

Freedom of Speech

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Freedom of speech is the freedom to speak freely without censorship. The term freedom of expression is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In practice, the right to freedom of speech is not absolute in any country and the right is commonly subject to limitations, such as on libel, slander, obscenity, incitement to commit a crime, etc.

The right to freedom of speech is recognized as a human right under Article 19 of the Universal Declaration of Human Rights and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Article 19 goes on to say that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "or respect of the rights or reputation of others" or "or the protection of national security or of public order (ordre public), or of public health or morals". In addition, national laws of many countries, in various forms, recognize a basic freedom of speech.

Freedom of Speech is different from and not to be confused with the concept of freedom of thought.

The right to freedom of speech and expression

Concepts of freedom of speech can be found in early human rights documents and the modern concept of freedom of speech emerged gradually during the European Enlightenment (Voltaire). England's Bill of Rights 1689 granted 'freedom of speech in Parliament' and the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right. The Declaration provides for freedom of expression in Article 11, which states that:

"The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law."

Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that:

"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."

Today freedom of speech, or the freedom of expression, is recognized in international and regional

human rights law. The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights. Based on John Milton's arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

the right to seek information and ideas;
the right to receive information and ideas;
the right to impart information and ideas.

International, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.

Relationship to other rights

The right to freedom of speech and expression is closely related to other rights, and may be limited when conflicting with other rights (see Limitations on freedom of speech). The right to freedom of expression is also related to the right to a fair trial and court proceeding which may limit access to the search for information or determine the opportunity and means in which freedom of expression is manifested within court proceedings. As a general principle freedom of expression may not limit the right to privacy, as well as the honor and reputation of others. However greater latitude is given when criticism of public figures is involved. The right to freedom of expression is particularly important for media, which plays a special role as the bearer of the general right to freedom of expression for all. However, freedom of the press is not necessarily enabling freedom of speech. Judith Lichtenberg has outlined conditions in which freedom of the press may constrain freedom of speech, for example where the media suppresses information or stifles the diversity of voices inherent in freedom of speech. Lichtenberg argues that freedom of the press is simply a form of property right summed up by the principle "no money, no voice".

Origins

Freedom of speech and expression has a long history that predates modern international human rights instruments. It is thought that ancient Athens' democratic ideology of free speech may have emerged in the late 6th or early 5th century BC. Two of the most cherished values of the Roman Republic were freedom of religion and freedom of speech. In Islamic ethics, freedom of speech was first declared in the Rashidun period by the caliph Umar in the 7th century AD.

In the Abbasid Caliphate period, freedom of speech was also declared by al-Hashimi (a cousin of Caliph al-Ma'mun) in a letter to one of the religious opponents he was attempting to convert through reason.

Starting in medieval times, Muslims began to refer to Manichaeans, apostates, pagans, heretics and those who antagonized Islam as zindiqs, the charge being punishable by death. As of the late 8th century the Abbasid caliphs began to hunt down and exterminate freethinkers in large numbers, putting to death anyone on mere suspicion of being a zindiq.

Freedom of speech, dissent and truth

In "Panegyricae orationes septem" (1596) Henric van Cuyck, a Dutch Bishop, defended the need for censorship. Van Cuyck argued that Johannes Gutenberg's printing press had resulted in a world infected by "pernicious lies." He singled out the Talmud and the Qu'ran, and the writings of Martin Luther, Jean Calvin and Erasmus of Rotterdam.

Before the invention of the printing press a writing, once created, could only be physically multiplied by the highly laborious and error-prone process of manual copying out and an elaborate system of censorship and control over scribes existed. Printing allowed for multiple exact copies of a work, leading to a more rapid and widespread circulation of ideas and information (see print culture). The origins of copyright law in most European countries lie in efforts by the Roman Catholic Church and governments to regulate and control the output of printers. In 1501 Pope Alexander VI issued a Bill against the unlicensed printing of books and in 1559 the Index Expurgatorius, or List of Prohibited Books, was issued for the first time. The Index Expurgatorius is the most famous and long lasting example of "bad books" catalogues issued by the Roman Catholic Church, which assumed responsibility to control thoughts and opinions, and suppressed views that went against its doctrines. The Index Expurgatorius was administered by the Roman Inquisition, but enforced by local government authorities, and went through 300 editions. Amongst others it banned or censored books written by Rene Descartes, Giordano Bruno, Galileo Galilei, David Hume, John Locke, Daniel Defoe, Jean-Jacques Rousseau and Voltaire. While governments and church encouraged printing in many ways because it allowed for the dissemination of Bibles and government information, works of dissent and criticism could also circulate rapidly. As a consequence, governments established controls over printers across Europe, requiring them to have official licenses to trade and produce books.

