Educational Freedom of Speech: From Principle to Practice

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Freedom of speech (FS) is not new to the philosophy of education. From the time of Socrates' trial to the present day, it arises when teachers bring up political issues in class or administrators invite social organizations active in political disputes to come into their schools. Those teachers and school administrators often find themselves under attack, as it is claimed that politics should not enter into schools. On the other hand, those holding liberal views often answer by pointing to the right to freedom of speech. Intuitively, it seems that what is at stake is a political controversy regarding the limits of freedom of speech. However, this article claims that the controversy is futile since both parties judge this situation to be political while it is in fact educational.

In his criticism of FS, Stanley Fish points out that FS cannot be a principle since it draws its meaning, justification, and form from the context in which it is used and performed. Thus, it is always conditioned and has political and epistemological limits. And in migrating to other social spaces, its meaning is shaped anew by absorbing other terms and practices that are already operating within that space. It is irrational to expect a specific sphere to import an external "principle" from another sphere without making any adjustments as this heavily disrupts the ongoing holistic operation and conception of that space. According to this pragmatic way of thinking, theoretical terms are nothing but *ex post facto* generalizations and abstractions of existing practices within that space and do not represent any essence or objectivity. Actually, choosing the term "principle" is nothing more than a metaphorical choice that is meant to

empower the strength of FS. After all, in semantic terms a "principle" expresses what is rigid, incapable of entertaining any doubt or objection; it expresses totality.³ Later on, this article will show that "practice" is a better metaphor when it comes to the educational sphere. For "practice" is loaded—semantically—with features such as flexibility, goal-orientation, attentiveness to the whole sphere, and adjustment to other practices.

It should be emphasized that the claim of a sphere-oriented "logic" does not imply a total distinction from a public sphere logic. There is no way to avoid some *family resemblance* between the public sphere and its local spheres. While an educational sphere has its own distinctive rules, norms, goals, and authorities there exists *family resemblance* with the public sphere which does not allow a total distinction. For example, one of the functions of the educational system is socialization, and thus it has to be attentive to public norms. Thus, if we would like to understand the way the meaning of FS and its functioning is different within the educational sphere, we should start with understanding the way it is understood within the public sphere. This will be discussed mainly through John S. Mill's concept of "freedom of speech," Isaiah Berlin's concept of "negative freedom," John Rawls' concepts of a "well-ordered-society" and "neutrality," R. Dworkin's "equal respect," G. Dworkin's "personal autonomy," and Joseph Raz's "perfectionism."

Berlin's famous concept of "negative freedom" posits a simple, necessary, and sufficient condition for political freedom: "I am free to the degree to which no man or body of men interferes with my activity." That is, freedom is a "freedom from." It is not demanding as it does not ask a person to implement this freedom or to do something with it, since otherwise that person will not be considered free. There are no substantive or procedural guidelines for this concept, as these guidelines are considered to be a kind of interference. This conception goes hand

in hand with Judith Shklar's concept of "liberalism of fear," which takes the liberal motivation to be that of avoiding the fear of being in fear.⁶ A similar motivation exists in J. Rawls' "political liberalism." For Rawls, the starting point for shaping a political theory must be socio-empirical. That is, we should form, shape, and refine that theory in accordance with the way modern democracies already look. Thus, democratic states are characterized by inevitable pluralism of moral, religious, cultural, and philosophical positions that represent subgroups of the overall society.⁷ From an epistemological-rhetorical perspective, even though these positions are "reasonable," they are incommensurable. Since the only way for a uniform and homogenous society to impose itself remains that of repression, Rawls prefers accepting value neutrality as a meta-principle for political life.⁸ Accordingly, any conception of the good should be left to the private sphere.

Thus, though Fish debunks the metaphysical and semantic meaning of "principle" he does not debunk the way this metaphor can, pragmatically and culturally, serve the public sphere. When we take acts of speech as sponsored by a principle, we actually take a cultural commitment to protect them, while when we take those speech acts to reflect a social "practice," it is a different kind of declaration. Thus, my claim is that within the public sphere FS is a double agent: sometimes it reflects the metaphor of "principle" (especially when it comes to protect self-expression), and sometimes it is "practice" (especially when it comes to interpersonal and inter-group dialogues).

