>

The telltale sign that the word “joker” is being talked about, rather than used, is that it is enclosed in quotation marks (either single or double).<sup>38</sup> Sometimes quotation marks are omitted even when the word is being talked about, but usually, in such a case, the context makes it clear that the word is being talked about rather than used.<sup>39</sup> When a word is being talked about, it is the *object* of discourse (i.e., the thing being talked about); it is not (except in a formal sense) *part* of the discourse. It should also be noted that the words “The word,” which appear in all six examples immediately above, can be omitted without loss of sense. In the first example, for example, I could have written “‘Joker’ has six letters” rather than “The word ‘joker’ has six letters.”

When philosophers distinguish between using a word and talking about it, they employ the words “use” and “mention” rather than “use” and “talk about.” Here are some illustrative quotations:

- *mention of a term.* An occurrence of a linguistic expression in quotation marks for the purpose of talking about that linguistic expression. For example, in “‘Cicero’ has six letters” it is not the orator himself but the word referring to him [i.e., his name] that is being discussed. This is to be contrasted with *use of a term*, the occurrence of a linguistic expression for the purpose of talking about something other than the expression.<sup>40</sup>
- **mention / use** If you heard someone say “The pig is short,” you might be unsure whether he meant that a pig is not tall, or that the phrase ‘the pig’ is a short phrase. If he was saying the first, then he was *using* the term ‘the pig’; if the second, then he was *mentioning* it. Had he said “The phrase ‘the pig’ is short” then it would have been unambiguous that he was mentioning that phrase, not using it. In written English, ambiguity can be eliminated by putting the mentioned part in quotes: ‘The pig’ is short. One sometimes sees philosophers wiggling their fingers in the air to indicate quotation marks in what they speak. A frequent philosophical custom is to put mentioned bits of language into single quotes.... Double quotes are used for reporting what someone said (and for other uses).<sup>41</sup>

<sup>37</sup> David E. E. Sloane, “The N-Word in *Adventures of Huckleberry Finn* Reconsidered,” *The Mark Twain Annual* 12, no. 1 (2014), 70–82, at 71 (all bracketed items added).

<sup>38</sup> According to Simon Blackburn, quotation is “[t]he primary device indicating that words are being mentioned rather than used.” Blackburn, *Oxford Dictionary of Philosophy*, 304.

<sup>39</sup> An example is Christopher M. Fairman, “Fuck,” *Cardozo Law Review* 28, no. 4 (February 2007): 1711–72. The title of Fairman’s article is “Fuck,” but he does not enclose the word in quotation marks, either single or double. Nor does he italicize it, as he does throughout the article. The context, however, makes it clear that Fairman is mentioning the word (in his title) rather than using it. He might well have entitled his article “The Word ‘Fuck,’” or “The Legal Status of the Word ‘Fuck,’” but those titles would not have been as provocative, and one suspects that he meant to provoke.

<sup>40</sup> Boruch [*sic*] A. Brody, “Logical Terms, Glossary Of,” in *Encyclopedia of Philosophy*, 2nd ed., ed. Donald M. Borcherdt (Farmington Hills, MI: Macmillan Reference USA, 2006), 5: 533–60, at 548 (two paragraphs combined into one; italics in original; bracketed item added).

<sup>41</sup> Robert M. Martin, *The Philosopher’s Dictionary*, 3rd ed. (Peterborough, Ontario: Broadview Press, 2002), 195 (boldface and italics in original; ellipsis added).

- Sometimes we want to talk about language itself.... In order to mention an entity—even if that entity is itself a linguistic object such as a word—we must make a name by means of which to refer to it. The standard practice is to enclose it in quotation marks; the word along with the surrounding quotation marks constitute a name for the word.... The following two statements are both correct: a] The table has four legs. b] “Table” has five letters. The following sentence is nonsense: c] Table has five letters. It is ungrammatical, for it confuses use and mention of a word; it violates the general principle that to *mention* an object we must *use* a name that is distinct from the object being mentioned. The fact that we are talking about a word is no license to confuse the object being discussed with the words used in the discussion.<sup>42</sup>

Suppose I quote someone who uses or mentions the word “joker.” When I do so, I both *utter* the word (either orally or in writing) and *mention* it, but I do not use it. Here, by way of illustration, is a snippet of text from a book by Henry Carrington Bolton:

Apparently the doggerel which is the favourite among American children to-day is the senseless jingle:—

Eeny, meeny, miny, mo,

Catch a [joker] by the toe!

If he hollers let him go!

Eeny, meeny, miny, mo.<sup>43</sup>

Those who utter the doggerel—American children—are *using* the word “joker”; they are not mentioning (i.e., talking about) it. Bolton, in quoting them, is *mentioning* (i.e., talking about) the word; he is not using it. Bolton is talking about the word because he is saying, in effect, “American children use the word ‘joker’ in the following way [followed by a recitation of the doggerel].” Quotation is a form of mentioning. More precisely, quoting someone who uses or mentions a word *is* mentioning the word. In both cases—talking about a word and quoting someone who uses or mentions it—quotation marks are employed as a distancing device.<sup>44</sup>

## 5. Direct and Indirect Uses of “Joker”

In indirect speech acts the speaker communicates to the hearer more than he actually says by way of relying on their mutually shared background information,

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<sup>42</sup> Wesley C. Salmon, *Logic*, 3rd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1984), 141 (italics in original; ellipses added; sentences combined into one paragraph).

<sup>43</sup> Henry Carrington Bolton, *The Counting-Out Rhymes of Children: Their Antiquity, Origin, and Wide Distribution: A Study in Folk-Lore* (New York: D. Appleton & Co., 1888), 46 (bracketed item added).

<sup>44</sup> According to lexicographer Bryan Garner, one should “[r]eserve quotation marks for five situations: (1) when you’re quoting someone; (2) when you’re referring to a word as a word <the word ‘that’>, unless you’re using italics for that purpose; (3) when you mean so-called-but-not-really <if he’s a ‘champion,’ he certainly doesn’t act like one>; (4) when you’re creating a new word for something—and then only on its first appearance <I’d call him a ‘mirb,’ by which I mean ...>; and (5) when you’re marking titles of TV and radio programs, magazine articles, book chapters, poems, short stories, and songs <having been put on the spot, she sang ‘Auld Lang Syne’ as best she could>.” Garner, *Garner’s Modern English Usage*, 752 (ellipsis in original). In each of the five situations, the person who uses quotation marks is distancing himself or herself from the words being enclosed, either by saying “I’m not *using* these words; I’m *mentioning* them” or by saying “I’m not using these words *literally*; I’m using them figuratively, metaphorically, or in some non-standard way.”

both linguistic and nonlinguistic, together with the general powers of rationality and inference on the part of the hearer.<sup>45</sup>

Before examining the ethics (rights and wrongs) of uttering the word “joker,” we should take note of an interesting phenomenon. Many acts can be performed either directly or indirectly. If I wish to travel from my house in Arlington, Texas, to Denton, Texas, I can take the most direct route or, if I have errands to run or simply want to do some sightseeing, I can go first to Dallas and then northwestward to Denton (on I-35E) or first to Fort Worth and then northeastward to Denton (on I-35W). Speech acts are no different. If I wish to assert that you are a joker, I can do so directly, by saying, “Joker,” “You joker,” or “You’re a joker,” or I can do so indirectly. There are many forms of indirection. Here are some of them:

- “If you’re not a joker, then I’m the Pope.”
- “The word ‘joker’ applies to you.”
- “You fall within the denotation (reference class) of the word ‘joker’.”
- “When Jones said to you, ‘You’re a joker,’ he spoke the truth.”
- “Are you seriously trying to deny that you’re a joker?”

In the first example, I am *using* the word “joker” rather than mentioning it. I am *asserting* that my interlocutor is a joker. But I am not *directly* asserting that my interlocutor is a joker. Rather, I am *indirectly* asserting it. I am counting on my interlocutor to draw, or deduce, the intended conclusion (by *Modus Tollens*).<sup>46</sup> In the second and third examples, I am *mentioning* (i.e., talking about) the word “joker,” but indirectly *using* it to make an assertion (namely, that my interlocutor is a joker).<sup>47</sup> In the fourth example, I am making an assertion by characterizing a quoted expression as true (the truth). In the fifth example, I am asking a rhetorical question, i.e., making an assertion by asking a question.<sup>48</sup>

Henceforth, when I speak of “using” a word, I mean to include both direct and indirect uses.

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<sup>45</sup> Searle, *Expression and Meaning*, 31–32.

<sup>46</sup> *Modus Tollens* is a valid (i.e., truth-preserving) argument form, to wit: ‘If p, then q; not q; therefore, not p’. In English, this says that anything that materially implies a falsehood is false. In the example, only the first premise (a conditional or “if-then” sentence) of the argument is being asserted by the speaker. It is supposed to be obvious (a matter of common knowledge) that the utterer is *not* the Pope, which makes the consequent of the asserted conditional false. From this supposition, together with the asserted premise, it follows (by *Modus Tollens*) that the antecedent of the asserted conditional is false. In other words, the interlocutor *is* a joker. This is, of course, the conclusion that I expect my interlocutor to arrive at (by reasoning).

<sup>47</sup> Imagine someone replying to the claim of use by saying, “I’m not *using* the word ‘joker’ when I say, ‘The word “joker” applies to you’; I’m *mentioning* it. I’m talking about the *word*.” This is true, but disingenuous, for when one says that a word *applies* to a certain object, one is predicating something of that object. This is no different, logically, from saying, “You’re a joker,” which is a straightforward act of predication. Now imagine a different reply. The utterer says, “The word ‘joker’ is applied to you,” rather than, “The word ‘joker’ applies to you.” This changes everything. The utterance is no longer a *use* of the word “joker,” for the utterer is now saying that *other (unnamed) people* apply the word (present tense) or have applied the word (past tense) to the interlocutor. Other people, in other words, are doing (have done) the predicating. By contrast, when the utterer says, “The word ‘joker’ applies to you,” he or she (the utterer) is doing the predicating.

