



Ethics Bites

Free Speech

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This is *Ethics Bites*, with me David Edmonds.

Nigel Warburton

And me Nigel Warburton.

Ethics Bites is a series of interviews on applied ethics, produced in association with The Open University.

Nigel

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David

For John Stuart Mill the limit of freedom of speech in a civilized society was roughly the point where a speaker was inciting violence. But perhaps it isn't as simple as that. For free speech, in the well-known example, doesn't entitle us to shout "Fire!" in a crowded theatre. Where then should we draw the line, and why? Tim Scanlon, Professor in Harvard University's philosophy department, has spent much of his career reflecting about issues of toleration and free speech. His initial writings on the topic stressed that the value of free speech lay in autonomy – in particular, the right of individuals to have access to information so as to be able to think for themselves. Now he has a more nuanced view – which takes into account the interests of both speaker and listener, and empirical considerations about the danger of granting powers of regulation to the state.

Nigel

Tim Scanlon, welcome to Ethics Bites.

Tim Scanlon

I'm glad to be here. Thank you very much.

Nigel

Now the topic we're focusing on today is free speech. Presumably you're an advocate of free speech at some level, but let's start by getting clear what do we mean by free speech? By free speech I mean the need for restrictions on the way in which governments can regulate speech. Whether speech is free in a further sense, that is whether people have opportunities, is a very important thing, but it's not the issue of free speech.

Nigel

That's really interesting, because you immediately began by talking about regulation and controlling what can be said.

Tim

Well certainly speaking is not without costs: what people can say can cause injury, can disclose private information, can disclose harmful public information. It's not a free zone where you can do anything because nothing matters. Speech matters. But because it matters it's very important that governments who want to regulate speech, for example to prevent things that would be embarrassing to politicians, or otherwise upset the government, it's important that that power should be restricted.

Nigel

The word speech seems to imply something spoken, but clearly speech stands for expression here, it's not just speech is it?

Tim

No, it's not just speech. In one respect, what defines our thinking about free speech is not the particular acts that constitute speech, but rather the reasons one has for wanting other people to notice – for wanting to make some kind of communication with others. Speech is just one way of doing it. How you dress, how you act in public. All those things can signal to other people your values, what kind of life you favour, and the fact that the way you act, as well as the way you speak, can signal those things provide reasons for other people to want to prevent you from doing those things - because they don't want those signals to be out there in the public space. The question of free speech is the question of how that impulse to regulate what can be out there in the public space need itself be controlled.

Nigel

Ok, well let's think about the justifications for controlling free speech. You've devoted quite a lot of your life to thinking philosophically about the limits of toleration. What's the philosophical underpinning of your position?

Tim

Well one philosophical underpinning in driving any of this has to be understanding the reasons why people should care about having these opportunities that might be restricted. I began by talking about how free speech has to do with limitations on government power. But of course the value that's at stake is affected by things other than what the government does, it's also affected by how corporations can control access to television and other important media. So here we have two sides. On the one hand, philosophically one of the first things you want to do in understanding free speech is to understand what are the values that are at stake, why should we care about it? That's much broader than the question of government regulation. On the other hand, if you think mainly in terms of constitutional provisions, restrictions on the law, there we're talking particularly about government.

Nigel

Often people talk about free speech as arising from individual autonomy. We should have a freedom to be who we are and to express ourselves in the way that we wish to. It's a basic right of humans to express themselves...

Tim

I don't know if I want to say it's a basic right. I want to say that people have reasons, all kinds of reasons, to want to be able to express themselves. Although when we're talking about the permissible limits on speech we need to focus not only on the interests that people have in wanting to get their own ideas out there, but also the interests that people have as potential audience members to have access to what other people want to say. Philosophical discussions of the topic divide, to some extent, as to whether they focus mainly on speaker values or audience values, and I think it's important to take both into account.

Nigel

OK, well with speaker values the justification tends to be in terms of autonomy; but with audience values we start talking about the consequences for the audience. The classic case there is with John Stuart Mill talking about the limits of free speech being set at the point where you harm another individual.

Tim

That's true although, in a way, autonomy based views on the whole tend to focus on audience values - because it's the audience who wants to have access to information to make up their minds. In so far as autonomy refers to the interests we have in being able to form our own opinions about how to live, what to do, how to vote, an autonomy based view tends to focus on audience values. By and large we think of speakers as already knowing what they want and what they value, and wanting to express it. That's a kind of freedom: but it may not be helpful to call it autonomy. In general, it's a case of once burnt twice shy. That is, having originally in my first publication given a theory of free speech that focused on autonomy, I've since come to think that it's a word that's probably a good idea to avoid. Because it can mean so many different things. On the one hand it can mean freedom, that is the ability to do things,

on the other hand it can be a particular value, or in Kant's case a particular inner power. It's a misused word so I like to avoid it.

