



Episode 1,509: Making Sense of Hate Speech, Hate Crimes, and Free Speech

Guest: Gerard Casey

WOODS: Well, it wasn't too long ago we were talking about your previous book on political thought, and now you've got a brand new one, *ZAP*, with the subtitle, *Free Speech and Tolerance in Light of the Zero Aggression Principle*. By the way, why do you use "zero aggression principle" instead of "nonaggression principle"? Is it because it's a cooler acronym?

CASEY: To some extent, and also because I discovered, from a rhetorical point of view, the minute you introduce any negative element into a statement or sentence, it reduces comprehension by 50%.

WOODS: Oh, so saying "zero" is better than saying "non"?

CASEY: Absolutely. Yeah, in fact, I guarantee you, if you introduce two zeros into a sentence, you'll reduce comprehension by about 70%, and three will mean people won't understand you at all. So it's not just sort of stylistic; it really has to do with communication.

WOODS: Okay, all right, I was wondering about that. All right, well, now I got my answer. Okay, so another book on free speech. I've had — now I can't remember the guy's name, but I did have somebody else who'd just written a book on free speech on. Yours is rather different, even though you have more or less the same conclusions. Yours are much more hardcore. But just as you point out in the early part of the book, there is need for some justification for a book on this. What's different about yours as compared to other ways people have looked at this?

CASEY: Well, I think I'm correct in saying this, but what I tried to do was to link the free speech section with the section on tolerance. And I can't remember — I mean, maybe I'm wrong. I say this in my in my foreword, but I don't remember seeing that being done before. And so the way I argue is — I mean, I'm well aware that there are many books on free speech, and make that point myself, again, in the foreword.

I think that one of the points that I'm trying to make is that if you're making a case for free speech, you can do it in two basic ways. You can do it ad hoc. You can do it on the fly, as it were, making up the rules as you go along. And that's not particularly satisfactory. And in fact, it tends to be the case that if you do that, those in power are the ones who get to make the rules, and if you're not empowered, it means that your free speech isn't protected, and everybody else's is.

So we need a principled basis for doing this, and my challenge on page six of my book is to say to somebody: if you don't like the way I'm doing it, fair enough. That's grand. But you're either stuck with the ad hoc approach, or you're going to have to come up with some other principled approach. And if you've got one, I'd like to see what that is.

So the second point, then, is it struck me as I was – this is actually part of a larger project. There are two more books coming out – that all of the stuff on diversity and inclusion and equality, which is all the rage these days – every university has a diversity officer and so on – is actually in itself a form of intolerance. And I see those both linked together and grounded on the same sort of principle. So I thought it would be a good idea to bring them together into one small book. It's a small book, short, I think, and relatively punchy.

WOODS: All right, I think most people listening are familiar enough with what we'll now call the zero aggression principle. And then you say the corollary of that, or a maxim that's derived from that, is the "my house, my rules" maxim. Now, by the way, this is – I'm getting us on a tangent a bit here, but where some, let's say, I don't know, anarchosocialists just go berserk, because they say this just goes to show that anarchocapitalism isn't really anarchism, because, look at this, look at all these rules. The property owner gets to be a tyrant over everybody. So when I saw that, I thought, oh, they're going to love this one. But just explain – I think it's probably self-evident, but "my house, my rules," and then how this applies to the free speech question.

CASEY: Well, okay, so one argument against, say, a libertarian position of free speech is that people can say anything, anywhere, anytime. And the answer is, well, yes, but there are actually limitations. And so again, in my foreword, I say that free speech fundamentalists won't be happy with my approach, because the "my house, my rules" means that, first of all, while you can say what you like on your own property or on the property of others with their permission, you have no right to demand that others make their property available to you. So for example, you have no right to demand that *The Washington Post* gives you a column or even publishes your letter. And therefore, this, if you like, gives a at least some form of restriction on, I don't know, an absurd level of free speech, meaning so that you can demand positively that others facilitate you in saying what you want to do.