<sup>48</sup> “A rhetorical question is one that is asked when no answer is expected, or when the answer is obvious.” Martin, *Philosopher’s Dictionary*, 263.

## 6. Rights and Wrongs

[G]iven our racial situation and the situation that we should attain, we should be wary of indulging in racial presumptions unless we are forced to do so by compelling reasons. There is no compelling justification for presuming that black usage of [joker] is permissible while white usage is objectionable. The most fervent opponents of [joker] agree with this point. They then go on to contend that public opinion should make [joker] out of bounds to *everyone* in *every* setting. But the prospect of a wholesale eradication of [joker]—with or without the aid of state power—poses a threat to valuable artistic and political expression. I therefore suggest proceeding in a different direction. I suggest that people presumptively frown upon the deployment of [joker] regardless of the race of the speaker because the N-word is still so often associated with ugly, unjustified, racial disparagement. But I also suggest that everyone be offered an opportunity to rebut this presumption, even in those cases in which whites are the speakers and blacks the objects of the language in question.<sup>49</sup>

Having distinguished between using an expression and mentioning it (the latter of which includes quoting someone who uses or mentions it), and having observed that use can be either direct or indirect, we are now in a position to ask—and attempt to answer—certain evaluative or normative (hereafter “moral”) questions regarding utterance of the word “joker.”<sup>50</sup> Remember that utterance encompasses both use and mention, and that use can be either direct or indirect. To utter a word (or a sentence) is to speak it, write it, or in some other way *present* it.

### 6.1. My Argumentative Strategy

There are three possible positions that one might take on the moral permissibility (i.e., rightness)<sup>51</sup> of uttering the word “joker”:

1. It is always wrong (i.e., it is never right or permissible) to utter the word “joker.”
2. It is never wrong (i.e., it is always right or permissible—perhaps, in some cases, *obligatory*) to utter the word “joker.”

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<sup>49</sup> Randall L. Kennedy, “Who Can Say ‘[Joker]’? ... and Other Considerations,” *The Journal of Blacks in Higher Education* 26 (Winter 1999/2000): 86–96, at 92 (italics in original; bracketed items added).

<sup>50</sup> See the Appendix of this article for a discussion of moral expertise. I thank an anonymous referee for this journal for questioning the placement of this discussion in the text (at roughly the point where this footnote occurs). The referee recommended deleting the material, but I worry that doing so will leave certain readers wondering what weight, if any, to give to my moral judgments. As the reader can see by reading the Appendix, I disclaim moral expertise, not merely on the topic of this article but *tout court*. Since, in my view, I *have* no moral expertise, I would not want anyone to confer on me undeserved moral authority by deferring to my judgments. The Appendix explains why I have this view of moral expertise.

<sup>51</sup> Two points. First, “x is permissible” means the same as “x is right,” and “x is impermissible” means the same as “x is wrong.” “Right” means “not wrong,” and “wrong” means “not right.” Every concrete act, so understood, is either right (permissible) or wrong (impermissible), and no concrete act is both right and wrong. (A concrete act, such as *my writing these words at this moment*, is an act that is performed exactly once, by a particular person on a particular occasion [time and place]. It is unique, a one-off. A generic act, such as *my writing words*, can be performed more than once.) Second, moral (im)permissibility is not the same as legal (im)permissibility. An act, such as breaking a promise to a friend, can be morally impermissible without being legally impermissible; and an act, such as disobeying an unjust law, can be legally impermissible (against the law) without being morally impermissible. Unless otherwise specified, our concern in this part of the article is with *moral* (im)permissibility.



3. It is sometimes wrong (impermissible) and sometimes right (permissible) to utter the word “joker.”

My argumentative strategy is as follows. First, I provide a counterexample to the first position by describing a case in which it is *permissible* (by your lights, or in your considered judgment) to utter the word “joker.” Second, I provide a counterexample to the second position by describing a case in which it is *impermissible* (by your lights, or in your considered judgment) to utter the word “joker.” Since the three positions are jointly exhaustive and mutually exclusive, the falsity of the first and second positions—which the counterexamples are designed to establish—entails the truth of the third. If you reject the first and second positions, therefore, as I believe you do (or will), you are committed (logically) to accepting the third.

Suppose you are persuaded to accept (or happen already to accept) the third position. It’s not enough merely to *know* that it’s sometimes wrong and sometimes right to utter the word “joker.” That would be both theoretically unedifying and practically useless. One wants to know what (exactly) *makes* it wrong (or right) to utter the word. What is the underlying principle? Perhaps, upon inquiry, one discovers that there is no single principle (or criterion), but merely a plurality of morally relevant considerations, in which case, to determine whether a given utterance of the word “joker” is morally permissible, one must bring all morally relevant considerations to bear, assign them their proper weights, and render a verdict or judgment.

The third part of my argumentative strategy (having reduced, by counterexample, the number of positions to one) is to explore various principles for distinguishing between those utterances of the word “joker” that are wrong and those that are right. I consider three such principles, each of which has, I believe, some initial plausibility.

The first principle, which may have occurred to you in light of our discussion of the difference between using a word and mentioning it, is that it is always wrong (i.e., never right or permissible) to *use* the word “joker,” but never wrong (i.e., always right or permissible) to *mention* it. I will try to persuade you that this principle is incorrect. Sometimes—I will argue—it is right to use the word “joker,” and sometimes it is wrong to mention it.

The second principle is that it is always wrong (i.e., never right) for a *white person* (or, more generally, a non-black person) to utter the word “joker,” but never wrong (i.e., always right) for a *black person* to utter it. This principle, too, is incorrect. Sometimes—I will argue—it is right for a white person (or, more generally, a non-black person) to utter the word “joker,” and sometimes it is wrong for a black person to utter it.

The third principle, which is a hybrid of the first two principles, is that it is always wrong (i.e., never right) for a *white person* (or, more generally, a non-black person) to *use* the word “joker,” but never wrong (i.e., always right) for a *black person* to *mention* it. Once again, I will try to persuade you that this principle is incorrect. Sometimes—I will argue—it is right for a white person (or, more generally, a non-black person) to use the word “joker,” and sometimes it is wrong for a black person to mention it.

If all three of these principles are incorrect, as I believe they are, then the situation is considerably more complicated (or, to use the currently fashionable term, *nuanced*) than one might think. I believe that, in the end, we must abandon the search for a single principle (criterion) for distinguishing between those utterances of the word “joker” that are wrong and those that are right. No principle of which I am aware sorts acts in just the right way, intuitively speaking, which is to say that there are counterexamples to every principle. This does not mean that we must throw up our hands and say, “Anything goes,” for it may be that there is a plurality of morally relevant considerations rather than a single

principle (criterion). These considerations, once identified and clarified, will have to be assigned their proper weights prior to a verdict or judgment being rendered in the case at hand.

In developing this suggestion (of plurality), I draw upon the work of William David Ross, who famously held that there is no single characteristic (such as being *optimific*<sup>52</sup>) that makes right acts right and wrong acts wrong. What there are, he said,<sup>53</sup> are seven morally relevant considerations, which he called “prima facie duties.” Morality, in Ross’s view, is not algorithmic (mechanical); it requires judgment. Because of this, different people—equally intelligent, equally well-informed, equally conscientious—may (indeed, almost certainly *will*) come to different conclusions regarding the rightness of a given concrete act. This is not a matter for concern or regret. It is simply an acknowledgment that (i) human beings are not machines, (ii) morality is complicated, and (iii) moral judgment is (therefore) inescapable.

## 6.2. The Unacceptability of the First Two Positions

*i. King.* Let us begin our discussion with the first position. You will have noticed that those who hold this position are absolutists. They hold that it is *always* wrong (i.e., *never* right or permissible) to utter the word “joker.” Nothing could possibly justify it. Is this tenable? I suggest not. Consider a famous passage from Martin Luther’s King, Jr.’s “Letter from Birmingham Jail”:

We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jet-like speed toward gaining political independence, but we still creep at horse-and-buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging darts of segregation to say “Wait.” But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters with impunity; when you see the vast majority of your 20 million Negro brothers smothering in an air-tight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted as you seek to explain to your six-year-old daughter why she can’t go to the public amusement park that has just been advertised on television, and see tears welling up when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by unconsciously developing a bitterness toward white people; when you have to concoct an answer for a five-year-old son asking, “Daddy, why do white people treat colored people so mean?”; when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading “white” and “colored”; when your first name becomes “[joker],” your middle name becomes “boy” (however old you are) and your last name becomes “John,” and your wife and mother are never given the respected title “Mrs.”; when you are harried by day and

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<sup>52</sup> The word “optimific” means “[p]roductive of the best outcome.” Blackburn, *Oxford Dictionary of Philosophy*, 261.

