

Towards a Better Understanding of Freedom of Speech

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1. TRENDS AND PITFALLS

Should the press be prohibited from publishing cartoons that may be offensive to Muslims? Should shop keepers refrain from saying “Merry Christmas”? Is it hate speech to express that practiced homosexuality is a sin according to the Bible? Is there a shift from freedom of expression towards a freedom from hearing or seeing things we don’t like? If so, democracy is in danger.

In October 2007 an advertisement in the Stockholm underground caused a national debate. The advertisement, sponsored by the Swedish Evangelical Alliance, promoted keeping the legal definition of marriage as being between one man and one woman. The ad simply said: “mum, dad, kids”. Prominent politicians called for a ban of such messages. They argued that the ad could be perceived as offensive to people who are single, divorced or gay. Some even labeled it “hate speech”.

The Mohammed cartoons published in the newspaper Jyllandsposten in Denmark clearly show that freedom of speech is an issue with global ramifications. Throughout the world Muslims started riots, imams issued fatwas, and there were boycotts and international diplomatic hard talk. There were demands, explicit and implicit, that freedom of speech / press should be restricted.

Pastor Daniel Scot had to flee Pakistan because he was accused of blaspheming Islam, but ended up being charged with offending Muslims and Islam in democratic “Christian” Australia. There he made a comparative analysis of Islam and Christianity in a seminar in a church. For this Pastor Scot faced fines and jail time for refusing to publicly recant his religious stance. His case was processed in the Australian court systems for over five years. Eventually, in late June 2007, the Muslim Council in Victoria, Australia agreed to drop the charges against Pastor Scot. Three Australian states have laws which, in the name of tolerance, do not tolerate criticism – even perceived criticism – of Islam.

There are an increasing number of cases related to freedom of speech, cases which are being discussed in media and / or tried in courts of law. There are also legislative changes with more countries introducing or changing so called hate speech laws – further restricting the right to free speech.

In a globalised world, where laws are increasingly internationalized, we need to better understand various trends and pitfalls which may impact us all.

2. THE IMPORTANCE OF FREEDOM OF SPEECH

Freedom of speech is foundational and essential for other freedoms and rights. Without it we have neither freedom of the press, nor any rights to open political debate, nor freedom to manifest religious beliefs, nor freedom of expression in art and music, et cetera.

While advocating freedom of speech, one must recognize the need for limitations. Absolute general freedom is anarchy; absolute freedom of speech can have undesirable consequences. Freedoms and rights need to be defined and operate within a particular framework, which is related to both ethical and legal systems.

There are some common legal limitations to freedom of speech. You cannot instigate imminent violence nor convey state or military secrets and plead that you are exercising freedom of speech. There are also some limitations related to libel and slander against individuals.

The right and freedom to express one's views and opinions in writing, speech, and art inevitably means that others may differ or even take offense. But that is the nature of freedom of speech. One cannot guarantee that no-one will ever be offended by a message, political, religious, or otherwise. One may say that Mohammed is the last prophet, another may disagree. Some will assert that Jesus is God and others may find that stupid or even offensive. Some may argue for homosexual marriages and others for limited abortion rights. But all these things are foundational for a functional democracy, which is based on individuals' right to express and convey various and differing opinions.

Freedom of speech puts the emphasis on the speaker and what is said; the right to say basically anything, even things that are not true (for instance, that the earth is flat).

A worrying trend is the shift toward the *hearer* and to *what is being heard* or how things are perceived, including the possibility that an individual or group may feel hurt or offended by what has been expressed. This is a move from the objective (what was expressed) to the subjective (how was it received, perceived). This is contrary to fundamental Rule of Law principles.

One can see this tendency in both media and in legislation in many parts of the world, often relating to Muslims and those engaging in homosexual conduct.

3. CASES OF CONCERN

Glasgow, 2006: A Member of the Scottish Parliament asked Strathclyde Police to investigate remarks made by the Roman Catholic Archbishop of Glasgow. The Archbishop had defended the institution of marriage and criticized civil partnerships in a church service.

In November 2003 the Bishop of Chester, the Rt. Rev. Dr. Peter Forster, was investigated by Cheshire Constabulary after he told his local newspaper that some homosexuals re-orientated to heterosexuality with the help of therapy.

In 2002, Dutch politician Pim Fortuyn was assassinated for his views on Islam and Muslim immigration.