Thus, even though liberalism abandons questions of substantive moral values, it remains faithful to procedural values like personal autonomy. A value representing the idea of a person who uses rationality to reflect upon its volitions, motivations, and personal circumstances, and who decides whether she wants to embrace these volitions, make these intentions "second-order-volitions." Such a reflection should transform intuitive thinking into critical thinking and transform short-term projects into long-term ones; it integrates large-scale considerations in order to achieve a balance between personal and cultural, or even universal, considerations. Autonomy would then be not just a mental state but an optimal and perpetual process of self-management. However, while it requires mental and cognitive capabilities, and of course the freedom to choose, it demands something that is beyond the self; it requires a significant scope of alternative choices. Otherwise, autonomy becomes trivial and banal and is not really put to the test. Autonomy requires a person not only to select among his current possibilities, but also to "listen" to other possibilities, to give them serious examination and "chance," and to be responsible also for those that were not selected.

How then does the question of FS concern discussion of Berlin, Rawls, and autonomy? First, neutrality, negative freedom, and the fear of repression give no justification for acting against practicing FS.¹² Now, we can see why FS guides us as a principle. Theoretically, following this FS becomes not only a principle but a privilege, as no positive impetus for its use is shown. And if this is the case, the major role of FS as a principle of liberalism seems awkward, since, paradoxically, the public sphere can be silent and still theoretically be called liberal. This lacuna gets an answer by Rawls' "well-ordered society." Rawls suggests understanding society as an active organism driving for a full balance among its parts. His social vision is functionalist, as he aspires to a stable and ordered society. However, such a balance leans on dynamic mechanisms of discourse like "cooperation," "reciprocity," "reasonableness," "overlapping consensus" and "burdens of judgment." 14 These ideas demand creating political practices, institutions, and discursive norms where the "fact of pluralism" becomes not only the "fact of reasonable pluralism," but also that of functioning pluralism.¹⁵ For that, public dialog should acquire lucidity

and complexity and be critical, employing social imagination, empathy, and negotiations skills. As P. De Marnefee points out, neutrality is not a vulgar vision that gives any "conception of good" an equal status; rather, it expresses the fact that only certain reasons may limit or disqualify, practically and rhetorically, the public presence of some positions. ¹⁶ But then as we demand from the public sphere that it be dynamic, express perfectionist features of discourse, and so on, we actually retreat from speech being neutral and privileged to it being a practice of public duty; it becomes a perfectionist public good. As Raz claims, beyond moral neutrality and beyond hidden personal perfectionism, Rawls actually demands that a societal perfectionism should also exist.¹⁷ Not only that, individualism is not enough, as Raz argues that there is a need for public practices that can reveal new possibilities, which is what gives autonomy value. 18 Pluralism is not only a set of existing reasonable lifestyles; it is a dynamic, searching ethical norm that uses many practices to accomplish its principles, including that of FS. A political right is justified not only from the way it serves the right-holder but also from the way it serves situated third parties.¹⁹ Such a perspective actually retreats from Berlin's "negative freedom" to his second option of "positive freedom," which is aimed at a self "which calculates and aims at what will satisfy it in the long run, with my [his] 'real' or 'ideal', or autonomous self, or with my [his] self 'at its best"; a perfectionist self.²⁰

A similar position is sketched in Mill's discussion of FS.²¹ Mill claims that through FS the market of ideas is created; this way people can choose the idea that withstands refutation, promises the most, defeats other positions, and thus, at least tentatively, becomes the "truth."²² But such a position is then problematic, as it reflects naivety or exaggerated optimism as to the way the market of ideas operates. The Millian process relies upon the assumption that an idea will be refuted or rejected in the "market of ideas" out of rational and critical discussion, as all