This 1688 edition of Jacobus de Voragine's Golden Legend (1260) was censored according to the Index Librorum Expurgatorum of 1707, which listed the specific passages of books already in circulation that required censorship.

The notion that the expression of dissent or subversive views should be tolerated, not censored or

punished by law, developed alongside the rise of printing and the press. *Areopagitica*, published in 1644, was John Milton's response to the Parliament of England's re-introduction of government licensing of printers, hence publishers. Church authorities had previously ensured that Milton's essay on the right to divorce was refused a license for publication. In *Areopagitica*, published without a license, Milton made an impassioned plea for freedom of expression and toleration of falsehood, stating:

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."

Milton's defense of freedom of expression was grounded in a Protestant worldview and he thought that the English people had the mission to work out the truth of the Reformation, which would lead to the enlightenment of all people. But Milton also articulated the main strands of future discussions about freedom of expression. By defining the scope of freedom of expression and of "harmful" speech Milton argued against the principle of pre-censorship and in favor of tolerance for a wide range of views.

As the "menace" of printing spread, governments established centralised control mechanism. The French crown repressed printing and the printer Etienne Dolet was burned at the stake in 1546. In 1557 the British Crown thought to stem the flow of seditious and heretical books by chartering the Stationers' Company. The right to print was limited to the members of that guild, and thirty years later the Star Chamber was chartered to curtail the "greate enormities and abuses" of "dyvers contentyous and disorderlye persons professinge the arte or mystere of pryntinge or selling of books." The right to print was restricted to two universities and to the 21 existing printers in the city of London, which had 53 printing presses. As the British crown took control of type founding in 1637 printers fled to the Netherlands. Confrontation with authority made printers radical and rebellious, with 800 authors, printers and book dealers being incarcerated in the Bastille in Paris before it was stormed in 1789.

A succession of English thinkers was at the forefront at the beginning of the discussion the idea of a right to freedom of expression, among them John Milton (1608-74) and John Locke (1632-1704). Locke established the individual as the unit of value and the bearer of rights to life, liberty, property and the pursuit of happiness. However Lockes ideas evolved primarily around the concept of a mans right to seek salvation for his or her soul, and was thus primarily concerned with theological matters. Locke did not support a universal toleration and freedom of speech, some groups, like atheists, should not be allowed according to his ideas.

By the second half of the 17th century philosophers on the European continent like Baruch Spinoza and Pierre Bayle developed ideas encompassing a more universal aspect freedom of speech and toleration than the early English philosophers. By the 18th century the idea of freedom of speech was being discussed by thinkers all over the Western world, especially by French

philosophes like Denis Diderot, Baron d'Holbach and Claude Adrien Helvétius. The idea began to be incorporated in political theory both in theory as well as practice; the first state edict in history proclaiming complete freedom of speech was the one issued December 4 1770 in Denmark-Norway during the regency of Johann Friedrich Struensee. However Struensee himself imposed some minor limitations to this edict in October 7 1771, and it was even further limited after the fall of Struensee with legislation introduced in 1773, although censorship was not reintroduced.

Milton and Locke emphasised the role of Government to protect these rights and this belief was first enshrined in a durable form in the US Constitution, with the First Amendment adding the guarantee that Congress shall make no law... abridging the freedom of speech, or of the press". John Stuart Mill (1806-1873) argued that human freedom is good and without it there can be no progress in science, law or politics, which according to Mill required free discussion of opinion. Mill's *On Liberty*, published in 1859 became a classic defence of the right to freedom of expression. Mill argued that truth drives out falsity, therefore the free expression of ideas, true or false, should not be feared. Truth is not stable or fixed, but evolves with time. Mill argued that much of what we once considered true has turned out false. Therefore views should not be prohibited for their apparent falsity. Mill also argued that free discussion is necessary to prevent the "deep slumber of a decided opinion". Discussion would drive the onwards march of truth and by considering false views the basis of true views could be re-affirmed.