In 2004, Dutch film maker Theo van Gogh was stabbed to death for producing a movie that criticized Islam.

In 2006, former Dutch lawmaker Ayaan Hirsi Ali was forced to flee the country after criticizing the mistreatment of women in Islamic societies.

In Italy, the journalist and author Oriana Fallaci was taken to court for writing that Islam “brings hate instead of love and slavery instead of freedom.”

In France, novelist Michel Houellebecq was taken to court for calling Islam “the stupidest religion.” He was acquitted in October 2002.

In Nottingham (Britain), the Greenwood Primary School cancelled a Christmas nativity play because it interfered with the Muslim festival of Eid al-Adha.

In Scarborough, the Yorkshire Coast College removed the words Christmas and Easter from their calendar so as not to offend Muslims.

In Glasgow, a Christian radio show host was fired after a debate between a Muslim and a Christian on whether Jesus is “the way, the truth and the life.”

In East London, the Tower Hamlets town council renamed a staff Christmas party a “festive meal” so as not to offend Muslims.

In the spring of 2010 a middle-aged preacher in Wokington, Cumbria in England was recently arrested for having "caused distress" among listeners. He had stated that according to the Bible drunkenness and homosexuality are wrong.

In 2010 both Swedish and American television did not dare to broadcast an episode of South Park where there are references to Islam, arguing that it was dangerous - one might be threatened or killed.

Also in 2010 a group in Miami, Florida had ads on buses promoting religious freedom and offering to help those who wish to leave Islam. The bus company quickly took them down because they did not want to “violate Islam”.

Christian hotel owners in Liverpool were arrested and prosecuted for expressing an opinion about Islam in a conversation about religion. Although they eventually were acquitted, the case was an economic disaster for the couple who were forced to sell the hotel.

55% of the Muslims in Denmark think criticizing religion should be forbidden and 64% support curtailing freedom of speech.

4. DANGEROUS SHIFTS

The above examples indicate dangerous shifts when it comes to freedom of speech. Put briefly:

from **freedom of speech** to **freedom from hearing**
from **speaker** to **hearer**
from **“instigating violence”** to **“I was offended or hurt”**
from **objective** to **subjective** criterias / laws

The emphasis is now on the *hearer*, not the *speaker*. It is a move from the *objective* (what was expressed) to the *subjective* (how was it received, perceived). A common limitation of freedom of speech used to be *instigating violence and threats*, now certain groups mustn't feel *hurt or offended*.

It needs to be stated again: Free speech is absolutely essential since other democratic freedoms hinge upon free speech (such as religious freedom, freedom of press, free political debate). Restrictions on free speech are attacks on the very foundation of democracy.

The losers will in the end be everyone, including Muslims and people engaging in homosexual practice. It is of no virtue to intentionally offend others, but we must distinguish between etiquette and law, what are good manners and what is accommodated by free speech.

Another example of a worrying and dangerous shift: The Islamic Conference, consisting of 57 Muslim countries, proposed a resolution that was passed by the UN Human Rights Council in March 2007 in Geneva relating to the Mohammed cartoons.

The resolution talks about vilification and defamation, but is quite different from libel and slander legislation in Rule of Law societies. There are several major flaws in the resolution. **Firstly**, it refers primarily to Islam and Muslims. **Secondly**, it makes freedom of speech content based. **Thirdly**, it is a major paradigm shift **from** individual freedoms and rights **to** protection of a group and their supposed “right” to not be offended. **Fourthly**, it presupposes that truth about religious issues can and should be established in courts of law. (cf. Inquisition)

“This resolution poses a dire threat to the rights of individuals – both Muslims and non-Muslims alike - to discover and live out their religious beliefs without fear of prosecution. It is imperative that the international community rise up to oppose the UN's endorsement of anti-blasphemy laws, and expose these resolutions for what they really are: legal justifications for undermining the freedoms of religion and expression, and institutionalized intolerance against religious minorities.” (Tina Ramirez, Congressional Fellow for Rep. Trent Franks, USA)

5. FOUR TRENDS

The above examples and shifts point towards four trends. They are all very serious threats to freedom of expression – a cornerstone of democracy and human rights.

First, the so-called **hate speech laws**. They violate a fundamental rule of law: laws must be objective and predictable. Freedom of speech laws should be about what is said, not how it is perceived. These laws go from the objective to the subjective, from the predictable to the unpredictable.

