

Free Speech and Speech That Frees: Free Speech and its Limits

RAJIV BHARGAVA
Jawaharlal Nehru University
New Delhi

Is curtailment of speech permissible? Are we ever justified in banning literature? Under what conditions, if any, is censorship morally acceptable? Can the issue of free speech be insulated from questions of identity and cultural relativity? These are some of the issues that are touched upon in this paper.

A preliminary point: I am not concerned here with dictatorial regimes where standard forms of 'censorships' include the assassination or incarceration of writers. Nor am I concerned with purposeful, political literature that unveils the lies and propaganda of the official machinery of any regime. I concentrate instead on the more tricky issue of censorship of all forms of writings in democratic regimes.¹ My primary political concern is with preventing democracies from falling into what can be called the authoritarian trap. This shift in focus is partly due to my personal conviction that the case against censorship of the literature of dissent in authoritarian regimes is too strong to require a more explicit defence—I do not think it needs much argument to convince anyone that most of what has appeared in the pages of Index of Censorship should ever have been censored by any regime—and partly due to the apparent marginalization of the issue caused by the collapse of dictatorial regimes in the countries of the communist bloc and in Latin America. A lot, however, has to do with the dramatic manner in which the matter was foregrounded after the publication of *Satanic Verses*.

It must also do with the current status of free speech in democratic India. Let me give examples. Sometime ago, a veteran journalist, with some pretensions of being a writer and a critic himself, made some casual remarks against Tagore and found himself in the throes of legal suit. Not only that. The Rajya Sabha passed the strongest possible strictures against him. What did he say? Something very innocuous indeed—that Tagore was a great poet but his novels and plays lacked literary merit and, therefore, his status in Bengal as a novelist is greatly exaggerated.

Around that time a bomb was hurled against the director of Bombay, a controversial film attempting to deal with the thorny issue of Hindu-Muslim relations in India. (Incidentally, the film was banned in other Asian countries, in Malaysia, Kuwait, UAE and Singapore, allegedly because it permitted and encouraged the marriage of Muslim women to Hindu men!) Days before I wrote this paper I learnt that the following couplets were causing a furore in parts of India: 'Agar tujh ko fursat nahin to na aa, magar

ek acchha nabi bhej de. Bahut nek bande hain ab bhi tere, kisi pe to, ya rab, vahi bhej de.' (O lord, if you cannot spare time then don't visit us; but send a good prophet. You still have so many good souls; bless, o lord, at least one with your divine revelation.) Written by a well-known Urdu writer, Mohammad Alavi, in a book published some seventeen years ago, the couplets first provoked a fatwa from the local imams and then forced Alavi to apologize: 'I hereby delete and cancel those two couplets and I am not going to incorporate them in the next edition of the book. I repent before Allah, the Almighty, and I hope he will forgive me.' Earlier, the exhibition on Ayodhya, site of the Ramjanmabhumi-Babri Masjid dispute, by a cultural organization, Sahmat, was first vandalized by a violent mob and then banned all over India, allegedly because it blasphemed about the Hindu deities, Rama and Sita. All Sahmat did was to exhibit different versions of the Hindu epic, *Ramayana*. It did so without interfering with the text of one of the Buddhist versions in which Rama and Sita are siblings. It is historically documented that in order to maintain purity of descent, it was not unknown for royal brothers and sisters to get married to each other.

Two Positions: Libertarian and Authoritarian

Censorship, ban, or prohibition of speech by social groups and non-governmental or state institutions is justified in none of the instances given above. Liberal reaction that the Indian state ought to have protected the exercise of right to speak freely is wholly justified. What form has it taken? In conditions where the state does not firmly back morally legitimate expression of speech and where intolerance is allowed to grow, it naturally assumes a pure libertarian posture. When the legitimate freedom of persons is denied and when argument and thought give way to emotion and rigid positions, at least some people are bound to demand that everything, literally everything should be permitted in speech, that nothing should be censored or banned. The pure libertarian intuition thrives in this culture: Why must we not be totally free to say what we believe, to communicate to others what we feel is right, to express an opinion on any matter whatsoever and in any form? Nothing is sacrosanct or out of bounds. As Rushdie put it: 'Everything is worth discussing. There are no subjects which are off limits and that includes god, includes prophets.'²

It will not take long to convince ourselves that we all possess these libertarian intuitions. However, I believe that we simultaneously nourish the contrary, authoritarian intuition, shared to some degree with those who appear to us particularly intolerant. Not infrequently we are drawn by the temptation not only to get others to accept our own conception of good life but to impose it on them. Don't we all live in the hope that at least some of what we believe to be good will be believed by all? Will it not be wonderful if all males ceased to believe in the inferiority of women, if all believed in the possibility and desirability of a free and equal society? The stronger our

commitment to a particular world view, the greater our belief in the utter worthlessness of any thing opposed to it and the more intense our desire to get others, at least all those matter to us, to think and behave like us. I doubt if there is anyone who has not felt, some time or the other, an irresistible urge to impose his opinion on others, especially when he believes that, all things considered, his opinions make for a much better world. Right or wrong, we are lured into paternalistic coercion, at least whenever we find our views threatened by beliefs that appear to us anyway to produce disastrous consequences.

