



# Analyzing the Importance of Freedom of Speech

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**Abstract.** The history of freedom of expression is best illustrated by the 1977 Supreme Court case of *Collin v Smith*. In this case, Justice Pell even made it clear that residents of the area who suffered moral damage as a result of the march could later bring a tort action, but that the NSPA's freedom to "express unpopular views" was protected by the courts. However, this extreme protection of speech has not always been the case, and the Supreme Court's attitude and position has fluctuated and thus changed many times throughout its history. In short, the core of the First Amendment debate is not "whether human beings have the right to speak in a certain way", but rather "whether laws that silence human beings are unconstitutional". Thus, in this work, we have discussed and answered the question of what kind of speech should be protected, which in effect falls on the Supreme Court in the exercise of its judicial power. This is one of the reasons why the Supreme Court's approach in the area of freedom of expression has been uncertain.

**Keywords:** freedom, speech, Skokie

## 1 Introduction

Freedom of expression is very important because it is indispensable for every step in the change of the political system, economic development and scientific and technological progress of human society. Therefore, freedom of expression is often referred to as the "first right" of mankind, and in a sense, the degree to which it is guaranteed reflects the overall level of economic and social development of a country. The history of freedom of expression is best exemplified by the 1977 Supreme Court case of *Collin v Smith*, a small town in Illinois where up to 5,000 of the 40,000 or so residents were Jewish survivors of the Nazi concentration camps of World War II. It was here that the National Socialist Party of America chose to march through the town, dressed in German SS uniforms and wearing Nazi swastikas, which caused quite an uproar. [1] The Supreme Court invalidated the order on the grounds that it contravened the First Amendment and the NSPA had the right to march and rally in Skokie as planned. In

this case, Justice Pell even made it clear that residents of the area who suffered moral damage as a result of the march could later sue in tort, but that the NSPA's freedom to "express unpopular views" was protected by the courts. However, such extreme protection of speech has not always been the case, and the Supreme Court's attitude and position has fluctuated and therefore changed many times in its history. In the United States, the constitutional basis for freedom of speech and of the press is the First Amendment, which reads in full: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or depriving the people of their right to peaceable assembly, and to petition the government for a redress of grievances. the right of the people to assemble peaceably, and to petition the government for redress of grievances." [2]

In the First Amendment, the language is so concise that many key questions such as the definition of "speech" and the boundaries of "freedom of speech" cannot be answered by the text of the Constitution itself; it simply states that freedom of speech is not protected in the United States by means of The text merely states that freedom of expression is not protected in the United States by the Constitution's positive recognition of the right to speak, but by the "elimination" of laws that unduly restrict it. In short, the crux of the debate over the First Amendment is not "whether human beings have the right to speak a certain way", but rather "whether laws that silence human beings are unconstitutional". Thus the burden of answering the question of what speech should be protected actually falls on the Supreme Court in the exercise of its judicial power. This is one of the reasons why the Supreme Court's approach to the field of freedom of expression has always been uncertain. At the same time, the freedom of speech is not just simply speaking, demonstrating and other expressions, either moderate or radical. Instead, the freedom of speech is more concerned with its goal — can people's demands be satisfied? And the definition of freedom of speech should be considered as a right that enables people to claim their particular demands to satisfy them.

## 2 Substantive argument

### 2.1 The perspective of Lockeanism

To begin with, freedom of speech can be in a state of nature. According to Locke, "The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions..." [3] Since all mankind is equal and independent, there is no hierarchy for people to consider whether their expressions are less important than those of the others. Therefore people should enjoy the right to speak out their opinions freely without any worries about depending on any authority. It is true that Locke uses the word "liberty", which may show the difference from the word "freedom" we use to describe the right that people can claim for their particular demands to satisfy them. The main difference between liberty and freedom is that the word "liberty" is more related to the concept of "right", while the word "freedom" is more similar to an "independent" state. However, in most cases, liberty and freedom can coexist with each other because, in modern

society, the constitutions of most countries ensure the right of the freedom of speech and people can express their ideas without depending on others.[4] For example, the First Amendment of the constitution of the United States mentions that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Although some countries might not clearly explain the definition of the freedom of speech, however, since modern constitutions are mainly based on the Declaration of the Rights of Man and of the Citizen, and thus the spirit and the concept of certain concepts of those constitutions ought to be similar to this declaration. Articles in this declaration strongly defend the right to freedom of speech. “All men are born and remain free and equal in rights.” “No one shall interfere with his opinions, even his religious views, provided that their expression does not disturb the public order established by law.” Thus, the freedom is born with us and so does the freedom of speech which is not only an independent state, but also a right, a liberty, ensured by many constitutions.

