



ZAP

Free Speech and Tolerance  
in the Light of the Zero  
Aggression Principle

Gerard Casey

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**SOCIETAS**

essays in political & cultural criticism

[imprint-academic.com](http://imprint-academic.com)

First published in 2019 by  
**Imprint Academic**  
PO Box 200, Exeter EX5 5YX  
[www.imprintacademic.com](http://www.imprintacademic.com)

Digital edition converted and distributed by  
**Andrews UK Limited**  
[www.andrewsuk.com](http://www.andrewsuk.com)

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To my son  
Gerard Patrick Casey  
1985-2017

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*

—Universal Declaration of Human Rights

*Tolerance implies no lack of commitment to one's own beliefs. Rather it condemns the oppression or persecution of others*

—John F. Kennedy

*Proclaim the truth and do not be silent through fear.*

—St. Catherine of Siena

## Foreword and Acknowledgements

Not another book on free speech! Not another book on tolerance! Aren't there plenty of good books on these topics already? Yes indeed, among which I highly recommend Frank Furedi's *On Tolerance*, Nadine Strossen's *Hate* and, on a topic related to the final chapters of this book, Ben Cobby's *The Tribe*. That being so, what, if anything, is the added value of ZAP?

I argue that free speech and tolerance are closely related topics and that a defensible treatment of both requires a principled rather than a pragmatic approach. Such an approach, I believe, can be provided by the Zero Aggression Principle (ZAP). This principle permits a defence of free speech to be coherently articulated while simultaneously avoiding the free-for all that would result from adopting a fundamentalist approach to free speech, as well as firmly rejecting the current *ad hoc* measures that are operative in our societies. The ZAP also provides the basis for a coherent and defensible account of tolerance.

I also argue that the currently fashionable dogmas of diversity, inclusion and equality are pre-eminent practical manifestations of intolerance and are therefore properly to be exposed and criticised as such.

Although the elements of a critical account such as this have been around for some time, I don't believe that anyone has grounded an approach to free speech and tolerance on the same basic principle while also characterising and criticising the fashionable doctrines of diversity, inclusion and equality as instances of practical intolerance. If they have, I'm not aware of it but I apologise if I've inadvertently repeated what has been



done elsewhere. I console myself with the thought that if it's worth doing, it's worth doing twice!

I'm not sure if many people will like this book. I'm not sure if I like it myself but, as Ralph Vaughan Williams is reputed to have said about one of his symphonies, 'I don't know whether I like it, but it's what I meant.' I suspect that my libertarian friends (some of them, at least) will balk at my imperfectly concealed socially conservative views while my conservative friends (all of them) will object to my overtly libertarian approach. Free speech fundamentalists will be appalled at my suggestion that there are *any* limits to free speech and my Christian co-believers may wonder (if they haven't already) if I've abandoned my faith and become a sceptic, a relativist and a libertine. To libertarians and conservatives I would reply that libertarianism and conservatism are compatible, to free speech fundamentalists I would point out that liberty is not licence, and to my fellow Christians I can only say that I believe more firmly than ever I did in the way, the life and the truth.

I have tried to keep this book focussed on practical issues and not allow it to float away on a sea of philosophical abstractions. As will be evident from even a cursory reading of this book, I have ransacked newspapers and other print and online sources for material germane to my project. A perennial danger in trying to be topical is that there's always another story, always another incident that just has to be included so that no matter where one stops the discussion one is sure to be overtaken by events. The manuscript as published was completed in May 2019. In striving to keep the discussion grounded (popular) while providing some measure of analysis (criticism), my plan was to provide two stools for the reader to sit on but I cannot shake off a nagging suspicion that the reader may end up trying to sit on the empty space between them.

The writing project, of which this book is a part, was originally conceived as a joint venture with my friend and colleague Tim Crowley but my would-be partner in crime was unable to continue. We have, however, been in regular correspondence and some of his ideas and, I suspect, even some of his *ipsissima verba* may have

found their way into the finished work. Thanks for the inspiration and support, Tim, and apologies for any inadvertent plagiarism.

The References section contains a list of books, articles and online material that I consulted in the writing of this book. I don't agree with everything in all of these writings—that would be little short of miraculous!—but I have found what their authors had to say informative, consciousness-raising, enlightening, sometimes infuriating but always stimulating.