In Evelyn Beatrice Hall's biography of Voltaire, she coined the following phrase to illustrate Voltaire's beliefs: "I disapprove of what you say, but I will defend to the death your right to say it." Hall's quote is frequently cited to describe the principle of freedom of speech. In the 20th Century Noam Chomsky states that: "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. Stalin and Hitler, for example, were dictators in favor of freedom of speech for views they liked only. If you're in favor of freedom of speech, that means you're in favor of freedom of speech precisely for views you despise." Professor Lee Bollinger argues that "the free speech principle involves a special act of carving out one area of social interaction for extraordinary self-restraint, the purpose of which is to develop and demonstrate a social capacity to control feelings evoked by a host of social encounters." Bollinger argues that tolerance is a desirable value, if not essential. However, critics argue that society should be concerned by those who directly deny or advocate, for example, genocide (see Limitations, below).

Democracy

The free speech zone at the 2004 Democratic National Convention

The notion of freedom of expression is intimately linked to political debate and the concept of democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency. One of the most notable proponents of the link

between freedom of speech and democracy is Alexander Meiklejohn. He argues that the concept of democracy is that of self-government by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. According to Meiklejohn, democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism. Meiklejohn acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideal.

Eric Barendt has called this defence of free speech on the grounds of democracy "probably the most attractive and certainly the most fashionable free speech theory in modern Western democracies". Thomas I. Emerson expanded on this defence when he argued that freedom of speech helps to provide a balance between stability and change. Freedom of speech acts as a "safety valve" to let off steam when people might otherwise be bent on revolution. He argues that "The principle of open discussion is a method of achieving a moral adaptable and at the same time more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus." Emerson furthermore maintains that "Opposition serves a vital social function in offsetting or ameliorating (the) normal process of bureaucratic decay."

Research undertaken by the Worldwide Governance Indicators project at the World Bank, indicates that freedom of speech, and the process of accountability that follows it, have a significant impact in the quality of governance of a country. "Voice and Accountability" within a country, defined as "the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media" is one of the six dimensions of governance that the Worldwide Governance Indicators measure for more than 200 countries.

Social interaction and community

Richard Moon has developed the argument that the value of freedom of speech and freedom of expression lies with social interactions. Moon writes that "by communicating an individual forms relationships and associations with others - family, friends, co-workers, church congregation, and countrymen. By entering into discussion with others an individual participates in the development of knowledge and in the direction of the community."

Limitations

According to the Freedom Forum Organization, legal systems, and society at large, recognize limits on the freedom of speech, particularly when freedom of speech conflicts with other values or rights. Limitations to freedom of speech may follow the "harm principle" or the "offense principle",

for example in the case of pornography or hate speech. Limitations to freedom of speech may occur through legal sanction or social disapprobation, or both.

Members of Westboro Baptist Church have been specifically banned from entering Canada for hate speech.

In "On Liberty" (1859) John Stuart Mill argued that "...there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered." Mill argues that the fullest liberty of expression is required to push arguments to their logical limits, rather than the limits of social embarrassment. However, Mill also introduced what is known as the harm principle, in placing the following limitation on free expression: "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."

In 1985 Joel Feinberg introduced what is known as the "offence principle", arguing that Mill's harm principle does not provide sufficient protection against the wrongful behaviours of others. Feinberg wrote "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end." Hence Feinberg argues that the harm principle sets the bar too high and that some forms of expression can be legitimately prohibited by law because they are very offensive. But, as offending someone is less serious than harming someone, the penalties imposed should be higher for causing harm. In contrast Mill does not support legal penalties unless they are based on the harm principle. Because the degree to which people may take offense varies, or may be the result of unjustified prejudice, Feinberg suggests that a number of factors need to be taken into account when applying the offense principle, including: the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offense, and the general interest of the community at large.

