

Literature, Censorship and Democracy ¹

Free Speech and Its Limits

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ABSTRACT

Traditional Libertarian and Authoritarian perspectives on the function of speech in society offer inadequate solutions to the question of censorship. A third position, abstemious liberalism, is an improvement over these two traditions, but it does not have a realistic understanding of cultural relativity and leads to a shutting down of speech that is potentially offensive to some, but which nevertheless is needed in democratic societies. A fourth approach is outlined, which seeks to address the shortcomings of the other three.

KEY WORDS

libertarian
abstemious liberalism
censorship
John Stuart Mill
form-compliance
private language
cultural relativity
normativity

authoritarian
dictatorship
content-neutrality, content-sensitivity
context-appropriateness
universalism
overlapping consensus
the good life

A week before the conference in Taiwan, I learned that the following couplets, written some 17 years ago by an urdu writer, Mohammad Alavi but printed this year in a magazine with a small readership, were causing a furor in parts of India:

“Aghar Tujh ko fursat nahin to na aa,
magar ek acchha nabi bhejh de.
Bahut nek bande hain ab bhi tere,
kisi pe to ya rab, vahi bhejh de.”

(O Lord if you do not have the time to visit us, dont, but do at least send us a good prophet.

There are many good souls you can call upon.

Bless O lord at least one with your divine revelation)

They provoked a fatwa from the local imams, and Alavi was compelled 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 in the same year a veteran Indian journalist and writer casually remarked in public that although Tagore was a great poet, his novels and plays fell short of exacting literary standards and therefore his status in Bengal as a novelist was greatly exaggerated. He found himself not only in the throes of a legal suit but faced from the Rajya Sabha, the upper house of the Indian parliament, the strongest possible strictures for having “defamed a national leader.” However, the most glaring example of illegitimate restriction of speech in recent years was the ban of an exhibition by Sahmat, a cultural organization working tenaciously within the secular-democratic framework of India for Hindu-Muslim amity. The exhibition on Ayodhya, site of the Ramjanmabhumi-Babri Masjid dispute, was first vandalized by a violent mob and then banned all over India, allegedly because it blasphemed the Hindu

deities Rama and Sita. Sahmat's 'offense' was to have exhibited different versions of the Hindu epic, Ramayana. It did so without interfering with the text of a Buddhist version 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 marry.

My concern for free speech is fueled by its precarious status in democratic India. It is also propelled by a deeper unease that the standard justifications for free expression, formulated either to counter blatant repression in dictatorial regimes or to meet problems generated in one phase of western, liberal societies, are inadequate for polities such as India. Three features make problematic the applicability or extension to India of standard justifications of free speech. First, (a) India is not a dictatorship. It has all the requisite political institutions of a vibrant democracy.² Yet, (b) its civil institutions are embedded with authoritarian traps that make political censorship easily possible or entirely redundant. Finally, (c) the language deployed to justify civil authoritarianism relies exclusively on home-grown cultural traditions, in sharp contrast to the justificatory language protesting violations of free speech that appears to exclude reference to such cultural traditions. My aim in this paper is to address the tricky question of censorship in such troubled democracies, with the hope that it will develop better forms of justification against restrictions of speech.

Two Positions: Libertarian and Authoritarian

Liberals and Democrats in India have reacted to the events cited above with some fear and disgust. This is indeed how it should be. The strong feeling of revulsion against censorship, the ban or strict regulation of speech by oppressive social groups or state-institutions, seems wholly appropriate. On the face of it, liberal reaction that the Indian state ought to have protected the right to speak freely is justified. However, attention must also be directed at the form of this response and at the precise justification that underlies it. In conditions where the morally legitimate expression of speech is not backed effectively by the state and where no restraints are placed on the growth of intolerance, it naturally assumes a pure libertarian posture. When legitimate freedom of persons is denied and when argument and thought give way to raw emotions, 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 aptness in this context of a pure libertarian intuition appears unquestionable: Why must we not be free to say what we believe, to communicate to others what we feel is right, to express an opinion on any

matter 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."³

It will not take long to convince many of us that we all possess these libertarian intuitions. However, I believe, we also nourish the contrary, authoritarian intuition, though we conceal this face from ourselves and do not wish to acknowledge that we share it with opponents of free speech. Not infrequently we are drawn by the temptation not only to get others to accept but to impose our own conception of the good life 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? Would 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 worldview, the greater our belief in the utter worthlessness of anything opposed to it, and the more intense our desire to get others to think and behave like us. I doubt that there is anyone who has not felt, at some time or 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 our views are threatened by beliefs that appear to produce disastrous consequences anyway.