Secondly, we see increasing **harassment by police, employers and surrounding communities**. In October 2009 a grandmother in the UK, Pauline Howe, was investigated by police for ‘homophobic hatred’ after objecting to a ‘gay pride’ parade in her home town of Norwich.

In 2005 pensioners Joe and Helen Roberts, also in the UK, were interrogated by police because they had expressed opposition to their local council spending public money on ‘gay rights’ projects.

The Church has for 2000 years taught that sex outside the marriage of one man and one woman is a sin. But in the summer of 2010 Intereconomia, a media group in Spain, was targeted with a fine of 100 000 Euros for its broadcast of television ads that promote the traditional family. It was deemed as hateful against homosexuals. (See also case # 2 in appendix)

Thirdly, the increasing number of **threats**. We have already mentioned threats against Ayaan Hirsi and the death threats and assassination attempts of the Danish cartoonists.

In May 2010 the Swedish artist Lars Vilks was attacked at the University of Uppsala in Sweden when he gave a lecture on freedom of expression, which included showing some pictures of Mohammed. He was physically attacked by Muslims chanting “Allahu akbar”.

Freedom of expression is designed to protect views and expressions that can provoke and shock. Freedom of speech also includes the right to question Lars Vilks and what he does. He has the legal right to do what he does and the state must uphold his right to freedom of expression. But in a civilized society and daily human interactions we would strive for good manners and to avoid intentionally causing anger. It feels a bit childish and immature to have as a primary goal to provoke and offend. But it is the smaller problem.

The attack on and threats against Vilks is just one of a growing number of examples of similar incidents which are threatening and harming democracy. That is the major problem.

Fourth, increasing **self-censorship**. Freedom of speech must be used – otherwise it dies. But more and more news desks, politicians and ordinary citizens are censoring themselves. This has reduced freedom of speech even though no laws may have been changed. The Swedish and American television networks that censored themselves regarding South Park and Islam are case in point.

6. ONE COMPLICATION

The term ‘*Human Rights*’ is used by many. But it doesn’t necessarily follow that the users of the term mean the same thing. This is important to note as we discuss freedom of speech and religion. There are two major global entities with their respective declarations on human rights: The United Nations (UN) and the Organization of Islamic Conference (OIC).

United Nations was founded after the 2nd World War. The UN declaration on human rights is based on Judeo-Christian ethics and was established in 1948. OIC was founded in 1969, has 57 member states and represents every fifth person on the globe. Its members produce the bulk of the world’s oil and gas. OIC has developed and adopted its own declaration on human rights, partly in opposition the UN version, stating that Islamic human rights are different. These Muslim countries have signed up to the UN declaration but pay little attention to it in practice, and adhere rather to the Islamic version, called the Cairo Declaration.

The Cairo Declaration states that all 57 Muslim countries should abide by the declaration. But it further clarifies that the declaration applies to the “*ummah*”, i.e. all Muslims all over the world, even in non-Muslim countries. This is noteworthy and remarkable. It is the norm of international treaties and conventions that nations sign up and commit themselves to abide by them. But the Cairo Declaration indirectly nullifies national borders and laws by asserting that the Sharia based interpretation of human rights applies to all Muslims regardless of citizenship and country of residence. That means that Islamic laws (and the Cairo Declaration) supersede national laws, in every case and in every place.

The declaration states again and again – in the preamble, in various articles and in the conclusion – that everything is subject to Sharia and should be interpreted in light of the Koran and Islamic law. Thus it may mention freedom and rights, but they are restricted according to the Koran and Islamic law.

Article 10 in the Cairo Declaration deals with religious freedom and asserts that there mustn’t be any compulsion in religion – but of course subject to Sharia. It is a well known fact that those who leave Islam are at risk and quite a few are punished, even by death. Article 18 in the UN Declaration deals with religious freedom and has three main components: The right to have, express and change your faith. But in countries where Islam has a major influence there are definite limitations regarding expressing your beliefs and changing your religion; the latter especially for Muslims. In general Christians are allowed to convert to Islam, but it is illegal and dangerous for a Muslim to leave Islam.

This is what the Cairo Declaration says about freedom of speech: “*Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shariah. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shariah.*” Thus freedom of speech is interpreted and limited by Sharia.

Many surveys measuring various freedoms shows – again and again – that citizens in Muslim countries suffer oppression. They lack basic human rights and freedoms when it comes to politics, media, religion, gender equality, and so forth. One may speak of human rights, but Islamic versions of the same lead to the opposite, as a result of the supremacy of Sharia law in Muslim faith and practice globally. This also includes freedom of speech and religion. Not everything called a human right is necessarily a true human right; same term - different content.