Both these intuitions, of an absolutist commitment to 'anything goes' in speech and the authoritarian one bred by an excessive partiality to one's own speech, have been formalized as political positions.³ The first, civil libertarian, takes a formal view on freedom of speech: formal because it is content-neutral. Speech must be free no matter what its content. This perspective on free speech is based on the assumption that mental harm can be never as serious as physical injury. Words never cause real damage to people. As the old nursery rhyme goes: 'Sticks and stones may break my bones but names and lies will never hurt me.' Interference, the argument goes, is necessary when there is a threat to my body but not when my mental equanimity is endangered. No speech can hurt enough to require interference, especially from the state. Which is why, on this view, speech needs absolute toleration.

The other, authoritarian intuition, grounded in substantive values, can also be expressed as a distinct view though it has no identifiable label. For this position, the freedom of our speech is conditional upon its content. Speech that promotes good life has a good content but speech that denigrates it is bad. Besides, bad speech causes real harm to people. Therefore, only speech with desirable content need be freely expressed. Bad speech must be restricted. Moreover, degrees of badness exist to which degrees of restriction or coercion must correspond. The really bad speech must be prohibited, banned. There exists a distinction between, say, free speech and speech that frees and if a persistent conflict exists between the two, then free speech may be restricted. So, on this view, distinct limits on the toleration of free speech exist. For example, feminists find it impossible to tolerate male chauvinist rubbish. Those who value individual autonomy can't stomach feudal-paternalist diatribe. Can any decent person sit quietly through irresponsible racist propaganda or when confronted with religious bigotry? Clearly, this is a substantive rather than a formal position on free speech, one that, rather than content-neutral, is content-biased. If we recognise this as a plausible view, then we can hope to understand that when the fuss has not been raised out of pure mischief and political calculation, people may have genuine reasons to express not only their dislike for remarks against Tagore or resentment against Bombay, the film, but to demand that these be censored or banned.

I have tried to make both these intuitions credible but their credibility can

be sustained only up to a point. While I understand them, I do not endorse either. Both the libertarian and the authoritarian intuitions are absolutist. I do not think I need to say much on the undesirability of the authoritarian intuition. But free speech is threatened not only by those who oppose it at the slightest provocation but also by those who defend it no matter what the context. In any case, the debate between the two opposing sides has long reached an impasse and to take it forward, a distinct, third position, carrier of a complex intuition, has since been articulated.

The Third Position: Gentile Liberalism

To understand this third position, let us return to our questions: Do we have a near absolute right to free speech? Is everything under the sun permissible? Must all speech be tolerated or are there limits to the toleration of free speech? An elementary technical point about speech acts may help give answers here. A swift examination of any speech act will show that it not only possesses a form and a content but is always performed in a context. Consider the sentence: 'We are discussing free speech.' The content of this sentence is obvious: the discussion of free speech. But it also possesses a certain form, a term of art by which I mean both its mood and the fact that it secretes a definite emotional resonance. For example, in its present shape the sentence has a declarative rather than the imperative or the interrogative mood. And though this is not immediately apparent, it must have an emotional texture. For example, we may suppose that it is spoken calmly rather than, say, in anger. Finally, it is uttered in a context: let us say that it is published in a politico-academic journal rather than spoken at a public meeting.

Notice that the character of the sentence is transformed not only with a change in its content but also when despite identity of content, its form or context alters. For example, in its imperative form the sentence reads: 'Discuss free speech.' And in the interrogative form: 'Are we to discuss free speech?' It can also have a different emotional resonance. So rather than be stated in a quiet, mild tone, it can be uttered with an air of utter incredulity, or with impatience bordering on hysteria. For example, the question 'Are we to discuss free speech?' can be asked in a mild, matter of fact tone or with a strong flavour of disbelief. When asked in the second way, it might convey the redundancy of any discussion on free speech. 'A discussion on free speech! Isn't the value of free speech already firmly secure? Does it really require any discussion?' Or consider how its meaning changes when instead of stated in, say, an Oxford seminar, it is uttered at a public meeting in Saddam's Iraq. A sentence can be uttered in many different ways, conveying by the same content quite different meanings.

