

Freedom of expression - some issues for debate.

by Gillian Cleverly for ANVIL on 2nd April 2014

What do we mean by Freedom of Expression? According to the UDHR (Article 19) and in subsequent international legislation, for example, the ICCPR and the ECHR, it is **the right to communicate one's opinions and ideas**. This includes any act of seeking, receiving and imparting information or ideas, regardless of frontiers and regardless of the medium used. Before the UK passed the HRA of 1998, it had been a negative freedom but is now **“a fundamental right and an essential foundation of a democratic society”**, i.e. positive right that impacts on the lives of all of us.

An absolute right?

However, although many people would like it to be so, this is not an absolute right. With rights come responsibilities and there is recognition of limitations on the right to free expression. The UDHR states “recognition and respect for the rights and freedoms of others...meeting the just requirements of morality, public order and general welfare in a democratic society” (Article 29, part 2). The ICCPR states that Freedom of Expression “may be subject to certain restrictions.... for respect for the rights and reputations of others or for the protection of national security” (Article 19). Sometimes too, Freedom of Expression may conflict with other rights: for example, the right to life, liberty and security of persons (Art. 3 UDHR); equality before the law “All are entitled to equal protection against any discrimination ...and against any incitement to such discriminations” (Article 7); “interference with privacy, family, home, correspondence, nor attacks upon his honour and reputation. Everyone is entitled to protection of the law against such interference or attacks” (Article 12).

A challenge to power

This makes the right to freedom of expression a slippery and tricky concept to put in to practice. In democracies, the acceptance and promotion of a set of human rights to which everyone is entitled, is fundamental to a fair and just society. Quite rightly, we condemn dictatorships, and states which only pay lip service to the individual's rights and freedoms; those that imprison, torture and kill internet bloggers, writers, politicians, gay activists etc for expressing views which challenge the power of the state or question traditions. “Speaking truth to power” or disturbing the status quo can be dangerous activities. Freedom of expression is anathema to authorities determined to keep their grip on power and is uncomfortable, even threatening, to powerful individuals, groups, institutions and corporations across the democratic world.

One of the first known free thinkers, Socrates, was condemned to exile or death for the corruption of Athenian youth in Ancient Greece, a society which prided itself on freedom of speech. Rome had enjoyed a degree of political freedom, in spite of the introduction of an official censor but this came to an end when the Republic ended. Nevertheless, there has been a slow development of respect for the right to free speech, as there has been for other rights that we take for granted today. The end of the dominance of the Catholic Church in Europe with the onset of the Reformation, did not mean the end of repression. The Papal Index, the notorious list of banned books, was only applicable within the Papal sphere of influence but in Protestant England, crimes of heresy and treason still meant certain death by fire, hanging, drawing and quartering, or the axe if you were lucky. But gradually, the invention of

the printing press, enabling the spread of the vernacular bible, philosophical works and printed political and religious pamphlets, aided the dissemination of different ideas and encouraged debate. In the 17th century, a time of impassioned debates about religious freedom, monarchical power and government, one of the finest essays on freedom of speech was written. “Areopagitica”, (John Milton’s Treatise on the Freedom of the Press), is still in print and containing some excellent arguments. The 18th century saw a great expansion of political, scientific and philosophical ideas and a corresponding concern about disruption of the social order, in Europe, and of course, in the British colony of America, where the democratic ideals of Tom Paine and others contributed to the Declaration of Independence and the subsequent Bill of Rights, in which the right to free speech is paramount.

Self-censorship

According to John Stuart Mill, without human freedom, there can be no progress in science, law or politics, as all require free discussion and exchange of opinion. However, it could be said that freedom of expression is always restricted to a greater or lesser extent. We self-censor and restrain our speech and behaviour according to the particular context. Most personal relationships might struggle to survive if people spoke their innermost thoughts to each other at all times. We keep quiet or even tell “white” lies to protect the feelings of others. We want to be liked and often modify our views for an easier life, at home and in the public arena. We reserve our opinions, conform in our dress, adapt our language and control our feelings in a range of social contexts.

These boundaries are not set in stone. They have changed and will continue to change as we become a more diverse society. What we think and say, the language we use and how we behave are vastly different to our ideas, speech and behaviour of 100 years ago and would appear shocking to those who lived then. Nevertheless, while many taboos and prohibitions have disappeared, new ones have replaced them. The majority of us would now find the use of terms such as “darkie”, “wop”, “Yid”, “queer”, “cripple”, unacceptable as they reflect discriminatory attitudes and behaviour. On the other hand, Anglo-Saxon swearwords and obscenities were removed from written and spoken texts until the late 20th Century but are now commonplace in the media.

