

Is free speech a problem? - Freedom, choice, and rights

Freedom of speech can only exist and be validated in the shared act of a successful communication or exchange. Without a successful communication event, free speech has no relevance.

Freedom of speech only exists in 'getting through' to those who are willing to listen, not just in being able to speak out.

This pushes back the argument over free speech to the speaker who, in being listened to, must and will consider and most likely respect their interlocutor in order to achieve success in communication.

Human expression (oral, mimetic, or written) is a forthcoming effort to communicate with another. As such, its effectiveness and validity rely on the successful transfer of information between both active parties - speaker and listener - as essential participating entities, regardless of what is achieved or not by the communication.

The individual's need to carry out, to put forward such expression is encapsulated in the very term 'free speech' and remains at the root of the problems societies face in dealing with it.

Attempting to define or restrict freedom of speech in terms of what an isolated individual says or should not say allows little if any room for freedom itself to prevail – whether that of the listener or that of the speaker – in any society.

By and large, 'not to listen' and 'not to speak' when spoken to are being misunderstood as 'rights' of the individual. In fact, they only represent a 'choice' against communication regardless of the cause or reason for refusal in the exchange.

Some individuals interpret these isolated positions where communication is not engaged upon as 'wisdom', others find them to be a way to avoid displaying their own ignorance or their lack of interest in the topic being broached, or else a way to avoid arguments or injury.

Freedom as defined by the scope of a potential action by an individual is easily understood. Freedom is something that resonates intrinsically with humans regardless of upbringing, culture, intelligence, or education. Nobody questions the existence or validity of freedom in their day-to-day life.

Generally speaking, humans assume a position of individual freedom unless this be curtailed or restricted in some obvious way (imprisonment, oppression, persecution). However, even in those extreme cases that negate individual or group freedom, freedom's mental reality appears to survive and, in many cases, even proliferate in some transcendental way. Therefore, freedom is innate to the individual.

So far, these are observations pertaining to individual freedom of speech. But I have made clear up front that freedom of speech is irrelevant without another, without the listener, without the counterpart in communication. And that is why things get complicated.

When any other party, a third-party, becomes involved in the reality of enacted freedom of speech, whether they be individuals or institutions,¹ unless they are actively engaging with all sides involved in the communication, they can only, despite their intentions, become obstacles to the process of communication and to free speech itself through interference, neglect, corporate bias, or censorship.

We often see free speech being heralded as a 'right' of the individual within democratic societies. I argue here that free speech is not a right, but it is important to highlight some conceptual distinctions that will help clarify the relevance of claims for absolute free speech.

'Freedom' is one thing, 'choice' is another, a 'right' is yet another thing.

'Freedom' gives us 'choice' but does not give us a 'right' to do anything, including to speak out freely.

¹ i.e. social media platforms, media outlets, governments, police, regulatory bodies, guard rails, lobby groups, social and private enterprise, etc.

Essentially, if we are to achieve successful communication, our individual freedom of speech ends where that of our interlocutor starts. Measuring the 'distance' between individual freedoms is a complex process, especially when more than one party or a society as a whole become part of the equation.

The balance between individual freedom and social responsibility underlies a position traceable to the French Revolution and which was made popular by expressions such as John B. Finch's (USA's Chairman of the Prohibition National Committee in the 1880s):

"Your right to swing your arms ends just where the other man's nose begins."²

Perhaps more significantly, French novelist and politician Victor Hugo's characterisation of Grantaire's and Enjolras' 'republican spirit' in *Les Misérables* (written between 1845 and 1862) will provide a more tangible view of what the expression of individual freedom in society require of individuals themselves:

"What about me?" said Grantaire. "Here am I."

"You?"

"I."

"You indoctrinate republicans! you warm up hearts that have grown cold in the name of principle!"

"Why not?"

"Are you good for anything?"

"I have a vague ambition in that direction," said Grantaire.

"You do not believe in everything."

"I believe in you."

"Grantaire will you do me a service?"

"Anything. I'll black your boots."

"Well, don't meddle with our affairs. Sleep yourself sober from your absinthe."

"You are an ingrate, Enjolras."

