



University of Zanjan

**The Journal of
Ethical Reflections**

Vol.1, Issue 4, Winter 2020-2021, pp. 43-56.

Online ISSN: 2717-1159 / Print ISSN: 2676-4810

<http://jer.znu.ac.ir>

Are There Limits to Free Speech? ¹

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Introduction

Freedom of speech has traditionally been a cause championed by the left and liberal side of the political spectrum, against conservatives who have tried to limit the expression of radical ideas. Here are three examples from the United States:

1) When I was appointed to Princeton University in 1999, Steve Forbes, whose father had endowed the university's Forbes College, called for my appointment to be rescinded, and pledged that he would not donate to the university as long as I was on the faculty. Forbes was, at the time, running for the Republican nomination for president.

2) In 2014 the University of Illinois withdrew an offer of appointment to Professor Steven Salaita because he posted tweets that were highly critical of Israel

Received: May 25, 2021 / **Accepted:** June 05, 2021 / **Published:** June 15, 2021.

1. This essay draws on Peter Singer, "Philosophy, Controversy, and Freedom of Speech," first published in Donald Downs and Chris Suprenant, eds., *The Value and Limits of Academic Free Speech*, Routledge, New York and London, 2017. A subsequent version was also published in Johannes L. Brandl; Beatrice Kobow; Daniel Messelken (eds.): *Analytische Explikationen und Interventionen*. Analytical Explications and Interventions. Paderborn, Germany: Brill-mentis 2021.

and Prime Minister Netanyahu.

3) In September 2017 Harvard's Kennedy School withdrew Chelsea Manning's appointment as a visiting fellow after then CIA Director [and later Secretary of State] Mike Pompeo called her a "traitor" and cancelled a lecture he had been scheduled to give at the school.

At present, however, and in contrast to this tradition, in many parts of the world today, today the most vigorous opposition to freedom of speech comes from a section of the left. Here again are three recent examples from the United States, all of which occurred in 2017:

1) At Middlebury College, in Vermont, protesters shouted down Charles Murray, co-author of the controversial book *The Bell Curve*, about race and IQ, and his host, Allison Stanger, a professor of international politics and economics at the college, suffered whiplash injuries and concussion after being pushed and jostled as she and Murray were leaving.

2) At Berkeley, a planned event featuring the alt-right journalist Milo Yiannopolis was cancelled after violent protests.

3) Outside the universities, James Damore, a software engineer at Google, was fired after he circulated a memo suggesting that there are differences between men and women that may explain, in part, why there are fewer women than men in his field of work.

Some will argue that although the restrictions of freedom of speech by the right are indefensible, those by the left are intended to protect disadvantaged, threatened or marginalized groups and so are justifiable. Should we agree that some speakers cross a line, and should not be tolerated?

In discussing that question, I begin with a disclosure: I have myself been thought to cross the line, and to express views that should not be tolerated. In a chapter of my book *Practical Ethics*, first published in English in 1979, I discuss the ethics of treating severely disabled newborn infants. I had become aware that in several countries, including the United Kingdom, the United States, and Australia, medical staff in neonatal intensive care units sometimes suggest to parents that the prognosis for their child is so poor that they should

consider withdrawing life-support, with the death of the baby the near-certain outcome. Although this seems to me better than using all available medical techniques to prolong life, irrespective of the consequences for the child and the family, the death of the child is more drawn-out, and often less humane, than death from active euthanasia would be. This makes the situation difficult for the parents and the nursing staff, as well as the child. It would be better, I argue, to allow parents faced with a life and death choice for their severely disabled infant, to choose active euthanasia.

Practical Ethics has been translated into several languages, and a German translation was published by Reclam in 1984. In 1989 I received and accepted an invitation to speak at a European Symposium on "Bioengineering, Ethics, and Mental Disability," organized jointly by Lebenshilfe, the organization for parents of intellectually disabled infants, and the Bishop Bekkers Institute, a Dutch organization in the same field. In addition, since I was going to be in Germany, I also accepted an invitation from Professor Christoph Anstötz, professor of special education at the University of Dortmund, to give a lecture on the subject "Do severely disabled newborn infants have a right to life?" At the time of accepting these invitations, although I was used to people having vigorous disagreements with my views about the treatment of disabled infants, as they did with my views about abortion and eating meat, none of my many speaking appearances had been protested against, nor had anyone ever tried to prevent me speaking.