I believe that all the statements made in this book about named or identifiable individuals are substantially true. In almost every such case, these statements are a re-publication, either verbatim or in paraphrase, of reports already available in the public domain. In any event, statements made in this book are my honest opinions and are made in the public interest.

I thank those who unselfishly gave of their time to read over my manuscript, in particular Patricia Casey and Mary Newman. Apart from readers' substantive suggestions for improvement—the one about using the manuscript to fuel the incinerator was perhaps a little harsh!—they have pointed out typographical errors, stylistic infelicities and instances of more than usual incomprehensibility. If any of these remain, it's entirely their fault!

And a special word of thanks is due to Jason Walsh for help well above and beyond the call of either duty or friendship.

## How Free Should Free Speech Be?

*I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.*

—James Madison

Don't teach tricks to your girlfriend's dog or, at least, don't teach him certain kinds of tricks. A Scottish YouTube comedian, Mark Meechan (aka Count Dankula) shot his girlfriend's dog raising his (the dog's) paw while Meechan made pro-Nazi comments. The shooting was done with a camera, I hasten to add, not with a gun! The video, pretty obviously a joke even if the joke was in bad taste, was posted online and was visited over three million times. Not everyone was amused, however. Meechan was taken to court and convicted in 2018 under the Communications Act of grossly offensive behaviour by inciting racial hatred! There had been no complaints from the public so it seems that the only ones not to get the joke were the police officers and the court officials.

Meechan explained during his trial that he wasn't a Nazi but did he really have to? Would any self-respecting card-carrying Nazi teach a *dog* to give the Nazi salute? Meechan claimed that he posted the video to annoy his girlfriend. Well, that's very bad boyfriend behaviour indeed—tut, tut, Mr Meechan—but it hardly makes his action anti-Semitic and racist, which is what the court sheriff declared it to be. The only ray of light in this whole affair was that at least the RSPCA didn't prosecute Meechan for animal abuse but maybe they're just biding their time!

## A Little Light Libertarianism

Should you be able to say anything you like, to anyone, at any time, anywhere, in public or in private, in person or electronically, even if you have to get your girlfriend's dog to do it for you? How would *you* answer this question? With a 'Yes', with a 'No', or with an 'It depends'? Think about your answer for a minute or two before reading on. No, seriously, really do think about it for a minute or two.

In the contemporary world, the problems associated with adjudicating free speech issues can seem intractable, a matter of clashing and mutually inconsistent rights. But almost all the problems associated with free speech and the restrictions to which it may be subjected (if any) stem from our not having a principled basis on which to make coherent and consistent decisions. Some principle or other has to be found to determine what we may say and where and how we may say it if, on the one hand, our speech is not to be subject to the capricious whims of those in authority or the soft tyranny of the Twitterati or if, on the other hand, we are not to fall under the sway of free speech fundamentalists (of which I'm not one) who recognise no limitations of any kind on speech in any circumstances.

This book is written from a libertarian perspective. Like that renowned political philosopher, Michael Corleone, 'I have no intention of placing my fate in the hands of men whose only qualification is that they managed to con a block of people to vote for them.' (Puzo, 366) However, I also have to live in the world as it actually is (as we all must do) so the discussion and analysis that follows will occasionally take into account where we actually are on the matter of free speech as distinct from where we might (if we were libertarians) wish to be. Given the centrality of libertarianism to the following discussion and analysis, it might be a good idea to give readers unacquainted with it a brief account of its essentials.

Libertarianism is the philosophical and political position that takes as its grounding the fundamental importance of freedom in inter-human relations—the clue is in the name! From the

libertarian perspective, individual freedom forms the necessary and ineliminable context of all mature and responsible social relations. The primary social implication of libertarianism may be expressed, positively and informally, in the claim that you have the right, subject to certain minimal conditions, to do whatever you wish provided only that, in so doing, you do not infringe on the like right of others. Negatively, and more precisely, the basic operative principle that governs human interactions without the requirement for consent is the Zero Aggression Principle (ZAP): *No one may initiate or threaten to initiate aggression [coercive physical violence] against the person or property of another.*

It should be noted that what is ruled out by the ZAP is the *initiation* of aggression (such as murder, rape, theft, assault) or the threat to initiate such aggression against the person or property of another; libertarianism does *not* rule out the use of violence in *defence* of one's person or property *against* aggression. The practical difficulties of telling the difference in borderline cases between aggression (which libertarianism prohibits) and the forceful resistance of aggression (which libertarianism permits) doesn't tell against the clear conceptual difference between the two. As part of your fundamental freedom, you have the right to defend your most basic property, yourself, and any other property that you have rightfully acquired. Of course, you may waive that right if you wish so that pacifism and libertarianism are compatible although libertarianism doesn't require pacifism.