Both these intuitions—the libertarian hunch fostered by the fear of political power and the authoritarian one bred by an excessive partiality to one's own views—have been formalized as political positions.⁴ The first, civil libertarian intuition, 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 often based on the assumption that mental harm can never be as serious as physical injury. Words never cause real damage to people. Interference, the argument goes, is necessary when there is a threat to the body but not when mental equanimity is endangered. No speech can hurt enough to require interference, especially from the state. Absolute toleration is possible because speech does not impose any real costs on anyone.

The second, authoritarian intuition, grounded in substantive values, can also be expressed as a distinct view though it has no identifiable label. For this position, freedom of speech is conditioned upon content. Speech that promotes the good life is by definition good, but speech that denigrates it is bad. Besides, bad speech causes real harm to people. Therefore, only speech with desirable content needs to be expressed freely. Bad speech must be restricted. Moreover, degrees of badness exist to which must correspond degrees of restriction. The really bad speech may be banned, the less harmful

may be regulated. What is crucial is the realization that toleration of free speech has distinct limits. Such a position on free speech cuts across the divide between conventional left and right or between traditionalists and modernists. Though commonly associated with religious orthodoxy, it is not unusual to find its espousal by others. For example, feminists find it impossible to tolerate what they consider to be male chauvinist rubbish. Those who value individual autonomy may not be able to stomach feudal-paternalist diatribe. Both may wish, indeed with good reason, to regulate such offensive speech. Clearly, this is a substantive rather than a formal position on free speech, one that is content-biased, not content-neutral. More importantly, once we recognise the motivation underlying it, we may begin to understand, with no little discomfort, that when the fuss over speech has not arisen out of political calculation or mischief, there may be good internal reasons for people to express resentment against what they take to be defamatory remarks against Tagore, or even demand that the Sahmat exhibition be banned.

I have tried to make both these intuitions credible, but in my view their credibility can be sustained only up to a point. I understand but do not endorse either. Both intuitions are absolutist, even coarse and insensitive. Moreover, the debate between these opposing sides has long reached an impasse. Indeed, to take it forward, a distinct, third position, carrier of a complex intuition, has since been articulated.

The Third Position: Abstemious Liberalism

To understand this third position, let us yet again ask the question of whether we have a near absolute right to free speech. Is everything under the sun really permissible? Must all speech be tolerated, or are there limits to the toleration of free speech? An elementary, technical point about speech acts may answer this. A quick 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 its emotional resonance. For example, in its present shape the sentence has a declarative rather than an imperative (Discuss free speech) or the interrogative mood (Are we to discuss free speech?). 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 angrily. Finally, it is uttered in a context: for instance, published in an academic journal, rather than spoken at a public meeting.

Notice that the meaning conveyed by the sentence is transformed not only with a change in its content but also when, despite identity of content, its form or context alters. Suppose we ask, "Are we to discuss free speech?" not quietly, but with an air of utter incredulity, or with impatience bordering on hysteria. Here, it is no longer an innocent question, but conveys 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, say, instead of stated in an Oxford seminar, it is uttered publically in Saddam's Iraq. Obviously, a sentence can be uttered in many different ways conveying by the same content quite different meanings.