<sup>53</sup> W. D. Ross, *The Right and the Good* (Indianapolis/Cambridge, MA: Hackett Publishing Company, 1988 [1930]), chap. II.

haunted by night by the fact that you are a Negro, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of “nobodiness”—then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into an abyss of injustice where they experience the bleakness of corroding despair. I hope, sirs, you can understand our legitimate and unavoidable impatience.<sup>54</sup>

A few paragraphs later, King pays tribute to some of the white individuals who sympathized with, chronicled, publicized, and assisted his movement:

I had hoped that the white moderate would see this need [for “creative extremists”]. Perhaps I was too optimistic; perhaps I expected too much. I suppose I should have realized that few members of the oppressor race can understand the deep groans and passionate yearnings of the oppressed race, and still fewer have the vision to see that injustice must be rooted out by strong, persistent and determined action. I am thankful, however, that some of our white brothers have grasped the meaning of this social revolution and committed themselves to it. They are still all too few in quantity, but they are big in quality. Some—such as Ralph McGill, Lillian Smith, Harry Golden, and James McBride Dabbs—have written about our struggle in eloquent and prophetic terms. Others have marched with us down nameless streets of the south. They have languished in filthy, roach-infested jails, suffering the abuse and brutality of policemen who view them as “dirty [joker] lovers.” Unlike so many of their moderate brothers and sisters, they have recognized the urgency of the moment and sensed the need for powerful “action” antidotes to combat the disease of segregation.<sup>55</sup>

These are the only two occurrences of the word “joker” in King’s letter. If it is always wrong to utter the word “joker,” as the first position maintains, then King acted wrongly on both occasions. This would be the case even though (i) King is mentioning the word rather than using it (specifically, King is *quoting* unnamed individuals who use the word); (ii) King is black; (iii) King’s motive in uttering the word is benign or benevolent rather than malevolent; and (iv) the consequences of King’s utterance of the word were (and were likely to be at the time of utterance) beneficial rather than detrimental, all things considered. (He was trying to convey to whites, especially Northern whites, what life is like for a black person in the South. His hope was that this consciousness-raising would lead to repeal or amendment of unjust laws.) I believe that this case serves as a counterexample to the first position. It shows that sometimes it is not wrong (i.e., that sometimes it is right or permissible) to utter the word “joker.”<sup>56</sup>

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<sup>54</sup> Martin Luther King, Jr., “Letter from Birmingham Jail,” *The Christian Century* 80 (12 June 1963): 767–73, at 768–69 (brackets added).

<sup>55</sup> *Ibid.*, 771 (first bracketed item added; all brackets added).

<sup>56</sup> Among those who hold this view is University of Texas law professor Sanford Levinson. According to Levinson, it is not merely permissible, but obligatory (a matter of duty), to utter (specifically, to *mention*) the word “joker” in a law-school classroom or courtroom. As he puts it, “there are circumstances in which running the risks of giving offense is inextricably connected with performing one’s role, whether as a lawyer, a professor of law, or ... a lecturer or writer about law.” Sanford Levinson, “The Pedagogy of the First Amendment: Why Teaching About Freedom of Speech Raises Unique (and Perhaps Insurmountable) Problems for Conscientious Teachers and Their Students,” *UCLA Law Review* 52, no. 5 (June 2005): 1359–91, at 1360 (ellipsis added). With regard to the word “joker” specifically, Levinson

ii. *Liebenguth*. Let us turn to the second position. Those who hold this position, like those who hold the first, are absolutists. They hold that it is *never* wrong (i.e., that it is *always* right or permissible) to utter the word “joker.” Is this tenable? As before, I suggest not. Recall the case of David Liebenguth, who uttered the words “fucking jokers” (twice) while in the presence of parking enforcement officer Michael McCargo. Here we have a white person, Liebenguth, using (not merely mentioning) the word “joker” in reference to a black person, McCargo. As we saw earlier, it is not implausible to view Liebenguth as performing a number of distinct speech acts through his utterances. Among these are (i) expressing hatred, animosity, or some other powerful negative emotion (an expressive use of language) and (ii) degrading McCargo (a declarative use). I suspect that most people who encounter the facts of this case (perhaps not all) judge Liebenguth’s behavior to be wrong, as I do.

I shall assume, for purposes of going forward, that you agree with me in rejecting the first and second positions on the moral permissibility of uttering the word “joker.” I have not, strictly speaking, *argued* (i.e., given reasons) for the falsity of the positions. What I *have* done is describe two cases in enough detail to engage your moral intuitions, or considered judgments. If you do not agree with me in rejecting the first and second positions, then you are not committed (logically) to accepting the third position. If, however, you agree with me in rejecting the first and second positions, then you are committed (logically) to accepting the third position, which holds that it is sometimes wrong (impermissible) and sometimes right (permissible) to utter the word “joker.”<sup>57</sup> Let us now explore some principles for distinguishing between those utterances of the word “joker” that are wrong and those that are right. For the sake of brevity, I discuss only three such principles, each of which, I believe, has some initial plausibility.

### 6.3. The First Principle

Earlier in the article, I suggested the following principle: It is always wrong (i.e., never right) to *use* the word “joker,” but never wrong (i.e., always right) to *mention* it. Let us take these propositions in turn. Is it always wrong to *use* the word “joker”? I suggest not.

i. *Good Obama*. Suppose that Barack Obama, who is half black<sup>58</sup> (or his wife, Michelle, who is black) greets an old friend, who is black. Obama, smiling broadly, and

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writes: “I believe that a professor generally should say all such words, not least because it is crucial to an understanding of what, precisely, makes their use offensive to some listeners or readers.” Ibid., 1385. Levinson, who is white, utters (mentions) the word “joker” several times in his article.

<sup>57</sup> An anonymous referee asks what I would say to “someone who does not share [my] intuition[s].” As I explain in the Appendix, the answer is “nothing.” I have tried to come up with examples about which most people, though perhaps not *all* people, share my intuitions. If a particular person does not share my intuitions, then I am at a loss as to what to say to him or her. An argument can be persuasive to some, many, or most people without being persuasive to all. Think of the article as being directed to those who share my (expressed) intuitions. In other words, think of the article as having an intended audience of less than all people. (Blaise Pascal did something similar when he tried to persuade backsliding Christians to return to the faith. Only those who reject the possibility of non-Christian gods could *possibly* be persuaded by his argument, for otherwise it succumbs to the Many-Gods Objection. Both arguments—mine and Pascal’s—are *ad hominem* rather than *ad omnes*. See Keith Burgess-Jackson, “Pascal’s Intended Audience, and Why It Matters,” *International Journal for Philosophy of Religion* (forthcoming).

<sup>58</sup> According to John McWhorter, “Obama qualifies as black” not “simply because of the color of his skin,” but “because he has embraced facets of being human that constitute black American culture.” John McWhorter, “Obama Is Culturally Black Because He Wants to Be,” *Time* (24 February 2016). McWhorter adds that, “at a certain point in Obama’s life, he signed on to cultural blackness. He did it so long ago that any notion of it as an act is too abstract to merit attention.” Ibid.

obviously delighted to see his friend after many years apart, says, ironically, “Hey, joker; how ya doin’?” This is how the two have greeted one another since their college days. They proceed to embrace. The word “joker” is being used here *endearingly* (to show affection) rather than *disparagingly* (to insult, belittle, or degrade). One of its functions is to promote solidarity between utterer and interlocutor. Who would say that it is wrong for Obama (either Barack or Michelle) to use the word in this way? I believe that it is perfectly acceptable (i.e., morally permissible) for a black person to use the word “joker” as a term of endearment—at least privately, and perhaps also in certain comparatively intimate public settings, such as a small gathering of friends. Later in this section, we will ask whether it is morally permissible for a *white* person to use the word “joker” in these circumstances.

*ii. Stone.* Let us turn to the second proposition. Is it always right to *mention* the word “joker”? Again, I suggest not. My counterexample this time comes from real life. Geoffrey Stone is a law professor at the University of Chicago, where he teaches a course on the First Amendment. According to a story published in *Inside Higher Ed*, Stone had for years been telling his students the following story:

[A] black student in one of his classes said the fighting-words doctrine [according to which fighting words are constitutionally unprotected speech] might be outdated. To make a point, a white student in the class then said, “That’s the dumbest idea I’ve ever heard, you stupid [N-word].” [T]he black student immediately lunged at the white student, illustrating that the doctrine was indeed still relevant.<sup>59</sup>

When Stone told this story to his students, he uttered the word “joker,” but he did not use it in our strict sense.<sup>60</sup> He mentioned it. (The reporter evidently replaced “joker” with “N-word.”) Stone’s motive, we can assume, was benign; it was to illustrate, for pedagogical purposes, an important legal doctrine.

Is there anything wrong with Stone’s utterance of the word? I think there is. If he had been quoting someone who used or mentioned the word, or if he had simply referred to the word in the course of a discussion of a legal case (for example, “The defendant called the officer ‘joker’”), I would say that he did nothing wrong. But in the context of the story that Stone told, mentioning the word is, arguably, offensive to the point of being morally objectionable. As one student put it, “[a]ny point [Stone] tried to make was completely obscured because both his story and act of retelling it were racist.”<sup>61</sup> What made the story and the retelling racist? The student explained:

They were racist because [Stone], as a white man, repeated a word used by white people to perpetuate the subjugation of black Americans for hundreds of years. He trivialized the word’s history and the lived experience of black students. He employed the word to highlight a white student’s reprehensible treatment of a black student. He lent credence to the false stereotype that black men are prone to violence. He primed black students through stereotype threat to learn less and perform worse.<sup>62</sup>

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<sup>59</sup> Colleen Flaherty, “First Amendment Scholar Geoffrey Stone, Who’s Previously Defended the Use of the N-Word in the Classroom, Has a Change of Mind,” *Inside Higher Ed* (8 March 2019) (bracketed item—“N-word”—in original; all other brackets added).

<sup>60</sup> The reporter, Colleen Flaherty, uses the word “use” repeatedly, when obviously she means “utter.” This is not a criticism. Philosophers often use the word “use” in a narrow or technical way, as I do in this article.

<sup>61</sup> Flaherty, “First Amendment Scholar” (brackets added).

<sup>62</sup> Quoted in *ibid.*, (brackets added).