The Internet and Information Society

Jo Glanville, editor of the Index on Censorship, states that "the Internet has been a revolution for censorship as much as for free speech". International, national and regional standards recognise that freedom of speech, as one form of freedom of expression, applies to any medium, including the Internet. The Communications Decency Act (CDA) of 1996 was the first major attempt by the United States Congress to regulate pornographic material on the Internet. In 1997, in the landmark cyberlaw case of *Reno v. ACLU*, the U.S. Supreme Court partially overturned the law. Judge Stewart R. Dalzell, one of the three federal judges who in June 1996 declared parts of the CDA unconstitutional, in his opinion stated the following:

"The Internet is a far more speech-enhancing medium than print, the village green, or the mails. Because it would necessarily affect the Internet itself, the CDA would necessarily reduce the speech available for adults on the medium. This is a constitutionally intolerable result. Some of the dialogue on the Internet surely tests the limits of conventional discourse. Speech on the Internet can be unfiltered, unpolished, and unconventional, even emotionally charged, sexually explicit, and vulgar - in a word, "indecent" in many communities. But we should expect such speech to occur in a medium in which citizens from all walks of life have a voice. We should also protect the autonomy that such a medium confers to ordinary people as well as media magnates. My analysis does not deprive the Government of all means of protecting children from the dangers of Internet communication. The Government can continue to protect children from pornography on the Internet through vigorous enforcement of existing laws criminalizing obscenity and child pornography. As we learned at the hearing, there is also a compelling need for public educations about the benefits and dangers of this new medium, and the Government can fill that role as well. In my view, our action today should only mean that Government's permissible supervision of Internet contents stops at the traditional line of unprotected speech. The absence of governmental regulation of Internet content has unquestionably produced a kind of chaos, but as one of the plaintiff's experts put it with such resonance at the hearing: What achieved success was the very chaos that the Internet is. The strength of the Internet is chaos." Just as the strength of the Internet is chaos, so that strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects."

The World Summit on the Information Society (WSIS) Declaration of Principles adopted in 2003 makes specific reference to the importance of the right to freedom of expression for the "Information Society" in stating:

We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that 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. Communication is a fundamental social process, a basic human need and the foundation of all social organisation. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits of the Information Society offers."

According to Bernt Hugenholtz and Lucie Guibault the public domain is under pressure from the "commodification of information" as item of information that previously had little or no economic value, have acquired independent economic value in the information age, such as factual data, personal data, genetic information and pure ideas. The commodification of information is taking place through intellectual property law, contract law, as well as broadcasting and telecommunications law.

Freedom of information

Freedom of information is an extension of freedom of speech where the medium of expression is the Internet. Freedom of information may also refer to the right to privacy in the context of the Internet and information technology. As with the right to freedom of expression, the right to privacy is a recognised human right and freedom of information acts as an extension to this right. Freedom of information may also concern censorship in an information technology context, i.e. the ability to access Web content, without censorship or restrictions.

Freedom of information is also explicitly protected by acts such as the Freedom of Information and Protection of Privacy Act of Ontario, in Canada.

Internet censorship

The concept of freedom of information has emerged in response to state sponsored censorship, monitoring and surveillance of the internet. Internet censorship includes the control or suppression of the publishing or accessing of information on the Internet. The Global Internet Freedom Consortium claims to remove blocks to the "free flow of information" for what they term "closed societies". According to the Reporters without Borders (RSB) "internet enemy list" the following states engage in pervasive internet censorship: China, Cuba, Iran, Myanmar/Burma, North Korea, Saudi Arabia, Syria, Turkmenistan, Uzbekistan, and Vietnam.

A widely publicized example of internet censorship is the "Great Firewall of China" (in reference both to its role as a network firewall and to the ancient Great Wall of China). The system blocks content by preventing IP addresses from being routed through and consists of standard firewall and proxy servers at the Internet gateways. The system also selectively engages in DNS poisoning when particular sites are requested. The government does not appear to be systematically examining Internet content, as this appears to be technically impractical. Internet censorship in the People's Republic of China is conducted under a wide variety of laws and administrative regulations. In accordance with these laws, more than sixty Internet regulations have been made by the People's Republic of China (PRC) government, and censorship systems are vigorously implemented by provincial branches of state-owned ISPs, business companies, and organizations.