What does all this have to do with freedom of speech? The third position on free speech claims that the libertarian intuition can be rescued and simultaneously put in its place. It purports to do this by suggesting that anything may be said, no matter what its content, provided it is uttered in a certain form and in specified contexts. There does exist a near absolute right to free speech with the single proviso that it be form-sensitive and context-appropriate. The content-neutrality of speech can be protected when 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 what-so-ever. This is an important freedom whose value to us can hardly ever be over-estimated. After all, the most insidious censorship takes the form of people concealing thoughts and feelings from themselves. A quick look at the work of Czech writers and Hungarian filmmakers under Stalinist repression easily foregrounds the importance of this freedom. Secondly, Content-neutrality must be respected in all contexts of intimacy. For example, no restrictions should be placed on the content of speech, on what all is said in private conversations among friends.⁵ Finally, content-neutrality must be observed in 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, must not have to consult a what-is-to-be-said-where manual. It need only maintain a requisite form—i.e., possess 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 anything means everything. So it must 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," as well as statements like "Blacks have a low IQ," "Muslims are inherently fanatical," "Hindus are intrinsically hierarchical," "women are inferior to men," "idolatry is sinful," and "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 in India. Way back in 1880, some Hindus in Moradabad, India, allegedly in retaliation to offensive and obscene allusions to Hindu deities, Vishnu, Brahma and Shiva, published pamphlets "in favour of Hinduism and in disparagement of Islam."⁶ Defending the pamphlets, the counsel claimed that they cannot 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.

The abstemious liberal position outlined here hopes to retain the spirit of the civil libertarian view without falling into glaring absurdities. Recall that the libertarian believes that everything is permitted in any form and in any context. Against libertarianism, this position maintains that content-bias cannot be wholly abjured in the evaluation of free speech. At the same time, against the second, authoritarian position, it argues that content-neutrality of speech that is sensitive to form and context must at all costs be protected. The whole point of free speech is lost if it can be restricted arbitrarily by external values. 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.

I have claimed that abstemious liberalism admits contexts where everything is tolerated. It is important here to distinguish two interpretations of what toleration requires, and to point out that the abstemious liberal view relies exclusively on one of the two.⁷ The first, one-dimensional account, enjoins upon people with differing faiths and sensibilities a live-and-let-live policy. Suppose that you believe in X, and I believe in Y, and that X contradicts Y. Why should this fact be a reason for us to criticize or interfere in each others' lives? Your life is yours and mine is mine, and that is it. On this view, the contradiction between beliefs X and Y creates an internally-

riven existential situation when X and Y are held by the same person, but why should it result in social conflict when they belong to different people? This account of toleration is not favoured by the abstemious liberal view. It espouses the second view of toleration for which our worlds cannot be insulated in the manner envisaged by the first account. Mutual criticism is unavoidable because if X and Y contradict each other, then an affirmation of X implies a criticism of Y. Therefore, to refrain from criticising the other is to abstain from a complete affirmation of oneself which can be extremely frustrating. Tolerating the other, it is argued, cannot be done at the expense of stifling oneself. And if this is so, the first view on toleration can hardly be imposed as a moral requirement on us. In any case, 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, given that mutual criticism is inevitable, toleration requires only that we restrain our manner and, therefore, that our criticism be serious and respectful, not frivolous and offensive. The feelings of others must not be hurt by sarcasm or insulting language. We must not mock the deepest convictions of others.

The abstemious liberal position appears to be eminently reasonable, with potential to accommodate traditional as well as the more recent justifications for free speech. For example, admitting controversial issues into the public arena for debate is fully justified by the traditional Millian argument from truth (formulated and defended earlier by Milton).⁸ 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 about which there is no truth of the matter. Consider, for example, a range of ethical issues that are marked by a high degree of indeterminacy. Here the Millian argument from truth naturally fails and skepticism or pluralism may be in order. But the abstemious liberal position does not rely exclusively on the Millian argument. It may undergird the need for free expression not in truth but in say, requirements of self-affirmation, consistent with both skepticism and pluralism. It can also be defended on grounds of autonomy and equal respect.

I believe the abstemious liberal position on free speech goes a long way to 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 by not side-stepping important issues of identity and shared values, it shows, without falling into the authoritarian trap, what's wrong with untrammelled libertarianism. It is also better able to match the complex reality of liberal and democratic societies. These points need

elaboration.

Let me first address this last issue. The liberty to express is legally prohibited in many contexts in most societies with a deep commitment to the value of free speech. There exist laws (a) on libel, (b) copyrights and (c) contempt of court; laws (d) protecting official secrets and (e) confidences; and laws (f) prohibiting or restricting obscenity and racial or religious hatred. The impossibility of following the absolutist position on free speech condemns it to mere ideological posturing, useful only when push comes to shove over the issue.