And the example I give is fairly straightforward, and I think most people would appreciate this. So suppose you invite somebody over to your house, and you have a dinner party, and you're having a pleasant conversation, and somebody starts talking about something that's offensive or gross. I don't know what you would do, but I would ask the person to come help me in the kitchen, and then I'd say, "Look, this is not a good idea. It's making the rest of my guests uncomfortable." And the person could say, "Well, hey, I thought you were a libertarian. What's all this free speech stuff?" And I'd go, "Well, you can speak as freely as you like, but if you want to keep talking like this, you're going to have to do it outside my front door." Right? And off you go. So that's the "my house, my rules," and that applies to all sorts of property. If I have a business or I run a university or have a newspaper, the same thing applies.

WOODS: Okay, so that, then, helps us to account for why it's all right for certain venues to prohibit certain types of behavior. So for example, the old chestnut about shouting "fire" in a crowded theater.

CASEY: [laughing] Yes.

WOODS: Well, this is easily resolved. This is not a matter — that was always used as an example of how: *You see? Nobody really believes in absolute free speech, because we wouldn't let you shout "fire" in a crowded theater. Oh, ha ha ha ha.* But of course, as Rothbard points out, and others before him pointed out, the issue there is the private property rights of the theater owner, who presumably has a restriction on causing a disruption in his theater. And it is his theater, so he just imposes that rule. No problem. No government involved.

CASEY: Well, not only that, but you can't say, "Roll up, roll up, get your hamburgers here," and open up a hamburger stand, or sort of have a philosophical discussion at the back of the theater while other people are trying to watch the film. I mean, when you go to the cinema, what you do is you buy a ticket, and that ticket is, from a legal point of view, a license. And that license entitles you to the quiet enjoyment of the film for a limited period of time, and pretty much nothing else. So it's not only a question of shouting "fire." By the way, what happens if a fire does break out? [laughing] We would like you to shout "fire." But anyway, under normal circumstances, all you're entitled to do is to sit there quietly and watch the movie.

Unfortunately, the conditions aren't strictly enough lights. So I notice now a lot of people insisting on using their mobile phones, not to make phone calls, necessarily, though that's happened, but also to check things out, and you see these lights flashing on and off all over the auditorium. Those people should be forthwith forcibly ejected.

But yeah, so that's very straightforward. I mean, we all do this. I mean, the owner of a shopping mall, for example, will have rules and regulations. So for example, if you want to sell raffle tickets or you wanted to do ad hoc advertising by walking up and down the concourse, you're going to have to get permission from the owners of the shopping mall in order to do that. Otherwise, you're violating their property rights.

WOODS: Let's say something about, now, something controversial, because I think most people — probably not as many as I would have thought some years ago, but I still think at least certainly in the United States, most people do believe that free speech at least has something to do with what it means to be an American, and they feel some kind of philosophical attachment to it.

But then the challenges come up, because it's easy to say I favorite free speech when the subject matter is what should the tax rate be or what's today whether no problem there. But then you get into the hard cases for some people. And that's where we get into so-called hate speech.

Now, this category of hate speech, what can we say about that? Because some people would say, the reason we favor free speech is that we want competing points of view to be in the marketplace of ideas, and then we sift through it and we reach some kind of a consensus that we hope is close to the truth. But they would say: what possible benefit do I get listening to somebody prattle on and on about some national group that he doesn't like? There's no benefit to us, so therefore, the purported benefits of free speech are not really being lived up to here, so then what is the harm in banning that? That would be the way they would think. And how would you answer?

CASEY: Okay, that's a reasonable point to. I mean, first of all, I would say, where are you listening to this person prattling on about some national group? If it's on the radio, turn it off. If it's in your house, ask them to leave. If you're attending a public meeting, then ask the person in charge of the public meeting whether this is permissible or not. So there are ways of controlling that.

Nonetheless, the problem there is, you see, that that seems fine, but there's an assumption here that we can all identify what is and what isn't hate speech. And it turns out, this is an alarmingly wide account. So many things that I would not consider to be hate speech other people do. And again, it all depends on who is in control and who makes the rules and determines what is and what isn't hate speech.

