

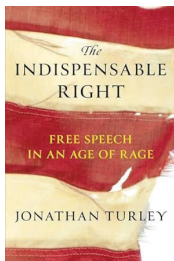
**BOOK AND
MULTIMEDIA
REVIEW**

The Indispensable Right: Free Speech in an Age of Rage

Henry H. Bauer

Professor Emeritus of Chemistry & Science Studies
Dean Emeritus of Arts & Sciences
Virginia Polytechnic Institute & State University

henryhbauer@gmail.com
www.henryhbauer.homestead.com



Turley, J. (2024). *The Indispensable Right: Free speech in an age of rage*. Simon & Schuster.

ISBN-13: 978-1668047057

<https://doi.org/10.31275/20243607>

PLATINUM OPEN ACCESS



Creative Commons License 4.0.
CC-BY-NC. Attribution required.
No commercial use.

CONTENT OVERVIEW

Turley begins by noting that we live in an age of rage, in which freedom of speech is most under stress: “our history of speech suppression” shows that “All three branches [of government] have abandoned protections for minority viewpoints due to a lack of a coherent and consistent theory of free speech” (p. 2).

The book’s chief thesis is that the need for, and benefits of, freedom of speech have typically been proclaimed in *functional* terms and in the context of politics; whereas Turley believes that freedom of speech is a natural human right, that human beings inherently want to express themselves, so that freedom of speech is indispensable everywhere and always, irrespective of the topic or context. Admittedly, “Neither view treats free speech as an absolute. However, the latter view based on individual autonomy allows fewer ‘trade-offs’ through balancing and harm-based tests” (p. 4).

The book’s Introduction, and the four chapters of Part I, describe historical episodes of speech suppression and striving for freedom of speech; for example, the work of Charlotte Anita Whitney in California, the sixth state to give women the vote (in 1911).

Other mentioned and discussed names and events include Socrates, Spinoza, the British “Star Chamber”. The American Bill of Rights “would include the strongest protection for free speech in history” (p. 49), as James Madison wanted to keep out what he called the “monster” of [anti-]sedition laws (p. 66).

In Part II of the book, chapter 4 tells of Thomas Paine; Chapter 5 is “the Boston Tea Party and America’s birth in rage”. Chapter 6 is on Shay’s Rebellion, and chapter 7 is on the Whiskey Rebellion. Chapter 8 describes protests against new taxes, and Chapter 9 describes how President John Adams brought back “Madison’s monster” of sedition laws. Later chapters in Part II feature Jefferson; Andrew Jackson; Lincoln; the Gilded Age; Comstock; pacifists during World War I; sedition during World War II; McCarthy and the Red Scare; the rebellions 1960s; Antifa, MAGA, and the age of rage; and January 6th and “the revival of American sedition”.

Part III of the book, “Holmes and dousing the fire of free speech”, has four chapters analyzing and critiquing three major cases tied in some way to the well-known hypothetical about shouting “Fire!” in a crowded theater.

Part IV, “Restoring the indispensable right”, has five chapters. 25 and 26 reiterate history and earlier discussions; 27 describes how it is conservative viewpoints that are now being silenced whereas in earlier times it was left-liberal speech that was being suppressed. 28 deals specifically with contemporary academic orthodoxy and cancel culture; and 29 rages against the excessive use of sedition laws in prosecuting those who stormed the Capitol on 6th January 2021.

Part V, Conclusion, summarizes Turley’s theme that we have more to fear from our



inclination to silence others, than we have from engaging opposing viewpoints.

PROS, CONS, AND THE BOOK'S CONTRIBUTIONS TO THE LITERATURE

The book has a wealth of information about the struggles of dissenting viewpoints to be heard, in a variety of national and intellectual contexts. It also describes the philosophical approaches of such salient figures as John Stuart Mill and Thomas Hobbes. The actions and attitudes are discussed and analyzed, of such prominent jurists as Oliver Wendell Holmes and such political notables as Thomas Jefferson. So that is certainly a “plus”.

That freedom of speech is indispensable on every subject is a crucially important point and certainly another “plus” for the book. Discussions of many topics rely on assertions as to fact, and “science” is typically looked to for the validation of facts. Unfortunately, “science” cannot speak for itself; and those who do speak for science, the generally recognized authorities, represent merely a consensus that is quite often disputed by minority voices that are typically ignored or dismissed by the authorities (Bauer, 2012). It is indeed indispensable that those voices should be heard by policymakers as well as society as a whole. Freedom of speech is necessary not only on issues of politics, social organization, and religion but on all matters of *knowledge*, scientific, medical, or ecological. Hence, the need for something like a Science Court (Bauer [Chapter 12], 2017).