Second, the absolutism in libertarian positions is such that it makes people jump at the very mention of a ban. "Is it not undemocratic to ban speech?" libertarians ask. It is of course true that a ban on speech amounts to its criminalization, and much else can be done before its eventual imposition. It is also undeniable that severe restrictions are accompanied by high risk. Yet we must distinguish, as the abstemious liberal does, between legitimate and illegitimate restrictions. Legitimate restrictions are neither entirely undesirable nor incompatible with democracy. But this shifts the burden of argument to the notion of legitimacy. What does legitimacy mean? The brief liberal answer to this would be that legitimacy requires some form of unanimous agreement.⁹ And who or people with what kinds of motivations are to be party to unanimous agreement? We are asked by the abstemious liberal to here imagine individuals who first abstract themselves from all cultural contexts and then arrive at no man's land from which a dispassionate and impartial view of principles is possible. Such principles automatically enlist unanimous consent, and therefore are legitimate. So, against the libertine position, the liberal claims that forms of speech may be censored, provided this prescription is supported by justificatory principles acceptable to all.

Third, the formalism and content-neutrality of the libertarian position is a sham, and the motivations required to sustain it too artificial and humanly unattainable. A libertarian position has its own substantive values of which it is either unaware or that it deliberately ignores. The libertarian is as committed as the authoritarian to substantive, even common values. In short, 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 formal 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 of special value to us, our complex motivations in real

life are sufficiently suffused with each other to make difficult a firm hold over these distinctions. It is possible, then, that the unease felt at the attack on Rushdie is caused less by the blow to a formal principle and more by our recognition that he is one of us—an artist, a secular humanist, a modernist, an intellectual in exile, an anxious nonbeliever in a world of rigid certainties. We feel a special obligation to someone who appears to be one of us rather than be moved by an impartial commitment to a wholly abstract principle. To be sure, blind conformity is undesirable but, over many issues and to a much greater extent than we realise, we expect some degree of conformity from each other. We eschew persistent disagreement. (Disagreement may be good for us but we rarely pursue it as a good.) We want our views accepted far more than we want them contradicted. It is not unlikely that the fulfilment of this expectation in Rushdie moves us to defend him and the disappointment caused by the failure of its fulfilment in his opponents prompts us to decry them. The power of solidarity should not be underestimated; it is greater than the authority of an abstract principle. But Libertarians deny that their commitment to free speech spring from common values or frames of identity—both associated usually with authoritarian intentions. This is a powerful objection to which even the abstemious liberal may be equally vulnerable, but let me first attend to some other problems that abound in this position.

Critique of Abstemious Liberalism

To begin with, in a society cleft with deeply differing faiths, it is extremely difficult to avoid offence to the sensibilities of the other. Indeed, as Waldron puts it, "it is hard to see how free expression could do its work if it remained psychologically innocuous."¹⁰ The third position sanitizes our emotions. This is one reason I have called it abstemious. Is it possible to disagree with some position but not feel hostility towards it? The abstemious liberal may here reply that in appropriate contexts expression of hostility is acceptable, indeed even encouraged. In the pure world of make-believe, in a near-uncontaminated world of fantasy and playfulness, anything in any form is allowed. In these contexts—in the somewhat esoteric world of art and the more mundane world of everyday humour—literally anything goes in any form. How can the liberal deny that upsetting conventional forms, including the forms of utterances, is one of the constitutive objectives of performances within this context? But this is to miss the point of the criticism. For restricting hostile emotions to the domain of the arts merely begs the question about the sanitization of emotions. Can emotions be compartmentalized in this way? Besides, the claim here is that hostility may be expressed as an

integral part of one's self-affirmation more generally. For example, the mere affirmation of one's faith may be deeply offensive to the other. How does one here sustain an environment free of offense and counter-offense? For some Hindus, the performance of rituals is impossible without music, but Muslims may find it against the diktat of Quran. Muslims and Jews find it offensive even to admit that Jesus is the son of God. Can the whole of Christendom be charged with blasphemy? Muslims find idolatry deeply repugnant. Shall the whole of Hinduism be outlawed? Form and content, style and substance, emotion and thought are too intertwined here to be separable in the manner desired by liberals.