7. THREE NECESSITIES

For freedom of religion, freedom of assembly and freedom of expression to work there must be at least three things in place. **First** there must just laws and good law enforcement. **Secondly**, the State and authorities must have the intention and the power to ensure that these rights and freedoms can be exercised. But **thirdly**, it also requires that there is an acceptance of these freedoms and rights among ordinary people, by different groups in society, otherwise these rights and freedoms may be undermined.

This includes allowing people to believe and express things you don't like as well as accepting their right to assemble. (A Supreme Court ruling in the USA on June 28, 2010 opposes these rights. See case # 1 in appendix)

Alberth Mohler writes about the “hate speech” concept in the article *The Culture of Offendedness?*. He rightly points out that you cannot have a free and democratic society and at the same time have guarantees that no-one should ever be offended by other people's expressed opinions.

“The very idea of civil society assumes the very real possibility that individuals may at any time be offended by another member of the community. Civilization thrives when individuals and groups seek to minimize unnecessary offendedness, while recognizing that some degree of real or perceived offendedness is the cost the society must pay for the right to enjoy the free exchange of ideas and the freedom to speak one's mind.”

On Valentine's Day in 1989, the Iranian Ayatollah Khomeini issued a death sentence against Salman Rushdie, accusing him of blasphemy against Islam in his book *“The Satanic Verses”*. Khomeini called on Muslims worldwide to execute the death sentence. Rushdie had to go underground. Thus he knows better than most the importance of freedom of speech and the threats against it. Mr. Rushdie's observations are critical:

“The idea that any kind of free society can be constructed in which people will never be offended or insulted is absurd. So too is the notion that people should have the right to call on the law to defend them against being offended or insulted. A fundamental decision needs to be made: do we want to live in a free society or not?”

Democracy is not a tea party where people sit around making polite conversation. In democracies people get extremely upset with each other. They argue vehemently against each other's positions. People have the fundamental right to take an argument to the point where

somebody is offended by what they say. It is no trick to support the free speech of somebody you agree with or to whose opinion you are indifferent. The defense of free speech begins at the point where people say something you can't stand. If you can't defend their right to say it, then you don't believe in free speech."

A state needs good laws protecting freedom of speech. Media and law enforcement must not harass those who express unpopular views. But it is equally important that each and every one of us, as individual and in groups, learn to accept others' rights to express views we don't like. We need to create a society where even detested opinions can be heard. A democratic society must not accept any demands of freedom from hearing.

8. CONCLUDING REMARKS

Freedom of speech is about making room for opinions which may make us uncomfortable. It is for the politically incorrect, for minority views, for the odd, and also for the ordinary. This is the basis for political debate and activity.

You cannot have freedom and still have guarantees that no one should feel offended or hurt. However, it is guaranteed that if freedom of expression is curtailed then democracy is endangered.

Freedom of Speech is also important as we fight against dictatorships. As Mr. Sam Ericson, president and founder of Advocates International, notes: *"There is no greater threat to any dictator – political, social, or theocratic – than the freedom of expression. Speaking truth to power is always a threat to those who want a monopoly in the marketplace of ideas. Access to truth has brought down dictators throughout history."*

Democracy, human rights and freedom are not destinations you arrive at. We mustn't take freedom of speech for granted – it can be lost.

"Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free." (President Ronald Reagan)

The attacks on freedom of speech in Europe and beyond are worrying. We need to fight against hate speech laws, harassments, threats and self censorship. We need to stand up for everyone's right to express opinions in print, words and images.

There are no winners – only losers – if our societies continue down the road of "freedom from hearing".

Freedom of speech is the very hub of the wheel of democracy and human rights. Don't tamper with it.

APPENDIX

(From my blog: www.varldenidag.se/blogg_matstunehag)

Case 1

Let freedom ring - but not in the USA?

The freedoms of expression, association and religion took a real blow on June 28, 2010 in a Supreme Court ruling in the United States. This is a significant case in itself. But is also yet another example of the slippery slope on which many Western democracies are on regarding these fundamental freedoms.