The part that makes Stone's utterance of the word morally objectionable, in my judgment, is recounting or reenacting a (hypothetical?) confrontation between a white student and a black student. This would obviously unsettle or offend some of the students (perhaps not all) in Stone's class, and apparently it did. It's one thing dispassionately to *utter* the word "joker." It's quite another (it seems to me) to tell a story that involves *racial confrontation* and *heightened emotion*, especially when that story both *invokes and perpetuates an offensive racial stereotype*.

Just to be clear: Stone has every right to eschew utterance of the word "joker" in his law-school classes. According to the news report<sup>63</sup> from which I have been quoting, he decided, after meeting with offended students, that "he won't say [i.e., utter] it anymore."<sup>64</sup> For present purposes, the point is not whether Stone or any other professor, in or out of law school, has a *right* to utter the word; it is that *it is not always right to mention the word*. Mentioning the word in a context involving racial confrontation and heightened emotion is not just a bad idea, pedagogically speaking; it is—or so it seems to me to be—morally wrong. Because it is wrong, Stone did the right thing in deciding never again to tell the story.<sup>65</sup> Later in this section, we will ask whether it is morally impermissible for a *black* person to mention the word "joker" in these circumstances.

#### 6.4. The Second Principle

Our discussion of the first principle (of three) is complete. We have seen, first, that it is not always wrong to *use* the word "joker," and, second, that it is not always right to *mention* it. In other words, sometimes it is right to use the word (Good Obama) and sometimes it is wrong to mention it (Stone). The first principle must therefore be rejected, because

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<sup>63</sup> Ibid.

<sup>64</sup> It's not clear from the report how Stone will manage this. According to the reporter, "Stone isn't sure how he'll talk about slurs in his class going forward, when necessary. He doesn't like to say 'N-word' when it's clear the relevant content pertains to the actual word, he said. But he's confident he'll figure it out." Ibid. It occurs to me that Stone is both overgeneralizing and overreacting (to a particular incident). Uttering the word "joker" in the context of an offensive story is not the same as mentioning the word as part of a discussion of a legal case. After all, many legal opinions, including United States Supreme Court opinions, utter the word "joker." If the students are seeing the word on the printed page as they prepare for their lectures, what could be their objection to hearing it spoken (by the professor) in the classroom? From the fact that it is *sometimes* wrong to mention the word "joker," as in the case under discussion, it hardly follows that it is *always* wrong to mention the word "joker." So far as I know, Stone's friend and collaborator, UCLA law professor Eugene Volokh, continues to mention the word in *his* lectures. If Volokh were to tell Stone's story in his (Volokh's) classroom, then it would, by my lights, be wrong for him to do so.

<sup>65</sup> Stone is reported as saying, "I've decided not to use this example in class." Flaherty, "First Amendment Scholar." That leaves open the possibility that he will continue to *utter* the word in his classes. I say nothing about whether this is appropriate or morally permissible. My sole point is that it's not always right to mention the word "joker." It takes only one example to counter the proposition that it's always right to mention the word, and I believe that Stone's classroom story provides that example.

If I may be permitted a further comment, what would an absolute ban on utterance of the word "joker" (in or out of a classroom) signify? In other words, what would be implied by acceptance of the proposition that "it is wrong always, everywhere, and for any one" (W. K. Clifford, "The Ethics of Belief," *Contemporary Review* 29 [January 1877], 289–309, at 295) to *mention* the word "joker"? Would it not signify that blacks are thin-skinned, emotionally fragile, or constitutionally incapable of participating in the rough and tumble of law, medicine, academia, commerce, sport, the military, or any other arena in which they are likely to encounter the word? Would it not *assume* that blacks are especially susceptible to insult, offense, or fright; and, if so, how is that not stereotyping blacks? How is that not degrading them? How does that not set back the movement for black civil rights?

it does not sort cases in an intuitively acceptable way (at least to me, and I hope also to you).<sup>66</sup>

The second of the three principles concerns race. It says that it is always wrong (i.e., never right) for a *white person* (or, more generally, a non-black person) to utter the word “joker,” but never wrong (i.e., always right) for a *black person* to utter it. Let us take these propositions in turn, beginning with the first.

*i. Volokh.* Is it always wrong for a *white person* (or, more generally, a non-black person) to utter the word “joker”? I suggest not. I will use as my example a case involving UCLA law professor Eugene Volokh, a white man who was taken to task by some of his students, and ultimately by his dean, for uttering the word “joker” in the classroom as part of his lecture on the First Amendment. Volokh did not *use* the word (of course);<sup>67</sup> he *mentioned* it. He both talked about the word and quoted individuals who used or mentioned it. Volokh’s view is that “in class readings and in-class discussions (as well as in outside-class discussions), professors ought to mention what actually happens in a case or incident, without euphemism [e.g., ‘the n-word’] or expurgation [e.g., ‘n—’]; and students should feel free to do the same.”<sup>68</sup>

Volokh’s use of the word “ought” in this quotation is instructive. He is not arguing (merely) that the word “joker” (or other potentially offensive words) *may* be uttered in a classroom or other scholarly context; he is arguing for a stronger conclusion, namely, that they *ought* (all things considered?) to be uttered. Indeed, he goes further than this. He says that professors have a *duty* (his word) “to accurately present and discuss the facts of the world around us,”<sup>69</sup> including, importantly, facts that unsettle or offend. Proper instruction, in his view, *requires* utterance of the word “joker” when it is essential to understanding the case being discussed.<sup>70</sup>

I happen to share Volokh’s view about the obligatoriness of full and accurate quotation in scholarly contexts (keep in mind that my decision to use “joker” throughout this article is practical or instrumental rather than moral), but that is neither here nor there. I am not concerned (in this article, at least) to defend the stronger view. For present purposes, we can ignore Volokh’s claims of obligation or requirement. We can even ignore his claim that professors *ought* (all things considered?) “to mention what actually happens in a case or

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<sup>66</sup> I realize that not everyone will share my intuitions about the examples I discuss. Kennedy and Volokh, for example, endorse (“urge”) the following “categorical principle”: “any word can [i.e., may, morally] be quoted in a good-faith academic discussion of the facts.” Kennedy and Volokh, “The New Taboo,” 61. If by “quoted” Kennedy and Volokh mean “mentioned” (which includes, but is not limited to, quoting), then they would disagree with me that Stone’s utterance is wrong, for clearly he (Stone) *mentioned* the word (as opposed to using it), and nobody would dispute that his utterance occurred during a “good-faith academic discussion.” What makes Stone’s utterance wrong, in my view, is its *context*. Stone didn’t just quote someone who used or mentioned the word (although he did that); nor did he *talk about* the word, as by saying, “The word ‘joker’ has been held by courts to constitute fighting words.” He told a *story* of his own devising that involved racial confrontation, heightened emotion, and stereotyping. *That* (to repeat what I have been saying) is what makes his mention of the word wrong.

<sup>67</sup> “Professors certainly shouldn’t use epithets, racial or otherwise, to themselves insult people.” Eugene Volokh, “UCLA Law Dean Apologizes for My Having Accurately Quoted the Word ‘[Joker]’ in Discussing a Case,” *The Volokh Conspiracy* (14 April 2020).

<sup>68</sup> *Ibid.* (bracketed items added).

<sup>69</sup> *Ibid.*

<sup>70</sup> Volokh’s dean “issued a public apology to the UCLA Law community” (*ibid.*) for his having uttered the word “joker” in his (Volokh’s) classroom. Volokh has not himself apologized, for that would imply that he believes that he did something wrong. He denies that he did anything wrong. That Volokh is unrepentant is shown by the fact that he uttered the word “joker” 15 times in the article we have been discussing.

incident, without euphemism or expurgation.”<sup>71</sup> I cite this case for a weaker proposition, namely, that sometimes it is *right* (i.e., morally permissible) for a white person (or, more generally, a non-black person) to utter the word “joker.” In other words, I cite this case (Volokh) as a counterexample to the principle that it is always wrong (i.e., never right) for a *white person* (or, more generally, a non-black person) to utter the word “joker.” I assume that you agree with me that this constitutes a counterexample.<sup>72</sup>

ii. *Bad Obama*. Let us turn to the second proposition. Is it always right for a *black person* to utter the word “joker”? Again, I suggest not. Earlier, I used Barack Obama as my example of a black person who uses the word “joker” in an endearing way. I said that, intuitively speaking, it would be right for him to do so. Let us use Obama again as our example, but this time, imagine him using the word “joker” in a *disparaging* way. In fact, to make the example concrete, let us replace David Liebenguth (utterer of “fucking jokers”) with Barack Obama, leaving everything else about the situation as it is. I should point out that I have no reason to believe that Obama has ever uttered the word “joker,” much less *used* it; and I certainly have no reason to believe that he has used it in a disparaging way. But he *might* have, and it is instructive to ask about the ethics of his doing so if he had.

I submit that it would be as wrong for Obama to use the word in a disparaging way as it was for Liebenguth to use it in that way. In both cases, the intention is to belittle or degrade the hearer, McCargo. Why should it matter that the utterer is black? As for *why* Obama or some other black person might use this word disparagingly of a fellow black, perhaps it has something to do with social class. Obama, after all, has an elite education (Columbia University, Harvard Law School), cultivated tastes, and significant wealth, fame, and power. It is certainly *possible* that he might “look down” on other blacks and, when angry or frustrated, demean them. My intuition in such a case is that the act is wrong. If I am right about this, then sometimes it is wrong for a black person to utter the word “joker.”<sup>73</sup>

## 6.5. The Third Principle

Our discussion of the second principle (of three) is complete. We have seen, first, that it is not always *wrong* for a *white person* (or, more generally, a non-black person) to utter the word “joker,” and, second, that it is not always *right* for a *black person* to utter it. In other words, sometimes it is right for a white person to utter the word (Volokh) and sometimes it is wrong for a black person to utter it (Bad Obama). The second principle, like the first, must therefore be rejected, because it does not sort cases in an intuitively acceptable way (at least to me, and I hope also to you).