citizens embrace rational discussion. However, such an assumption is too demanding; in a way it begs the question. After all, many times those ideas are nothing but a reflection of irrational thinking that is the source for those wrong ideas.²³ Most of the discussion around Mill's FS considers his uncompromising stance against any limitations being put on FS. However, this ideal accompanies another pragmatic stance. Public discussion is important not only because it "creates" truth, but also because it ensures an ongoing process of improvement and refinement of public reason. Truths are dependent on a reliable public and rational apparatus; thus, pragmatically the aim becomes the cultivation of such an apparatus. "[I]f there be a better truth, it will be found when the human mind is capable of receiving it; and in the mean time we may rely on having attained such approach to truth, as it is possible in our day."²⁴ What we aspire for is not a realistic concept of truth but a social and consensual one, which makes the rational discourse apparatus the main thing. Again, FS becomes not only a principle but a social practice with perfectionist features. On the other hand, as liberalism takes autonomy to be a postulate there is no citizenry duty to prove intellectual sincerity or seriousness when using FS. As Levinson clarifies, liberalism "values citizens' exercise of autonomy, but does not discriminate against those who do not exercise autonomy in their own lives."25

If the public sphere operates under a schism of strong value neutrality while on the other side remaining procedurally perfectionist, then the educational sphere operates under the opposite schism: a perfectionist sphere—substantively and not only procedurally—and, on the other hand, an opposite postulate regarding children's lack of autonomy. Since we presume autonomy to be crucial for the public sphere, is there a liberal way to construct FS within the educational sphere while also declining autonomy? There are two main distinctions that are crucial for understanding the relation between FS and autonomy. If, within the

public sphere, the right to FS stems from the right to autonomy, then within the educational sphere it stems from the right for autonomy. Second, having the right for autonomy entails an opposite duty incumbent upon the educational system. As FS is a vital component for building such autonomy, it becomes itself a duty for the system. That is, if, within the public sphere, FS is just a privilege, then, following Hohfeld's typology, within the educational sphere it becomes a kind of duty. 26 The lack of autonomy gives legitimacy to Hohfeld's third type of right: right as power to revoke a privilege or claim. Within the logic of the educational sphere, a certain use of power over children is justified through paternalism. This is because paternalism assumes it is necessary and right to limit a person's freedom for their own personal good and protection as that person is not autonomous. However, the definition of paternalism exposes the "weakness" and limits in its power. Paternalism relies on a conditional imperative: it is justified as long as it for the good of the child; in this case, it is a 'soft paternalism.' There is no way to avoid paternalism when a child has no capacity for autonomy. However, as children slowly become autonomous, the educational system must retreat, at the same time, from substantive paternalism (as curriculum is) and move toward those procedural measures that are intrinsic for autonomy. Educational paternalism is justified not only as it is temporary and necessary, but also as it is a necessary wrong for the benefit of a necessary educational good: autonomy. This article contends that practicing FS in class is such a pedagogical practice.

What are the characteristics that make FS a suitable practice for developing autonomy? It is beyond the scope of this article to take an overall view of those characteristics. Still, we can point to some of them as they clearly show how FS is tightly related to autonomy. But before we do that, we should keep in mind some points concerning autonomy. First, autonomy is a thick concept: it is not enough for it to reflect sec-

ond-order volitions; what is needed is exposure to a wide spectrum of options and critical skills and the ability to resist heteronomous powers. As this requires a lot more elaboration and research, this topic will be presented only briskly, showing preliminary ways to develop it within further research.

