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Giving the Devil His Due: Why Freedom of Inquiry in Science and Politics is Inviolable

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In the 1990s I undertook an extensive analysis of the Holocaust and those who deny it that culminated in *Denying History*, a book I coauthored with Alex Grobman (Shermer & Grobman, 2000). Alex and I are both civil libertarians who believe strongly that the right to speak one's mind is fundamental to a free society, so we were surprised to discover that Holocaust denial is primarily an American phenomenon for the simple reason that America is one of the few countries where it is legal to doubt the Holocaust. Legal? Where (and why) on Earth would it be illegal? In Canada, for starters, where there are “anti-hate” statutes and laws against spreading “false news” that have been applied to Holocaust deniers. In Austria it is a crime if a person “denies, grossly trivializes, approves or seeks to justify the national socialist genocide or other national socialist crimes against humanity.” In France it is illegal to challenge the existence of “crimes against humanity” as they were defined by the Military Tribunal at Nuremberg “or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” The “Race Relations Act” in Great Britain forbids racially charged speech “not only when it is likely to lead to violence, but generally, on the grounds that members of minority races should be protected from racial insults.” Switzerland, Belgium, Israel, Italy, New Zealand, and Sweden have all passed similar laws (Douglas, 1996). In 1989 the New South Wales parliament in Australia passed the “Anti-Discrimination Act” that includes these chilling passages, Orwellian in their implications:

The law invests in the Anti-Discrimination Board the power to determine whether a report is “fair”, and whether a discussion is “reasonable”, “in good faith”, and “in the public interest”. The Board will pronounce upon the acceptability of artistic expression, research papers, academic controversy, and scientific questions. An unfair (i.e., inaccurate) report of a public act may expose the reporter and the publisher to damages of up to \$40,000.

(Rauch, 1993)

Even at the University of California, Berkeley, home of the free speech movement of the 1960s, they apparently have abandoned teaching this most basic principle. On Friday, February 3, 1995, for example, the controversial historian David Irving was invited to speak on campus, leading 300 protesters to show up and block the 113 ticket holders from entering the building and prevent Irving from speaking

about his alternative views of the Holocaust and the Second World War. Campus police were roused to action to control the unruly crowd and Irving had to seek protection behind his book table until order was restored (Post, 1995). Frank Miele, one of my editors for *Skeptic* magazine, attended the event and reported the mayhem:

The people outside the door were screaming at Irving and the rest of us inside the room. They tried to force their way in, but the Berkeley police prevented this. At one point an older-looking man with a gray stubbly beard came from the back of the crowd and made his way through the demonstrators and into the room. Irving grabbed his cash box from the display table of books and retreated peacefully to the wall. The old man pushed the books off the table and then physically pushed and shoved Irving. The Berkeley police finally restored order, moving the crowd out of the building and into the street, where they continued to chant, shout, and demonstrate. When the old man physically assaulted Irving, a muscular young man in a black t-shirt came forward and decked him with one right cross. The young man made no attempt to attack or injure him further, and the Berkeley police took the old man out of the room.

(Personal correspondence, January 2000).

Since Irving's invitation to speak came from the Berkeley Coalition for Free Speech, they apparently also no longer teach irony at that institution.

Given the fact that the Shoah took place in Europe it is perhaps understandable that some countries there would be hypersensitive to the denial of it. And given the horrific history of race relations in America such hate speech laws could be rationalized as relevant to the claim that there are genetically-determined differences between blacks and whites in intelligence, because such information (whether true or false) might lead white supremacists and other bigots to commit violence against blacks. Or considering the long struggle women have had to gain parity to men, one could argue that research on gender differences in cognitive abilities could turn back the clock on women's rights should a disparity be found in favor of the gender still dominant in positions of power. Since people act on their beliefs, and beliefs are expressed in the form of speech, isn't it reasonable to argue that certain scientific findings be categorized as a form of hate speech that should be censored?