And it will turn out again that if we have an unprincipled account here of free speech, that, largely speaking, those in power will be the ones who determine what is and what isn't hate speech, and it will turn out, and indeed is turning out, that merely saying things that would seem to be reasonably uncontroversial – like, for example, a man is a man and a woman is a woman – could actually get you into trouble now in the United Kingdom. That can be considered to be transphobic and a form of hate speech, even though you could say this in the course of a discussion and be very careful to say that I don't intend to signify hatred of anybody, nor am I endorsing any violence or any discrimination against people. But nonetheless, it seems to be true that this is the case.

And we're increasingly – I mean, one of one of the reasons – this book could have been twice as long if I actually included all of the examples I collected on that. And so you see that the costs, as it were – yes, you're going to get trash. That's one of these things. But that's the cost of a free society. And by the way, it's easy to say this, and somebody might say, well, that's easy for you because you're not the one on the receiving end, but I have been on the receiving end. And almost anybody in our business has been on the receiving end of nonsense like this. I have a rule, which is that in any comments section, I never read beyond the fifth or six comment, because after that, they go crazy.

WOODS: Well, I think if you're lucky, it's the fifth or sixth sometimes [laughing]. But on the other hand, every once in a while, a comments section fills me with a hope. Every once in a while, there'll be some nonsense article, and I'll think, oh, the comments are going to be dreadful, and the comments are just piling on the guy. And I think, well, you know, every now and again, we get something like that.

Can we say something about, even though it's not directly related to free speech, it's let's say, a close cousin, and that is hate crime laws? Hate *crimes*, not hate speech, but hate crimes. Because here, I can understand the motivation behind somebody who says, yes, I understand that somebody who is killed because a robbery gone wrong, or somebody who's killed because he's hated by the killer, I grant that they're both equally dead, and it won't make the first person feel any better to know that the robber had no hard feelings toward him. I mean, I get that they're both equally dead. But there does seem to be something especially odious about somebody who goes and commits a violent crime out of sheer hatred for a group identity that that person holds. And this is our way in society of indicating our extreme displeasure at people who hold those attitudes. So why can't society, in this way, indicate its displeasure with people who harbor these kinds of resentments?

CASEY: Well, I mean, no, that's a very good point, and indeed, you're right in saying they're odious. But then again, we have to come back to what I think is one of the basic distinctions libertarianism, which is that between the legal and the moral. So hatred is not a good thing. Apart from any actions it might lead to on the part of the person who hates it's actually corrosive of the hating person, himself.

But the point has to do with crime. And so the question here is, you have to distinguish in a crime between the intention, what it is that the person intends to do, and the motive, which is why they intend to do it. And the law has always made that sort of distinction. In other words, if I intend to cause grievous bodily harm or to kill somebody, and I kill somebody, that's murder, if that can be proved. My reason for so doing, whether it's because I want their money, or because I hate the way they look, or because of their nationality and so on, is legally speaking, irrelevant. Morally speaking, of course, it is entirely relevant. But the problem is it's not the law's function to punish us for our attitudes, however much our attitudes might be reprehensible, provided they don't find expression.

The point is all of these things, in other words, all of these crimes, these hate crimes, are crimes anyway; it's just that the hatred element has been punished. And the hatred element is a thought element, and so it turns out that hate crime is actually a form of thought crime. And whatever we think about it, morally speaking, legally speaking, that's not something that is actually punishable or should be.

WOODS: Now, no discussion of this topic would be complete without making reference to universities. Now, your experience, of course, has primarily been with the universities in Ireland, I suppose, but you have some experience here and there. Now, I don't know what the climate is like over there. I do know what the climate is like here. Maybe Ireland is 15% more sane than the United States. I honestly don't know. In fact, can we just start there?

CASEY: [laughing] Well, I've been retired for three or four years, and so I can't really comment on what it is now, but it was moving in — Ireland sort of follows a kind of a lag behind Britain to the east of us and the United States to the west, so there's always a sort of a time gap. It used to be about 10 to 15 years, but now of course, with communications being what they are, it's much quicker. So at the time I retired, the situation here wasn't anything like as bad as it is in some of the institutions I read about in the United States or, indeed, in the UK. I couldn't say for now, although my colleagues, some of those who still speak to me, have told me stories. And institutionally, I have to say that the university has moved into the kind of radically politically correct views and so on. So maybe the students are lagging behind the university authorities here, rather than leading them, as they tend to in the United States.