What has all this to do with freedom of speech? The third position on free speech claims that the libertarian intuition can be simultaneously rescued and put in its place. It purports to do this by suggesting that anything, no

matter what its content, may be said provided it is uttered in a certain form and in certain specified contexts. There exists a near absolute right to free speech provided speech is form-sensitive and context-sensitive. The content neutrality of speech can be protected provided certain normative constraints are met. In some contexts, anything goes.

What then are the contexts within which anything can be said? At least three contexts come immediately to mind. First of all, I must be free to say anything to myself and therefore think anything whatsoever. This is an important freedom whose value to us can hardly ever be over estimated. The most insidious form of censorship takes the form of people concealing thoughts and feelings from themselves. Czech writers and Hungarian film makers have in recent times done most to underline the importance of this freedom. Secondly, content-neutrality must be respected in all contexts of intimacy. For example, there should be no restrictions on the content of speech, on what all can be said in private conversations with friends. Hours after the declaration of Emergency, a minister in Mrs. Gandhi's cabinet spoke informally to a friend that this kind of 'danda raj' (rule by coercion) will not work for long in India. Next day, he was dropped from the cabinet. Finally, there exist public forums, for example discussions conducted in formal, face to face situations such as seminars or in academic journals and specified sections of magazines and newspapers, where speech must be content-neutral and freely uttered. At the same time, speech must maintain a form in each of these contexts. It must have a hypothetical intent; every opinion expressed must be an invitation for further discussion not the declaration of a dogma. It must be a proposal not an injunction and uttered with humility and restraint, not with recalcitrant fervour.

In all these contexts, provided speech is form-sensitive, anything can be said, and by anything is meant anything. So not only must it be totally permissible to make statements like 'the ban on a book is no solution', 'God does not exist', 'we are free to question and reject anything', 'women are equal to men in many significant respects and superior to them in some', but also statements like 'Blacks have a low IQ', 'Muslims are inherently fanatical', 'Hindus are superstitious', 'women are inferior to men', 'the holocaust never occurred.'

This point about the contextual validity and desirability of the free expression of all shades of opinions has long been noted by courts, even in India. Way back in 1880, some Hindus in Moradabad in India allegedly in retaliation to offensive and obscene allusions to the Hindu deities, Vishnu, Brahma and Shiva, published pamphlets 'in favour of Hinduism and in disparagement of Islam.'⁴ Defending the pamphlets, the counsel claimed that they could not be censored or banned because of their contribution to debate among rival faiths. The judge agreed that a religious controversy in the public arena was welcome: 'No one would wish to interfere with the publication of such things as are necessary for the legitimate purpose of controversy. But for anyone to suppose that the cause of his faith could be

benefited by the publication of works of such character would indicate a depravity of moral sense and mental incapacity', the judge declared and thereafter banned them.

This third position outlined here hopes to keep the spirit of the civil libertarian view without falling into its glaring absurdities. Recall that the purist civil libertarian is committed to the view that anything goes in any form and in any context. Against the purists, this position holds that content-bias cannot be wholly abjured in the evaluation of free speech. At the same time, against the second, substantive position it argues that the content-neutrality of speech that is sensitive to form and context must be maintained at all cost. The whole point of free speech is lost if it can be arbitrarily restricted by values external to it. Simply put, to be able to speak freely in some context is part of any plausible conception of the Good life. Free speech is good in itself and not a value merely in the service of other, more important values. It needs to be tolerated even when it causes some mental anguish.

In outlining the third position, I have so far accepted that there are contexts where free speech can afford to be content-neutral, where it need not respect any substantive constraints. Here anything goes and must be tolerated. Let me dwell just a bit on what, for this third position, toleration means.⁵ The first, one dimensional account involves leaving people alone with their faith and sensibility. If you believe in X, and I believe in Y, then both of us should continue to live by X and Y. The fact that X contradicts Y is no reason for us to interfere in each other's lives. Your life is yours and mine is mine and that is it. Nor does this supply a reason to criticise X or Y. On this view, the contradiction between X and Y may create an internally riven existential situation if they are both held by one person. But why should it produce social conflict when they are held by different people? The second view of toleration claims that criticism of each other cannot be insulated in this way, that if X and Y contradict each other then an affirmation of X implies a criticism of Y and therefore to refrain from criticising the other would be tantamount to forbidding a complete affirmation of oneself which can be frustrating. Tolerating the other cannot be done at the expense of stifling oneself.

This first view cannot even be imposed as a moral requirement on us, for it has an unrealistic assessment of our own motivations, i.e., it fails to see the extent to which self-affirmation in public matters to each one of us. So on the two dimensional account of toleration, criticism of each other is unavoidable. Toleration here requires only that we restrain our manner and therefore that our criticism be serious and respectful, not frivolous and offensive. One must not hurt the feelings of others by being particularly sarcastic or insulting. One cannot mock another, particularly when what is at issue are one's deepest convictions. Generally speaking, toleration pre-supposes the presence of features that are disliked and disapproved, that may even be morally reprehensible. But it is analytic to this second notion of tolerance

that when faced with expressions of disagreeable speech, one refrains from positive action or curbs one's inclinations to intercede.

