AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era – Democratic Rights/Free Speech

**Wisconsin v. Mitchell, 508 U.S. 476** (1993)

*In 1998, Todd Mitchell was among a group of young black men and boys who found themselves in conversation about a scene in the movie Mississippi Burning in which a white man beat a praying black boy. Eventually Mitchell asked the group, “Do you all feel hyped u to move on some white people?” When he spotted a white boy walking by the group on the street, Mitchell said, “There goes a white boy; go get him.” The group chased the boy, beat him into unconsciousness, and stole his shoes.*

*Mitchell was tried and convicted of aggravated battery, which carried a maximum sentence of two years in prison. Wisconsin law included a provision that allowed for a sentencing enhancement for hate crimes, when the victim of a criminal offense is selected “because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person.” The jury found that this was true in Mitchell’s case, and the result was a four year sentence. Mitchell appealed, and the state supreme court held that the sentencing enhancement “violates the First Amendment directly by punishing what the legislature has deemed to be offensive thought.” The state appealed to the U.S. Supreme Court, which unanimously reversed the state court and held that the penalty enhancement did not violate the U.S. Constitution.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

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Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant. The defendant's motive for committing the offense is one important factor.

But it is equally true that a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge. . . . In *Dawson v. Delaware* (1992)*,* the State introduced evidence at a capital sentencing hearing that the defendant was a member of a white supremacist prison gang. Because "the evidence proved nothing more than [the defendant's] abstract beliefs," we held that its admission violated the defendant's First Amendment rights. . . . [I]n *Barclay* v. *Florida* (1983), we allowed the sentencing judge to take into account the defendant's racial animus towards his victim. The evidence in that case showed that the defendant's membership in the Black Liberation Army and desire to provoke a "race war" were related to the murder of a white man for which he was convicted. . . .

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Mitchell argues that the Wisconsin penalty-enhancement statute is invalid because it punishes the defendant's discriminatory motive, or reason, for acting. But motive plays the same role under the Wisconsin statute as it does under federal and state antidiscrimination laws, which we have previously upheld against constitutional challenge. Title VII of the Civil Rights Act of 1964, for example, makes it unlawful for an employer to discriminate against an employee "*because of* such individual's race, color, religion, sex, or national origin." In *Hishon v. King & Spalding* (1984)*,* we rejected the argument that Title VII infringed employers' First Amendment rights. . . .

Nothing in our decision last Term in *R. A. V v. St. Paul* (1992) compels a different result here. That case involved a First Amendment challenge to a municipal ordinance prohibiting the use of "`fighting words' that insult, or provoke violence, `on the basis of race, color, creed, religion or gender.'" Because the ordinance only proscribed a class of "fighting words" deemed particularly offensive by the city—*i. e.,* those "that contain . . . messages of `bias-motivated' hatred,"— we held that it violated the rule against content-based discrimination. But whereas the ordinance struck down in *R. A. V.* was explicitly directed at expression (*i. e.,* "speech" or "messages"), the statute in this case is aimed at conduct unprotected by the First Amendment.

Moreover, the Wisconsin statute singles out for enhancement bias-inspired conduct because this conduct is thought to inflict greater individual and societal harm. . . . The State's desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases. As Blackstone said long ago, "it is but reasonable that among crimes of different natures those should be most severely punished, which are the most destructive of the public safety and happiness."

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The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent. Evidence of a defendant's previous declarations or statements is commonly admitted in criminal trials subject to evidentiary rules dealing with relevancy, reliability, and the like. Nearly half a century ago, in *Haupt* v. *United States* (1947), we rejected a contention similar to that advanced by Mitchell here. Haupt was tried for the offense of treason, which, as defined by the Constitution, may depend very much on proof of motive. To prove that the acts in question were committed out of "adherence to the enemy" rather than "parental solicitude," the Government introduced evidence of conversations that had taken place long prior to the indictment, some of which consisted of statements showing Haupt's sympathy with Germany and Hitler and hostility towards the United States. . . .

*Reversed*.