A right to offend?

Does the popular consensus drive legislation? Sometimes legislation is driven by particular events; for example: the Terrorism Act 2000 resulted from the threat from extreme Islamist groups and others. This included a new prohibition on the “encouragement”, “other inducement” or “glorification” of terrorism. At other times, it is driven by the public consensus; for example the Blasphemy Law, which only applied to the Christian religion in the UK and was rarely used, appeared inappropriate and anachronistic by many in a secular age. Although Mary Whitehouse successfully brought a private prosecution in 1977 against Denis Lemon editor of Gay News for publication of a poem about a homosexual Christ, a private prosecution against the BBC for “Jerry Springer: the opera” was rejected. This was an explicit satire on popular culture and sexual standards but this was ignored by the 45,000 evangelical Christians who, in spite of not having seen it, wanted it banned because of its provocative language, swearing and irreverence about Jesus (Ursula Owen, Index on Censorship). In spite of the desire by some other religious groups to have the

Blasphemy Law extended to cover their religion, its days were numbered, and the law was finally abolished under the Criminal Justice and Immigration Act which took effect from 8th July 2008.

We are free then to criticise political opinions, ways of life, religion and beliefs. Freedom of Expression is explicitly protected in the “Racial and Religious Hatred Act of 2006 “Nothing in this part shall be given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religious...beliefs...practices of adherents...or proselytising or urging adherents of a different religion or belief system to cease practising” ((Section 2 9J). Therefore as we have the right to express diverse and possibly outrageous opinions, what laws are there to protect the interests of the vulnerable, to maintain social order and security, to protect privacy? How do we find the balance and where are our boundaries now? Should we allow hate speech, akin to the vilification and depiction of the Jews in Nazi Germany or the verbal abuse against the Tutsis broadcast prior to the genocide in Rwanda? Most of us would say not but should we draw the line at the depiction of the Roma in certain tabloid newspapers? Maybe not explicit but stirring up hatred in some quarters.

Hate speech

In the UK, a person who uses threatening, abusive words or behaviour towards someone on account of that person’s colour, race, nationality (inc citizenship), ethnic or national origin, religion or sexual orientation, (or displays written material of the same) is guilty of an offence if he intends to stir up racial or religious hatred, or causing another person harassment, alarm or distress. However, interpretation is all. In the USA, the right to freedom of expression is strongly protected by the First Amendment of the Bill of Rights and although there are well-defined limits e.g. ‘the lewd and obscene, the profane, the libellous and the insulting or “fighting words” – those by which their very utterance inflict injury or tend to incite an immediate breach of the peace’ (Justice Frank Murphy), the bar is set quite high. In 1992, a gang of white racists burned a cross in the front yard of a black family. A gang member was charged under a local ordinance but this was struck down by the Supreme Court as a violation of the right to free speech. This was based on the fact that the ordinance concerned the content of expression, not the mode of expression. During the 1980’s in particular, there were radio broadcasts spreading bigotry and prejudice, even urging an audience to commit hate crimes plus hotlines intimidating people and organisations. (NTIA report). There has been an increase in the verbal abuse and violence directed at historically persecuted groups, including homosexuals and women and people of colour, especially on college and university campuses. The response to this by civil liberties organisations is for better education on these issues rather than codes or policies prohibiting offensive speech.

People feel insulted when their beliefs are criticised; should we therefore tread carefully around their sensitivities or should they toughen up, learn how to defend their beliefs rationally and not take it so personally? Humour and satire have long been used to stimulate thought and debate in addition to supplying entertainment- Aristophanes, Jonathan Swift, Hogarth, members of Beyond the Fringe and Bill Hicks are just a few of a long line of sharp, sometimes insulting, social commentators who have drawn attention to irrational beliefs, detrimental and unfair practices, ridiculous

behaviour etc. who have angered the politically powerful as well as the religious by their writing or performance.