This appears to be a very reasonable position and accommodates traditional as well as more recent justifications for free speech. For example, admitting controversial issues into the public arena for the sake of discussion and debate is fully justified by the Millian argument from truth (formulated and defended earlier by Milton).⁶ Recall that for Mill a free discussion of an issue and an uninhibited exchange of opinions is necessary if truth concerning that matter is to emerge. But suppose that there are some issues concerning which there is no truth of the matter. Wherever there is a sufficient degree of indeterminacy or where there is no unique truth to be achieved, as is the case in many ethical issues; in other words, wherever there is sufficient reason to be sceptical or to believe in value pluralism, there is even a greater justification for expressing different opinions and even to welcome controversy. Mill's argument from truth may not apply to opinions which are proven to be false or which are such that it is hopeless to even look for an element of truth there, but a case for the second type of defence of free speech can be constructed even if the Millian argument fails. The third position on free speech is neutral between uni-vocal truth, pluralism and scepticism. It can also be defended on grounds of autonomy consistent with equal respect and dignity of all. People, individuals or groups, are free to express any view whatsoever, in keeping with requirements of autonomy, as long as they do not offend or insult others. Offensive or insulting literature demeans those against which it is directed, undermines their self-respect, and therefore curtailing this speech is justified.

I believe this third position on free speech goes a long way in overcoming—in the Hegelian sense of cancelling and preserving—the libertarian and the authoritarian positions. By making better sense of the motivations behind censorship and bans, and not side-tracking important issues of identity and shared values, it shows what is wrong with untrammelled libertarianism without falling into the authoritarian trap. It is also better able to square up with the complex reality of existing motivations in liberal and democratic societies. Let me elaborate.

To begin with, the libertarian position on free speech does not square up with the reality of even the most liberal and democratic societies. Freedom of expression in most liberal societies is legally prohibited in many ways. There exist laws on libel, laws protecting official secrets and for the protection of confidences, laws prohibiting or restricting obscenity or racial hatred, laws on contempt of court and copy right. The impossibility of following the absolutist position on free speech condemns it to a mere stance except when the going gets really tough for legitimate expressions of speech.

Secondly, it is arguable that the formalism and content-neutrality of this position is a sham, and that the motivations required to sustain it are too pure to be humanly attainable. A libertarian position has its own substantive values of which it is either unaware or that it deliberately ignores. The

libertarian is as committed, so the argument might go, as the authoritarian is to common values. The libertarian belief that the question of free speech can be detached from shared values and identity is a hopeless illusion. Consider, for example, the motivations of those who defend Rushdie. Do they support him because of their commitment to a principle or because of the values they share with him? Although it is analytically possible and often desirable to distinguish the general defence of free speech from the defence of speaking freely about matters dear to us, in real life our complex motivations are sufficiently suffused with each other to make difficult any easy and firm hold over these distinctions. It is possible, then, that the unease felt when Rushdie is attacked is caused less by the blow to a valued principle than by our recognition that he is one of us—a novelist, a freelance writer, a secular humanist, a modernist, an intellectual in exile, an artist, an anxious non-believer in a world of rigid uncertainties. We are moved by the special obligation that we feel for someone who appears to be one of us than by an impartial commitment to a wholly abstract principle. Conformity is undesirable to many but in whole lot of matters and to a much greater extent than we realise, we expect conformity from each other. We want others to accept our views far more than we wish them to disagree with us. It is the fulfilment of this expectation in, say, the case of Rushdie that moves us to defend him and it is the disappointment caused by the failure of its fulfilment in others that prompts us to decry his opponents. We should never underestimate the power of common values; it is greater than the authority of an abstract principle. But libertarians deny that their commitment to free speech comes from common values or from frames of identity—both associated usually with authoritarian intentions.

Third, the absolutism in libertarian positions is such that it makes people jump at the very mention of the word ban. Are bans not undemocratic? Of course a ban on speech amounts to its criminalization and much else can be done before or instead of its imposition. But ban after all is a form of restriction and restrictions as such are not always undesirable. Besides, there is nothing incompatible between restrictions on speech or conduct and democracy. All legitimate restrictions are compatible with democracy. But this shifts the burden of argument on to the notion of legitimacy. What is it? A brief answer to this is that legitimacy requires some form of unanimous agreement.⁷ Here another question arises: Who or people with what kinds of motivations are to be party to unanimous agreement? To this, the standard liberal answer, at one time at any rate, was to imagine individuals who first abstract themselves from all communal and cultural contexts and then arrive on a ground belonging to no one in particular and therefore from where a dispassionate and impartial view of principles is possible. Such principles automatically enlist unanimous consent, and therefore are legitimate. So, against the libertine position, we may claim that forms of speech may be censored or banned provided this prescription is supported by justificatory principles acceptable to all.