However, the book's attempt to demonstrate the superiority of a natural-law basis over a pragmatic, utilitarian, functional basis in defense of the greatest possible range of freedom of speech is inevitably unsuccessful since Turley is forced continually — and quite properly — to allow for exceptions: “Neither view treats free speech as an absolute”; but making natural law axiomatic “allows fewer ‘trade-offs’ through balancing and harm-based tests” (p. 4).

The trouble is that “natural law” sounds like an absolute (at least for this reviewer). Turley asserts that it is natural for human beings to wish to express themselves; that free speech is as fundamental --- as natural --- as free thought and the instinctive desire to express oneself, as revealed by such creative activities as art, examples of which have been traced as far back as many tens of thousands of years.

However, there is general agreement that humans are social animals. The earliest experience of being “social” involves absorbing what is taken for granted in one's own family, clan, or tribe. An inevitable consequence is that no two human beings are exactly alike. What is taken

for granted in one group will differ in some respects from what is taken for granted in other groups. What *we* do is naturally taken to be the right thing, so doing things differently seems somehow *wrong*. In other words, some degree of xenophobia would seem to be as inevitable, as “natural”, as the individual wish to express oneself.

The organization of any group must therefore involve trade-offs between individual freedom and social cooperation. Human history would seem to teach that establishing a stable protocol of trade-offs works better when a group is smaller rather than larger.

In our age, we all participate in several groups of different sizes and formed for different purposes — religious, political, ideological, as well as professional, vocational, recreational, and more; and there are also differences between generations as a result of differing experiences. It is therefore *inevitable* that there will be *perpetual* stresses, for individuals of course, but also for groups; and within groups as well as between groups, there will always be tension between orthodoxy and unorthodoxy or heterodoxy.

Just as natural as free thought and the wish to express oneself creatively is surely the desire to act on the basis of those thoughts and wishes. At various points in the book, Turley attempts a sharp division not only concerning the best axiomatic basis for freedom of speech but also for the necessary distinction between speech and action, most particularly in the context of sedition laws. But here again, I would argue that no clear division is feasible, particularly in such contexts as politics. To what extent, for example, might a particular statement constitute incitement of others? To what degree might such incitement be intended or unintended?

Above all, how likely is the statement to persuade others to *act* violently?

Rather obviously, that depends on who makes the statement, and in what contextual environment. If Joe Blow in a pub rages that an election was stolen, clearly that should be classed as free speech and not as a seditious statement. If an elected representative makes such a statement in a speech in Congress, that might warrant an investigation, depending on the representative's status among the other representatives. If a just-defeated president makes the statement publicly, that would rather clearly constitute incitement to others to *act* seditiously.

Sharp divisions require the availability of objective measures. On the distinctions and differences that are discussed and analyzed in this book, no objective measures are available. Turley's theme, expressed most directly in his Conclusions, that we have more to fear from our inclination to silence others than we have from en-

gaging opposing viewpoints, may be perfectly true, but it could be the basis for actual organization only in a group in which every individual agrees to act appropriately. And that does not seem feasible in any contemporary nation-state.

The greatest flaw in this book is that the theme is a generalization whereas all actual happenings are contextual as to time, place, and actors, and every decision as to the “monster” of sedition laws (or about anything else) needs to be made on a case-by-case basis.

AUTHOR DISCLOSURES

The foregoing reveals my ambiguity about this book’s message and argument. There is much detail of many important episodes, and it can be useful to learn of them; but the attempt to insist that a natural-law basis is superior to pragmatism is unsustainable.

I had become increasingly confused as I read, before recognizing that basic flaw; and looked for other reviews of the book to see whether I was missing something — especially as the editorial reviews on amazon.com are so complimentary, as also are the blurb extracts from them on the book’s cover, from such respected people as a former president of the ACLU and the columnist George Will. Readers at Goodreads rate the book 4.6/5, at amazon.com 4.9/5; sampling a few 5-star and a few 1-star reviews at the latter site illustrates that overall reader ratings are best ignored.

I can only speculate that the book’s blurbs came from people who were sent pre-publication drafts, looked in the index, read a few pages, and expressed praise because these bits appealed to them. George Will, for instance, would have liked and approved, as much as I did, of chapter 28, “Academic Orthodoxy and the Restoration of Free Speech in Higher Education”.

Kirkus Reviews calls it “A smart book that invites argument — civil argument, that is, with good faith and tolerance” (<https://www.kirkusreviews.com/book-reviews/jonathan-turley/the-indispensable-right/>). I’ve long regarded “smart” as used when a writer wants to be complimentary but has nothing substantive to praise.