WOODS: Well, let's talk about the issue of, let's say, having controversial speakers on campus. If I have my own private university, obviously, or it's obvious to me, that I can decide who gets to speak and who doesn't, in the same way that if the person comes to my home and wants to harangue me, I can show that person the door or not invite that person in the first place. But do you think it gets slightly more complicated when the institution itself is, rather than public, let's say government-run or government-funded? How does that affect this?

CASEY: Well, you see, that's where the problem is. I mean, if it's my home, it's my property, I can make all the decisions myself. The trouble is that most universities, even ostensibly private universities, are in receipt of large wedges of government money, and therefore,

they've given hostages to fortune. And therefore, they have to decide what they're prepared to do. So he who pays the Piper calls the tunes. If the government is supplying you with a large amount of money, then it gets to say what can and can't be done. And that's really a problem.

But so the simple case is where an institution is completely private, and there, the owners of the university get to determine exactly what can and cannot be done on their property. That's very simple. But in almost every institution, to the best of my knowledge, the university is in receipt of money, either directly or indirectly via sort of student grants, and therefore, it's very difficult for them, even if they were prepared to do so, to stand up, as it were, for free speech.

WOODS: Now, let's say for the sake of argument, let's set aside the issue of public versus private institutions. Let's say everything's private. In that case, it's an open and shut case. I can make the decision about – I would say the university president or the board of trustees or whatever, they can decide who speaks and who doesn't.

But sometimes, I hear even some libertarians saying things like: well, such and such as a private institution; they can do what they want. But yeah, we all get that. Like I'm older than six years old. I understand how my principles apply to particular situations, but I'm still allowed to have an opinion about how they're running their institution. It just astonishes me how many people – like if I'm talking about Facebook and what their policies are – will just tell me, "Well, it's a private company. It doesn't matter." Well, duh, I know it's a private company.

By the way, that's like the most left-wing caricature of libertarianism, where you can't even criticize corporations. When did libertarians ever say we can't criticize corporations? So these people whose entire argument is "It's a private company," they're falling into the dumbest caricature of libertarianism. "Don't you people believe in the free market? That's a corporation. It can do what it wants." Yeah. Yes, I do believe in the free market. I'm not saying somebody should take them off in handcuffs. I'm saying that I personally think it's a dumb policy. It's a counterproductive policy. It's a harmful policy. It's a dumb policy. It's based on ridiculous motives.

And so when it comes to a university, I get if it's a private university, they can invite anybody – but I can still say the university has a particular mission, and that university is not carrying out that mission as effectively as it would be if it invited a broader range of speakers. Why is that so controversial?

CASEY: I have no idea. I try to make a distinction, I do this in several places to the book, between what one has a right to do and whether one is right to do it. And it seems to me, those are two different things. So to come back to your point, of course, the owners of an institution have the right to do as they wish with our property. But that doesn't mean that we are forbidden from judging and making a comment as to whether it is right for them to do so.

And of course, given the very nature of the university, I would say, a university for me is, of its very nature, a place where contrasting views and opinions can be freely expressed and freely argued and robustly at that. And if you turn it into a sort of global safe space, where nothing possibly controversial can be said about anything, then you have anesthetized it. It's dead. It's an institution that's dying on its feet. And that may, in fact, already be happening.

So yes, people have a right to do with a property as they wish, but whether it is right to do so, we are actually free to make judgments about that.

WOODS: Now, you said something in the beginning about tolerance, and you note in your book that tolerance — I mean, let's say in the 18th century or 17th century, "toleration" basically meant we shouldn't kill people for holding this view. But you notice that when you say something like that — like let's say you and I both like Beethoven, but you also like Mozart and I didn't. And I said, "Well, I'll tolerate his admiration for Mozart," I'm not exactly celebrating your admiration for Mozart.