Secondly, the abstemious liberal 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 victims, the poor and the marginal is so thickly woven with emotions that it may have scant respect for speech with "proper" propositional form. The persistent exclusion from public arena forces speech to be loud, shrill, and offensive, making it difficult to fit it 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 accustomed, and to allow or encourage only those forms that are culturally unavailable to them? In the formally-educated milieu of the middle-class, the moderate position works well; but does it succeed in other contexts and for other people?

Finally, as it stands, the third position is still trapped in an unacknowledged, false universalism insufficiently sensitive to cultural difference. This is a point I have made already, but which needs elaboration.

Cultural Relativism and Free speech

For the abstemious liberal position, offensive speech is to be tolerated as long as it is restricted to one domain, say the sphere of the arts. But it can be argued that the exemption of literature from form-compliance 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 in societies where literature has gained a certain degree of autonomy can certain kinds of haute literature be exempt from those constraints under which less exalted literature is routinely placed in other societies. Abstemious liberals also claim that critique and discussion among rival faiths is generally permissible as long it conforms to a certain form—i.e., without causing offense to anyone and with equal respect to all. The point

about equal respect and the necessity to place restriction on offense is well-taken, but this view fails to fully acknowledge how the assessment of what counts as offense changes with variations in public and formal contexts and in modes of address, how varied cultures are in their understanding of the dynamics of these relationships, and how cultures may ultimately differ even in the weight they accord the value of speech.

Some faiths permit jokes about God, while others require that even the name of God be uttered, under strigent conditions, only by a distinct class of persons—for example, by males not only born pure but continuously purifying themselves! Or consider the contrast often drawn between modern-Western and traditional-Islamic cultures. It is said that it is easier in modern western societies for people to remark about each other on paper what they dare not say in person. In traditional-Islamic societies, on the other hand, private speech between individuals is much freer than when it is written.¹¹ Whether or not it is morally permissible to say something varies, therefore, with whether or not it is written. Let me take another shot in my attempt to capture the relevant contrast. Perhaps it is the difference between formal and informal contexts, and not between written and oral speech, that is doing the relevant work here. 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, societies 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 the value attached, in the background culture, to autonomy. Given that societies have different cultures and moral values and further that the weight they place on the same values differs, it is likely that the way they resolve conflicts between free expression and other values is different, too. Indeed, theoretically at least, it is possible that in some cultures free speech has no value at all. But whether or not this is so, there is much plausibility in the claim that the value of a statement depends on whether it is written or oral, delivered formally or informally, in public or in private, and all this affects our judgement on what place the statement occupies on the tolerance/intolerance continuum. Since cultures differ on the former, variations in the latter are to be expected, too. Any theory espousing the cross-cultural value of free speech must take cognisance of these issues, but

abstemious liberalism appears not to do so.¹²

These critical remarks suggest the following dilemma. On the one hand, it seems right 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 least at the far extreme, that we should not expect from some cultures a degree of respect for any form of speech, and therefore, that 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 employing an important point made by Jeremy Waldron.¹³ Waldron has forcefully argued that the question of free speech must be protected from the more pernicious forms of cultural relativism. 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 the fundamentally human and universal that need rescuing from the more vertiginous forms of cultural relativism. The challenge is to formulate a universal defence of free speech allowing maximum sensitivity for, not stepping over, cultural context. It is of course true that a particular formulation and defence of free speech should not masquerade as universal. But it is equally important that the aspiration to formulate a concrete universal of free expression is not wholly abandoned. Contra the abstemious liberal position, we need perhaps to arrive at it not by following a single course of reasoning but by allowing different persons, reasoning from within their own distinct cultural perspectives, to converge on something common.