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The justification of such laws in the consequentialist argument that people might be incited to discrimination, hate, or violence if exposed to such ideas fails the moment you turn the argument around and ask: What happens when it is *you and your* ideas that are determined to be dangerous? This argument against censorship was well articulated in Robert Bolt's 1960 play, *A Man for All Seasons*, based on the true story of the sixteenth century Chancellor of England, Sir Thomas More, and his collision with King Henry VIII over his divorce from Catherine of Aragon. In the play a dialogue unfolds over the changing of the law, between More and his future son-in-law Roper, who urges him to arrest a man whose testimony could condemn More to death, even though no laws were broken. "And go he should, if he were the Devil himself, until he broke the law!" More entices.

Roper: So now you'd give the Devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that.

More: Oh? And when the law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country is planted thick with laws from coast to coast...and if you cut them down...do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

(The complete script of *A Man for All Seasons* is available online at <http://bit.ly/1vY6H3s>)

Pretend for a moment that the majority of people deny the Holocaust (or believe that racial and gender differences are real and innate) and that they are in the positions of power. If a mechanism for censorship of unwanted speech exists, then the believer in the reality of the Holocaust (or the skeptic of racial and gender differences) may now be censored. Would we tolerate this? Of course not. This case for free speech was argued in one of the most famous court trials of the twentieth century. When evolutionists were in the minority in America in the 1920s, and politically powerful fundamentalists were successfully passing anti-evolution legislation making it a crime to teach Darwin's theory in public schools, as they did in Tennessee, in the 1925 Scopes' trial held in Dayton the noted attorney and civil liberties defender Clarence Darrow made this case against censorship:

If today you can take a thing like evolution and make it a crime to teach it in the public school, tomorrow you can make it a crime to teach it in the private schools, and the next year you can make it a crime to teach it in the hustings or in the church. At the next session you may ban books and the newspapers. Soon you may set Catholic against Protestant and Protestant against Protestant, and try to foist your own religion upon the minds of men. If you can do one you can do the other. Ignorance and fanaticism is ever busy and needs feeding. Always it is feeding and gloating for more. Today it is the public school teachers, tomorrow the private. The next day the preachers and the lecturers, the magazines, the books, the newspapers. After awhile, your honor, it is the setting of man against man and creed against creed until with flying banners and beating drums we are marching backward to the glorious ages of the sixteenth century when bigots lighted fagots to burn the men who dared to bring any intelligence and enlightenment and culture to the human mind.

(Quoted in: *The world's most famous court trial: Tennessee evolution case: A complete stenographic report of the famous court test of the Tennessee Anti-Evolution Act, at Dayton, July 10–21, 1925, including speeches and arguments of attorneys.* Clark, NJ: The Lawbook Exchange, Ltd. (Google eBook), 87. <http://bit.ly/1MMj2SZ>)

In America, the First Amendment protects the right of citizens to express their opinions on anything they like, no matter how extreme,

evil, conniving, or crazy. Here you are free to doubt the Apollo moon landing, the single-bullet theory, the existence of God, the divinity of Jesus, the verisimilitude of the Quran, the prophetic nature of Moses or Muhammad, al Qaeda's role in 9/11, and even the President's birthplace. No matter how much one may dislike someone else's opinion—even if it is something as disturbing or potentially disruptive as denying that the Holocaust happened or that some people may not be as successful because of innate racial or gender differences—that opinion is protected by the First Amendment. More than a legal right, I also believe we have a moral duty to speak our minds. I am therefore in unwavering agreement with James Flynn in his target article on "Academic Freedom and Race" in the *Journal of Criminal Justice*, that "There should be no academic sanctions against those who believe that were environments equalized, genetic differences between black and white Americans would mean that blacks have an IQ deficit." Flynn's courage and integrity go even further when he argues, "Moreover, research into this question should not be forbidden. This is so, no matter what the outcome of the race and IQ debate, that is, no matter whether the evidence eventually dictates a genetically caused deficit of nil or 5 or 10 or 20 IQ points."

There are exceptions to the purely civil libertarian case for free speech, of course, from Justice Potter Stewart's concerns about false fires and crowded theaters (wrongly applied to the ill-conceived idea that "hate speech" might incite people to violence) to spreading lies about someone that damages their reputation, safety, or income. But never in history have a people been so free to speak their mind, and from that freedom emerges the truth, for the only way to know if your idea is wrong is to allow others to critique it. That principle—the freedom to participate in the dialogue that the philosopher Karl Popper called "conjecture and refutation"—is at the heart of both the scientific method and the political process (Popper, 1963).