So the very use of the word "toleration," it doesn't necessarily imply that I'm holding my nose, but it does sort of suggest that I'm dealing with people who have views, let's say, at the very least, that are different from my own and who embrace ideas that are different from my own and that would not be my first choice, but I'm saying that we ought not to have legal sanctions against them. So there is a kind of negative element to the idea of tolerance, because if it weren't just that, then we would just use the word "acceptance." We wouldn't use the word "tolerance." Now, how is this relevant to your argument?

CASEY: Well, no, that's absolutely correct. I mean, one of my chapters is called "Tolerance Is Intolerable." And I first became aware of this about 10 years ago at a colloquium at the university, when I was expressing certain views that, surprise, surprise, weren't particularly popular with some of my colleagues. And while I was perfectly happy to debate with others who had other views, they seemed to be suggesting that it wasn't proper for me to express my views, because I wasn't validating or accepting or honoring, or whatever it might be, the other person's view.

And I pointed out that, well, that makes nonsense of discussion, because tolerance by its very nature, as you just pointed out, has an intellectual sort of negative element. It may be mild. It may be severe. But any statement — by the way, this is not just about political or religious views or social views; it has to do with any statement whatsoever. If I make any statement, any truth claim, I cannot at the same time and in the same respect tolerate something which is contradictory or contrary to that. That's what I call the intellectual tolerance.

Practical tolerance means that, when we live in a world where there are many, many views and many different ways of living, we have to be prepared to find that people are doing things that we find either mildly distasteful or even completely obnoxious. Nonetheless, I'm arguing that, as long as they're not violating the zero aggression principle, I am obliged to tolerate them. That is to say, not to like them or to accept them or to think that they're good or praiseworthy. In fact, I may even say all of these things, that they're not praiseworthy, and that they're not good. But nonetheless, I am prepared to tolerate it. Now, that has become a controversial position, which is quite striking.

In the book, I think I mention — just for your viewers there, because you will be familiar with this in the United States — a *South Park* episode. I don't normally watch *South Park*, but I came across this episode once. It's series 6, episode 14, and it's called "The Death Camp of Tolerance." And it should be required viewing for anybody who thinks seriously about this, because — apart from being slightly gross, so we can forget about those elements, but it's nonetheless, hilariously funny — it makes the point that you just made.

So somebody who's trying to get fired by having what he thinks are unacceptable views finds that his board of management and the parents – this is a teacher in school– are so tolerant, that nothing he can do will cause them to fire him. And eventually he loses patience, and he says, "What do I have to do in order to get fired?" Just because you tolerate something doesn't mean you have to approve of it, right? And they have the Museum of Tolerance there, and he said if tolerance meant acceptance, it wouldn't be called the Museum of Tolerance; they would call it the Museum of Acceptance. So we've moved in the last probably 10 to 15 years in a very worrying direction, where tolerance now is not only a virtue; it is actually, from the liberal point of view, something of vice, which is really, really disturbing.

WOODS: Well, here's maybe one of the most controversial claims of the book, and then you restate it in your afterword. You say, "The currently fashionable dogmas of diversity, inclusion, and equality are forms of practical intolerance." Now, I'm going to require you to defend that statement right here.

CASEY: Okay. So what does it mean? Again, if we're talking about tolerance, not a problem. But diversity, inclusion, and equality, while they sound fairly innocuous, indeed, anodyne, actually, they result in the unwillingness of the establishment to accept the free choices of individuals who are not violating the zero aggression principle. So it's not enough that you're not prepared to use violence or force against somebody. You must be prepared to accept that, for example, the use of quotas in, say, the allocation of university places can be done appropriately, say, on the basis of somebody's skin color or nationality, or whatever, or their socioeconomic class. And that objecting to that, if you like, puts you beyond the pale. And if you act on the basis of the principle that you're prepared to accept the equality of all human beings and make your decisions to use your property as you wish, then you can be required now, in many cases by law, to act on principles that you simply do not accept. And that's a form of practical intolerance. The other people are not prepared to accept your free choices here, which are not, in fact, aggressive.

WOODS: It seems to me, getting to the end of this book here, where you have just made a pretty strong case for everybody should have absolute freedom of speech, obviously bounded by the "my house, my rules" principle, all that. But in other words, there shouldn't be state-imposed restrictions on speech.