DIALOGUE

Taylor claims that "we become full human agents, capable of understanding ourselves, and hence of defining our identity, through our acquisition of rich human languages of expression. ... But we learn these modes of expression through exchange with others. ... who matter to us—what George Hebert Mead called 'significant others.' The genesis of the human mind is not monological, not something each person accomplishes on his or her own, but dialogical."27 Forming and developing self-identity is not a mental act but a dialectal social praxis, mainly linguistic, where not only the addressor has functional significance, but the addressee, too, is part of the "game." Taylor's insights complement Kohlberg's empirical research into autonomy: "[M]oral stages must primarily be the products of the child's interaction with others, rather than the direct unfolding of biological or neurological structures."28 Habermas continues this developmental-normative line of thought as he connects this to the question of speaking. Habermas points out—while referring to ego psychology, cognitive development, and symbolic interactionism—that the development of autonomy is much more related to social interaction than to some essence of a solipsistic rational thinking.²⁹ This accentuates the importance of "interaction" and "otherness." Cultural interaction challenges the child and "forces" them to move out of the comfort zone they are in; learning occurs when the child is exposed to a new term or point of view. That is, autonomy involves dynamic and constant exposure to dilemmas, challenging situations, and new ways of thinking beyond what someone is used to and beyond formal positions; it is otherness in its epistemological, cultural, political, linguistic, and moral forms. Sometimes such an otherness even requires constructing it "artificially" in class, for example, by the teacher. The teacher plays two roles: one is radical, as they are supposed to introduce provocative issues into class; the other is to balance and regulate dialog, as they keep students from falling into what Frankfurt termed, in a picturesque way, "bullshit"—that is, the ability to talk without saying something meaningful, to pay no respect to the way language is supposed to represent reason.³⁰ Empathy, listening, giving meaning, arranging thought—all of these are complex acts that demand an opposite pole, embodied in the figure of the interlocutor who responds, opposes, gives assurance, and so on. As Perkins rightly claims, understanding is not created through mental acts alone but mainly through some "physical" public practices, just as FS is (e.g., explaining through speaking, giving examples, responding to a follow-up question, rephrasing a position).³¹

Such a dialogical position clarifies the way personal autonomy is not a monolog; it is not amorphous and striving for universality as Kantian philosophy, which is blind to any cultural or particularistic circumstances. It is closer to Dewey's position as it retreats from a "solitary thinker's reflection" that "allows her to see the connections between actions, inferences, outcomes, and goals" to a "group's deliberations" that "allow them to see the connections between their actions, inferences, outcomes, and goals." In this respect, the classroom provides "laboratory" conditions, which the public sphere will find harder to provide. As a community it is big enough, but not too big; it has "natural" caring relations, mutual recognition, and a pedagogical instructor who is able to navigate and restrain this practice. 33

EXPERIMENTALISM

"It implies that reflective morality demands observation of particular situations, rather than fixed adherence to a priori principles; that free inquiry and freedom of publication and discussion must be encouraged and not merely grudgingly tolerated ... It is, in short, the method of democracy."34 A significant discussion arises when we address concrete situations instead of directly addressing theoretical principles, as those will arise and be defined in retrospect, as we further reflect on our discussion. First, thinking begins when an event demands accountability in terms of explanation, meaning, justification, and so on. As the event is part of our "surroundings," it functions as an impetus for improving theory.³⁵ Second, experimentalism opposes toleration, which carries a disposition or "temptation" wherein people retreat to their personal space, without going against the other's position, even it is taken to be offensive or despicable; this is because FS is taken to be a principle and not a social tool. However, when FS is taken to be a social and functional practice, it demands participation and helps to shape a communitarian-democratic sphere.³⁶ Again, Dewey is aware that such a process might take a malignant form, such as Frankfurt's "bullshit" disposition, and therefore a pedagogical authority is needed.³⁷ This authority will guard against procedural blunders, such as irrelevance of certain propositions, logical fallacies, biases, and misconceptions, and will offer guidance given a minimal knowledge base when discussing a situation, pointing to the outcomes of the argument, posing challenging questions, and so on.

RESISTANCE

This is the way Ackerman defines rational discourse: "Whenever anybody questions the legitimacy of another's power, the power holder must respond not by suppressing the questioner but by giving a reason that explains why he is more entitled to the resource than the questioner is." Paradoxically, the request this makes of a paternalistic system, such as education, is to "artificially" create such possibility—to allow, and even create, such dialogical situations in which, on the one hand, epistemological force is put on the student and, on the other hand, the student is given legitimation and encouragement to resist that force. The aspiration is not for students to constantly, and on principle, reject curriculum, but to accept, support or embrace an idea only through rational discourse after resisting; curriculum should be accepted only as second-order volition.

Nevertheless, if FS is only the ethical-political representation of critical thinking, it is not clear why FS should necessarily deal with disputed issues that trouble society. Thus, an Israeli student can practice FS by dealing with Swedish issues, and vice versa. Such an argument can be answered from a socialization perspective, as by this we "train" the student for living in his society. Such reasoning, even if correct, goes beyond autonomy, which is the main justification here. I believe the way to answer this is through involving the communitarian perspective. Again, as this requires more elaboration, this topic will be presented only as an introduction that requires further research.