There is something startlingly obvious about the ZAP. We learn as children not to hit other children and not to take what belongs to them, not least because *we* object to being hit ourselves and to having *our* stuff taken! All parents know that not long after their little darlings learn to speak and start to play with other children, they can expect to hear 'He took my toys' and 'She started it' and 'That's not fair'. This is kids' stuff and libertarianism is, in a sense, simply kids' stuff writ large. A critic once remarked that Libertarianism is the philosophy of 3-year olds! That remark was meant to be dismissive but I take it to be a back-handed insight

into the obviousness of the ZAP, the truth of which is so patent that even 3-year old children can understand it.

Obvious the ZAP may be but, when examined, it turns out to rest on a certain conception of property—specifically, it rests on the, perhaps initially startling, claim that we own ourselves and, as the rightful owners of ourselves, only we can rightfully decide what is to be done by and to our bodies and our minds. If you hit Tom, it is aggression against Tom because Tom has a property right in his person. The concept of self-ownership may seem to be a characteristically modern idea but in fact it was clearly articulated as long ago as the high Middle Ages. The medieval master of the University of Paris, Henry of Ghent, in a 1289 discussion of whether a man condemned to death could lawfully flee, argued that whereas others might have the right to use the criminal's body in certain ways, only the criminal himself had a property right in his own body. Henry used the word *proprietas* to describe this right, not the more common (and ambiguous) word *dominium*. The criminal's efforts of self-preservation (provided he did not thereby injure another) were equitable (*fas*), permitted by the law of nature and therefore licit (*licitum*) and right (*ius*) and, Henry argues, even a matter of necessity (*necessitas*).

We don't perhaps normally think of ourselves as something that can be owned but the libertarian self-ownership claim is, minimally, a rejection of the idea that anyone else owns us. (In the context of this book, I am concerned only with the this-worldly aspects of ownership and I prescind entirely from theological questions of whether and to what extent a creator God might be said to own his creation and his creatures.) The corollary of owning yourself is that as a free adult person you are also responsible for yourself. Apart from specific agreements, no one else is, or can be, legally obliged to protect, defend, pay for, support, feed, clothe, or care for you. Besides owning yourself, you can own and use anything that you rightfully appropriate that belongs to no one else or anything that you can persuade someone else to transfer to you either by sale or gift. It follows from this that if you liberate Angela's apple from her possession without her consent and convert it to your own

purposes, this is trespass, a form of aggression, because Angela owns the apple and it is just as much an act of aggression as if you pulled Angela's hair.

Libertarianism may be justified by an appeal to consequences. One might, for example, claim that the preservation and expansion of the sphere of human liberty will lead to greater prosperity and efficiency. Also, libertarianism might be justified by an appeal to natural law or natural rights. One might, for example, claim that the preservation and expansion of the sphere of human liberty is justified by the nature of man and the nature of the world in which he lives, irrespective of consequences. Although the differences between the two approaches may be reconcilable and even though I am persuaded that the preservation and expansion of the sphere of human liberty would in fact be more beneficial than otherwise, nevertheless, the approach I take to libertarianism is rights-based rather than consequences-based.

Finally, it is important to realise that libertarianism is not, nor is it intended to be, a complete moral theory. Much confusion will be prevented and many possible objections can be summarily deflected if this point is appreciated. Many activities that are currently banned or prohibited by the State—the ingestion of exotic chemical substances, various imaginative forms of consensual sexual congress, non-coerced contractual relations between consenting adults such as prostitution—would all be *legally* permissible from a libertarian perspective, provided, of course, that no violation of the ZAP was involved. The libertarian *as libertarian* makes no judgement on the morality of such acts. That such activities should not be legally prohibited doesn't mean that they are necessarily morally defensible or good or edifying or even sensible. Libertarians can (and do) make moral judgements on many such matters but unless the subject matter of those judgements impinges on human freedom, they do so not wearing their libertarian hats but some other form of moral headgear.