Shortly before I arrived in Germany, both invitations were withdrawn, as a result of protests by people who thought that the question of whether severely disabled infants have a right to life is not one that should be discussed. Christoph Anstötz, I should say, wanted to go ahead with the lecture he had invited me to give, but was overruled by the Rector of the university, who was clearly intimidated by the threat of protests. There was also extensive media coverage of my views, generally extremely derogatory and misleading.

It was then that I received an invitation from Professor Georg Meggle, at the University of Saarbrücken, to speak about my views there. I knew nothing of Georg then, but I could see that it took courage, in that atmosphere, to invite me to speak, and I was pleased to have an opportunity to explain my views to a university audience. Even that was not easy, because the room was filled with people who

wanted to shout me down and deny me the opportunity to speak. Meggle invited one of them up on the stage to state why I should not be allowed to speak. Georg handled the situation with great aplomb, first inviting one of the protesters onto the stage to explain why she thought I should not be allowed to speak, and then saying that it was only fair that I should be allowed to respond to the views that had just been put – not to give my original speech, but to reply. Many of the protesters, who had thought they were coming to object to some kind of extreme right-winger or even neo-Nazi were evidently surprised to find that I am politically on the left, that I had written a book called *Animal Liberation*, and above all that I am of Jewish descent and my parents were fortunate to be able to flee Austria after the Nazis arrived in 1938. In the course of my response, and then further questions and discussion from the audience, I managed to say almost everything that I would have said if I had been allowed to give my lecture.

The protests did not end there. For several years thereafter, in Germany, Austria and the German-speaking part of Switzerland, announcements of my lectures led to protests and threats of violence. Such threats caused the complete cancellation of two entire conferences and the withdrawal, at late notice, of several invitations to speak at universities and conferences. In Zurich, I had to stop lecturing after I was physically attacked on the stage, and my glasses were ripped off my face and smashed under the boot of a protester.²

Many of my German opponents were not interested in the reasons why a professor of philosophy might argue for making the option of euthanasia available to parents of severely disabled infants. Rather they held that, irrespective of the merits of the arguments, it is impermissible to question the inviolability of human life in general or the right to life of disabled human beings in particular.³ Some values, they claimed, are so sacrosanct that they must not be challenged.

The legitimacy of objections to freedom of speech, similar in type to these

2. For details, see "On Being Silenced in Germany," *The New York Review of Books*, August 15, 1991, reprinted in *Practical Ethics*, 2nd edition, Cambridge University Press, Cambridge, 1993, appendix, and *Writings on an Ethical Life*, Ecco, New York, 200, pp. 303-318.

3. See, for example, Franz Christoph, "(K)ein Diskurs über 'lebensunwertes Leben,'" *Der Spiegel*, No. 23/1989 (June 5, 1989); O. Tolmein, *Geschütztes Leben* (Hamburg: Konkret Literatur Verlag, 1990); T. Bastian, editor, *Denken, Schreiben, Töten* (Stuttgart: Hirzel, 1990); Franz Christoph, *Tödlicher Zeitgeist* (Cologne: Kiepenheuer und Witsch, 1990).

objection to my views urged by German opponents of freedom of speech is discussed by John Stuart Mill in his famous defense of freedom of expression in *On Liberty*. Mill begins his defense by arguing that to prohibit disagreement with a widely shared view is to assume infallibility in the belief that the view is true. He cites many examples to show that what has been believed to be the most certain truth has often turned out to be false. It is only by allowing views to be contested that we can really be justified in claiming to know that they are true. Moreover, he adds, even if a view is true, to prevent it being challenged is to risk it becoming dead dogma, rather than a living truth.

Mill also considers a different ground for suppressing dissent. There are some, he tells us, who would deny the right to challenge a belief, not because they are certain the belief is true, but because the belief is “indispensable to well-being” and “none but bad men would desire to weaken these salutary beliefs.” Mill responds that this objection seeks to separate the usefulness, or otherwise, of a view from the question of its truth. But surely, Mill says, we are no more infallible in assuming that a view is harmful than we are in assuming it to be false. We have to be able to discuss whether a view really is useful or harmful (Mill, *On Liberty*, Chapter 2).

This is exactly what my German opponents were arguing – that my views, whether true or false, are dangerous. Germany’s past, they claimed, shows the danger of regarding some human lives as more valuable or “worthy of life” than others. But as Georg pointed out in Saarbrücken, if this claim is made, we should be able to discuss whether it is true. In response, I argued, no reflective society with sophisticated and expensive medical technology can avoid raising the issues that my opponents thought should not be raised. We can surely all agree that the fact that we *can* save a life does not imply that we *ought* to save that life. We need to ask whether our medical technology should always be used to preserve human life to the maximum extent possible. If the answer is “maybe not”, and it is acknowledged that sometimes the patient is incapable of expressing a preference for continuing to live or for dying, then some important questions must be asked:

- On what grounds are decisions to discontinue treatment to be based?