Nigel

Perhaps it would be easier to focus on a particular case to bring out the sort of considerations that are relevant here. If we take the case of people expressing contempt for a particular racial group - some people might argue that is a consequence of free speech that people should be allowed to say offensive things. How would you approach that case.

Tim

Well there seems to be a divide on this across different countries. That is, in the United States the law and much of academic opinion is much more in favour of the idea that free speech is incompatible with having laws that ban speech simply because they're offensive - laws for incitement against racial hatred or expressing contempt for other groups are by and large held to be unconstitutional in the United States whereas in Britain, France, Canada, laws are quite different.

Now I'm in this sense typical of my country. I'm inclined to be rather suspicious of laws that restrict speech on the grounds that it gives offence to a particular group. Not that I favour speech that does that, I think it's terrible; the question is whether you want to have a law that restricts it. And the natural question is why on earth shouldn't you? After all it does harm people. Immigrant groups, racial minorities, are in a vulnerable position – vulnerable because they suffer from status harm. Widespread opinion that they are in some way inferior, ought not to be associated with, ineligible for various jobs, and so on.

So why shouldn't speech that supports and perpetuates those attitudes be restricted? The problem is that there are so many ways in which speech can be offensive to different people, that if we start allowing offence to be a ground for restriction it's very easy to generalise it, and the restrictions on speech, particularly on political speech, become too tight in my opinion.

Now there's an empirical question here, and I think the jury is out. Canada has laws against speech that foments racial hatred, and Britain does, and so on. So against the free speech advocates of my sort you can say, well they have these laws, the sky hasn't fallen. Political speech continues. On the other hand race relations haven't improved much either. So the jury is to some degree out. And with respect to the UK I think it's fair to say that a somewhat greater tolerance for restrictions on expression hasn't served the political culture well. There's also much more tolerance of restrictions on disclosures of official secrets and so on and I think these haven't helped political discussion in the UK. So I think the US has benefited to some degree to what might seem to some people an overly rigorous protection of free speech.

Nigel

That strikes me as a slippery slope argument: the idea that you can't take one step down the slope without ending up at the bottom. So you can't take one step by restricting certain sorts of hateful speech because the consequence will be that all kinds of other sorts of speech will be restricted.

Tim

Well in the first instance it's not a slippery slope argument. It is a question about what would be the effect of having that particular restriction. So I think the case turns on that. I then move to saying if you look more generally, the more permissive attitude towards restrictions on speech hasn't been a good thing. The view of free speech that I've come to does give a heavy weight to calculations of that kind. The question is, is a particular regulatory power, the power to restrict speech on certain grounds, is that a power we can give to government without placing important speaker and audience interests unacceptably at risk? That's the question. And the view that there is a right to speak in certain ways comes down to the claim that if the government were allowed to prevent speech of that kind that would be a dangerous power, that we shouldn't allow, because the values of being able to speak and the values of being able to have access wouldn't be adequately served; and that's an empirical question – which powers are dangerous, but that's my view.

Nigel

And the danger that you're speaking of, is that the danger that effective government won't be possible because there won't be sufficient airing of different views?

Tim

That's one value. That is preserving the kind of opportunity to speak and influence people, and the kind of opportunity on the part of voters to be informed that we need to have a functioning democracy. That's certainly one value. But there are also more personal values. People have good reason outside of politics to want to be able to influence the development of their society culturally, to express their attitudes about sex about art about how to live. Audiences benefit from having access to these expressions. We want to hear a diversity of views.

On the other hand people want to protect what the dominant attitudes in society are. They don't want people to express permissive attitudes towards sex or attitudes about religion that they disagree with, because that may cause the culture to evolve in ways in which they would prefer it didn't evolve. We all have feelings of that kind; I don't think it's just these awful intolerant people. I feel that my society places a greater emphasis on sex, sexual attractiveness and so on than would be desirable. I don't like living in a society that's saturated with these feelings; but that's the price of living in a free society.

I also think religion is growing in its influence and so the sense that one ought to be religious or pay deference to religion is growing in strength in the United States, from my point of view that doesn't make it a society more like the one I would like to live in. But that's the price of living in a free society. There are these ebbs and flows of cultural opinion and if you want to live on terms of freedom with other people you have to be willing to accept the society that results from everybody having access to a public space – you just have to accept it.

Nigel

I can see how censoring somebody's political opinions might be dangerous to good government. But censoring somebody's freedom to print pornographic images for instance, how can that harm good government?

