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Imus' Free-Speech Rights Were Not Violated

by Jacob G. Hornberger

Contrary to what some people are suggesting, the firing of Don Imus for his racist comments about the Rutgers University women's basketball team did not constitute censorship and it did not violate Imus' freedom of speech. Instead, the controversy revolved solely around the principles of private property, freedom of contract, and economic liberty.

Censorship and violation of freedom of speech occur only when government, not private individuals, suppresses speech. The true test of a free society, with respect to speech, is not whether people are free to publish acceptable and pleasing speech but instead whether they are free to publish vile and unpopular speech without fear of governmental suppression or punishment.

For example, if the FCC had been threatening to fine Imus or his employer, CBS, for his racist comment, as they did with Howard Stern and his obscene comments, that would have constituted censorship and violation of freedom of speech. But since there was no threat by the FCC to punish Imus or CBS for his racist remark, the issues of censorship and freedom of speech do not arise.

As the owner of the radio network on which Imus worked as a commentator, CBS has the right to set any rules it wants as to what will be and will not be published on the air. If CBS chooses to publish racist material, that is its right. By the same token, it also has the right to *not* publish racist material. The right to make the decision on what is going to be published and not published comes with ownership.

Whatever the radio station's decision, its employees, including its radio commentators, must abide by the owner's rules as to what can be published and not published. If an employee doesn't like the conditions of employment, he is free to quit and go elsewhere. But he can't violate his employer's rules and then claim that his free-speech rights have been violated when he gets fired.

If a radio station decides to publish racist material, that still doesn't end the matter. In a free market, advertisers and consumers are free to boycott the radio station, which provides the

following not-so-subtle message to the station: “While you are free to publish racist material, we are free to refuse to patronize your radio station.”

That is obviously what happened in the Imus case. As the public uproar grew and as CBS began losing advertisers for Imus’ show, CBS realized that it was going to have to pay an enormously high financial and public-relations price for continuing to air Imus’ show. Despite the high profits that Imus had been bringing CBS, economic pressure and moral suasion in the marketplace ultimately induced CBS to terminate Imus’ employment.

The Imus controversy shows how effective the market, as compared to the government, can be in addressing racism. Under principles of economic liberty, the racist is free to publish racist material but must oftentimes pay an economic price for his racism because of adverse reaction among consumers. Unlike government coercion, which relies on the bludgeon of law to regulate peaceful behavior, economic boycotts and moral suasion *nudge* people toward moral and ethical behavior.

Don Imus lost his job not because he was censured and not because his free-speech rights were violated. He was fired because of a free-market process that punished him for his racist remarks, a process that, up to now, had rewarded him with lots of money.

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