- Should these grounds include judgments about the quality of the life that the patient can be expected to live, if he or she receives all possible treatment and, as a result, continues to live?
- Who should make such a decision, when the patient cannot?
- If the decision is to bring about the patient's death, does it make a morally significant difference whether that is done by the withdrawal of life-support, such as a ventilator, or by a lethal injection?

There is room for different views on these questions. I have no problem with that. My problem is in understanding how some people can believe that these questions should not be asked.

On one point here my experience does not entirely support what Mill writes. He asserts: "And it will not do to say that the heretic may be allowed to maintain the utility or harmlessness of his opinion, though forbidden to maintain its truth. The truth of an opinion is part of its utility." That is no doubt correct, if we are concerned with opinions about something that can be true or false. But, arguably, that is not the case with moral opinions. My German opponents seemed divided on this question. Some of them were conservative Christians, who thought that the sanctity of human life is God's law and hence a moral truth that I was denying. To this group Mill's point would apply. Others, however, were from the left, and regarded morality and politics as simply a power struggle. They saw themselves as on the side of the oppressed, whereas my views were part of a capitalist-fascist attempt to eliminate all who are not productive workers. It was precisely because they saw ethics as relative to economic interests that they rejected the idea of debate and discussion as a way of reaching truth. They represent a different kind of challenge to free speech, one that sees ethics as mere camouflage for the real issues of power and dominance that, they say, inevitably lie beneath its surface.

This approach was not entirely unknown when Mill wrote *On Liberty* – it is outlined in *The Communist Manifesto* and can be traced back to Thrasymachus, who in Plato's *Republic* defines "justice" as "whatever is in the interests of the stronger" – but it has become more popular since, especially among postmodernists,

deconstructionists, and critical theorists of various kinds.⁴ It is alien to Mill's philosophical outlook, however, and so requires a separate refutation. That refutation should start from the fact that those who oppose freedom of expression without assuming that reason plays a role in ethical argument face the problem of undermining their own ethical stance. They cannot, consistently argue that it is true, or any better justified, in terms of reason and argument, than the view they would suppress. Once that is granted, however, we have arrived at an argumentative stalemate, and opened the door for those willing to use force to impose what we might call the Thrasymachus solution: to impose their own "justice" which in fact becomes "whatever is in the interests of the stronger." In other words, they have opened the door for, precisely, fascism. There is a deep irony in having one's freedom of speech suppressed by those who profess to be anti-fascist.

In arguing against those who tried to prevent me speaking, I have been focusing on views that I believe to be sound or true. What about views that are palpably false? Even here it is important to defend the right to free speech. As an example, I will take David Irving, whose failed lawsuit against the historian Deborah Lipstadt is the subject of the 2016 film *Denial*. In 2006, Irving served time in an Austrian prison for saying that the Holocaust never happened.

The best way to persuade anyone of the reality of the Holocaust is to confront them and their audience with some of the evidence, which is completely overwhelming. In contrast, how is imprisoning someone who denies the existence of the Holocaust going to persuade anyone that the Holocaust happened? Would it be unreasonable to think that if a government locks someone up for saying something, that person may be in possession of facts that the government wants to keep secret?

But, it may be said, to deny the existence of the Holocaust is deeply offensive to those who survived it, or to the descendants of those who were victims of it. It is. I know because I am among those descendants: three of my four grandparents died in the Holocaust, and the fourth endured terrible years in the overcrowded and

4. See, for example, Richard Rorty, "Does Academic Freedom Have Philosophical Presuppositions," *Academe*, 80:6 (1994) pp. 52-63.

disease-ridden Theresienstadt ghetto before her liberation. Nevertheless, I agree with Mill that causing offence is not sufficient reason for restricting free speech. There are so many different ways in which people can take offence that to restrict freedom of expression on this ground would destroy it. The benefits of freedom of speech outweigh the harms of offense.

This is especially true in philosophy. Our tradition goes back to Socrates. The Oracle of Delphi said that he was the wisest person alive. That puzzled him, until he realized that if he was wiser than others, it was because others thought that they knew things, and he knew that he did not. Socrates spend a lot of time demonstrating to his fellow-Athenians how little they knew, and pushing them to examine the way they were living. In doing so, he would undoubtedly have offended many of them. For this he was condemned to death by drinking hemlock. Today, philosophers are still challenging conventional beliefs and our values, encouraging us to ask ourselves how we ought to live, and in the process changing the lives of many people. To do this properly, philosophy needs a license to cause offense.