This brings me to another related issue. The abstemious liberal position never really abandons the view that a consensus on principles justifying restrictions on free speech hinges on the impartial motivations of agents. This is hopelessly utopian. Convergence must be sought on the basis of a more realistic appraisal of motivations that takes into account not only the particular projects and commitments valued by the agent but also the special obligations to his family, his community, his culture or indeed even his nation. Human beings inhabit two worlds at once: an impersonal and a personal universe, and though a balance may never be achieved—dwelling in one more than the other is the norm for most people—the influence of one never quite ceases even when the other gains dominance.¹⁴ The challenge therefore is to admit at the outset that we start from different cultures but still reach a consensus on some principles that endorse, in specific contexts, protection or

restriction of speech. The Rawlsian idea of an overlapping consensus is not inappropriate here.¹⁵ So against the libertine position, and as an improvement on the abstemious liberal view, we may claim that forms of speech may be protected or censored provided there is support from justificatory principles arrived at by an overlapping consensus.

The Need for Free Expression

But can we ever hope to arrive at an overlapping consensus in a culturally divided world? What if the taste for free speech is really specific only 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, that the poor have no need for it, or that free speech thrives only in cultures where the very idea of the sacred has been renounced, and not, say in South Asia, where faith overrides everything else and where compared with rituals, the discursive has low priority anyway. Two points make a brief riposte to this argument. First, going merely by people's tastes, preferences and interests, free speech does not appear to matter very much even in the West. A catalogue of people's interests in the West displays a relatively low place given to free speech. By their own account, people's interests are far better served, say, by a secure job, by decent human relationships, by a safe environment, et al. Why free speech, rather than all these, is accorded special protection in the West is a widely acknowledged 'liberal puzzle.'¹⁶

Contrary to my own intuition, and for the sake of argument, let me assume that free speech is indeed a cultural preference. I now counter the relativist argument by using two distinctions between (a) expression and speech and (b) need and preference. While free speech may indeed be culture-specific—the short or long-term preference of some individuals in specific cultures—free expression, I wish to claim, is a basic, universal need. Further, assuming the inescapability and desirability of equality, I argue that we must respect and therefore allow the precise form of expression chosen or endorsed by others. Let me elaborate.

First, the distinction between need and preference.¹⁷ A need is a desire which belongs to us largely in virtue of the kind of beings we are (e.g., desire for food or sleep). Preference by contrast is a desire we have because we have adopted it (the taste for beef rather than pork). Second, the distinction between speech and expression. Roughly speaking, speech in the narrow sense is the use of words containing propositional information (i.e., prose).

symbolic forms and what Taylor calls expression.¹⁸ Expression has five 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. Fifth, it is public not merely in the sense that it is displayed after it is produced and polished, but in that it is formed in public and to be the expression that it is constantly requires collaboration of and corroboration by participants in relevant public spheres. As the term is used here, expression includes not just speech in both the narrow and wide senses, but any symbolic activity, such as art and ritual.

Now, in this sense expression is neither culture-specific nor a mere preference but rather a common human need. People cannot help expressing themselves one way or another, in one or another form. More strongly stated, for humans it is a way of being in this world. The value of (public) expression lies in its existential significance for humans. But as judgment on the value of particular expressions is a social achievement, the more able the relevant others are to corroborate our expressions, the more satisfactory these expressions become and correspondingly the better our fulfilment of this need.

But forms of expression can be misrecognised, restricted, and even wholly thwarted, either because they conflict with and threaten other forms, or because of the overwhelming tendency among humans to believe that their own particular good is generalizable, or because of genuine human failure to overcome one's given conceptual universe. At any rate, the particular form of expression favoured by individuals or cultural groups can be inhibited in public for these reasons. Freedom of expression needs protection because of the persistent tendency among humans to restrict expressive activities of other persons or groups and because it is undesirable to do so.¹⁹ Freedom of speech is a value, derived from the general need for free expression, that may be of special importance to some cultural groups, even perhaps to some individuals within those groups, but its protection is required on grounds of the general egalitarian principle that forms of expression of a group or individual matter equally—of one as much as of the other—and therefore when restrictions are imposed, it is mandatory to furnish consensual justification. So, free speech may need special protection, despite the general rather than the culture-specific perception that it is not as vital as other interests. Even supposing that it is a cultural preference, its protection is still required by the general egalitarian principle stemming from the need for free expression in all human beings. I know that what I have here offered is not an argument but a mere point of view, but I believe an argument along these lines has to be

constructed to reach a common perspective that accommodates cultural diversity.