Tim

My point in my answer to your last question was that providing the conditions necessary for good government isn't the only thing that's at stake in free speech. People who have views about, say, particular sexual relations, want to be able to express this not only as a matter of self expression, but they want to be in contact with other people who have similar views. And when regulation of that kind of expression is allowed the first thing that's likely to happen is that the minority views of this are the most likely to get restricted, and I think that's a cost. I don't like living in a society where there's lots of pornography and people very interested in that, but, you've got to live with it.

Nigel

Another area where it's difficult to see where to draw the line is with factual information that could be used in terrorist activity. So for instance if somebody wants to publish the details of how to make a certain kind of bomb on the internet, is it appropriate to censor them?

Tim

I think it is. I don't think we don't have an interest in access to information about how to manufacture bombs which is parallel to our interest to wanting to have information about what the government is actually doing, or to be able to communicate with others about sexual, moral or religious matters. So I don't think there's a similar threat to our interests as potential speakers or to our interests as audiences who want to be able to form our opinion about things if technical information about armaments and explosives is restricted.

The main worry there seems to me to be at the margin; whether some kinds of information about technical questions about military armaments become important political things that we need to know about. Like we need to know whether a missile defence system would actually

work! Now there's a fair amount of distance between having a recipe for making nerve gas at home and having some information about how well the government's attempt to build a missile defence system have actually worked. But in between, there might be a worry. But on the whole I'm relatively comfortable with the idea that technical information about the production of armaments is something that it's permissible to regulate.

Nigel

We've talked quite a lot about the differences between the law in the States and the UK, I'm intrigued to know whether you think that the kinds of principles that you come up with in your philosophy are universalizable across societies and countries, or whether they are restricted to the particular circumstances of particular countries at particular times?

Tim

On the whole I come down on the universal side. I once had an experience speaking to a seminar that involved people from 27 different countries, academics and non academics. And they'd asked for a presentation on free speech. So I said the question of free speech is the question of whether the power to regulate speech in a certain way is the power that it's too dangerous for governments to have. And that's a question of whether, if they had that power, the interests of speakers or audiences would be unduly restricted. And those who believe in free speech also have to believe that we should forbid governments from having this power at acceptable cost. And in the discussion, people all objected; they said your discussion entirely focused on things in the United States. It maybe alright in the United States to prevent the government from restricting speech, but that wouldn't work in India, someone said. Because in India if you allowed people to say certain things, then some people would riot. And a Turkish man said, a man in our law school thinks that bourgeois rights are nonsense, and obviously he can't be allowed to say that kind of thing; but you don't have that problem in the United States. The effect of this discussion was to reinforce my universalist tendencies and to think that things aren't that different all over. Because, of course, exactly those questions come up in almost any society.

Now of course societies vary; the risks may be greater in some societies than in others. But on the whole there's a lot of commonality there. As far as the question of riots is concerned, this is what's known in the United States legal arguments as the hecklers veto. If you allow the threat of a riot to be a reason to prevent somebody from speaking all a group has to do to stop somebody from speaking is to threaten to riot. So the first response of the State has to be to stop the riot or put the speech in a venue where it can be protected; those are things the state can do.

Places where people don't believe in free speech, I think they don't believe in free speech largely for the reasons I've just mentioned, they may think, well in a stable society it's ok, but for us the risks are too great. It's possible that sometimes they're right about that, but on the whole I think it's a matter of not having enough faith in your fellow citizens and being too worried about what the consequences will be. Of course it's in the interests of governments to encourage these fears, because it's in the interests of governments to be able to regulate speech. Not because they're evil, but just because they're people who have their objectives and they want to be able to pursue those objectives in what seems to be the most effective way. Governments everywhere have reason to want to restrict speech; so everywhere we need laws to prevent them from doing that.

Nigel

Free speech is one of those ideas that people are prepared to die for. How would you place free speech relative to other important rights or ideas that animate people in political situations?

Tim

Well free speech first has a particular instrumental value, because it's very important as a way of preventing other kinds of rights violations. People can be imprisoned in secret and one of the best ways of trying to stop that kind of thing is to try to bring it into the public sphere where political opposition can be mobilised. So freedom of speech has an important instrumental role in protecting other rights. There are cases where freedom of speech can seem to conflict

with other rights. For example the right to a fair trial. In order to have a fair trial we need to prevent people from being convicted in advance in the press, so the jury can't be convened that won't already have made up its mind about guilt. That is a clash.

When there is a clash of values of that kind one has to try to work out a strategy to deal with it. I think on the whole, by sequestering juries, by allowing defence attorneys to examine juries in advance and to ask them about their prejudices, on the whole I think one can protect the right to a fair trial, without placing many restrictions on what can be said. I don't want to say there is never a conflict, there can be, but I think on the whole it's possible to work them out.

Nigel

Tim Scanlon, thank you very much.

Tim

Thank you, it's been a pleasure talking with you.

David

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