Within this argument, we will discuss mainly two concepts: Heidegger's dismantling of the subject/object duality and Taylor's idea about taking identity not to be atomistic but community-embedded. In discussing Heidegger, the article will use Okrent's pragmatic interpretation of Heidegger's *Being and Time.*³⁹ According to Heidegger's phenomenology, the human subject (*Dasein*) is characterized as always existing through understanding.⁴⁰ As understanding is characterized as object-oriented (intentional) and primarily practical, "[o]ne understands something practically if one knows how to deal with it and how to cope with it."⁴¹ It is also holistic, since as "[t]hings can be understood only in relation to

one another ... those relations are principally instrumental rather than casual ... and the properties these things are understood as having are functional."42 To understand a hammer, one has to understand the way it relates, in "real-time," to the nail and the wall and the way each of them cooperate functionally. The same goes for when a person understands the concept (object) of an "argument": this means to link functionally an assumption, conclusion, rhetorical devices (e.g., metaphor, analogy), and logical devices. As humans get skilled understanding, it becomes more "automatic" in a sense; it needs no deep reflection or significant effort before. Thus, Heidegger's theory breaks down the dualities of subject/ object and mental/physical. It is not that we think and then express ourselves; thinking occurs while we actually speak, while the action itself is occurring. Nevertheless, as the world is mediated through our direct surroundings (environment), we actually understand ourselves through specific surroundings and not in a worldly way. These surroundings may be physical but may also consist of language, symbols, common ideas—community. "To say that Dasein is essentially 'being-with' is to say that every individual Dasein, in order to be Dasein, must as a logical necessity inhabit a shared world; and that insofar as it acts in a way appropriate for its community, it has an implicit practical understanding of the other members of that community as purposive agents who also use things as they ought to be used."43 The world in not abstract and total; it is our locality.

Taylor accepts Heidegger's perspective of men as local "self-interpretive animals." Thus, along with recognizing the universal-democratic and abstract concept of respect, he adopts a perfectionist understanding that binds the moral concept of identity with the political concept of community. Our identity is, partially at least, constructed through questions surrounding us. FS is not a pure critical thinking practice, as it is constructed via autonomy and identity, concepts that have strong ties

with community and the issues that matter to it.

In conclusion, when FS encounters the educational sphere, it abandons the meaning of 'principle' and adopts the meaning of 'practice.' As such, FS becomes much more procedurally and epistemologically sensitive; it is much more prone to procedural limitations. On the other hand, as a pedagogical practice, it imposes a duty on the educational system to train and challenge students in provocative and radical ways. If within the public sphere autonomy serves FS, within the educational sphere FS serves **autonomy**.

¹ Stanley Fish, "There is No Such Thing as Free Speech, and It's a Good Thing, Too," in *There's No Such Thing as Free Speech, and It's a Good Thing, Too* (New York: Oxford University Press, 1994), 102–119.

² Ibid., 107.

³ For the way choosing a certain metaphor navigates our thinking and behavior see: George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980/2003).

⁴ John S. Mill, On Liberty, in The Philosophy of John Stuart Mill, ed. Marshall Cohen (New York: The Modern Library, 1961), 185–319; Isaiah Berlin, "Two Concepts of Liberty," in The Proper Study of Mankind: An Anthology of Essays, eds. Henry Hardy and Roger Hausheer (New York: Farrar, Straus, and Giroux, 1997), 191–242; John Rawls, Political Liberalism (New York: Columbia University Press, 2005); Ronald Dworkin, Taking Rights Seriously (Cambridge, MA: Harvard University Press, 1977); Gerald Dworkin, The Theory and Practice of Autonomy (Cambridge: Cambridge University Press, 1988); Joseph Raz, The Morality of Freedom (Oxford: Oxford University Press, 1986).

⁵ Berlin, "Two Concepts of Liberty," 194.

⁶ Judith Shklar, "Liberalism of Fear," in *Liberalism and the Moral Life*, ed. Nancy L. Rosenblum (Cambridge: Harvard University Press, 1989), 21–38.