Since the freedom of speech is natural, it is interesting to think whether the freedom of speech can be considered Locke’s “property”. Admittedly, some scholars may disagree with the idea that freedom is a kind of property. “A right to freedom of speech is not something we have, not something we own, in the same way as we possess arms and legs”. However, a key point of the concept of Locke’s property is labour. Labour adds deserving value to the property. Therefore, to examine whether the freedom of speech is a kind of “property”, we should prove that the freedom of speech requires labour to get its value. When people want to express their ideas, their concepts, slogans and demonstrates cannot happen and appeal to their demands just in their minds. Instead, people who want to satisfy their demands need to spend time and money costs. Even babies when they feel hungry they need to cry aloud to attract their parents to feed them. By using crying and tears, babies show their need for food and finally get satisfied. If babies can express their ideas by using “labour”, no to mention adults who actively claim for other serious issues. For example, Kwangju Uprising that happened in Korea, in 1980, shows people’s great efforts in demanding democracy and freedom of speech. Angry protesters seized weapons and fight with the authoritarian forces of the government. At the end of the uprising, 200 people or even more lost their lives to claim democracy and freedom of speech. If the lives of those defenders of democracy cannot be regarded as “labour”, which added deserving value to the property, the freedom of speech, what can be regarded as labour and property? [5] Therefore, it is reasonable that the freedom of speech to some degree can be considered Locke’s “property”. If the freedom of speech is a kind of “property”, then, according to Locke, the freedom of speech cannot be deprived by anyone because it is part of those who devote their labour to their freedom of speech. Thus, according to Locke, the freedom of speech cannot be deprived by anyone.

## **2.2 Freedom of expression from the utilitarian's perspective**

The definition of 'utilitarianism' understands that utilitarian liberals regard utilitarian principles, including consequences, as supreme over the principles of freedom, and use

them to measure the reasonableness and feasibility of a given freedom at a given time and place. In the early twentieth century, the US Supreme Court, in another decision, introduced the idea of 'more speech', arguing that the way to eliminate the ills of speech was not to restrict it, but to encourage more speech and eliminate its ills through the flow of free speech and the interplay of ideas.[6] From a utilitarian perspective, Mill's argument for freedom of speech in *On Liberty* makes perfect sense. First, neither the government nor most people have the right to prohibit speech. Mill argues that, in general, in constitutional states there is usually no need to worry about the government exerting control over speech. Assuming that the government is aligned with the interests of the people, the government, as the representative of the majority of public opinion, also has no right to restrict freedom of expression. This is because the right itself is unlawful. The core meaning of free speech is the protection of minority speech, and the degree of protection of minority speech is an important measure of the degree of freedom of expression in a society.

Moreover, there are disadvantages to restricting freedom of expression. If society allows intellectuals to think freely but does not allow them to express their opinions in public, it may appear to maintain calm and peace, but this would have extremely detrimental consequences, which in turn would be extremely harmful to society as a whole. In Mill's words, "Under such a state of affairs, one can only find such a class of men as are either overflowing tone-setters, or seasonal cargoes of truth, whose arguments on all great subjects are for the sake of their hearers, and not what they are really convinced of." At the same time, "no one thinks for himself with considerable diligence and preparation but produces error, while others hold true opinions but only to spare themselves from thinking, and in both cases the truth is gained more by the former than by the latter". [7]

Secondly, it is wrong to forbid the expression of opinions, whether they are right or wrong. As Mill says, "The peculiar evil which compels an opinion to be unpublished is that it is a plundering of the whole human race, for future generations as well as for the present, and still more for those who hold different opinions." If that opinion is right, they are deprived of the opportunity to exchange error for truth; if it is wrong, they lose almost the same benefit. In short, the prohibition of the expression of opinion is wrong and detrimental to the development of society.