The third of the three principles is a hybrid of the first two. It says that it is always wrong (i.e., never right) for a *white person* (or, more generally, a non-black person) to *use*

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<sup>71</sup> Ibid.

<sup>72</sup> An anonymous referee asks whether a word other than “joker,” such as “joker” with the letter “i” replaced by the letter “u,” would suffice, in a classroom situation, to “capture much of the emotional content of the n-word.” Perhaps it would. As I explain in the text, however, my concern in this article is with what is morally *permissible*, not with what is morally obligatory or with what ought to be done, all things considered. My intuition is that a white professor (such as Volokh) who uses “joker” rather than the closely spelled variant acts rightly. It follows that using the closely spelled variant would also be morally permissible. I hope that I have not misunderstood the anonymous referee’s question.

<sup>73</sup> It will not do to say that Obama, who has a white mother, isn’t “really” black. See McWhorter, “Obama Is Culturally Black Because He Wants to Be,” for a discussion of why Obama is (i.e., counts as) black.



the word “joker,” but never wrong (i.e., always right) for a *black person* to *mention* it. Let us take these propositions in turn, beginning with the first.

*i. Ayers.* Is it always *wrong* for a *white person* (or, more generally, a non-black person) to *use* the word “joker”? I suggest not. Consider the following example. Bill Ayers, “founder of the Weather Underground [a self-described communist revolutionary group] in the 1960s”<sup>74</sup> and later a professor of education at the University of Illinois at Chicago, was at one time a neighbor of Barack Obama’s in fashionable Hyde Park, Chicago. In addition to being neighbors, they were fellow board members of the Chicago Annenberg Challenge (CAC), a philanthropic organization founded by Ayers in 1994 and dedicated to the reformation of Chicago public schools. “As CAC chairman [appointed, some say, with the approval of Ayers], Mr. Obama [lent] moral and financial support to Mr. Ayers and his radical circle.”<sup>75</sup> According to scholar and journalist Stanley Kurtz, “[t]he group [CAC] poured more than \$100 million into the hands of community organizers and radical education activists.”<sup>76</sup> When Obama ran for public office (the Illinois Senate) in 1995, he launched his campaign “at Mr. Ayers’s home.”<sup>77</sup> Although—possibly for political reasons—each man denies it, it is reasonable to conclude that they were, and remain, friends, political allies, and confidants. Ayers is white.

We saw earlier that it would be morally permissible for Obama, a black man, to use “joker” in an endearing way, to greet a long-time friend. May Ayers do the same? Before you answer this question, let me provide some context. Imagine that Ayers and Obama meet in a private setting after not seeing one another for several years. Ayers, smiling broadly, says, “Hey, joker; how ya doin’?” Obama smiles and embraces him. My intuition is that this use of “joker” is morally permissible. The only difference in the two cases—Good Obama and Ayers—is that Obama (the first utterer) is black and Ayers (the second utterer) white; but why should this be dispositive? What matters, it seems to me, is not the race of the speaker but the bond between the two men. In both cases, the word is being used endearingly rather than disparagingly. It is being used to promote solidarity between the two men, each of whom, we may presume, implicitly trusts the other. If I am right about this, then it is not always wrong for a white person (or, more generally, a non-black person) to use the word “joker.”

*ii. Kennedy.* Let us turn to the second proposition. Is it always *right* for a *black person* to *mention* the word “joker”? I submit not. Randall Kennedy is a law professor at Harvard University and author of the book *[Joker]: The Strange Career of a Troublesome Word* (2002).<sup>78</sup> He is black. Suppose Kennedy told (or retold) Geoffrey Stone’s story in his (Kennedy’s) law-school classroom. I said earlier that, intuitively, Stone’s act of telling the story is wrong. I am strongly inclined to say the same about Kennedy’s telling. For purposes of analysis, we are holding everything constant except the race of the speaker. Does that matter? Does it matter that Kennedy is black? I confess that it doesn’t matter to me (though it *may* matter in other cases). What matters are such things as the effect of the story on the students who hear it (they are likely to be embarrassed, unsettled, offended, even appalled or angry), the fact that it involves an emotional confrontation between a

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<sup>74</sup> Stanley Kurtz, “Obama and Ayers Pushed Radicalism on Schools,” *The Wall Street Journal* (23 September 2008) (bracketed item added).

<sup>75</sup> *Ibid.* (bracketed items added).

<sup>76</sup> *Ibid.* (bracketed item added).

<sup>77</sup> *Ibid.*

<sup>78</sup> Randall Kennedy, *[Joker]: The Strange Career of a Troublesome Word* (New York: Pantheon Books, 2002).

white student and a black student (rather than, say, a dispassionate discussion of a word that occurs in a judicial opinion), and the fact that it invokes and perpetuates an invidious stereotype of blacks (or black men in particular).

I fully understand that some readers of this article may have a contrary intuition. Some of you may intuit that it is wrong for *Stone* to tell the story, but *not* wrong for *Kennedy* to tell it. You would be placing weight—indeed, significant weight—on the race of the speaker. I, too, believe that race is a morally relevant consideration (as you will see); but it is only a consideration, and, as such, it can be outweighed by other considerations. In some cases, such as the case we are discussing (*Kennedy*), it *is* (or so it seems to me to be) outweighed. In the next section of the article, where I set out my pluralistic approach, I explain why the race of the utterer is morally relevant. What I resist is the idea that blacks may *always* mention the word “joker.” Sometimes, as in the case of *Kennedy*, it is *wrong* for a black person to mention the word. This is why I consider the case a counterexample to the third principle.

Our discussion of the third principle (of three) is complete. We have seen, first, that it is not always *wrong* for a *white person* (or, more generally, a non-black person) to *use* the word “joker,” and, second, that it is not always *right* for a *black person* to *mention* it. In other words, sometimes it is right for a white person to use the word (*Ayers*) and sometimes it is wrong for a black person to mention it (*Kennedy*). The third principle, like the first and second, must therefore be rejected, because it does not sort cases in an intuitively acceptable way (at least to me, and I hope also to you).

The following chart summarizes our conclusions (assuming that you have gone along with me to this point):

		Using “Joker”	Mentioning “Joker”
Non-Black Utterer	Right	<b>Ayers</b> (counterexample to “It is always wrong for a white person [or, more generally, a non-black person] to use the word ‘joker’”)	<b>Volokh</b> (counterexample to “It is always wrong for a white person [or, more generally, a non-black person] to utter the word ‘joker’”)
	Wrong	<b>Liebenguth</b> (counterexample to “It is never wrong to utter the word ‘joker’”)	<b>Stone</b> (counterexample to “It is never wrong to mention the word ‘joker’”)
Black Utterer	Right	<b>Good Obama</b> (counterexample to “It is always wrong to use the word ‘joker’”)	<b>King</b> (counterexample to “It is always wrong to utter the word ‘joker’”)
	Wrong	<b>Bad Obama</b> (counterexample to “It is never wrong for a black person to utter the word ‘joker’”)	<b>Kennedy</b> (counterexample to “It is never wrong for a black person to mention the word ‘joker’”)

For what it’s worth, my intuitions are strongest in the cases of *Liebenguth* and *King*. They are somewhat less strong in the cases of *Bad Obama* and *Volokh*. They are weakest (though not *weak*) in the cases of *Kennedy* and *Ayers*. They are somewhat less weak in the cases of *Stone* and *Good Obama*.

## 6.6. A Pluralistic Approach

Although I have not examined *all* possible principles for distinguishing between those utterances of the word “joker” that are morally permissible and those that are morally impermissible, I believe that I have done enough, in the three previous subsections of

this section of the article, to shift the burden of persuasion to those who believe that there *is* such a principle. In this, the remaining subsection, I sketch a pluralistic approach. According to the pluralistic approach, there is not just one thing that distinguishes between permissible and impermissible utterances. There are many things. These things I call, for convenience, “morally relevant considerations.” What follows is a list of considerations that seem to me to be *relevant* in determining whether a given utterance of “joker” is morally permissible:

1. *Use or mention?* *Ceteris paribus*,<sup>79</sup> it is worse (morally) to *use* the word “joker” than to *mention* it. Mentioning the word is talking about it, which *can* be offensive (as we have seen), but usually is not. For this reason, mentioning the word is presumptively right. *Using* the word, on the other hand, while not *always* wrong (as we have seen), is presumptively wrong, for its main use is as an epithet (in the narrow sense of the word, meaning “slur”). Presumptions, by their nature, are rebuttable.
2. *Race of utterer.* *Ceteris paribus*, it is worse (morally) for a non-black person (including a white person) to utter the word “joker” than for a black person to utter the word. This is because the word has a long history of being used as a slur *against blacks*. We might say that there is a presumption (perhaps a strong one) *against* utterance by a non-black person. Whether we go further than this and say that there is a presumption *in favor of* utterance by a black person (as opposed to there being no presumption at all in such a case) need not be decided here (although, near the end of this section, I assume, for the sake of discussion, that there *is* such a presumption). I should note that not everyone shares my view of the moral relevance of race. Randall Kennedy, for example, says that “[t]here is no compelling

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<sup>79</sup> This term is Latin for “other things being equal.” According to philosopher and lexicographer Robert M. Martin, it “is used in comparing two things while assuming they differ only in the one characteristic under consideration. For example, it could be said that, *ceteris paribus*, a simple theory is better than a complicated one; though if everything else is not equal—if, for example, the simpler theory has fewer true predictions—then it might not be better.” Martin, *Philosopher’s Dictionary*, 56 (italics in original).