Nevertheless, aren't there limits on freedom of speech? Mill thought that there are: "even opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act." That sentence immediately precedes his oft-quoted distinction between publishing in a newspaper one's opinion that corn dealers starve the poor, and saying the same to an excited mob in front of a corn-dealer's house (Mill, *On Liberty*, Chapter 3).

Today we are less worried about violence to corn dealers, and more concerned about incitement to racial or religious hatred.

Consistently with the distinction Mill was trying to draw, I believe that the right of free speech does not extend to a right to incite racial or religious hatred, or hatred against people because of their sexual orientation. Such vilification, sometimes referred to as hate speech can be distinguished from other forms of speech because it is an appeal to our emotions, rather than to our intellect or our finer feelings, and often, it is an incitement to violence. Granted, the line is not always easy to draw, and where it is not, that will be a task for the courts. But the principle is tolerably clear.

It is also clear that some speakers and authors who have recently been shouted down are not engaging in vilification. Charles Murray's claims about race and

intelligence in *The Bell Curve* do not amount to racial vilification, for they are aimed at our intellect. Murray presents complex evidence and makes arguments based on that evidence. You may think the evidence is selective and the arguments unsound. You may point out that some will find his conclusions offensive. Even if all that is true, it is not sufficient grounds for preventing Murray from defending those claims. The proper response is to refute the evidence, or present contrary evidence, and to point to holes in the argument. For those who are predisposed to believe the conclusions Murray reaches, preventing him speaking will only reinforce their view that his opponents have no answer to him. If Murray's opponents can refute him, his supporters will say, why would they need to prevent him speaking? Especially if he has been invited to speak in a university, it would seem, where there are many people who have the resources and ability to scrutinize and point out whatever flaws there are to be found in his writings, refutation would seem a more effective way of discrediting his claims than preventing him putting those claims forward.

At Middlebury College after the 2017 events involving Murray, a number of faculty members wrote and signed onto a statement of principles under the heading "Free Inquiry on Campus." The principles included such points as:

- Genuine higher learning is possible only where free, reasoned, and civil speech and discussion are respected.
- Only through the contest of clashing viewpoints do we have any hope of replacing mere opinion with knowledge.
- The incivility and coarseness that characterize so much of American politics and culture cannot justify a response of incivility and coarseness on the college campus.
- A protest that prevents campus speakers from communicating with their audience is a coercive act.

The statement prompted a counter-statement by a group of Middlebury students entitled "Broken Inquiry on Campus." The counter-statement critiques some of the principles included in the statement by members of the faculty. It offers us an opportunity to examine the thinking of some of those who prevented Murray from communicating with those who had turned up to hear him. Here is one revealing passage, written in response to the faculty assertion that "*Only through the contest of clashing viewpoints do we have any hope of replacing mere opinion with knowledge.*"

The students respond:

By elevating bigotry and engaging with it in open debate under the misguided view that all ideas must be respected, we risk elevating biased opinions with no solid, factual foundation into the realm of “knowledge” and affirming the unconscious biases many hold... If we hold that the contest of clashing viewpoints is the only way to solidify knowledge, it naturally follows that we have a responsibility to articulate some parameters for which viewpoints are worthy of such a process.

The students assume that Murray’s work consists of biased opinions with no solid, factual foundations. But that is precisely what needs to be demonstrated, and by silencing Murray and preventing any debate, they missed the opportunity to demonstrate it. Perhaps, instead of pressing their university administration to cancel Murray’s visit, they should have asked for a debate in which Murray and someone knowledgeable in the area who is opposed to his views – and there are many such people – would have had the opportunity to show that his views do lack solid factual foundations.

The students also appear to believe that it is possible to articulate parameters for deciding which viewpoints are worthy to enter the contest of clashing opinions. Presumably, since Murray’s work attempts to appeal to our reason rather than to our emotions, the students believe that these parameters can be set on the basis of an assessment of the content of the work, rather than, as I have suggested, its tone. But how is that to be done, without debating and discussing that content? And why do the students think that they are in a position to decide this for others – for those who had come to the event to hear what Murray had to say, and, presumably, to hear other members of the university community respond critically to it? If they simply assert that they know that Murray is wrong, Mill’s assumption of infallibility is squarely applicable.

