

Freedom of Expression

After the “Cartoon Wars”

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The world’s democracies have faced two crucial challenges to the ideal of freedom of expression in recent years: the fatwa calling for the death of novelist Salman Rushdie and the more recent controversy over the publication by a Danish newspaper of cartoons deemed offensive to Muslims. In both instances, the response of the democratic world’s political and, in the case of the cartoons, cultural leaders fell well short of a ringing affirmation of the values of a free society.

The Rushdie episode originated with the 1988 publication of *The Satanic Verses*, a novel that took an irreverent view of the Prophet Muhammad. Within a month the book was banned by the Indian government, followed by bannings in South Africa, Pakistan, and a number of Middle Eastern countries. By January 1989, Muslims in the British city of Bradford had carried out a book burning. Shortly thereafter, the police shot and killed five rioters who were protesting against the book in Islamabad, Pakistan.

Then, in February, a fatwa calling for Rushdie’s death was issued by Iran’s spiritual leader, Ayatollah Khomeini, who called *The Satanic Verses* “blasphemous against Islam.” Khomeini also declared Rushdie guilty of apostasy and asserted that it was the responsibility of all “zealous Muslims” to kill Rushdie and his publishers. Khomeini offered a \$3 million reward to anyone who would carry out the fatwa.

The violence then escalated. Book burnings took place throughout the Muslim world. Five people were killed by police during a demonstration outside the British consulate in Bombay. There were fire bombings at a bookstore that carried *The Satanic Verses* in Berkeley, California, and at a New York newspaper that supported Rushdie. Rushdie’s Japanese translator was stabbed to death and his Italian translator stabbed and seriously

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wounded. Several years later, his Norwegian publisher was shot and severely injured, and 37 people were killed when a Turkish hotel was burned by protesters demonstrating against Rushdie's Turkish translator.

Measured by the sheer level of mayhem and bloodshed, this was a serious toll—more deadly by far than the upheavals that followed on the heels of the Danish cartoons. Yet far from responding with a resolute and unqualified defense of Rushdie and the value of free expression, many democratic political leaders adopted a stance of evenhandedness, distancing themselves from Rushdie while giving pro forma affirmations of artistic freedom and criticisms of the fatwa.

Sir Geoffrey Howe, Great Britain's foreign secretary at the time, summed up his country's stance on the matter by stating that "I do emphasize that we are not upholding the right of freedom to speak because we like this book...we are not in line with or in sympathy with, or in support of the book." Former U.S. president Jimmy Carter wrote an opinion piece in which a boilerplate denunciation of the fatwa was followed by a lengthy disquisition on Rushdie's lack of sensitivity and the West's overemphasis of the author's First Amendment rights.

To be sure, Great Britain gave Rushdie, a naturalized citizen of the United Kingdom, ample security protection, and a number of European governments took the important step of withdrawing their diplomats from Tehran in the aftermath of the fatwa declaration. Furthermore, writers, journalists, freedom of expression advocates, and anticensorship organizations responded with impressive solidarity in their unqualified support of Rushdie. The affair burnished Rushdie's artistic reputation while reinforcing Iran's image as a clerical dictatorship.

The recent controversy over the publication of a series of cartoons that depicted and lampooned Muhammad likewise posed a serious challenge to the core democratic value of freedom of expression. Once again, the response of the political leaders in the United States and Europe was notable for its confusion, indecisiveness, and limp support for a fundamental principle of freedom.

As in the Rushdie episode, the cartoon controversy involved claims of insensitivity, riots, violence, and death threats. Likewise, both cases to some degree were ignited by actions taken by those in positions of authority. In the Rushdie example, the all-powerful spiritual leader of revolutionary Iran issued the death sentence. In the case of the cartoons, the Organization of the Islamic Conference convened several months after the cartoons were published and put together a strategy for a campaign of

protests in the Islamic world. Some of the ensuing protests were thus not acts of spontaneous rage, but rather manifestations that were instigated, and perhaps even organized, by political parties and governments.