This is as good a place as any to explain something that may strike certain readers as odd. Throughout my article, I provide definitions (usually in footnotes) of basic philosophical terms. I am well aware that my philosophical colleagues understand what these terms mean. The reason I provide the definitions is that I am writing not just for my philosophical colleagues (i.e., those with philosophical credentials), but for (i) graduate students, (ii) undergraduates, and (iii) intelligent, literate laypeople. What is the point of writing exclusively for a narrow audience of one’s peers? Just as judicial opinions can be written in plain English, with a minimum of jargon, so too can philosophical essays. I share the view of former federal appellate judge Richard A. Posner, who wrote:

What one is seeing in [Harvard law professor Richard] Fallon’s article [on theories of statutory interpretation], and in much other elite legal scholarship as well, is academic law becoming esoteric. We’ve seen this in other fields, such as literary criticism and philosophy. These were fields once inhabited by academics and nonacademics, such as F. R. Leavis and T. S. Eliot in literary criticism and William James and John Stuart Mill in philosophy, the first of each pair being the academic and the second the nonacademic. Moreover, whether academic or nonacademic, most literary criticism and most philosophical writing were accessible to and widely read by persons in other fields and indeed by many members of the general public.... At present, literary criticism and especially philosophy are for the most part jargon-ridden, technical, and inaccessible to persons in other fields.

Richard A. Posner, *Divergent Paths: The Academy and the Judiciary* (Cambridge, MA, and London: Harvard University Press, 2016), 43–44 (bracketed items and ellipsis added). Some philosophical jargon is, admittedly, necessary, because of the complexity of the ideas being expressed, but most of it, I submit, is *unnecessary*—and sometimes *worse* than unnecessary: counterproductive. Good writing is plain writing, and plain writing good writing. Philosophy can and should be written so that an intelligent, literate layperson can understand it.

justification for presuming that black usage of [joker] is permissible while white usage is objectionable.”<sup>80</sup>

3. *Antecedents and concomitants of utterance.* Speech acts, like other acts, are intentional, in that they are performed with a particular aim in mind. They are also motivated. The motive of an act is its spring or source; it is what explains its performance. Some acts are motivated by self-interest, others by fear, sympathy, guilt, or love. *Ceteris paribus*, it is worse (morally) for an utterance of “joker” to be motivated by malevolence (e.g., hatred, animosity, cruelty) than it is for an utterance to be motivated by benevolence (e.g., love, affection, kindness). As we have seen, one can utter the word “joker” endearingly (with the intent to endear oneself to the other—to promote interpersonal solidarity) or disparagingly (with the intent to insult, belittle, or degrade). The word can be used either literally or non-literally (e.g., sarcastically, ironically, figuratively, or metaphorically). While the motive or intention with which the word is uttered does not *determine* the act’s rightness, I submit that it is *relevant* to that determination. We might say that there is a presumption in favor of benevolent uses and against malevolent uses, or in favor of endearing uses and against disparaging uses.

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<sup>80</sup> Kennedy, “Who Can Say [Joker]?” 92 (bracketed item added). Kennedy’s view is stated more fully in the epigraph to this section of the article. His justification for rejecting a race-based presumption is as follows: “We ought to reject racial distinction-making ... in order to inculcate a habit for seeing people more carefully as distinctive, particular, sovereign individuals as opposed to predetermined agents or subjects of this or that racial group.” *Ibid.*, 92 (ellipsis added).

An anonymous referee for this journal asks me to explain why the race of the utterer is morally relevant. Doing so would require an article of its own, so the most I can do here is *sketch* an explanation. The race of the utterer is morally relevant because of the history of the word “joker.” This word was (and is) used by *whites* to demean *blacks*. It was not used by blacks (or any other racial group) to demean whites. There is an asymmetry in usage that makes it worse (I submit) for a white person to use the word than for a non-white person (including, particularly, a black person) to use the word. While I share Professor Kennedy’s desire to get beyond “racial distinction-making,” I fear that doing so too soon will leave in place a structure of—for lack of a better term—white privilege. If and when white privilege becomes a thing of the past, we can begin to see people as “distinctive, particular, sovereign individuals.” Until then, we must think (and conduct our affairs) in group terms, such as “blacks” and “whites.” Note that there are two mistakes, not just one, that we might make, as a society. The first is to become colorblind (so to speak) too soon (before racism and white privilege have been eradicated). The costs of this mistake will be borne disproportionately by blacks. The second is to become colorblind too late (after racism and white privilege have been eradicated). The costs of this mistake will be borne disproportionately by whites. With all due respect to Professor Kennedy, I think it is too soon to become colorblind with respect to uttering the word “joker.”

The same referee asked several probing questions about individuals who are neither white nor black. (I am thinking particularly of Hispanics and Asians.) For example: (i) “If there is a particular racial group that never used the n-word as a slur for black people, is it also more problematic for its members to use it than it is for a black person to do so? (assuming all else to be equal).” (ii) “Relatedly, would the use of the n-word by members of this group be less problematic than its use by white people, assuming all else to be equal?” My (tentative) answer to the first question is yes, for the reason that the members of the racial group in question have not, themselves, been demeaned by the word, as blacks have. My (tentative) answer to the second question is also yes, for the reason that whites, and not Hispanics or Asians, have been the primary users of the word to demean. The referee asks, finally, whether “the justificatory threshold for using the n-word [is] lower the darker the color of one’s [skin].” In other words, are the dark(er)-skinned more likely to be justified in using the word than the light(er)-skinned? Here I think the answer is no. The emphasis should be placed on what John McWhorter calls “cultural blackness,” not on skin color. See note 58. I wish I could say more about these matters, and will, perhaps, in future essays. My focus in the present essay has been the use of the word “joker” by whites and blacks. These are the central cases. Peripheral cases need further attention.

4. *Consequences of utterance.* Ceteris paribus, the worse the overall consequences of uttering the word “joker,” the more likely it is that the utterance (the act) is wrong. Some utterances of the word, as we have seen, have few or no bad consequences, in part because (i) only the speaker and hearer know of the utterance (i.e., the act is performed in private or in conditions of comparative privacy) and (ii) the hearer is, as a matter of fact, neither harmed nor offended by the utterance. Good Obama and Ayers fall into this category. If anything, their uses of the word “joker” made the world a better place, not a worse place. Some utterances of the word, as we have seen, have many bad consequences, some of them serious. Liebiguth’s use of “joker” not only “shocked and personally offended”<sup>81</sup> McCargo; it made an eyewitness “nervous and upset.”<sup>82</sup> Many people who hear the word “joker” being used are frightened by it, thinking that it will precipitate violence. The rightness or wrongness of uttering the word “joker” therefore depends, as least in part, on its consequences (as an act). If we wish to cast this consideration in terms of presumptions, we might say that uttering the word “joker” to bring about *good* consequences is presumptively right, while uttering the word “joker” to bring about *bad* consequences is presumptively wrong.
5. *Context of utterance.* Ceteris paribus, it is worse (morally) to utter the word “joker” outside of a professional, scholarly, or pedagogical context than it is to utter it *in* such a context. Judges, lawyers, witnesses, jurors, police officers, bailiffs, stenographers, and other participants in (or observers of) the legal process must be prepared to hear racial and other epithets (such as “joker”) if they are to understand the facts of a case.<sup>83</sup> Students in a history course must be confronted with ugly language if they are to understand the past, for that language, regrettably, is part of the past. Linguistics and philosophy students (in courses such as philosophy of language) must talk about epithets as well as euphemisms and other features of language and language use. Lexicographers must mention (talk about) words in order to advise readers of their origin, meaning, and uses, even if those uses are (to some) unsettling or offensive. All of these are legitimate (i.e., morally defensible) reasons to mention the word “joker” (though not, of course, to *use* it). For these reasons, there is, or should be, a presumption in favor of uttering the word “joker” in professional, scholarly, and pedagogical contexts. (That is to say, it should be presumed—subject to rebuttal—that a given utterance in any of these contexts is morally permissible.) Whether there is, or should be, a similar presumption in other contexts (such as art, comedy, and entertainment) is a matter about which reasonable people may disagree.

That completes my catalog of morally relevant considerations. If this article were not already overly long, I would bring each of the five morally relevant considerations to bear on each of the eight examples discussed earlier. I believe that when this is done (I leave

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<sup>81</sup> *State v. Liebiguth*, 691.

<sup>82</sup> *Ibid.*, 692.

<sup>83</sup> Law professors Randall Kennedy and Eugene Volokh explain: “We think that the way that courts routinely handle the epithets [such as “joker”] is correct and that law schools should deal with the facts of life with at least an equivalent level of directness. We should certainly reject a rule that words that are routinely mentioned in courtrooms, opinions, and briefs are taboo in legal academic settings. Promulgating such a norm would be wrongfully repressive regardless of its professional consequences for students. But promulgating such a norm would also misprepare law students for the profession that they will shortly enter.” Kennedy and Volokh, “The New Taboo,” 33 (bracketed item added).

it as an exercise for the reader), the pluralistic approach will be shown to coincide with, and therefore to provide rational support for, the reader's intuitions about the examples.<sup>84</sup>

## 6.7. Reasoning about Cases

I have argued that, when it comes to determining whether a given utterance of the word "joker" is morally permissible, there are several (specifically, five) relevant considerations. Suppose someone objects to my analysis by saying the following: "Why is Good Obama allowed to use the word 'joker,' but Liebenguth not? In other words, why is it morally *permissible* for Good Obama to use the word 'joker,' but morally *impermissible* for Liebenguth to do so?"