## ‘My House, My Rules’

The libertarian maxim for speech that can be derived from the ZAP is ‘My House, My Rules’ (MHMR), a maxim that is at once both permissive and restrictive. The regulation of speech (and conduct generally) is primarily a matter for the owners of property. On my property or with my property, I can, with certain minimal exceptions, say (and do) what I please (permissive); you may exclusively determine what can be said (and done) on *your* property (permissive). On the other hand, if I were to invite someone to a dinner party at my house and he wanted to make vile racist remarks, I should ask him to cease and desist. If he protested ‘But I have a right to free speech’ I should say, ‘Yes, of course. Now go and speak freely elsewhere!’ (restrictive) The same restrictions can be enforced by you on your property. It follows from the maxim MHMR that no one may prevent you by force or the threat of force from speaking freely on property that is yours or prevent you from granting permission to others to use your property as you determine, nor may they prevent you from speaking freely on any property whose owner has given you the requisite permission. It also follows from the maxim MHMR that you may not be compelled to grant a licence to anyone to use your property as they may wish for purposes of speech or action.

What if you are not minded to accept the ZAP (and its derivative maxim MHMR) as constituting the appropriate parameter for freedom in general and for freedom of speech in particular? If you reject the ZAP then you must be prepared in principle to accept the legitimacy of using physical violence against the person or property of another or to have others do so on your behalf in circumstances other than that of resisting aggression. Perhaps more significantly, you must also be prepared to accept the legitimacy of having others use physical violence *against you or your property* when *you* are not engaged in aggression! It is possible to reject the ZAP without lapsing into intellectual incoherence but to do so in practice is to play a zero-sum power game of winner-takes-all. Lose this game and the winners may treat you as they wish and you will have



no principled grounds for complaint. I think it is true to say that the laws that currently govern our right to speak freely in most Western democracies are largely a hodgepodge of *ad hoc* measures erected upon no coherent principled foundation. If you reject the ZAP, you must either accept this legal goulash or propose some other *principled* basis upon which freedom and freedom of speech might be erected. And what would that look like?

The matter of free speech becomes complicated in our current non-libertarian societies when we come to consider what may or may not be said in so-called public spaces. Even here, however, the *effective* owner of such spaces, which is the person who has the power to make decisions, is the one who has the right to decide who may use that property for all purposes, including that of speech. Public spaces are in effect owned by those who control them, usually local authorities or national bodies. Where, as would be the case in a libertarian society, streets, schools, and parks are owned by individuals or by communities, those individuals or communities will make the rules. It should be emphasised that while the effective owners of such spaces have the right to make such decisions, it doesn't necessarily follow that the decisions that they make will be right! What of institutions in receipt of government money, such as most universities? If there are conditions attached to the receipt of government funding, then the receiver of such funding is contractually bound by those conditions. Otherwise, and outside specific freely assumed conditions, the owners of such institutions have the right, as does any other owner of property, to make decisions on the basis of MHMR.

It follows from the MHMR maxim that having a right to speak freely doesn't carry with it the right to make use of other people's property or resources to enable you to express your views. If others refuse to grant you permission to use their resources this, while it may be foolish or regrettable or petty or mean-spirited, is not, strictly speaking, censorship. On this point, I'm likely to part company with many free speech advocates. In the *Washington Post*, Christine Emba takes issue with writers who claim that editorial control over their columns amounts to a form of censorship. One such writer

is Daniella Greenbaum who used to have a column on the website *Business Insider*. Greenbaum resigned from her position because she believed herself to be a victim of censorship when a column she wrote was removed from *Business Insider*'s site for not meeting editorial standards and because it was suggested that what were deemed to be 'culturally sensitive columns' should be reviewed by a second editor. Emba writes, 'But Greenbaum is wrong. The removal of her piece does not mean that writers everywhere are being fallen upon by a "predatory mob," that they are now constantly subject to "intimidation," or even that her "commonsensical opinions" are now "beyond the pale of acceptable opinion." It does not mean, as she seems to imply, there is a looming crisis of free speech. All it means is that Business Insider did not want Daniella Greenbaum's column.' (Emba 2018)

Emba is right, at least in this respect, that one's right to speak freely does not entitle one to a platform on which to speak. The property of others is their property and they and only they may determine who gets to use it for any given purpose, including that of writing and publishing newspaper columns. Another's refusal to publish your material isn't necessarily a curtailment of your right to speak freely. Emba again: "Free speech," she says, 'does not mean "the right to say whatever you want without criticism on social media," or even "the right to run your columns without being subject to executive decision-making." It means "freedom to speak." Which Greenbaum clearly has, whether she's published by Business Insider or not.' (Emba 2018) Similarly, one's right to free speech doesn't entail that others may not criticise one—in fact, in having a right to free speech, they have exactly that right.