On the whole, without free discussion, people would forget not only the arguments of their views, but even the views themselves. The protection of critics therefore benefits not only the critics but also the people who hold the views. As Mill says, "If someone is questioning the accepted view, or if someone will question the accepted view if the law or doctrine allows, let us thank them, let us listen to them with an open mind, and let us be glad that someone has done for us what we should have done for ourselves, and put in more effort. "

### **2.3 The freedom of speech should have a boundary**

"All men are born and remain free and equal in rights." This is what article 1 of the Declaration of Human and Civil Rights says. Freedom of speech is also a kind of freedom, so people are born with freedom of speech as well. As Article 10 of the

Declaration of Human and Civil Rights, the fundamental human right of thought, says: "No one shall interfere with his opinions, even his religious views, provided that their expression does not disturb the public order established by law." [8]

According to John Locke, every man's property is sacred, and any political society and its laws that fail to protect it have no basis in legitimacy. Therefore, it cannot be deprived, because the property is a part of us. In *Two Treatises of Government*, he pointed out that "human beings are born shall have the right to survival, therefore has the right to food and naturally provided to maintain the survival of all other items", "no matter from which perspective, human obviously can enjoy these things together". But "every man has a right to his person, and no one has that right but himself"; "Although natural objects belong to man, man is his own master, the owner of himself and his actions, and has the basis of property in itself." In this way, Locke linked property right, life right and freedom right together. As a basic right, property right is born and inviolable. Since free speech is seen as innate, in Locke's view, we can think of it as "property." Therefore, freedom of speech also should not be denied.

In Shanghai during the epidemic, a woman asked a delivery man to deliver vegetables to her father, but because of traffic control, the delivery man had to walk for four hours to deliver vegetables to the woman's father. The woman transferred 200 yuan to the delivery man as a token of gratitude, only to be met with a torrent of online violence, accusing her of paying men and cheating on her husband. Because the woman is very secretive, she could not bear the criticism from thousands of people online. Eventually, she jumped to her death.

This is not the first time this has happened in China. With the development of short videos and new forms of communication nowadays, people also have the freedom of speech on the Internet. But because no one knows who they are, there is no limit and boundary to what people say online. At this point, the so-called freedom of speech has turned into a personal attack on the Internet, and even death. Thus increasing divisions within society. When every citizen has full freedom of speech, conflicts of speech are bound to occur, gradually from competition and suspicion to honour, to the elimination of all possible contempt, and thus the destruction of the body and freedom of others. This renders free speech ineffective. So people need to restrict and set boundaries on freedom of speech. The Declaration of Human and Civil Rights defined freedom of speech as "No one shall be interfered with his opinions, even his religious views, provided that their expression does not disturb the public order established by law." This definition shows that freedom of speech must be established without affecting society in a harmful way.

## **2.4 Comparison between the Republic of China and the United States**

In the village of Skokie, Neo-Nazis (National Socialist Party of America) want to parade in the village, but the Jews in the village disagree with the parade. Therefore Neo-Nazis appealed to the court of the state that the march was justified. The Illinois Supreme Court denied the appeal and imposed an injunction on Neo-Nazi activities. But then, the U.S. Supreme Court held that the injunction could not be imposed without an appeal because it would deprive them of their constitutional rights. In this case, the

American government considered that Everyone has rights, including unpopular Neo-Nazis, who also have the right to freedom of expression, despite their rights would harm those Jews in Skokie. On February 17, 1947, a Taiwanese (Republic of China) police officer accidentally killed two civilians while investigating anti-smuggling cigarettes, arousing the public's long-simmering anger. The following day, the citizens went on strike and marched to protest at the monopoly Bureau and to petition the office of the governor. [9] However, the guards strafed them with machine-gun fire, causing several casualties. It was not until March 17 that Chiang Ching-Kuo (son of Chiang Kai-shek, then the president of the Republic of China) inspected government agencies, and went to Taiwan to listen to opinions and deal with the matter based on democratic law.

By comparing the two events of the United States and the Republic of China, although both countries are democratic, we find that the two countries deal with things in completely different ways. In the case of the village of Skokie, although many citizens were disgusted with the Nazi flag, the US government first gave these Neo-Nazis the right to freedom of speech and allowed them to express their ideas. Finally, they evaluate what they say. [10] But in contrast, the Taiwanese government did not initially guarantee its citizens' freedom of speech. The first solution of the Taiwanese government was to crack down on the demonstrators. We believe that this approach is wrong. To be a proper democratic government, the first step must be to affirm citizens' freedom of speech, no matter what they say. Forcibly depriving people of freedom of speech could destroy the normal operation of social life and return to the chaotic state of Hobbes' State of Nature, which goes against the process of development and is a regression of society.