The answer is that, morally speaking, the cases are not on a par with one another. Though both cases involve *use* of the word, rather than mention of it (they have that in common), there are morally relevant differences between them. First, Obama is black and Liebenguth white. We saw the moral relevance of this earlier. Second, the antecedents and concomitants of utterance differ. Good Obama uses the term endearingly, to promote solidarity between himself and his black friend. Liebenguth uses the term disparagingly, to insult, belittle, and degrade McCargo. Good Obama is motivated by love, affection, kindness, or some other benevolent emotion (or mental state). Liebenguth is motivated by hatred, animosity, cruelty, or some other malevolent emotion (or mental state). Third, the consequences of the utterance differ (or are likely to differ). Good Obama's utterance promotes (or is likely to promote) happiness and good feeling, while Liebenguth's utterance produces (or is likely to produce) psychic pain and discomfort.

In order to reason validly from one case to another, the cases must be alike in all morally relevant respects, i.e., there must be *no morally relevant difference* between the cases. The form of a valid deductive analogical argument (not to be confused with an *inductive* analogical argument<sup>85</sup>) is as follows:

1. There is no morally relevant difference between object  $O_1$  and object  $O_2$  (i.e., objects  $O_1$  and  $O_2$  are alike in *all* morally relevant respects).
2. Object  $O_1$  has moral property P. Therefore,

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<sup>84</sup> In other words, the approach and the intuitions (i.e., the considered judgments) are in reflective equilibrium—"[a] state in which all one's thoughts about a topic fit together; in which there are no loose ends or recalcitrant elements that do not cohere with an overall position." Blackburn, *Oxford Dictionary of Philosophy*, 311. Once reflective equilibrium is *achieved*, it becomes normative: it may then be used for guidance in cases other than those that brought it about.

<sup>85</sup> An inductive analogical argument has the following form:

1. There are relevant similarities between object  $O_1$  and object  $O_2$  (relevant, that is, to possession of property P).
2. Object  $O_1$  has property P.

Therefore, *probably*,

3. Object  $O_2$  has property P (from 1 and 2).

The strength of an inductive analogical argument (strength is a matter of degree) depends on (i) how many relevant similarities there are between object  $O_1$  and object  $O_2$  and (ii) how many relevant dissimilarities there are between object  $O_1$  and object  $O_2$ . The greater the number of relevant similarities, the stronger the argument. The greater the number of relevant dissimilarities, the weaker the argument. *Irrelevant* similarities or dissimilarities have no bearing on the strength of the argument.

3. Object O<sub>2</sub> has moral property P (from 1 and 2).

Because this argument form is valid (meaning truth-preserving), there are only three rational responses to it (or to an instance of it): (i) reject the first premise (by showing that there is, in fact, a morally relevant difference between the two objects); (ii) reject the second premise; and (iii) accept the conclusion. If we instantiate this argument form by filling it out with the facts of the two cases under consideration (Good Obama and Liebenguth), we get the following argument (which is also valid, since any argument that has a valid form is a valid argument):

1. There is no morally relevant difference between Good Obama's utterance of "joker" and Liebenguth's utterance of "joker" (i.e., Good Obama's utterance and Liebenguth's utterance are alike in *all* morally relevant respects).
2. Good Obama's utterance of "joker" is morally permissible. Therefore,
3. Liebenguth's utterance of "joker" is morally permissible (from 1 and 2).

The second premise of this argument is true (or so I have been assuming since we first discussed it), but the first premise is, as we have seen, false, since (i) the races of the two utterers differ and (ii) race (I have argued, or more properly suggested) is a morally relevant consideration. The argument is therefore unsound. Acceptance of its second premise does not, therefore, logically commit one to accepting its conclusion.

Now consider a second example. We saw earlier that it is morally permissible for Volokh to mention the word "joker" in his law-school classroom. Let us replace Volokh with another white law-school professor, say, Geoffrey Stone, and call the resulting example "Stone\*" to distinguish it from the original example called "Stone." If we hold everything else constant, then we may infer, validly, that it is morally permissible for Stone\* to mention the word "joker" in *his* law-school classroom. The argument goes as follows:

1. There is no morally relevant difference between Volokh's utterance of "joker" and Stone\*'s utterance of "joker" (i.e., Volokh's utterance and Stone\*'s utterance are alike in *all* morally relevant respects).
2. Volokh's utterance of "joker" is morally permissible. Therefore,
3. Stone\*'s utterance of "joker" is morally permissible (from 1 and 2).

This argument, like the previous one, is valid, but, unlike the previous one, it is sound. Both of its premises are true. Acceptance of its premises therefore commits one to accepting its conclusion.

Now consider a third example. Let us replace Volokh with a *black* law-school professor, say, Randall Kennedy, and call the resulting example "Kennedy\*" to distinguish it from the original example called "Kennedy." If we hold everything else constant, then we may infer, validly, that it is morally permissible for Kennedy\* to mention the word "joker" in his law-school classroom. But notice that we have introduced a morally relevant *difference* between the cases. The difference is that Volokh is white and Kennedy black. It might seem that this difference prevents us from using the argument form that we have been using, for the first premise of *that* argument (involving Volokh and Kennedy\*) is now false. But it's false only in a technical sense, for the morally relevant difference that we have introduced (replacing Volokh with Kennedy\*) militates *in favor of* moral permissibility. We would express this as follows: "If Volokh's utterance is morally permissible (premise 2),

then, *a fortiori*,<sup>86</sup> Kennedy's utterance is morally permissible" (conclusion). The first premise of the argument, in other words, while false (for there *is* a morally relevant difference—namely, race—between the cases), is not false in a way that destroys the soundness of the argument (for the morally relevant difference *supports*, rather than *undermines*, the conclusion).

The point of these examples is to show *that* (and *why*) details matter. Because details matter, we must be careful in drawing inferences from one case to another. Doing so is permitted (logically speaking) only when (i) there is no morally relevant difference between the cases or (ii) there *is* a morally relevant difference, but it militates *in favor of* (or, in a particular case, *against*) moral permissibility. Thus:

- Given a presumption (even a weak one) *against* utterance by a non-black person (see Section 6.6, point 2), if it is morally permissible for a non-black person (including a white person) to utter the word "joker" in a particular situation, as in the cases of Volokh and Ayers, then, *a fortiori*, it is morally permissible for a black person to utter it in that situation.
- Given a presumption (even a weak one) *in favor of* utterance by a black person (see Section 6.6, point 2), if it is morally impermissible for a black person to utter the word "joker" in a particular situation, as in the cases of Bad Obama and Kennedy, then, *a fortiori*, it is morally impermissible for a non-black person (including a white person) to utter it in that situation.

## 7. Conclusion

We are well aware that racism is a powerful force in American life that appears in many guises, some lethal. We believe that opposing racism is imperative, and that vigilance is essential. We also believe, however, that developing a capacity for making important distinctions is a valuable skill and a fundamental goal of education. That is why we insist on recognizing the gulf that separates using slurs as insults from quoting or mentioning them as part of an educational venture.<sup>87</sup>

The philosopher Judith Jarvis Thomson once said, while discussing abortion, that "there are cases and cases, and the details make a difference."<sup>88</sup> This is as true in the context of uttering the word "joker" as it is in the context of aborting a pregnancy. Whether a particular utterance of "joker" is morally permissible depends, I have argued, on the details of the case. I have shown that no moral principle (at least any of which I am aware) sorts cases in just the right way, with all and only those cases that *are* right (intuitively) being *classified* as right by the principle. The alternative to a principled (monistic) approach is a non-principled (pluralistic) approach.<sup>89</sup> This approach involves identifying (and clarifying)

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<sup>86</sup> This term is Latin for "from the stronger." It is a "[p]hrase used for 'all the more' or 'even more so': if all donkeys bray, then *a fortiori* all young donkeys bray." Blackburn, *Oxford Dictionary of Philosophy*, 9 (italics in original).

<sup>87</sup> Randall Kennedy and Eugene Volokh, "The Case for Quoting the N-Word in University Classrooms," *The Washington Post* (13 May 2021).

<sup>88</sup> Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (Fall 1971): 47–66, at 58.

<sup>89</sup> "Non-principled" does not mean "unprincipled," which is a synonym for "unscrupulous," which means lacking moral integrity. *Merriam-Webster.com*, accessed 26 February 2022 <https://www.merriam-webster.com/dictionary/unprincipled>. Compare "non-voluntary" and "involuntary," "non-responsible" and "irresponsible."



morally relevant considerations, each of which is brought to bear on the situation at hand. The person using this approach, or method, must assign to each morally relevant consideration its proper weight, after which a verdict or judgment is rendered. Sometimes it will transpire that the act in question is morally permissible. At other times, it will transpire that the act in question is morally impermissible.

I have identified (and clarified) five morally relevant considerations. I have also explained (albeit briefly) *why* each consideration is morally relevant. It may be that there are morally relevant considerations that I have (inadvertently) omitted. If so, I welcome supplementation. It may also be that I have identified as morally relevant a consideration that is not, in fact, morally relevant. If so, I welcome criticism. An approach or method can be correct even if some of its details are incorrect, or even if it is incomplete. William David Ross, for example, wrote that there are seven “prima facie duties.”<sup>90</sup> He admitted<sup>91</sup> that he may be wrong about the number. Perhaps there are six prima facie duties, or eight, or some other number. What Ross insisted on—or rather, what he *argued*—is that his pluralistic approach is the correct one. I make a similar claim for *my* pluralistic approach to the moral permissibility of uttering the word “joker.” Again, if you believe that something I consider morally relevant is not morally relevant (a false positive), or if you believe that something I have omitted belongs on my list (a false negative), please let me know, either through correspondence or through published criticism (preferably the latter, since others can then enter the conversation).