There are those who believe that free speech is under threat from do-gooders who want to prevent anybody being offended anywhere, anytime or by anyone; from politicians who want to appease vocal minorities (religious or ethnic); from university authorities (and students) who believe that students have a right not to have their fragile minds disturbed; from social justice warriors of every stripe; from gender feminists; from transgender activists—in short, from all those who wish to limit the freedom of

others to speak freely because *they* know what is good for everyone else and are determined to enforce their views and to prevent the expression of opposing views.

Not everybody is persuaded that free speech is under some kind of dire existential threat. Sam Leith expresses his scepticism on the matter. In his lambent if vulgar phrase, the concern over the alleged devastation being wrought on our freedom of speech is ‘essentially, horseshit’. For Leith, free speech is already abridged substantially, *de facto* by good manners and social consensus and *de jure* by defamation laws, laws prohibiting incitement to violence and by the regulation of false advertising. He recognises that the law now limits speech by means of laws on hate speech, Holocaust denial and modern forms of blasphemy but, he says, ‘We can and should argue about the limits law places on public discourse—I favour the barest minimum—but we should recognise that is what we are doing, rather than invoking an imaginary, unproblematic ideal called “free speech”’ (Leith 2018)

I find myself agreeing in part with Leith though perhaps not for his reasons. I recognise, as he does, and commend in principle the informal social regulation of speech which, in effect, amounts to permitting one to say whatever one likes provided one is prepared to take the social consequences, which might be banishment from polite society and, if especially egregious, ostracism. ‘If you say something offensive,’ Leith writes, ‘you may well suffer an influx of angry eggs; turn up at a costume party blacked up or dressed as a Wehrmacht officer and unless your host is Taki you can expect to cop some flak. But you won’t go to jail.’ Just so. This is the kind of informal social control that excited J. S. Mill’s concerns in *On Liberty*, far more than any overt legal restrictions that might have been imposed by government. Mill was concerned that the extent of such informal social control might become so extensive as to restrict not just overt vulgarity or uncalled-for abrasive or insulting comments but to induce a kind of radical self-censorship. That self-censorship would mean that even polite and warranted, albeit unwelcome, comments on issues of political and social concern would become functionally inexpressible. This is still, I believe,

an issue that, with some justification, troubles many of those who are now concerned with the issue of the restriction or limitation of free speech. I recognise, as Leith does, but without necessarily endorsing them, the legal sanctions that already apply to speech, including defamation, incitement to violence and the like. I am not sanguine about the introduction of laws prohibiting 'hate speech' nor am I enthusiastic about the re-introduction of laws prohibiting what is in effect the modern equivalent of blasphemy. I shall discuss these matters in more detail below.

### Limitations On Free Speech?

So, back to my initial question. Are there, or should there be, any limits at all to free speech other than MRMH? Yes, where speech shades over into action and that action is clearly criminal when evaluated by the standard of the ZAP.

The common law distinguishes three inchoate crimes—incitement, conspiracy and attempt. *Attempt* is clearly criminal; the ZAP prohibits not just aggression but the initiation of aggression which is what attempt clearly is. *Conspiracy* may be criminal if it is correctly judged to be the beginnings of a concerted action. On the other hand, it might be nothing more than reprehensible idle talk. *Incitement*, however, is not criminal at all, unless my suggestions somehow have the magical quality of overbearing the autonomy of other human agents and forcing them to do things they wouldn't otherwise do. Incitement is a 'go on' activity rather than a 'come on'. If I post a piece on Facebook saying, 'I think it would be a good idea to burn down the Houses of Parliament' and others go ahead and burn them down, I'm not responsible for what they've done. I'm not a Svengali with the power to overrule other people's wills. The Henry II/Thomas Beckett case lies on the margins between the mere expression of a wish and a command for the king's wish is often taken to be a command. Was Henry, as he said those immortal words, 'Who will rid me of this troublesome priest?' expressing a disinterested question about future possibilities or was he giving a 'wink, wink, nudge, nudge,' implicit command? On