Now it might be argued that the thesis established by a fully worked out argument of this kind is so general and trivial that no workable political principles concerning free speech could flow from it. But this would be to miss the point of my claim. For, in response to the fair charge of cultural parochialism, all I am seeking is a refinement of the abstemious liberal view and not its replacement. A narrow defence of free speech in societies today must be complemented by a broader argument in favour of the need for self-expression. Unless this is done, a defence of free speech will cut no ice with cultures that do not understandably and immediately see its importance.²⁰

I believe the thin argument developed above can be used against censorship of some kinds of literature. But what about "offensive literature"? As it stands, the argument from need for expression does not apply to it. The expressive need can be met in many ways. Why, it might be argued, must it assume a form offensive to others? Now, we have already acknowledged that offensive expressions cannot be entirely eliminated from the public sphere because of the mutual implication of affirmation and offense. Given the relationship between expression, affirmation and offense, it appears that those offended by such self-affirmative acts (I assume that the relationship among expression, affirmation and offense is self-evident or can be reasonably demonstrated) must learn to live with it, and bear the costs of offense.²¹ The matter need not be left at this, however. I wish to supplement this claim with another universalist argument from equality of respect and with the assumption that it is a universally acknowledged fact that some of the deepest questions concerning life and death, good and evil, have a persistent hold on all humans. Now, these issues are not only inescapable but 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 must include not only "the whole kaleidoscope of literary technique—fantasy, irony, poetry, wordplay and the speculative juggling of ideas,"²² but also all modes of communication. Not only Sacred and Secular art, literature and philosophy, but all other expressive forms must unleash on each other all the resources at their command to deepen our understanding of these issues. If we are to respond effectively to the criticism that haute literature should not be privileged, then we must throw the net wide enough to cover all forms of expression that explore these deep questions.

Of course, toleration of all such expressions has costs. Opening ourselves up to all possible cultural expressions may be volatile, particularly

when we may neither be able 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."²³ But it may also have benefits. We might eventually come to the realization that a deeper understanding of some of these perennially perplexing issues is inhibited in this case by the narrowness of our cultural forms. By implication, we may realize that we invite offense by a personal lack of catholicity. This does not mean that we endorse the other's cultural vision but, by recognizing our own limitations, we may better come to terms with a common human frailty.

Two problems in this fourth view still need addressing. a) First, in an ideal world of equal relations, offensive, indeed any speech that hurts may be tolerated. But the real world is full of structured inequalities. When speech unfailingly 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 it persistently damages the sense of one's identity—then speech need not be tolerated. Recall the notorious incident in an American university where white students harassed and heckled an Afro-American woman, shouting "we have never taken a nigger." Even from within the abstemious liberal perspective, the inflictors of this speech forfeit the right to toleration. Their speech must be restricted.

Does this contradict the claim that offending the identity and sense of dignity of people may, in some cases, be unavoidable? It is clear from the example given above that the "sense of hurt" is much stronger when inflicted by persons belonging to a powerful group who "talk down" from a superior platform to oppressed individuals or groups. We can't escape the fact that hurtful speech from an equal is easy to brush aside, but when it comes in conditions of assymetricity and hierarchy, from the arrogant or the powerful, then it can't be shrugged off by those who are generally alienated, insecure or oppressed. Moreover, individuals who are culturally ill at ease in society tend to band together and greatly value collective self-definition, and those with a strong collective identity find it even more difficult to ignore denigration aimed at their group. Words cause special damage to them and when the intention is manifestly, deliberately and persistently to injure, then they are left with no reason to tolerate hurtful speech.