However, the boundaries of freedom of speech are needed. If there are no boundaries to maintain the order, it will be chaotic in real life and ineffective for people to achieve their appeal. This does not meet the goal that people have the right to satisfy their demands, because people will not achieve their goals in an orderless situation. Thus boundaries are needed to ensure the effectiveness of the freedom. [11] "At a minimum, the speech will have to be limited for the sake of order. If we all speak at once, we end up with an incoherent noise. Without some rules and procedures we cannot have a conversation at all and consequently, speech has to be limited by protocols of basic civility." (Freedom of Speech, David van Mill). This is not difficult to imagine. If one day all laws about the boundaries of the state of nature disappeared and people could express their opinions without any order, nobody will be able to slow down to think about other people's rather they will only be egocentric, solving no problems finally. This will lead to the state of nature of Hobbes, instead of Locke. Everyone will be in a state of war, evoking endless chaos and disturbance because "life of man is solitary, poor, nasty, brutish, and short"(Leviathan, Hobbes), and thus people will be limited by their primitive state. Speech that spread the hate, antihuman and criminal activity and others which can cause direct harm to others should not be taken into consideration in the range of freedom of speech, because it contradicts the basis of the principle that people should not deteriorate other's property for their own sake to maintain their property, or right, not infringed by others according to John Locke. [12] In the United States, the First Amendment, which ensures the right to the freedom of speech, sets the boundaries of the freedom of speech as well. Forms of speech that aren't protected by the First

Amendment include: Obscene material such as child pornography; Plagiarism of copyrighted material; Defamation (libel and slander); True threats.

These forms share a common characteristic: infringing the reasonable rights of other people. Thus, freedom of speech is based on the principle that people's expression should not cause direct harm to people. Freedom of speech with boundaries will not have qualitative change when its core characteristic is still there. The freedom of speech is not just simply speaking, demonstrating and other expressions, either moderate or radical [13] Instead, the freedom of speech is more concerned with its goal — can people's demands be satisfied? Speech contains many different forms. Utterances, slogans, demonstrations and so on. When people claim what they want, they should choose the most effective way to achieve their goals. However, turmoil and chaos are always not the best forms for them. In modern society, the parliamentary system allows people to express their opinions by regulating the order of free speech. People can express their opinions and demands to their representatives so that their voices can be heard in the parliament. Thanks to the parliament, the need of the public can be heard and even solved without meaningless fighting and chaotic situation. Although it seems that the existence of the parliament seizes the direct way for the public to speak out, it improves the effectiveness of the freedom of speech. People in this way can solve their problems in fact, instead of staying in their words and minds. [14] Thus, the parliament defends the core characteristic of the freedom of speech: people have the right to express their needs to satisfy their demands.

### 3 Conclusion

The *Collin v. Smith*, decided by the Supreme Court in 1977, is a classic case on the issue of freedom of expression. The burden of answering the question of what kind of speech should be protected has in fact fallen on the Supreme Court in the exercise of its judicial power. But at the heart of the matter is the fact that freedom of expression cannot be denied. Thus, in response to this question, we analyse it from a Lockean perspective, and we argue that freedom of expression can be in a state of nature. Freedom of expression cannot be taken away from anyone, because it is part of those who have laboured for it. At the same time, from a utilitarian perspective, there is a downside to restricting freedom of speech, so the way to eliminate the downside of speech is not to restrict it, but to encourage more speech and eliminate the downside of speech through the flow of freedom of speech and the interplay of ideas. [15] Furthermore, by comparing the two events in the United States and the Republic of China, we find that although both countries are democracies, both advocate freedom of speech and believe that forcibly denying people freedom of speech may disrupt the normal functioning of social life and return to the chaos of the Hobbesian state of nature, which goes against the course of development and is a step backwards for society, therefore within the boundaries of freedom of speech i.e. people's speech should not It is important to ensure people's freedom of expression in situations where it directly harms them, because freedom of expression is the combination and expression of many types of freedom in society. [16] As from a philosophical point of view, things can be multiple and composite

in nature, and not just singular and simple. This is also true of the constitutional right attribute of freedom of expression.

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