

1-2006

# Review of: License to Harass: Law, Hierarchy, and Offensive Public Speech

Susan Fineran

*University of Southern Maine, sfineran@maine.edu*

Follow this and additional works at: <http://digitalcommons.usm.maine.edu/swo>



Part of the [Social Work Commons](#)

---

## Recommended Citation

License to Harass: Law, Hierarchy, and Offensive Public Speech by Laura Beth Nielsen License to Harass: Law, Hierarchy, and Offensive Public Speech by Laura Beth Nielsen Review by: Susan Fineran *American Journal of Sociology*, Vol. 111, No. 4 (January 2006), pp. 1255-1257 Article DOI: 10.1086/503006

This Book Review is brought to you for free and open access by USM Digital Commons. It has been accepted for inclusion in School of Social Work by an authorized administrator of USM Digital Commons. For more information, please contact [jessica.c.hovey@maine.edu](mailto:jessica.c.hovey@maine.edu).

Baker concludes there is little evidence for a crisis of values. Cross-culturally, the United States (with Ireland) is the most traditional of economically advanced democracies. Historically, American traditionalism has not changed a bit. And though its approval of self-expression is substantial and has increased, it has increased no more than that of scores of comparable societies. However, it is important to note that the United States is virtually unique in its simultaneous commitment to tradition and self-expression, and that these two commitments themselves create conflicts and contradictions.

But, Baker argues, there is a level of value analysis required that goes deeper than the level at which the World Values Survey is pitched. He calls this the level of “moral visions.” And at this level, there *has* been an increase in polarization in the United States in recent years. The particular moral visions being contested are “absolutism” and “relativism.” Between 1981 and 1995, the proportion of “absolutists” in the United States increased from one-third to one-half across age, income, class, and racial groups. So the United States is now split down the middle. Baker is at pains to point out that there is plenty of slippage between moral visions and moral values, so that people with different visions can have the same values (though presumably with different justifications). Nonetheless, the dispute about moral visions takes its toll.

Baker suggests that differences in moral vision are especially significant in the United States, because unlike other nations, which he calls “birth-right nations,” that are built on common ancestry, history, language, customs, religion, and the like, the United States is built on common ideas. So a cultural disagreement about these ideas represents a threat to national identity in the United States that it would not in other societies. What this means is that people in the United States are engaged in a high-stakes struggle, both between and within individuals, to reconcile absolutism with relativism—tradition with self-expression. It is the salience of this struggle, both within and between us, that gives rise to the sense of moral crisis, that induces us to focus on differences and ignore similarities.

This review has only scratched the surface of this deeply provocative book. It raises many questions for further investigation, and it will reward careful study.

*License to Harass: Law, Hierarchy, and Offensive Public Speech.* By Laura Beth Nielsen. Princeton, N.J.: Princeton University Press, 2005. Pp. 225. \$35.00.

Susan Fineran  
*University of Southern Maine*

In her book *License to Harass: Law, Hierarchy, and Offensive Public Speech*, Laura Beth Nielsen provides a provocative overview of offensive

public speech and its complex relationship to the First Amendment right of free speech. This book gives voice to ordinary citizens, who describe going about their everyday routines amid a relentless background noise of racism and sexism. Nielsen sets out to answer the question of why our society continues to afford constitutional protection to public speech that is racist, sexist, and elitist.

For sociologists, social workers, psychologists, educators, and lawyers, this book provides a unique overview of public speech, including the inconsistent application of First Amendment rights. Using a sociolegal investigation of offensive public speech, Nielsen explores the relationship between the legal consciousness of ordinary citizens, the judicial treatment of offensive public speech, and the racial and gender hierarchies that offensive speech reinforces.

Analyzing data from field observations and in-depth interviews with 100 adults regarding their experiences with offensive public speech, the author finds both expected and unexpected agreement among three disparate groups: white men, white women, and people of color. With regard to the legal regulation of offensive speech, white men disfavor regulation based on First Amendment values, while African-American males disfavor regulation based on mistrust of the legal system, and women opposed regulation because they felt it defined them as victims and would be impractical to enforce. When questioned about racist comments in public, people of color were less likely to report that race-related comments were a social problem than were whites.

The book is organized into seven chapters and an appendix that contains a description of the research design and survey instrument. The first two chapters of the book provide a concise overview of offensive public speech between strangers in public places and the author's logic behind comparing begging, sexually suggestive speech, and racist speech. The examination of begging was critical for the inclusion of white men as a group, since that is the major form of unsolicited public speech they experience. Generally, people did not find begging to be offensive public speech unless it was unusually aggressive. However, begging is the most regulated of the three types of offensive speech, suggesting that the law of free speech is biased against the poor.

Chapters 3–6 contain the empirical results and analysis of the study. Chapter 3 reports on the frequencies people of different races, genders, and classes experience offensive public speech and illustrates that those who are not targeted based on race, class, or sex underestimate the frequency of those interactions for others. In addition, numerous examples of street harassment and the harm it inflicts are delineated. Chapter 4 probes how people understand offensive speech and whether they define it as a public social problem or a private trouble and whether the law should intervene to remedy these problems. In chapter 5, four paradigms that people use in talking about offensive speech and its legal regulation are outlined and discussed, while chapter 6 explores reactions and re-

sponses to offensive public speech, including themes of resistance. Nielsen concludes her book with a discussion of the major findings and commentary on whether the law is the proper mechanism for dealing with the issue of offensive public speech.

This book provided painful-to-read first-person descriptions of offensive public speech that certainly contribute to the need for raising this issue for public debate. One criticism of the book is that although it clearly defines the problem, I was left wishing for one more chapter that discussed strategies (legal or otherwise) of how we might use this information in order to start the revolution to “take back the streets.” Nielsen did mention in her book that after an incident in June 2000 in New York City’s Central Park, in which hundreds of men assaulted, stripped, and fondled over 56 women, that a grassroots program called the Street Harassment Project was developed. A premise of the project is that “verbal street harassment often becomes assault” (p. 177). However, Nielsen noted that “the group does not seem to have an official position on the legal regulation of speech in and of itself” (p. 177). Unfortunately, Nielsen leaves us with no remedy for offensive public speech. She states “law is one of many institutions and social forces that provides justification for allowing such speech. Law legitimates, rather than condemns, offensive public speech” (p. 176).

An overall strength of the book is the very clear description of the legal cases supporting free speech and Nielsen’s organized way of presenting complex legal arguments that have shaped our understanding of this important right. The legal content was somewhat repetitive from chapter to chapter, but for a reader who is not familiar with the legal context this could be a strength, although professionals with a legal background may find it a drawback. To this end the author has written a compelling text that not only highlights the problem of offensive public speech experienced daily by ordinary citizens but broadens our understanding of this noxious issue.

*Trauma and the Memory of Politics*. By Jenny Edkins. New York: Cambridge University Press, 2003. Pp. xvii + 265. \$65.00 (cloth); \$23.00 (paper).

Arthur G. Neal  
*Portland State University*

*Trauma and the Memory of Politics* deals with the political dimensions of traumatic memories by drawing upon case studies from World War I, Vietnam, the Holocaust, Kosovo, and September 11. It is not clear why these specific traumas were selected for analysis, rather than any of the other major traumas of the past 100 years. Jenny Edkins’s discussion includes such formal practices of memory as memorials, museums, and remembrance ceremonies and such informal practices as bearing witness and diagnosis of posttraumatic stress disorder (PTSD).