If the response of democratic countries to the Rushdie death threat was inadequate, much worse can be said about their response to the tempest over the cartoons. Confronted by demands for censorship, the sacking of Western embassies in Muslim countries, a boycott of Danish export goods, and the persecution of Arab intellectuals who defended the cartoons' publication, officials in Washington and European capitals often spoke as if the fundamental problem lay in the cartoons' publication and not the frenzied reaction. Although government officials did not employ the mordant vocabulary of Sir Geoffrey Howe, most preferred to emphasize the cartoons' lack of sensitivity rather than the threat to freedom of the press posed by the critics. Notable among the weaker responders was the Bush administration, which seemed to find solace in a controversy in which Europe, rather than the United States, was the principal target.

If the tepid reaction of diplomats was to be anticipated, the absence of straightforward support from the press and the advocacy community was a dismaying surprise. When Salman Rushdie was threatened, writers and advocates responded with a flurry of initiatives of solidarity, including protest forums, manifestos, opinion pieces, and petitions. By contrast, *Jyllands Posten*, the newspaper that first published the cartoons, found itself isolated once the violent response in the Muslim world began. Although a few press freedom groups issued strong statements in defense of freedom of expression, others issued declarations that were weak and grudging in their support of the beleaguered journalists. Many often betrayed more resentment toward the editors who had approved the cartoons' publication than toward those who were calling for what amounted to censorship and threats of violence against those responsible for the cartoons. Likewise, newspapers that had defended Rushdie without reservation published editorials that seemed to skate a fine line between a defense of freedom of the press and the apparent requirements of sensitivity in an era of globalization and multiculturalism. Also disturbing was the attitude of United Nations human rights officials, whose mission includes the protection of press freedoms. The High Commissioner for Human Rights responded not with a defense of freedom of expression, but with an announcement of planned investigations into racism and Islamophobia, while the Special Rapporteur on Racism denounced the cartoons and spoke of the "grave offense they caused to members of the Muslim community."

In the wake of the cartoon controversy and the earlier Rushdie case, the question for democratic societies is the degree to which they can be counted on to stand up for freedom of the press and expression in the future. The answer to this question is disturbingly unclear.

To be sure, in the United States and Europe, political debates on the key issues of war and peace, economic policy, elections, and other critical topics remain sharp, robust, and, in some instances, polarized. At the same time, there is a tension between the right to express unconventional ideas and a body of laws, policies, and attitudes motivated by a perceived need to limit such expression. Although the problem is more apparent in Europe—with its hate speech laws and libel prosecutions—it is not unknown in the United States, despite America’s commitment to the First Amendment of the U.S. Constitution, which guarantees free speech.

Practically every European country, along with other English-speaking countries like Canada, has embraced some form of hate speech legislation. Norway’s law is typical. It forbids “publicly stirring one part of the population against another” and any utterance that “threatens, insults, or subjects to hatred, persecution, or contempt any person or group of persons because of their creed, color, race, or national origins...or homosexual bent.” In Canada, hate speech principles are enshrined in several statutes. The criminal code includes a section that makes it a criminal act to advocate genocide, publicly incite hatred, or “willfully promote hatred.” The Canadian human rights law outlaws the spreading of hate through telecommunications, including the internet. This policy applies to a lengthy list of categories: race, ethnicity, national origin, color, religion, age, sex, sexual orientation, marital status, family status, disability, or pardoned criminals. Furthermore, legislation banning hate speech is incorporated into Canada’s broadcasting regulation laws. These laws have been invoked on a number of occasions. To take two examples, a newspaper was fined for publishing biblical citations—not the actual text—condemning homosexuality, and a teacher was suspended for writing a letter to the editor contending that homosexuality is not a fixed condition, but something that can be changed over time.

Denmark also has a broadly worded hate speech statute as well as a law that criminalizes blasphemy. Section 140 of the Criminal Code can be used to punish anyone who mocks or scorns the doctrines of an established religion, and provides for jail terms of up to four months for offenders. The Danish prosecutor’s office actually discussed indicting *Jyllands-Posten* for publishing the cartoons, but ultimately decided against bringing charges.

Earlier, a television station was convicted under Denmark's hate speech code for producing a documentary in which three young men expressed strongly racist views about dark skinned immigrants. In so doing, the court rejected the journalist's argument that he was simply bringing to the public's attention the fact that racist attitudes existed in Danish society. His conviction was later overturned by the European Court of Human Rights.