The students do have more to say on this matter, but it cuts directly against what I have been arguing are key values for a university and for any community that values an open search for knowledge:

We contend that experiences and emotions are valid ways to see the world, and that the hegemony of rational thought-based perspective often found in a university setting limits our collective creativity, health, and potential. If we are to move from opinion to knowledge, it is truly imperative to listen, understand, and reflect upon the various

lenses members of our community use to view the world.

It is, of course, important to know how other members of our community view the world, and that includes knowing what they are experiencing and what emotions they are feeling. But we should firmly reject the claim that emotions are “valid ways to see the world” and we should uphold what is here referred to, critically, as “the hegemony of rational thought”. Otherwise, we open the door to all the nationalist, racist and sexist emotions which as we saw only too clearly in the 2016 US presidential election, are very widely held in that country, and which continue to be regularly expressed by Donald Trump. I am sure the students would not regard his emotional and biased tweets as “valid ways to see the world.” But without rational thought, how can we decide which emotions are valid ways of seeing the world, and which are not?

I need to respond to one ground that the students give for disrupting Murray’s speech, rather than presenting arguments against his views. They ask: “...is it reasonable for students or community members to be asked to debate someone who has presented their intellectual inferiority as an irrefutable fact?” The reference, of course, is to Murray’s claim that there is a genetic basis for the lower average IQ scores of African Americans, when compared to whites. I am not aware of any place in which Murray has presented this as “an irrefutable fact”. I presume that he would acknowledge the possibility of new evidence emerging that would refute his views. More importantly, he is talking about averages, not about the intellectual inferiority of any particular African Americans – it is of course obvious, and Murray states it clearly, that some African Americans are intellectually superior to most whites. Nevertheless, it is doubtless troubling for African Americans, and indeed for anyone hoping for a more egalitarian and less racially divided society, to hear claims that there are genetic differences in intelligence that align in any way with racial differences. Is this a reason for not allowing such claims to be discussed in a university?

In 2017, the same year that Charles Murray was prevented from speaking at Middlebury College, Yale University named a new residential college after a very different Murray – Pauli Murray. Born in 1910, Pauli Murray was the granddaughter of a slave. She became a civil rights activist. She spent time in jail for refusing to sit in the “Negro” section of the bus. She led sit-ins to desegregate

white-only eating places in Washington DC. When she studied law at Howard University, in the 1940s, she was the only woman in the class. Her professors were all male. One of them announced to the class that he didn't know why a woman would want to study law. She graduated first in her class and applied to Harvard Law School to do graduate work, only to be turned down because at that time Harvard Law School did not admit women. She did her own legal research on segregation, which was later drawn upon by the legal team that won the landmark desegregation case, *Brown v Board of Education*. Later Pauli Murray was a co-founder, with Betty Friedan, of the National Organization for Women.

In 1963 Pauli Murray was studying for a doctorate at Yale Law School when the Yale Political Union invited George Wallace, the Governor of Alabama, to speak on campus. In his inaugural speech as Governor, Wallace had called for "Segregation now, segregation tomorrow, segregation forever!" In the wake of that speech, members of the Ku Klux Klan bombed a church in Birmingham, Alabama, killing four African American schoolgirls and injuring 22 others. Many blamed Wallace for inciting violence. By that time, opposing segregation had been Pauli Murray's life work for more than 20 years. She had described segregation as "a monster, dividing peoples, thwarting personalities, breeding civil wars." She said that she would picket any event at which Wallace spoke. Nevertheless, she wrote to the president of Yale urging him not to "compromise the tradition of freedom of speech and academic inquiry" by preventing Wallace speaking on campus. Her experience in the civil rights movement had given her a strong sense of the importance of maintaining these rights for everyone. In her letter to the president of Yale, she wrote: "This has been the principle behind the enforcement of the rights of the Little Rock Nine, James Meredith and others to attend desegregated schools in the face of a hostile community and threats of violence. It must operate equally in the case of Governor Wallace."⁵

Pauli Murray was an African American woman living in a climate of racism and

5. On Pauli Murray, see Kathryn Schulz "Saint Pauli" *The New Yorker*, April 17, 2017, published online as "The Many Lives of Pauli Murray," <https://www.newyorker.com/magazine/2017/04/17/the-many-lives-of-pauli-murray>; and Peter Salovey, "Free Speech Personified," *New York Times*, November 26, 2017, <https://www.nytimes.com/2017/11/26/opinion/free-speech-yale-civil-rights.html>

sexism more overt than anything that exists today, and she was fully aware of how mistaken and harmful racist and sexist views are. Yet this did not lead her to seek to suppress them, nor did it blind her to the fundamental importance of freedom of thought and expression. She sets an example to us all.

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