The reason we need critical feedback from others is that our brains come equipped with a set of cognitive heuristics—or rules of thumb, or shortcuts—that help us navigate through the buzzing blurring confusion of information coming in through our senses. These heuristics are also known as *cognitive biases* because they often distort our percepts to fit preconceived concepts. These cognitive biases are part of a larger process called "motivated reasoning", in which no matter what belief system is in place—religious, political, economic, or social—they shape how we interpret information that comes through our senses and motivate us to reason our way to finding the world to be precisely the way we wish it were. As I argue in *The Believing Brain*, our beliefs are formed for a variety of subjective, emotional, psychological, and social reasons, and then are reinforced through these belief confirmation heuristics and justified and explained with rational reasons (Shermer, 2011). The confirmation bias, the hindsight bias, the self-justification bias, the status quo bias, the sunk-cost bias, the availability bias, the representative bias, the believability bias, the authority bias, and the consistency bias are just a few of the ways cognitive psychologists have discovered that we distort the world.

It is not so much that scientists are trained to avoid these cognitive biases as it is that science itself is designed to force you to ferret out your errors and prejudices because if you don't someone else will, often with great glee in a public forum, from peer-review commentary to social media (where all pretensions to civil discourse are stripped away). Science is a competitive enterprise that is not for the thin-skinned or faint of heart. Most ideas that people come up with are wrong. That is why science is so cautious about tossing aside old ideas that have already survived the competitive marketplace, and why scientists tend to dismiss out of hand new ideas that threaten a tried-and-true research paradigm, especially before the revolutionary theory has been properly vetted by professionals in the field. That process of generating new ideas and introducing them to your peers and the public where they can be skeptically scrutinized in the bright light of other minds is the only way to find out if you've come up with something true and important or if you've been immersed in self-deception.

James Flynn hits the mark on this point when he writes, “I know of no alternative to the scientific method to maximize accumulation of truth about the physical world and the causes of human behavior. If scholars are to debate this issue, do we not want the best evidence possible—and this can only come from science.” What if it turns out that the primary cause of racial differences in IQ is the environment, but due to academic censorship of sensitive topics the only people doing research in this area are those who believe that all such differences are to be found in our genes? Where is the environmental refutation to the genetic conjecture? “There will be bad science on both sides of the debate,” Flynn admits. But “The only antidote I know for that is to use the scientific method as scrupulously as possible.” By way of example, Flynn says he discovered his eponymous effect—the “Flynn Effect” that IQ points have been increasing on average about 3 points every 10 years for almost a century (Flynn, 2012)—by reading Arthur Jensen’s research on IQ and “g” (the general intelligence factor), which no one else noticed because of their reticence to give any credence to Jensen’s work because of his association with the genetic position on racial differences in IQ. Flynn asks rhetorically, “Does academia really want to ally itself with those who reserve free discussion to Philosopher Kings, and create dogmas to deaden the minds of all others?” The answer for many academics, I’m sorry to say, is a resounding yes. They see themselves as Philosopher Kings who know what is best for the masses, whom they believe are incapable of thinking as deeply as themselves.

This narcissistic arrogance goes a long way to explaining the recent and disturbing trend on college campuses to censor unwanted speech and thought (yes, thought crimes!), well documented by Greg Lukianoff, President of the Foundation for Individual Rights in Education (FIRE), in his 2014 booklet *Freedom From Speech* (Lukianoff, 2014). Readers may recall the wave of “disinvitations” at universities who invited controversial (or simply interesting) speakers to enlighten their students, only to disinvite them after waves of protest from some students and faculty that the speakers’ words might offend. FIRE has documented 257 such incidents since 2000, 111 of which were successful in preventing the invited speakers from delivering their speeches (75 disinvitations, 20 speaker withdrawals, and 16 “heckler’s vetoes” in which student hecklers shouted down or chased off stage the speakers) (Ibid., 31). Potentially offensive words are the basis of “trigger warnings” professors are supposed to supply their students in classroom lectures that might cause them discomfort (these include sex, addiction, bullying, suicide, sizeism, ableism, homophobia, transphobia, slut shaming, and victim-blaming (Ibid., 38)), as if a university classroom were designed infantilize students and treat them like children instead of preparing them for adulthood and the real world where they most certainly will not be so shielded.