⁷ Rawls, *Political Liberalism*, 3–4; cf. Meira Levinson, *The Demands of Liberal Education* (Oxford: Oxford University Press, 2004), 9.

⁸ Rawls, *Political Liberalism*, 36–37; cf. George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), 1–44.

⁹ Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," *The Journal of Philosophy* 68, no. 1 (1971): 5–20.

¹⁰ G. Dworkin, The Theory and Practice of Autonomy.

¹¹ Raz, The Morality of Freedom, 369–378.

¹² For the sake of discussion, let us put to the side the question of harm caused through incitement, hate, etc.

- 13 Rawls, Political Liberalism, 35-40.
- 14 Ibid., 35–40, 47–71.
- 15 Ibid., 36.
- 16 Peter De Marnefe, "Liberalism, Neutrality, and Education," in *Moral and Political Education*, eds. Yael Tamir and Stephen Macedo (New York: New York University Press), 223–224.
- 17 Raz, The Morality of Freedom, 130-133.
- 18 Ibid., 372-378.
- 19 Joseph Raz, "Free Expression and Personal Identification," in *Ethics in the Public Domain* (Oxford: Oxford University Press, 1994), 149–151.
- 20 Berlin, "Two Concepts of Liberty," 204.
- 21 Mill, On Liberty.
- 22 Ibid., 210.
- 23 Kenth Greenwalt, "Free Speech Justifications," in *Freedom of Speech, Volume 1*, ed. Larry Alexander (Aldershot, Hants, England: Ashgate/Dartmouth, 2000), 261.
- 24 Mill, On Liberty, 210.
- 25 Levinson, The Demands of Liberal Education, 21.
- 26 Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 23, no. 1 (1913): 16–59.
- 27 Charles Taylor, "The Politics of Recognition," in *Multiculturalism*, ed. Amy Gutman (New Jersey: Princeton University Press, 1994), 32.
- 28 Lawrence Kohlberg, "The Development of Moral Judgment and Moral Action," in *Child Psychology and Childhood Education* (New York: Longman), 271.
- 29 Jurgen Habermas, "Moral Development and Ego Identity," in *Communication and the Evolution of Society,* trans. Thomas McCarthy (Boston: Beacon Press, 1979), 69–94.
- 30 Harry G. Frankfurt, On Bullshit (New Jersey: Princeton University Press, 2005).
- 31 David Perkins, "Teaching for Understanding," in *American Educator: The Professional Journal of the American Federation of Teachers* 17, no. 3 (1993), 28–35.
- 32 Willian Keith and Robert Danisch, "Dewey on Science, Deliberation, and the Sociology of Rhetoric," in *Trained Capacities: John Dewey, Rhetoric, and Democratic Practice*, eds. Brian Jackson and Gregory Clark (New York: Columbia University Press, 2014), 35–36.
- 33 Ibid., 37-38.
- 34 John Dewey, "Intelligence in Morals," in *Intelligence in the Modern World: John Dewey Philosophy*, ed. Joseph Ratner (New York: The Modern Library, 1939), 775.
- 35 Norman Crick, "Rhetoric and Dewey's Experimental Pedagogy," in *Trained Capacities: John Dewey, Rhetoric, and Democratic Practice*, eds. Brian Jackson and Gregory Clark (New York: Columbia University Press, 2014), 183.
- 36 Keith and Danisch, "Dewey on Science, Deliberation, and the Sociology of Rhetoric," 29–32.
- 37 Dewey, "Intelligence in Morals," 776.
- 38 Bruce Ackerman, Social Justice in the Liberal State (New Haven, CT: Yale University Press, 1980), 4.
- 39 Martin Heidegger, Being and Time, trans. John Macquarrie and Edward Robinson (New York: Harper & Row, 1962); Mark Okrent, Heidegger's Pragmatism (Ithaca, NY:

Cornell University Press, 1988).

- 40 Okrent, Heidegger's Pragmatism, 22.
- 41 Ibid., 24.
- 42 Ibid., 28.
- 43 Ibid., 49.
- 44 Charles Taylor, "Self-Interpreting Animals," in *Human Agency and Language: Philosophical Papers Vol 1* (Cambridge: Cambridge University Press, 1985), 45–76.
- 45 Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1994), 25-29.