Beliefs and identity

JS Mill may warn us to beware of the “tyranny of the majority” but we should also beware of the tyranny of a minority. The British Sikh playwright, Gurpreet Kaur Bhatti wrote a play called *Behzti* (Dishonour), about sexual and physical abuse, set in a Gurdwara (Sikh temple). Some of the Sikh community were consulted before the opening night and offended by the issues raised in the play and the fact of the setting, demonstrated outside the Birmingham theatre. The demonstration turned violent, theatre windows were broken, the audience in the foyer were terrified, 3 police officers were injured and the play closed. The playwright and her family were threatened and abused. Ms Bhatti stood by her work but said she was proud to be a Sikh and was not trying to offend but to raise points about human frailties but the Sikh community remains divided on the issue.

Ursula Owen, (Index on Censorship), takes the view that as a society we are not dealing with our increasing cultural diversity and pluralism very well. British Asians – mostly Muslims, Sikhs and Hindus- are increasingly choosing to define themselves by their religion and not their ethnicity and are often demanding protection from offence and insult to the detriment of freedom of expression.

The Internet

The internet has revolutionised discourse on these topics. Apart from the difficulty in regulating this global medium, (every firewall gets breached eventually), censorship is undesirable. “Communication is a fundamental social process, a basic human need and the foundation of all social organisation and is central to the Information Society...everyone, everywhere should have the opportunity to participate” (World Summit on the Information Society 2003). States which engage widely in internet censorship are China, Cuba, Iran, Burma, North Korea, Syria, Uzbekistan among others. Bloggers expressing dissident views are arrested and punished, often under the pretext of other crimes – Alexei Navalny, a Russian dissident, is banned from using the internet and is under house arrest while being investigated for embezzlement.

Pornography

There are of course serious concerns about children’s access to pornography in addition to their vulnerability to paedophiles. Most of us would accept that children should be protected by existing laws against obscenity and child pornography and by the availability of parental controls. Many people do not accept that adults need a similar legal protection and think that we should be free to decide for ourselves, even regarding the most hard-core of this genre. Others are offended by the visibility of soft-core porn in the form of men’s magazines. It is not simply a conflict between prudish religious conservatives and libertarians. What is defined as porn is a moveable feast, whether pictorial or written (*Lady Chatterley’s Lover*; page 3 of the *Sun*; violent and explicit sexual acts on film). What most pornography has in common is the objectification of women and it is this key aspect that has divided the feminist movement. Radical feminists such as Catherine McKinnon and Andrea Dworkin identify pornography as a way of reinforcing sexual inequality, subordination and discrimination. On the other hand, anti-censorship feminists reject

the idea of state intervention in sexual matters and see legislative control in this area as a threat to women's freedom and autonomy.

Press freedom versus privacy/freedom of information

The extent that the press can go in their pursuit of a story, even if it is in the public interest, is still not agreed and seems unlikely to be resolved in a manner which satisfies all parties. Listening to voicemails or intercepting emails is forbidden to the press but available to the security services, who would like to suppress the publication of evidence relating to their activities.

The press has always to take care when it comes to publishing stories of dubious provenance as the libel laws can prove expensive. However, the need to sell newspapers or magazines overrides respect for privacy and even the rich and powerful are not immune in the UK.

In this essay, the focus has been mostly on the UK and to a degree on the USA. There is no space to consider the situation in Europe. There is considerable public debate particularly about the right to offend, as a result of the interface between the strongly restrictive religious standpoints, held by new immigrants, and the more secular liberal ones of the established majority. Westerguard, the Danish cartoonist, who depicted Muhammad wearing a bomb in his turban (deemed a serious blasphemy by Muslims) received death threats and murder attempts. While he has broken no law, others, including politicians, have been prosecuted for making "anti-Islamic" statements. There have been similar hard-line responses in other European countries to inflammatory statements against Islam - in the Netherlands, Gert Wilders (indicted for the incitement to hatred); in France – Brigitte Bardot convicted and fined (5th time fined for her criticism of ritual animal slaughter).

There is a danger that these issues regarding the freedom of expression could become increasingly angry and divisive if we don't reach out to those with opposing views and engage in open discussion.

Co-incidentally, one of the main discussions at the World Humanist Congress in Oxford this summer, will look at the difficult case of incitement to hatred and the conflict with the right to freedom of expression. With international speakers, it should be interesting.

UDHR – Universal Declaration of Human Rights

ICCPR – International Convention on Civil and Political Rights

ECHR European Convention on Human Rights

HRA – Human Rights Act

NTIA – National Telecommunications and Information Administration