This is why the principle of free speech and the arguments in its favor apply to the political world as well as the scientific one (and why no Philosopher King or Benevolent Dictator can ever be allowed to rule). As I explained in my 2015 book *The Moral Arc*:

Democracies developed in response to the monarchic autocracies of the eighteenth and nineteenth centuries and to the dictatorship regimes of the 20th century because democracies empower individuals with a methodology instead of an ideology, and it is to this extent that we can see that the scientific values of reason, empiricism and antiauthoritarianism are not the *product* of liberal democracy but the *producers* of it. Democratic elections are analogous to scientific experiments: every couple of years you carefully alter the variables with an election and observe the results. If you want different results, change the variables. The political system in the United States is often called the “American experiment”, and the founding patriarchs referred to it as such, and thought of this experiment in democracy as a means to an end, not an end in itself. Many of the founding fathers were, in fact, scientists who deliberately adapted the method of data gathering, hypothesis testing, and

theory formation to their nation building. Their understanding of the provisional nature of findings led them to develop a social system in which doubt and dispute were the centerpieces of a functional polity. Jefferson, Franklin, Paine, and the others thought of social governance as a *problem to be solved* rather than as power to be grabbed. They thought of democracy in the same way that they thought of science—as a method, not an ideology. They argued, in essence, that no one knows how to govern a nation so we have to set up a system that allows for experimentation. Try this. Try that. Check the results. Repeat. That is the very heart of science.

(Shermer, 2015)

The freedom of speech has been one of the driving forces behind moral progress through science and reason because it enables the search for truth. “There must be no barriers to freedom of inquiry,” J. Robert Oppenheimer wrote in 1949. “The scientist is free, and must be free to ask any question, to doubt any assertion, to seek for any evidence, to correct any errors.” Reflecting on the history of science and extrapolating to wider spheres, he noted: “Our political life is also predicated on openness. We know that the only way to avoid error is to detect it and that the only way to detect it is to be free to inquire. And we know that as long as men are free to ask what they must, free to say what they think, free to think what they will, freedom can never be lost, and science can never regress.” How does freedom of speech lead to truth? There are at least five reasons (One of the earliest and still strongest defense of free speech was made in 1859 by the utilitarian philosopher John Stuart Mill in his classic work *On Liberty*, still in print and available online: <http://bit.ly/1WolXpA>):

1. We might be completely right but still learn something new.
2. We might be partially wrong and by listening to other viewpoints we might stand corrected and refine and improve our beliefs. No one is omniscient.
3. We might be completely wrong, so hearing criticism or counterpoint gives us the opportunity to change our minds and improve our thinking. No one is infallible. The only way to find out if you’re wrong or if you’ve gone off the rails is to get feedback on your beliefs, opinions, and even your facts.
4. Whether right or wrong by listening to the opinions of others we have the opportunity to develop stronger arguments and build better facts for our positions.
5. My freedom to speak and dissent is inextricably tied to your freedom to speak and dissent. Once customs and laws are in place to silence someone on one topic, what’s to stop people from silencing anyone on any topic that deviates from the accepted canon? No one should be forced to facilitate the expression of an offensive opinion, but neither should there be what the U.S. Supreme Court justice Louis Brandeis called “silence coerced by law—the argument of force in its worst form.”

It is my belief that truth will win out when the evidence is made available for all to see. “It is error alone which needs the support of government,” Thomas Jefferson wrote in his *Notes on Virginia*. “Truth can stand by itself” (Cummingham, 1987). And as Jefferson articulated the principle in his original draft of the *Declaration of Independence*, arguably the greatest free speech statement ever penned, “And, finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.” (Ibid., 49).

Thus it is that the human mind, no matter what ideas it may generate, must never be quashed.

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