CASEY: Yes.

WOODS: I think the obstacle that you're facing right now, that we're facing, is that the people who want to impose the restrictions cannot imagine that they could ever be on the receiving end of such restrictions. They feel like their people are firmly in charge of the regimes of the world. And incidentally, they believe this even when they have persuaded themselves that Trump means the end of the world. They know in their heart of hearts, that's not true. They know that their people really cling to the inner levers of power, basically everywhere. And so of course, it's not going to trouble them, because they're never going to be on the receiving end of this. In a way, it kind of reminds me of all the antiwar protests in the '60s, and then the draft goes away, and the protests kind of disappear. I mean, at first, it was, *Our blood is boiling with moral outrage at what you're doing in the war*. Okay, the war was no less horrible after they got rid of the draft, and yet the protests disappeared. It doesn't affect me, so suddenly, my righteous outrage has disappeared. Well, so likewise –

CASEY: Absolutely.

WOODS: I mean, I think that's really the issue, is that the people doing it don't find themselves fearing that this power will be turned against them someday. So I don't know how you change that.

CASEY: No, I don't know, either, but you're absolutely right, of course. And as I said, to come back to a point I made earlier in our discussion, when I'm putting forward the zero aggression principle as the basis for this, I said if you don't accept it, you're going to have to tell me what you're going to. If you don't accept that, that's fine. It's a free country. It's a free world. But here's the thing. If you reject the zero aggression principle, what you're doing is you're doing two things.

First of all, you're saying it is in order to use force or violence to prevent somebody from doing something or to force somebody to do something, which in the case of preventing them, which is not an act of aggression on their part, or forcing them to do something that they'd rather not do. And somebody might say that's fine, because that's other people. And I say, well, hang on a second, there's a second side to this, which is that you also have to be prepared to accept that others – if you don't accept the zero aggression principle, others are perfectly entitled to use force or violence, to prevent you from doing things which are not violent or aggressive and to force you to do things that you do not want to do. Are you prepared to accept that in principle? And when I have conversations with people, this is normally when I get silence. I say you have to be prepared to live with that.

Now, the truth is, in the rhetorical environment in which we live, you're absolutely correct that those on the other side who are all in favor of imposing all of these restrictions on us can never see themselves as being in a situation where they will be on the other side and other people will be imposing restrictions on them. But I would say, first of all, you must have an astonishing ignorance of history if you think that's the case. Because you don't have to go back that far to find cases like that. And secondly, if there's one thing that's true, it's that things never stay the same, and there is no guarantee that you or your friends or your pals or whatever they might be, will always be in power, will always be the ones controlling this. And then you will find yourself in a situation where you're on the receiving end. And when you find yourself in that situation, don't come crying to me. Don't then take the high moral ground and say, "Oh, you can't do this to us," because you've accepted the principle that it is right and proper to do it.

WOODS: All right, well, the book is *ZAP: Free Speech and Tolerance in the Light of the Zero Aggression Principle*. I'll link to it at TomWoods.com/1509. Before we go, can you say a little something about what your hoped-for schedule is in releasing the other volumes?

CASEY: Yes, well, I just signed the contract on the next book, so it should be out in March. It's called *After Me Too*, and so you might guess what it's about. So there's really a trilogy in progress here. So the *ZAP* book is the first one, and the *After Me Too* will be the second one, and both of these are sort of practical books. They deal with sort of the practical problems in our world. The third book is going to be a more sort of reflective and philosophical work, and it's going to be about, if you like, working out the dynamics of social and cultural change. And I'm going to be using some heavyweight thinkers in there, and so on. So the first two, if you like, are fun books. At least I hope they are. And so the second one's going to be a bit more kind of philosophical, trying to redeem what's left of my reputation as a philosopher.

WOODS: [laughing] All right, well, we'll very much look forward to those. So I hope folks will check out TomWoods.com/1509, where they can click through and get a copy this book for themselves. You'll never ever, ever be bored reading a book by Gerard Casey. That's just a fact. Never, ever. So thanks for talking to us today.

CASEY: Thank you very much, Tom.