Critique of Gentile Liberalism

However, problems abound with this view. To begin with, in a society of deeply differing faiths, it is extremely difficult to avoid offending people or hurting each other's sensibilities. Indeed, as Waldron puts it, 'it is hard to see how free expression could do its work if it remained psychologically innocuous.'⁸ The third position sanitizes our emotions. Is it possible that we shall disagree with and criticize some position but shall not feel inclined to be hostile to it? Indeed, expressing hostility to it may be an integral part of self-affirmation. Moreover, if rival faiths exist in a society, it may be too difficult to sustain an environment free of offence and counter-offence. For some religions, animal sacrifice is an essential part of their practice, for others it is deeply offensive. Some cannot perform their rituals without music, others find it against the diktat of their holy book. Muslims and Jews find it offensive to even admit that Jesus is the son of God. Can the whole of Christendom be charged for blasphemy? Muslims find idolatry deeply repugnant. Shall the whole of Hinduism be outlawed?

Secondly, the third position is too middle class or elitist in the following sense. It antecedently over-values propositional speech to which the elites are accustomed. The language of the less well-to-do, the marginalised and victimised is so thickly woven with emotional texture that it has little respect for speech with proper propositional form. The more one is kept out of the public arena, the more shrill and offensive one's tone becomes and the less easy it will be to fit one's speech into the traditional mould favoured by the third position. What justification exists to inhibit the expression of forms of speech to which the victims are most accustomed and to allow or encourage those forms that are culturally unavailable to them? In the formally educated milieu of the middle class, the third position works well but it is doubtful if it succeeds in other contexts and for other people.

Third, it fails to take into account the existential and social reality of art and humour. Is it not possible for one to say anything one pleases even in a disagreeable form, in what is often termed immoderate language? In the pure world of make believe, in a near uncontaminated world of fantasy and playfulness, surely, just about anything must be permitted. It might be argued that if we create a new world of reference that is anchored in the real world of everyday life by a million very fine threads and in ways both innumerable and complicated, then within that world we have the liberty to say anything we like. In these contexts—in the somewhat esoteric world of art and the more mundane world of everyday humour—literally anything goes in any form. I cannot here provide an argument for this not so novel claim. All I can say is that upsetting conventional forms, including the forms of utterances, is one of the constitutive objectives of performances within this context. We must be prepared to tolerate disagreeable forms of speech because the use and creation of such forms is an integral feature of what is going on here. To object to them is to be insensitive to the very point of these contexts. Finally, as it stands, the third position is trapped in a blind

universalism, not sensitive enough to cultural differences. Let me further elaborate this final point.

Cultural Relativism and Free Speech

For the sophisticated libertarian position, public criticism and discussion between rival faiths is permissible as long as it is conducted in a certain form, i.e., without causing offence and insult to anyone and with equal respect to all persons. I think the point about equal concern and respect and the necessity to place some restrictions on offence or insult is well taken but this view, as it stands, fails to take into account cultural differences in the appreciation of the value of speech, of the importance of public and formal contexts and modes of address, and of the relationship between forms of expression, public spaces and modes of address. What causes offence and insult varies with such cultural differences. Some faiths permit jokes about God, others require that even the name of God be uttered only by a class of persons under some very stringent conditions; for example, by males not only born pure but who are continuously purifying themselves!

Or, consider, for example, the contrast often drawn between modern-Western and traditional-Islamic cultures. It is said that in the West it is easier for people to write about things that they dare not say in person. In traditional-Islamic societies, as Malise Ruthven has observed, private speech between individuals is much freer than that which is written.⁹ Whether or not it is morally permissible to say something varies, therefore, with the context. Let me take another shot in my attempt to capture the relevant contrast. Perhaps it is not differences in written and oral speech but between formal and informal contexts that matter. Anything said formally with the appropriate modes of address may be socially, morally, and even politically acceptable, and this may include all written and some oral expressions. By contrast, in some cultures it may be morally impermissible to make a host of statements in formal contexts and because all written speech is thought formal, one may not be able to say in writing what one is able to say face-to-face. So, different societies and cultures have different moral conventions and the permissibility within a culture of a certain form of speech is shaped by whether or not it is written, how formal it is, and what weight is placed in the given culture on speech as a mode of expression. It may even be argued, not very convincingly in my opinion, that the importance of free expression depends on what value within the background culture is attached to freedom or autonomy on the one hand and among the various modes of expressions to speech on the other. It would certainly depend on whether speech is written or oral and delivered formally or informally, in public or in private, and how in the first place a culture draws such a distinction. *Thus, it is the formalism and culture-blindness of this liberalism which is questionable, not the specific general value that it espouses.*