In brief, the presence of structured inequalities requires that special attention be accorded disagreeable speech, i.e. speech which has an immoderate, disagreeable form, uttered in inappropriate contexts, coming primarily from the arrogant or powerful and that persistently offends the self-

respect of others. The standard view of free speech that restricts individual libel but protects group libel has no principled justification going for it in contexts where the relationship between the relevant groups is demonstrably asymmetrical. Only consequentialist reasons favour toleration of group-libel by powerful groups.

b) Can disparagement of an entire way of life of a people, even in an ideal egalitarian universe, be permitted? When, not merely one or the other of its aspect but indeed the entire moral system of a group is severely maligned by speakers who show no evidence of understanding of the moral belief of the concerned group, then surely the ground from which they demand toleration is gone. This is tricky as it is formulated and needs distinguishing from an observation by Joseph Raz. Raz claims that every opinion expressed embodies a wider net of opinions and sensibilities which, taken together, constitute a form of life. The free expression of an 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 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! I confess there is no simple resolution to this problem. It is, nonetheless, sensible to distinguish between cases where offense is caused by implication and where it is intentionally brought about. The former must be tolerated, the latter need not be.

Let me conclude: 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 abstemious liberal view is an improvement on both, but fails to come to grips with the cultural relativity of speech and is so sanitised that it inhibits much offensive speech that ought to be morally permissible in the public sphere. I doubt that it will be able to justify free speech in non-Western, troubled democracies or work even in the full-blown, multi-cultural character of Western democracies. Finally, I struggle to articulate a fourth position that begins to meet some of these objections. I cannot claim to have been successful in building an alternative, but I do hope to have shown both the need for reaffirming the value of free speech and the difficulty this entails. Free speech must be specially protected, but not with justifications that we have come to associate with it.

Notes

¹ I thank Tani Sandhu for her comments on an earlier draft of the paper.

² My argument presupposes a democratic polity. However, the existence of democracy does not automatically solve the problem of censorship. As Rushdie in a different context put it, 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 *live 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.

³ Quoted in Simon Lee, *The Costs of Free Speech*, Faber and Faber, 1990.

⁴ For a good discussion of some of these issues, see, T.C. Grey, (1991) "Civil Rights and Civil Liberties: The Case of Discriminatory Verbal Harassment" in E.F. Paul, F.D. Miller, and J Paul, (eds.), *Reassessing Civil Rights*, Blackwell.

⁵ Example: Hour 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.

⁶ I am here referring to a famous judgement, *Emperor vs. Indarman* (1881) 3 All. p.837. For a discussion of some of these issues, see Rajeev Dhawan, *Only the Good News*, Manohar, Delhi, p. 305.

⁷ See Jeremy Waldron, *Liberal Rights*, CUP, pp. 134-142. See also Susan Mendus, *Toleration and the Limits of Liberalism*, Macmillan, 1989.

⁸ For a good discussion of these issues, see E. Barendt, *Freedom of Speech*, Clarendon, 1987.

⁹ See T. Nagel, *Equality and Partiality*, OUP, 1991, pp. 33-40.

¹⁰ J. Waldron, op cit., p. 139.

¹¹ I refer to the work of Malise Ruthven, discussed in Simon Lee, op cit.

¹² In short, this liberalism is abstemious because it holds back on emotions, shies away from deep cultural difference, and is too proper to accommodate the language of the marginalized.

¹³ Waldron, *ibid*.

¹⁴ On this, see Nagel, op cit., pp. 10-20.

¹⁵ John Rawls, *Political Liberalism*, Columbia UP 1993, pp. 133-168.

¹⁶ Raz, op cit., p. 131.

¹⁷ See Charles Larmore, *Patterns of Moral Complexity*, CUP, 1987, p. 139.

¹⁸ I rely here on Charles Taylor, *Philosophical Papers*, Vol 2, p. 219.

¹⁹ The danger arises because misrecognition is almost always built into the very process of recognition. Expressions need others to be the expressions they are, but are also distorted just as they are formed. Protection is required, one might say, to tilt the balance in favour of recognition.

²⁰ Similarly, a better defence of free speech must recognize the cultural specificity of offense and cultural variations in the relation between what counts as insult and modes of address, etc. Here I only point to the need to address the issue but am unable to fully address it myself.

²¹ Perhaps the knowledge that such costs are equally shared, that those who appear to inflict them also bear such costs in other contexts, makes life more liveable.

²² Jeremy Waldron, *ibid.*, p. 140.

²³ *Ibid.*