As is often the case in philosophy (as well as in life generally), things are not as simple as they appear with regard to the word “joker.” It is sometimes said that the word is so offensive—so “filthy, dirty, and nasty,” as Christopher Darden might have put it (see footnote 1 and accompanying text)—that it *should* not, indeed *must* not, be uttered. This is not just unrealistic; it is facile and unacceptable. The word, as I have tried to show in this article, has legitimate functions, primarily in professional, scholarly, or pedagogical contexts, but also, surprisingly, in interpersonal relations. Use of the word can build solidarity among oppressed or disadvantaged individuals; it can—and sometimes does—function as a term of endearment, rather than as a term of disparagement; and it can convey kindness, affection, and familiarity rather than cruelty, antipathy, and rejection. Banishing the word from our vocabulary is tantamount to throwing the baby out with the bathwater.<sup>92</sup>

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<sup>90</sup> Those who are familiar with Ross’s work know that he listed six (not seven) prima facie duties. But the first of his six duties resolves itself into two kinds, which makes for a total of seven. The duties, in order, are fidelity, reparation, gratitude, justice, beneficence, self-improvement, and non-maleficence. (These are Ross’s names.) See Ross, *The Right and the Good*, 21. Ross apologizes for his use of the phrase “prima facie duty,” which he says has unfortunate associations or “suggestions” (Ibid., 20), but he says that he can’t think of a term “which fully meets the case” (Ibid.). One wonders why he didn’t consider “presumptive duty,” for that would appear to capture his intended meaning. (As we saw earlier—in the text of the present article—presumptions, by their nature, are rebuttable.) There is, according to Ross, a presumptive duty to be faithful, i.e., to keep one’s commitments, including implicit commitments to refrain from lying (fidelity), to rectify one’s wrongs (reparation), to repay kindnesses (gratitude), to give others their due (justice), to do good for others (beneficence), to perfect oneself (self-improvement), and to refrain from harming others (non-maleficence). The reader will note that in Section 6.6 of the present article, I formulated my five morally relevant considerations in terms of presumptions.

<sup>91</sup> Ibid.

<sup>92</sup> Jennifer Speake glosses this proverb as “Beware of losing something valuable in your haste to get rid of things that are not wanted.” Jennifer Speake, ed., *Oxford Dictionary of Proverbs*, 6th ed. (New York: Oxford University Press, 2015), 318.

The solution to the problem of unacceptable utterance of the word “joker” is not banishment of the word (how would that even work?) but education of those who deploy it. People need to be taught to think clearly and carefully about (i) the difference between use and mention (the latter of which includes, but is not limited to, quotation), (ii) the difference between a black person using or mentioning the word and a non-black person using or mentioning the word, (iii) the relevance of context to moral judgment, and (iv) the moral importance of intention or motivation. There is all the difference in the world (or so I have argued) between using a word and talking about it, between using a word and quoting someone who uses or mentions it, between using the word “joker” endearingly and using it disparagingly, between using the word “joker” to uplift or consolidate and using it to diminish or dispirit. I hope this article goes some way toward making the world a better place for all. If it does so, then it will, incidentally, show the practical value of philosophy.

## Appendix

[I]t is no part of the professional business of moral philosophers to tell people what they ought or ought not to do or to exhort them to do their duty. Moral philosophers, as such, have no special information, not available to the general public, about what is right and what is wrong; nor have they any call to undertake those hortatory functions which are so adequately performed by clergymen, politicians, leader-writers, and wireless loudspeakers. But it *is* the function of a moral philosopher to reflect on the moral concepts and beliefs which he or others have; to try to analyse them and draw distinctions and clear up confusions in connection with them; and to see how they are inter-related and whether they can be arranged in a coherent system. <sup>93</sup>

I make a number of moral judgments in this article. Most of them express intuitions that I have about particular cases—about the rightness or wrongness of particular utterances of the word “joker.” The reader may wonder what weight, if any, to give to these judgments. In particular, the reader may wonder whether the fact that I am a credentialed philosopher (PhD, 1989, The University of Arizona) makes me any kind of expert (or authority) on moral matters, someone to whom he or she, *not* being expert, should (or must) defer. After all, the word “philosophy” derives from the Greek word “philosophia,” which means “love of wisdom.” Does that not make me *wise*, or at least a *lover* of wisdom, and isn’t it foolish to ignore what the wise (or lovers of wisdom) have to say?

I hate to be a killjoy, but I am not an expert on moral matters. (That is to say, I have no “moral expertise.”) Yes, I am a philosopher (by training and profession), and yes, I specialize in ethics (understood as the philosophical study of morality); but while these facts about me may confer technical (i.e., analytical or conceptual) expertise on me, they do not, either separately or together, certify my opinions or judgments on substantive moral matters as correct, or even as presumptively correct. My own view, which I will not argue for here, is that *there are no moral experts*. Nobody, therefore, need defer to anyone else (including me) on substantive moral matters, simply because that other has philosophical training or expertise.

I share the view of Peter Winch, who, half a century ago, said that “philosophy can no more show a man what he should attach importance to than geometry can show a

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<sup>93</sup> C. D. Broad, “Conscience and Conscientious Action,” *Philosophy* 15, no. 58 (April 1940): 115–30, at 115 (italics in original).

man where he should stand.”<sup>94</sup> To grasp what Winch is saying, suppose that a particular person, who happens to be a philosopher, constructs a deductive argument, the first premise of which is a value judgment, the second premise of which is a factual claim, and the conclusion of which is a value judgment. (Hume’s Law<sup>95</sup> says that every valid argument that has a value judgment as its conclusion has—*must* have—at least one value judgment as a premise. This is a special case of a more general proposition: “There is no way that deductively valid inference could reach a conclusion that mentions a new concept—that is, a concept that is not mentioned in the premises.”<sup>96</sup>) Whatever else the arguer is doing in making this argument, he or she is claiming that the following three propositions are logically inconsistent (meaning that they cannot all be true, from which it follows that at least one is false):

1. The first premise of the argument (the value judgment) is true.
2. The second premise of the argument (the factual claim) is true.
3. The conclusion of the argument (a value judgment) is false.

If the arguer is correct that these propositions are logically inconsistent (i.e., if the arguer is correct that the argument is valid), then every rational person, *including the arguer*, must reject at least one of them. The arguer rejects the third proposition. He or she believes that the conclusion is *true*. But why should this be a reason for *me*, the interlocutor, to follow suit? I may, without irrationality, reject the first proposition. I may, without irrationality, reject the second proposition. The fact that the arguer is a *philosopher* goes no way toward showing *which* of the three propositions should be rejected.

A philosopher’s expertise is technical rather than substantive. It consists in showing that a proposition (of the three in our example) must be rejected (on pain of irrationality). More generally, it consists in showing which propositions do, and which do not, entail which other propositions.<sup>97</sup> When I say that philosophers, as such, lack moral expertise, I mean that their knowledge and skill regarding logical relations between propositions confers no advantage on them when it comes to substantive moral matters. (I go further than this, of course, when I say that *there are no moral experts*, but for the moment I am addressing those who believe that *philosophers*, as such, possess moral expertise.)

Let me pose a question (a serious one) for those who believe that philosophers, *qua* philosophers, possess moral expertise. Where do they get it? In which graduate-school course, specifically? I learned a lot in my graduate-school courses, both at Wayne State University (where I was a law student as well as a graduate student) and at the University of Arizona, but I learned nothing about what is good, right, just, or beautiful. As far as I can tell, I came out of graduate school with the same values that I had going in. (If my values changed at all during my graduate studies, the change had nothing to do with my studies.) This suggests that the purpose of graduate study in philosophy is something *other* than the acquisition of substantive moral knowledge—knowledge about the good, the right, the just, or the beautiful. I submit that the purpose of graduate study in philosophy (which

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<sup>94</sup> Peter Winch, *Moral Integrity*, Inaugural Lecture in the Chair of Philosophy Delivered at King’s College London 9 May 1968 (Oxford: Basil Blackwell, 1968), 25. See also the epigraph to this section, by C. D. Broad.

<sup>95</sup> See, e.g., Blackburn, *Oxford Dictionary of Philosophy*, 173.

<sup>96</sup> Hans Halvorson, *How Logic Works: A User’s Guide* (Princeton & Oxford: Princeton University Press, 2020), 135.

<sup>97</sup> Consistency is reducible to entailment. To say that proposition p is *consistent* with proposition q is to say that p does not entail not-q. To say that proposition p is *inconsistent* with proposition q is to say that p entails not-q.

culminates in the conferral of academic credentials) is the acquisition of *technical* skills (the main one being conceptual analysis).

Throughout this article, I have appealed to the presumed values, beliefs, judgments, and intuitions of my readers (you!) to try to persuade you (or remind you) that certain utterances of the word “joker” are right and others wrong. If you do not share my intuitions, then you will not be persuaded to reject the principles to which they are put forward as counterexamples.

This is not cause for regret. No argument can convince everyone, for the simple reason that no argument (at least none of which I am aware) has premises that everyone accepts. If you do not accept my premises, then my argument gets no grip on you; and if my argument gets no grip on you, then it cannot possibly persuade you. You may, of course, continue reading my article in order to see what else I have to say, or where I go from there, but, *ex hypothesi*, your mind (and behavior) will not be changed as a result. Therefore, unless you value understanding for its own sake, you may as well find something else to do with your time. As Peter Singer once said, in another context, “[t]hose who disagree [with his assumption that suffering and death from lack of food, shelter, and medical care are bad] need read no further.”<sup>98</sup>

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<sup>98</sup> Peter Singer, “Famine, Affluence, and Morality,” *Philosophy & Public Affairs* 1, no. 3 (Spring 1972): 229–43, at 231.