Advocates International, a global network of Christian lawyers in over 100 countries, filed a brief in this case. The Founder & CEO, Sam Ericsson, writes about the case and its implications in the USA and beyond. Excerpts:

“In 2004, a group of seven Christian law students at the University of California/Hastings Law School campus wanted to affiliate with the national Christian Legal Society, CLS, network of lawyers and students. The CLS Statement of Faith for leaders and members states that Scripture is “the inspired Word of God.” One tenet is the belief that sexual activity should not occur outside of marriage between a man and a woman.

Thus, CLS excludes from leadership and membership anyone who does not live up to this standard including adulterers, fornicators, pedophiles and those who engage in homosexual conduct. Hastings rejected the CLS Law Student group application for a “Registered Student Organization” (RSO) because the national CLS Statement of Faith allegedly violated Hastings’ Nondiscrimination Policy by excluding students based on religious belief and sexual orientation. CLS sued alleging violation of its First Amendment rights to freedom of speech, association and religion.

At the deposition of the Law School dean in 2005, she testified that Hastings has had a long-standing policy requiring all RSOs to “accept-all-comers,” meaning that none of the 60 student groups could exclude any student for any reason from being a leader or member.

But this “all comers” policy had never been heard of in the history of the school until the dean made the revelation at her deposition. Under the “all comers” policy, Jewish student groups could not exclude non-Jews, including anti-Semites. Likewise, Muslims must accept non-Muslims. CLS discovered that several RSO groups had not complied with the “all comers” policy. For example, the Hispanic “La Raza” group required members to be Hispanic. CLS is the only group denied recognition since Hastings’ founding in 1878!

The District Court ruled that the “all comers” policy was reasonable! The Ninth Circuit Court of Appeals upheld the lower court in an opinion that was two sentences long! In her majority opinion, Supreme Court Justice Ginsburg focused her attention approvingly on the “all

comers” policy. She noted that the CLS group could still meet but would not have access to benefits such as the school communication network to let all 2,000 Hastings students know when and where the CLS held its meetings. But there is still hope. The Court sent the case back down to determine whether there had been other violations of the “all comers” policy that had been overlooked by the school and whether CLS was treated unfairly.

In a brilliant 37-page dissent by Justice Alito, joined by Chief Justice Roberts, Justices Scalia and Thomas, he took the majority apart point-by-point. According to Alito, the majority’s decision means that ‘no freedom for expression that offends prevailing standards of political correctness [is allowed] in our country’s institutions of higher learning.’ He concludes, ‘I do not think it is an exaggeration to say that today’s decision is a serious setback for freedom of expression in this country ... I can only hope that this decision will turn out to be an aberration.’

Justice was driven back and truth stumbled on June 28th.”

Case 2

Religion professor fired for teaching religion

Yet another example of political correctness going overboard and how the flawed hate speech concept is undermining freedom of speech: A university professor in Illinois, USA was fired when he simply taught Catholic beliefs in a class about Catholic beliefs. It was deemed hate speech. Here’s the story:

For nine years Kenneth Howell has been an adjunct lecturer at the University of Illinois in its Department of Religion. One of the courses he has taught for the school is “Introduction to Catholicism.”

As part of this course, Howell discusses natural law theory and its application to social issues. In preparation for an exam, Howell emailed his students a lengthy discussion of the theories of utilitarianism and natural law and how they would apply in judging the morality of homosexual acts.

Here’s a small portion of that e-mail: “Natural Moral Law says that Morality must be a response to REALITY. In other words, sexual acts are only appropriate for people who are complementary, not the same.”

Professor Howell is not breaking news here. He’s simply explaining the theory of natural law and how it is used in Roman Catholic teaching regarding homosexual acts. It’s what he’s paid to do.

Or was paid to do. The University of Illinois Department of Religion has decided it will no longer use his services. Why? A student complained that Howell was engaging in “hate speech.”

About the author

Mats Tunehag is a journalist, lecturer and consultant from Sweden. He has worked in nearly half the countries of the world, developing global strategic alliances for various aims and constituencies.

Tunehag also works with a global investment fund based on Christian values that helps SMEs to grow in size, profitability and holistic impact in the Arab world and Asia, by providing financial, intellectual and human capital.

He writes editorials on international affairs for a national newspaper in Sweden.

Tunehag is also a global spokesperson on Religious Liberty & Freedom of Speech for the World Evangelical Alliance.

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Tunehag has lectured for lawyers in Europe, Latin America and North America on Human Rights issues and lessons learned in building strategic and influential alliances shaping public opinion and legislation.