The entire question of the right to free expression must then be asked

against the background of which practices and forms of expression are morally permissible in different cultures and why. True, it is theoretically possible to conceive a culture where people have a right to express anything in any form but even in such a culture, it is doubtful that people find everything expressed morally acceptable or in good taste. Given that societies have different cultures and often these cultures have different moral values or the weight they place on the same values are different, it is likely that the way they resolve the conflict between free expression and other values is different. Indeed, it is theoretically possible that in some cultures free expression is not a value at all. This point about cultural differences can be taken further, even against a critique of the third position mentioned above. It might be argued that exempting literature from the requirement of form is itself a culturally specific phenomenon, not possible without a separation of spheres characteristic of modern Western societies. Where art has not detached itself from magic, religion and everyday life, the special place accorded to literature may be unwarranted. Only where literature has gained a certain degree of autonomy can certain kinds of literature be exempt from those constraints under which literature is routinely placed.

These critical remarks suggest the following dilemma. On the one hand we are required to allow all kinds of offensive speech in public space—the ironical, satirical tone in literature, the wit and humour of ordinary persons in their everyday life, and, in the case of the weak and the victim, even their hate-speech. On the other hand cultural relativity suggests, at the far extreme, that we should not expect from some cultures a degree of respect for any form of speech, and that, therefore, censorship of speech must appropriately be viewed from the inside. How do we get over this conundrum?

I start my response to this difficulty by deploying an important point made by Jeremy Waldron.¹⁰ Waldron has forcefully argued that the question of free speech must be protected from the more pernicious forms of cultural relativism. The curtailment of free speech cannot be justified by a facile appeal to cultural relativism. As he puts it, 'The urgent question is whether or not we shall have free expression in the world not whether this culture or that from within its own perspective, permits it.' I agree. Something in the question of free speech is addressed to what is fundamentally human and therefore is universal and must be saved from the more vertiginous forms of cultural relativism. The challenge before us is to formulate a universal defence of free speech not by by-passing but allowing maximum sensitivity for cultural context. We must ensure that a particular formulation and defence of free speech does not masquerade as a universal. But we must at the same time not wholly abandon the aspiration to formulate a concrete universal of free expression. Perhaps, contra the gentile liberal position, we need to arrive at it not by a single course of reasoning which everybody must follow but by allowing and then discovering that different persons, reasoning from within their own distinct cultural perspectives, converge on it. But reach it, we must.

This brings me to another related issue. The gentle liberal position expects agents with completely impartial motivations reaching a consensus on principles justifying censorship and bans. But it is now widely accepted that it is hopelessly utopian to expect the general availability of such motivations. Convergence must then be sought on the basis of a much more realistic appraisal of reasons and motivations, that takes into account not only particular projects and commitments valued by the agent but also the special obligations he may have to his family, to members of his community, to his culture and indeed to even his nation. Human beings inhabit both a personal and an impersonal world and while they may in some contexts dwell more in one than in another, the influence of the other never ceases. The challenge before us therefore is to admit that we all start from different cultural universes but can still reach a consensus on some principles that may endorse, in specific contexts, restriction of some forms of speech. The Rawlsian idea of an overlapping consensus is not inappropriate here.¹¹ So against the libertine position, we may claim that forms of speech may be censored or banned provided this restriction is supported by an overlapping consensus on its justificatory principles.

The Need for Free Expression

But in a culturally divided world can we ever hope to arrive at an overlapping consensus? What if the taste for free speech is really specific to some cultures? What if it is a mere preference of the modern, logocentric West? Let me begin by dismissing a particularly bad formulation of this issue. I have often heard people say that a commitment to free speech is a luxury of the modernized elite and that the poor, ordinary people of India have no need for it or that free speech thrives only in those cultures where the very idea of the sacred has been given up but not in South Asia where faith, with a relatively low emphasis on the discursive, comes first in a permanently established hierarchy. I have two points to make in a brief riposte to this argument. First, if one goes by people's tastes, preferences and interests, then free speech does not appear to matter even in the West. A catalogue of people's interests in the West will easily give free speech a relatively low place. By their own account, people's interests are far better served, for example, by a secure job, by decent human relationships, by a safe environment, etc. Why free speech, rather than all these, is accorded special protection in the West is a widely acknowledged 'liberal puzzle.'

Let me, contrary to my own intuition, assume that free speech is indeed a cultural preference. I shall now counter the relativist argument by deploying two distinctions, between (a) expression and speech and (b) need and preference. I wish to claim that while free speech may indeed be culture specific—short or long-term preference of some individuals in specific cultures—free expression is a basic, universal need. Further, assuming the inescapability and desirability of equality, we must respect and therefore

allow the precise form of expression chosen by others both inside and outside our society. Let me elaborate.