But I also found some definitely negative reviews, unfortunately rather *ad hominem*:

“A Trump apologist values at least some of the U.S. Constitution” (Kelley, 2024).

“Some years ago, academics and legal and political commentators began joining in a lament that eventually became a kind of trope: ‘What the heck has happened to Jonathan Turley?’ The sad refrain recalled that George Washington University law professor Turley was once a serious and respected legal scholar — a civil libertarian

who often constructively criticized liberal cant — and then observed that he had turned his energy into appearing all over the media, but especially welcomed the chance to be on Fox News” (Weisberg, 2022).

That may explain why Chapter 29 rants against the said-to-be-harsh treatment of those who forced entry into the Capitol on Jan. 6th, 2021. This seems out of place in a book about the indispensable right to *free speech* which insists on the need to distinguish speech from acts. What happened at the Capitol was certainly action, after all; does Turley want to construe it as just a protest and thus a form of speech?

The harshest criticism should be directed not at the author, however, but at the publisher.

Simon and Schuster is a long-respected imprint; but this book lacks competent editing. As pointed out above, the fundamental argument for natural-law adjudication is illogical, muddled, and self-contradictory. There is a lack even of rudimentary copy-editing (for instance, “those” at bottom of p. 15 lacks a referent; middle p. 30 has “that” instead of “who” referring to a person; last four lines on page 33 could have been expressed in a more readily understandable way; and much more). There is unnecessary repetition everywhere.

But the most disgraceful point is the ridiculous pretense of documenting sources in the 55 pages of “Notes” at the end of the book. Nowhere in the text itself is there anything to suggest that a fact or statement is being cited or can be sourced. The “Notes” are a sequence of page numbers, each accompanied by a word or phrase that appears in the text on that page; and some sort of reference for that is given.

None of the academics I asked — including a well-published, long-time teacher of “creative nonfiction” writing — had ever come across this apparent substitute for reference numbers or (author, date) citation.

What has happened to Simon and Schuster? Several weeks ago I had read *Burn Book*, which has every sign of self-publication, including a last page celebrating the absence of an index (Bauer, 2024); it was also published by Simon & Schuster (the Turley book at least has an index, though it is rather perfunctory).

Both of these books bear proudly the colophon of the 100th year of this formerly respected publishing imprint.

Book publishing seems to have been taken over by multinational corporations in which good editors who love books are not particularly empowered. In the latest change of hands, Simon and Schuster was taken over by a private equity firm with a less-than-stellar reputation for doing good to those it acquires (Grothaus, 2023).

RECOMMENDATION

Read this book, if at all, only for examples throughout history of struggles for freedom of speech.

REFERENCES

- Bauer, H. H. (2012). *Dogmatism in science and medicine: How dominant theories monopolize research and stifle the search for truth*. McFarland.
- Bauer, H. H. (2017). *Science is not what you think: How it has changed, why we can't trust it, how it can be fixed*. McFarland.
- Bauer, H. H. (2024). Delights and dangers of the digital age [Review of the book *Burn Book: A Tech Love Story*, by K. Swisher]. *Henry H. Bauer's Substack*. <https://henryhbauer.substack.com/p/delights-and-dangers-of-the-digital>
- Dougherty, C., & Park, A. (2023, September 9). Book publishing has a Toys 'R' Us problem. *The Atlantic*. <https://www.theatlantic.com/ideas/archive/2023/09/private-equity-simon-and-schuster/675261/>
- Grothaus, M. (2023, August 8). Paramount Global sells Simon & Schuster to private equity firm KKR. *Fast Company*. <https://www.fastcompany.com/90934757/paramount-simon-schuster-sale-private-equity-kkr>
- Kelley, K. (2024, June 7). *The indispensable right: Free speech in an age of rage* [Review of the book *The indispensable right*, by J. Turley]. *Washington Independent Review of Books*. <https://www.washingtonindependentreviewofbooks.com/index.php/bookreview/the-indispensable-right-free-speech-in-an-age-of-rage>
- Kirkus Reviews. (n.d.). *The indispensable right* [Review of the book *The indispensable right: Free speech in an age of rage*, by J. Turley]. Kirkus Reviews. Retrieved December 4, 2024, from <https://www.kirkusreviews.com/book-reviews/jonathan-turley/the-indispensable-right/>
- Weisberg, R. (2022, November). What happened to Jonathan Turley really? *Slate*. <https://slate.com/news-and-politics/2022/11/what-happened-to-jonathan-turley-really.html>