"You the man to go to the Barrière du Maine! You capable of it!"

"I am capable of descending the Rue de Grès, of crossing the Place Saint-Michel, of sloping through the Rue Monsieur-le-Prince, of taking the Rue de Vaugirard, of passing the Carmelites, of turning into the Rue d'Assas, of reaching the Rue du

² <https://quoteinvestigator.com/2011/10/15/liberty-fist-nose/>

Cherche-Midi, of leaving behind me the Conseil de Guerre, of pacing the Rue des Vieilles-Tuileries, of striding across the boulevard, of following the Chaussée du Maine, of passing the barrier, and entering Richefeu's. I am capable of that. My shoes are capable of that."

"Do you know anything of those comrades who meet at Richefeu's?"

"Not much. We only address each other as *thou*."

"What will you say to them?"

"I will speak to them of Robespierre, pardi! Of Danton. Of principles."

"You?"

"I. But I don't receive justice. When I set about it, I am terrible. I have read Prudhomme, I know the Social Contract, I know my constitution of the year Two by heart. **'The liberty of one citizen ends where the liberty of another citizen begins.'** Do you take me for a brute? I have an old bank-bill of the Republic in my drawer. The Rights of Man, the sovereignty of the people, sapristi! I am even a bit of a Hébertist. I can talk the most superb twaddle for six hours by the clock, watch in hand."

"Be serious," said Enjolras.

"I am wild," replied Grantaire.

Enjolras meditated for a few moments, and made the gesture of a man who has taken a resolution.

"Grantaire," he said gravely, "I consent to try you. You shall go to the Barrière du Maine." ³

The expression of individual freedom within society starts with communication among those involved. It then progresses into the creation of an informal agreement between the individual parties involved, before being instituted into a formal charter which purpose is to delimit and restrict the extent of individual freedom for the purpose of achieving some level of societal harmony.

The new 'Working group on Anti-Muslim Hatred/Islamophobia definition' launched by the UK government is an example in point and is introduced as follows:

- It is the first duty of government to keep its citizens safe
- New group set to deliver a definition of Anti-Muslim Hatred/Islamophobia within six months as incidents of anti-Muslim hatred reach the highest number on record in 2024
- The definition will provide guidance to government and other bodies to support further action on tackling religiously motivated hate, delivering on the Plan for Change safer streets mission

A new working group has been established to provide government with a definition of Anti-Muslim Hatred/Islamophobia, supporting a wider stream of work to tackle the unacceptable incidents of anti-Muslim hatred.

³ <https://www.sparknotes.com/lit/lesmis/full-text/saintdenis-book-one-chapter-vi/>

It will advise government on how to best understand, quantify and define prejudice, discrimination, and hate crime targeted against Muslims.

With incidents of anti-Muslim hate crime at record high in England and Wales, the group's work will support wider and ongoing government-led efforts to tackle religiously motivated hate crime – delivering on the government's Plan for Change mission for safer streets.⁴

This is the consequence of an actual incidence of proportionally exceptional cases of individuals who, in their freedom, make the choice to go beyond their own rights and breach the rights of others, as well as because of the associated fear that such unrightful behaviour may become the cause of a loss in the desired level of harmony maintained within a given community or society.

Freedom of speech allows us the choice not to respect another's freedom and attempt to force them to listen, but their own freedom will guide their choice in that event one way or another. Their freedom does not impact the other's choice. Nor does the other's theirs.

An argument may be made for regulation of free speech when individuals considered to be vulnerable or disadvantaged, underage or belonging to specific minorities and their respective rights are considered. However, 'regulation for the few' indirectly implies 'regulation for all', especially in our age of rapid, massified communication.

In effect, the rights of minorities will, by default, unavoidably become the rights applicable to all members of such society and the relevant regulatory structures will inevitably be drawn from the minorities' standpoint thus seriously restricting the rights of all the members of society while increasing the regulatory and implementation burden⁵ for all in a colossal way.

It is important to distinguish between the concepts being discussed here and summarise their import for the purposes of the discussion on free speech.

'Free speech' represents an innate individual expression that cannot be regulated upon practically unless centralised access to and monitoring of the individual mind is achieved and implemented.