First, the distinction between need and preference.¹² A need is a desire which belongs to us largely in virtue of the kind of beings we are (desire for food or sleep, for example). Preference, by contrast, is a desire we have because we have adopted it (the desire for beef rather than pork). Second, the distinction between speech and expression. Speech in the narrow sense is roughly the deployments of words containing propositional information (i.e., prose speech). Speech in the wider sense is part of a much wider network of what Cassirer called symbolic forms and what I here call expression.¹³ Expression has four features. First, it is embodied meaning. Second, the meaning so embodied may be a belief, desire or feeling or a set thereof. Third, its embodiment implies the necessary presence of a material medium. Fourth, the meaning so embodied is manifest, directly present for all to see, i.e., publicly available. Expression includes not just speech in both the narrow and wide senses, but any symbolic form such as art and ritual.

Now, expression in this sense is neither culture-specific nor a mere preference, but a common human need. One may even put it more strongly by saying that for humans it is a way of being in this world. People cannot help expressing themselves one way or another, in one or another form. But expression can be restricted, thwarted and even wholly prevented. In any case, the favoured form of expression of individuals or cultural groups can be inhibited. Freedom of expression is a value because in general it is undesirable to restrict expressive activities of any person or group. Freedom of speech may be a derivative value, derived from the general need for free expression, and may pertain especially to some cultural groups and even some individuals within those groups, but its protection is required by the general egalitarian principle that forms of expression of a group or individual matter as much as those of others and therefore any restriction imposed on them must be presumed to mandatorily require special justification.

Let me recapitulate. I have argued that free speech may need special protection, despite the general rather than the culture specific perception that it is not as vital as other interests, and that even if it was a cultural preference, its protection is still required by the general egalitarian principle of the need for free expression in all human beings. I know that what I have here provided is not an argument but a mere point of view, but I believe something along these lines has to be constructed to reach a common perspective that accommodates cultural diversity.

This argument can also be deployed against censorship of some kinds of literature. But what about 'offensive literature'? The argument from need for expression does not apply to it. We have already admitted that because affirmation and offence are implicated with each other, offensive expressions cannot be entirely eliminated from public sphere. I wish to supplement this claim by another Universalist argument from equality of respect and from

the persistent hold on all human beings of some of the deepest questions concerning life and death, good and evil. It is widely accepted that many of these issues are both inescapable and stretch our intellect and imagination to their limit. If they are inescapable, we must deal with them. If they strain our psyche, we must forever ferret out new ways of exploring them and this would have to include 'the whole kaleidoscope of literary technique—fantasy, irony, poetry, wordplay and the speculative juggling of ideas.'¹⁴ The sacred literature of different faiths as well as secular art, literature and philosophy will unleash on each other all the resources at their command to deepen our understanding of these issues. We may neither be able to lay down to each other the terms on which those issues shall be tackled nor 'respectfully tiptoe . . . around each other's cultural and psychological furniture.'¹⁵

However, there are two problems in this view that still need addressing. First, in an ideal world of equal relations, offence and insult, any speech that hurts, will have to be tolerated. But our real world is full of structured inequalities. Let us go back to our third position. On that view, when speech unflinchingly and repeatedly comes into conflict with the principle of treating persons as equals, when it deliberately and persistently inflicts, directly or by creating a pervasively hostile climate, a sense of inferiority on an individual or a group, lowers self-esteem and self-confidence, humiliates or stigmatises—in short, whenever speech persistently damages the sense of one's identity, then, the argument goes, it need not be tolerated. Recall the notorious incident in an American university where white students harassed and heckled a black woman shouting 'we have never taken a nigger.' For the third position, the utterers of this speech simply have no ground from which to expect toleration. Their speech must be restricted.

In criticism of the third position, I have claimed that insulting people, offending their sense of identity and dignity may, in some cases, be unavoidable. But it is clear from the example given above that the 'sense of hurt' is much stronger if it is inflicted by persons belonging to a powerful, dominant group who speak down upon oppressed individuals or groups from a superior platform. We can't get away from the fact that hurtful speech from an equal is easy to brush aside but when it comes in conditions of asymmetry and hierarchy, from the arrogant and the powerful, then it can't easily be shrugged off by those who are generally alienated, insecure or oppressed. Moreover, individuals who are culturally ill at ease in society tend to stick together and greatly value collective self-definition, and those with a strong collective identity find it more difficult to ignore denigrating epithets aimed at their group. To such people words cause special damage and when they know that the intent to injure is both deliberate and persistent, then perhaps they are left with no reason whatsoever to tolerate hurtful speech.