In addition to hate speech laws, legislation that explicitly outlaws Holocaust denial has been adopted by a number of European countries. Germany and Austria are most notable here, but similar laws also exist in France and 11 other countries. Austria invoked its Holocaust denial law in its prosecution of David Irving, a British historian and icon of the Holocaust denial circuit, for remarks he made in the country in 1989. Although there is little sympathy for Irving, advocates of freedom of expression were disturbed by his conviction and the sentence of three years' imprisonment handed down by the Austrian court.

As these examples suggest, many of the hate expression incidents that have reached the level of criminal prosecution or other types of formal action involve statements that are deemed anti-Semitic or pro-Nazi or deny or belittle the Holocaust experience. Muslims in Europe have been known to complain that hate speech codes are applied unfairly, with prosecutions brought in cases of anti-Semitic statements while anti-Muslim remarks are ignored. In fact, the past few years have brought several high-profile cases in which prominent European writers were accused of making statements that slandered Muslims or their faith. A noted French author was the defendant in a case brought by four Muslim organizations for having declared that Islam is the "stupidest religion." He was acquitted; had he been convicted, he faced a sentence of up to eighteen months in prison and a fine of over US\$70,000. A similar case has been brought against Oriana Fallaci, the Italian journalist, for a book that, in polemical fashion, criticizes Muslim culture and warns of the dangers of the Islamization of Europe. As Europe becomes more racially diverse, demands for the implementation of hate speech legislation can be expected to increase. Once a state adopts laws regulating speech or expression, it creates an expectation among the public that it will intervene on behalf of groups that regard themselves as aggrieved.

It is true, however, that the initial rationale for Europe's hate speech regimen derives from the continent's experience in World War II, when the Nazis set the stage for genocide through virulent campaigns of demonization that sought to blame the country's troubles on the Jews.

This helps explain the laws that specifically outlaw Holocaust denial, a wedge issue for anti-Semites. Beyond the question of anti-Semitism, hate speech laws are part of a mosaic of agreements and understandings that Europeans have woven together to discourage the rise of the kind of extreme nationalism that led to two catastrophic world wars during the twentieth century. These laws also reflect the European attitude that gives priority to collective rights over individual rights.

More recently, a new hate speech justification has been added: multiculturalism. The multiculturalists contend that in an increasingly diverse Europe, it is incumbent on governments to regulate the content of the press, works of art, and the internet. Furthermore, multiculturalists believe that either certain sensitive subjects should be out of bounds for public discourse or that debate on subjects such as race, religion, nationality, or gender should be carefully moderated.

While freedom of expression remains alive and well throughout Europe, the demands of multiculturalists for restrictions on certain kinds of expression have intensified in recent years. One argument is that international law calls on governments to outlaw, as one group put it, “any advocacy of national, religious, or racial hatred that constitutes incitement to violence, discrimination, or hostility.” Although most would agree that incitement to violence should be criminalized, “hostility” is a vague and potentially sweeping concept that could, depending on one’s political orientation, refer to strident critics of liberal asylum policies as easily as to those with neo-Nazi views.

If the cartoon wars forced to the surface tensions between certain international institutions and freedom of expression advocates, they also reminded us of the different attitudes toward press freedom and freedom of expression in the United States and Europe. The guarantee of freedom of expression enshrined in the First Amendment of the U.S. Constitution is viewed by many Europeans as a distinctly American peculiarity, like the death penalty. In addition to adopting hate speech laws, most European countries have enacted legislation making it far easier to bring charges of libel, slander, or defamation against critics of public figures than is the case in the United States. Likewise, Europeans find incomprehensible American court rulings that permit neo-Nazis to march through Jewish neighborhoods or racist organizations to parade through black districts. European irritation with America’s libertarian policies has actually increased with the growth of the internet. Europeans speak of the “commercialization of the First Amendment,” by which they mean the circulation of hate speech

through the internet for profit. Europeans also complain that most of the hate speech that filters through the internet has its origins in the United States, which prohibits child pornography but not hate material. Indeed, some racist organizations whose principal audience lies in Europe locate their sites in the United States precisely to avoid criminal prosecution by European authorities.