'Choice' is the individual un/ethical bringing into practice of convictions, beliefs, interests or ideas/desires such as right & wrong, good & bad, green or blue, large or small, and an infinite array of alternatives.

A **'right'** is an instituted rule or regulation that, depending on where the individual lives, will impact on their choices and the exercise of their freedom, if they choose to abide by it.

'Rights' are formal conceptual structures created and agreed upon by humans to regulate generic human behaviour according to the law of the land (constitutions,

⁴ <https://www.gov.uk/government/news/government-launches-working-group-on-anti-muslim-hatredislamophobia-definition>

⁵ monitoring, policing and apprehension, legal representation, judicial interventions and penalty allocation

bills of rights, case law, etc.). They ebb and flow depending on the various forms of government, cultural influence, and historical prerogatives.

Rights transcend the individual and are distinct from 'choice' and 'freedom' in as much as they depend on successful communication and agreement within a large cohort of individuals, a community, a nation, an institution.

Ultimately, rights are of no consequence to individuals unless individuals themselves choose to surrender their freedom to the communal agreement. That is why free speech cannot be effectively regulated at the individual level.

Yet, in their actual application, rights attempt to monitor and control the infinite number of choices, and the innate freedom of millions of individuals. This, in itself represents an untenable paradox.

Similarly, the individual often chooses to agree to restrict the extent of their freedom by not impacting the freedom of others in the society they are a part of, and does that to the best of their ability.

Neither the institution of rights nor the individual's own restraint are or may be expected to be full proof mechanisms to avoid individual cases of offense or harm through the use of free speech.

Based on the above, 'to speak freely', 'not to listen' and/or 'not to speak' do not represent 'rights' per se, they are only curtailments of the individual's freedom of speech arrived at through the means of individual choice.

To confuse freedom of speech and directly associate it with a 'right' represents a misconception and misrepresentation of the individual's 'choice' to abide or not by the rules agreed by their community or society.

Based on their freedom of speech, an individual may choose to speak in ways that injure others, promote or provoke harmful activities. This will be considered to be affecting the 'rights' of others and possibly breaking the laws/regulations within specific contexts. The rights of others, however, in such cases, do not essentially curtail the individual's innate freedom to speak.

If free speech communication is to take place between two or more individuals, it must be left to the play of their respective freedom and to the decisions or choices of the individuals involved without seeking recourse to what the regulation and laws, the rights of humans approve or don't.

If, on the other hand, rights are enforced on individuals to curtail their freedom of speech, it will become impossible - once the legal structures and monitoring practices are fully erected - for any individual to make sense of or even recognise their own freedom.

When individual freedom of speech is defined, expressed and implemented on the basis of communal agreements, of rights, and not on the grounds of the individual's own choices based on their own innate freedom, the result is an unavoidable

dominance of institutions and states based on those pre-agreed (majority-agreed in the best of cases), or dictatorially imposed 'rights'.

Additionally, if still intent on exercising their freedom of speech within a society where rights take precedence, the individual's only route to actual freedom becomes, by elimination, something outside the law.

The most important and aberrant consequence of the phenomena outlined above is that individuals may now effectively be required to prove the rightful legality of their daily free speech activities because of the palpable separation that has been effected between their rights (and those of others) and their freedom.⁶

In this type of scenario, not only will individuals effectively be pushed into a process which will require them to deny their innate freedom to speak without governmental intervention, but they will in fact be forced to pay for such loss of freedom through the cost of state regulation on the taxpayer.

It may be conjectured that, in the foreseeable future, the tables will turn. Freedom of speech and of choice will no longer depend on the individual but on the rights of the communal other. Freedom of speech will have a price tag attached to it and will no longer be free.

If the ultimate responsibility for individual acts of free speech rests with the individual, what is the purpose of regulating free speech for the masses?

⁶ <https://www.theverge.com/2022/2/7/22912054/uk-grossly-offensive-tweet-prosecution-section-127-2003-communications-act> & <https://www.libertasonline.co.uk/home/tweets-behind-bars> & <https://www.bbc.co.uk/news/articles/cy76dxkjpjjo>