In brief, the presence of inequalities requires that special attention be accorded disagreeable speech, i.e., speech that has an immoderate, disagreeable form, uttered in inappropriate contexts, coming primarily from the

wealthy, the arrogant or the powerful and systematically and persistently offends the self-respect of others.

Secondly, we may ask if we can permit disparagement of an entire way of life of a people, even in an ideal egalitarian universe. When the entire moral system of a group, rather than any one of its aspects, is severely disparaged and undermined by speakers who show no evidence of any understanding of the moral belief of the concerned group, then it loses the ground from which it can demand toleration. This is a tricky observation. As I have formulated it, it needs distinguishing from another point. Joseph Raz has made the interesting remark that every opinion expressed embodies a wider net of opinions; sensibilities which, taken together, constitute a form of life. The free expression of this opinion validates, therefore, a whole way of life. The censoring of this opinion, on the other hand, implies an authoritative condemnation, not just of the particular opinion censored, but of the whole style of life. The problem is this: Assume the holist view on expressions and then consider persons X and Y. X may, in expressing his culture, offend or even disparage not just an aspect but almost the entire culture of Y. Since this is intolerable to Y, she may seek assistance from the state, and in attempting to help Y, the state may, by banning X's expression, end up officially condemning the entire culture of X! This problem I do not know how to resolve. Perhaps, the answer is not to use any coercion at all and leave X and Y to sort the problem out on their own.

Thomas Nagel has made a four-fold classification of the legitimate grounds for coercion.¹⁶ There exist, for Nagel, (i) grounds for coercion which the victim acknowledges as valid (cases where one is forced to do what one clearly wants to but cannot achieve in the absence of force); (ii) grounds not acknowledged by the victim but which are admissible because he is grossly unreasonable or irrational not to acknowledge them (criminal laws); (iii) grounds not acknowledged by the victim but which are admissible under a higher order principle which he does acknowledge or would if he is reasonable; and (iv) grounds which the victim does not acknowledge—either reasonably or even unreasonably—and which are such that he cannot be acquired to accept a higher order principle admitting them into a political justification even if most others disagree with him. This classification is relevant for censorship of expressions. The case above can only be subsumed under (iv). If so, no grounds for coercion can be reasonably accepted. Hence, no bans are permissible. However, this point is valid only with one important assumption, namely that X and Y are equal in all relevant respects. Where relations between the two are persistently asymmetrical, the state may act in favour of the weak by banning the speech of the other.

Conclusion

I have argued against the libertarian view that disallows all bans and forms of censorship. Against the authoritarian view I have claimed that censorship

cannot always depend on content of speech. The genteel liberal view is an improvement on both but fails to come to grips with the culture relativity of speech and is so sanitised that it inhibits much offensive speech that ought to be morally permissible in the public sphere. The fourth position that I defend meets some of these objections but needs to be explored and elaborated further.

NOTES AND REFERENCES

1. The real challenge of censorship is faced in democracies. As Rushdie put it, '... but the big test will come after the end of dictatorship, after the restoration of civilian rule and free elections, wherever that is ...; because if leaders do not then emerge who are willing to lift censorship, to permit dissent, to believe and to demonstrate that opposition is the bed-rock of democracy, then I'm afraid the last chance will have been lost. For the moment however one can hope.' In *Casualties of Censorship: They Shoot Writers, Don't They*, Faber and Faber, 1984, p. 87.
2. Quoted in Simon Lee, *The Costs of Free Speech*, Faber and Faber, 1990.
3. For a good discussion of some of these issues, see, T.C. Grey, 'Civil Rights and Civil Liberties: The case of discriminatory verbal harassment' in E.F. Paul et. al., eds. *Reassessing Civil Rights*, Oxford, Blackwell, 1991.
4. I am here referring to a famous judgement, Emperor vrs. Indarman (11881), 3 All. p. 837. For a discussion of some of these issues, see Rajeev Dhawan, *Only the Good News*, Manohar, Delhi, p. 305.
5. See Jeremy Waldron, *Liberal Rights*, OUP, pp. 134-42. Also see, Susan Mendus, *Toleration and the Limits of Liberalism*, 1989.
6. For a good discussion of these issues see, E. Barendt, *Freedom of Speech*, Clarendon, 1987.
7. See T. Nagel, *Equality and Partiality*, OUP, 1991, pp. 33-40.
8. J. Waldron, op. cit., p. 139.
9. See Simon Lee, op. cit.
10. Waldron, op. cit.
11. John Rawls, *Political Liberalism*, Columbia University Press, 1993, pp. 133-68.
12. See Charles Larmore, *Patterns of Moral Complexity*, OUP, 1987, p. 139.
13. I rely here on Charles Taylor, *Philosophical Papers*, Vol. 2, p. 219.
14. Jeremy Waldron, op. cit., p. 140.
15. Ibid.
16. T. Nagel, op. cit., pp. 159-60.