The European claim that some regulation of the press and speech is essential to curbing the rise of xenophobic or ultranationalistic parties or movements is based on dubious evidence. Despite its First Amendment guarantees of near absolute free speech and its freewheeling public debate, the United States has not experienced a political movement based on racial or religious division—on hate or resentment, in other words—since George Wallace’s 1968 presidential campaign. By contrast, ultranationalist parties have gained a measure of popularity and influence in a number of European countries, including France, Austria, Italy, Germany, Belgium, and Denmark. Indeed, parties whose primary appeal is to the electorate’s anti-immigrant prejudices have gained a disturbing staying power throughout Europe, winning seats in municipal and regional bodies and occasionally participating in governing coalitions.

If the experience of Western Europe demonstrates that attempts to control speech have failed to control the spread of ultranationalist political movements, developments in the new democracies of Central Europe suggest that a policy of tolerance toward extremists can be more effective than censorship in checking their influence. Romanians were initially alarmed when *Romana Mare*, an ultranationalist newspaper, built up a large circulation through a relentless campaign of mockery and slander directed at minority groups. However, the newspaper fell out of favor when Romanians realized that it had nothing relevant to add to the debate over the country’s future. Other post-Communist countries experienced a similar pattern in which ultranationalist parties or movements gained support by blaming minority groups for economic disruption, only to fall into decline after people came to understand the irrelevance of their message.

Just as the Central European countries did not need censorship to cope with political extremists, the United States did not require laws curbing speech to prevent anti-Muslim hatred in the wake of the events of 9/11. While there have been heated debates over America’s Middle East policy, the Iraq war, the Patriot Act, the treatment of detainees, terrorist renditions, and other issues tied to the war on terrorism, political leaders, public figures, and mainstream journalists have been careful to avoid statements that

could be interpreted as vilifying Muslims. Public opinion has been quick to respond to those who issued sweeping attacks on Muslims or their religion. But there have been no censorship or defamation suits. And far from being marginalized, Muslims have actually deepened their involvement in the American political process in the years since 9/11.

But the fact that citizens of the United States have been able to carry out a vigorous political debate over controversial issues of race, immigration, and similar issues without the need for regulations on speech is no cause for self-satisfaction. Americans' attitudes might well be different if their country had been ravaged by two calamitous wars in which religious and ethnic hatred and totalitarian ideologies drove events forward. Furthermore, some Americans share with Europeans the mind-set that finds a measure of speech regulation or even forms of censorship acceptable. It is, after all, American universities that adopted ambitious limitations on speech in the name of "political correctness" during the 1990s. At the same time, textbooks for literature and social science courses in American public schools were subjected to a corrosive form of censorship as the result of intense lobbying from a collection of constituencies ranging from feminists to racial minorities to conservative religious groups. That university administrators and publishing executives—the very people who would be expected to take a stand for freedom of expression—have collaborated in censorship projects renders the problem all the more disturbing. Indeed, the kinds of speech controls one encounters in the United States, in which the policies are made quietly by private institutions rather than openly through government action, can have a more insidious effect in the long run than the openly adopted legislation on hate speech found in Europe.

What does distinguish the United States from many other democracies is the First Amendment tradition—that is, the enshrining of press freedom in the Constitution, the long history of press freedom as fundamental to American democracy, and the many court decisions that have reinforced First Amendment rights. The result is to give press freedom and freedom of speech a degree of legal and political legitimacy that exists in few other societies. With the First Amendment, there is the expectation that infringements on these freedoms, including those stemming from presidential actions, will be rectified.

Those who fret that the contentious language that defines American political discourse poses a threat in a multicultural environment have things exactly backward. While the voicing of extremist opinions often offends or infuriates, it also contributes to the resolution of important

disagreements by making it possible for all sides to have their say in the debates of the day. Without access to a free press or the protection of free speech, groups that were denied full democratic representation would never have succeeded in bringing their case to the public. The black civil rights revolution in particular was predicated on the right to express controversial ideas and the crusading spirit of an uncensored press. Contrary to the belief of multiculturalists, open public debate is more important in societies that are racially or religiously heterogeneous—that is, as long as speech is not manipulated in the service of violence. Freedom of speech is not a contentious subject in societies where all are in agreement. It is where there are differences that the ability to freely express dissenting or heretical ideas is crucial. George Orwell once wrote, “If liberty means anything, it means the right to tell people what they don’t want to hear.” His words should be committed to memory by those who will be called on to uphold basic freedoms when the next writer, or even the next cartoonist, is threatened for expressing inconvenient ideas.

