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Freedom of expression and its limits

The formal laws constituting freedom of expression in democratic societies are only the tip of the iceberg of unwritten agreements between citizens about what they can express publicly in one context or another, says Göran Rosenberg. These agreements differ from society to society: in the case of Denmark, the agreement to allow expressions of anti-Muslim prejudice has served to produce conflict instead of dealing with it. With communications technology enabling the proliferation of parallel public spheres, the need for common agreements on freedom of expression are all the more necessary if conflicts such as the latest controversy over the Mohammed cartoons are not to intensify.

At the trial of major German war criminals at Nuremberg, Julius Streicher, the publisher of the anti-Semitic newspaper *Der Stürmer*, argued in his defence that he had not killed anyone, but had merely published a newspaper. It was a lie of course. Streicher had killed millions of people. Perhaps not with his hands, but with his words. It was for these that Streicher was hanged to death in Nuremberg on 16 October 1946.

Some might argue that Streicher's words would never have had the same deadly consequences in a democracy, since in a democracy there would have been counter-voices and counter-forces. And most importantly, there would have been no totalitarian state prepared to put into practice the genocide to which the words of Streicher had incited. But when Streicher founded *Der Stürmer* in 1923, Germany was still a democracy, and since then he had "in his speeches and articles, week after week, month after month, infected the German mind with the virus of anti-Semitism, and incited the German People to active persecution". It was for this prolonged and persistent use of words only that he was found guilty of "crimes against humanity" and sentenced to death by the Court in Nuremberg.

We thus know that words can kill. Anti-Semitic caricatures of the kind once published in *Der Stürmer* are not possible to publish today. If *Jyllands-Posten* in Denmark had done that, very few would have accepted the argument that the newspaper only wanted to manifest its freedom of expression. Nor would the prime minister of Denmark have failed to distance himself from such a manifestation. Most people would have seen through the real motives behind such a publication. Most people would also have understood that everything that is legal to say nevertheless must not be said, and that freedom of expression has its limits.

Not saying whatever whenever is in fact a fundamental requirement for human communication. We cannot lie too often since eventually no one would take us seriously. We cannot always say in public what we say in private, since what we say in private needs to be understood by only those we know, while what we say in public must also be understood by strangers. The risk of what we say

in public being misunderstood is therefore greater.

The risk is also greater that what we say publicly may inadvertently cause hurt. When we talk in everyday conversation about hurting somebody we are normally talking about the effects of words, not of knives. When we hurt someone in private we are normally aware of what we do, or can at least understand how what we say might be perceived, and sometimes we regret what has been said and wish it had remained unsaid. When we hurt in public we do not always know what we do, since we cannot always know how what we say will be perceived. Normally we don't care much either, since we don't know the people we might hurt. This demands that what we say in public be publicly countered and disputed. A condition of freedom of expression is thus a public arena where words effectively can be put against words.

Nevertheless, when we say something in public, we must also have some notion about how it will be understood, especially if what we say actually is intended to hurt or wound, which in our tradition of freedom of expression has become a rightful intent in certain public spheres. Someone who has no such notion, and therefore who does not care whether he is understood or not, has at best misunderstood the premises of the freedom of expression. When a major Danish daily in a country notorious for its fierce anti-Muslim public rhetoric decides to publish caricatures of the prophet Mohammed, with the stated purpose to demonstrate the Danish freedom of expression, it must either not have understood that the purpose would be perceived quite differently by Denmark's already battered Muslims — or it must have had a different purpose.

Whatever might have been the case, what was demonstrated was not the strength of Danish freedom of expression, but its weakness.

The written laws that formally constitute freedom of expression in a democratic society are only the tip of the iceberg of unwritten social and cultural agreements between the citizens of that society on what they can express publicly in one context or another. When we claim the right to say anything wherever and whenever, we claim a right that cannot be put into practice, because if it were it would undo itself. Those who systematically exercised this right with the intention of creating misunderstanding and non-understanding would systematically chip away at the ground of those using it with the intention of being understood. Freedom of expression that can be used for the systematic production of non-understanding will eventually render itself useless.

Thus, another unwritten condition for the existence of freedom of expression is the continuous practice of tuning and adjustment among actors in the public sphere on how public expression may be perceived and understood. What may a vicar preach in church? What may a tabloid print on its posters? What may a daily newspaper write about Muslims and Islam?

The answers to such questions will in different public arenas depend on different informal understandings and agreements. In the Danish public sphere, it has long been possible to say things about Muslims and Islam that are not possible to say in the Swedish public arena. For example, that Muslims and Islam do not belong in Denmark or that Muslim priests are "weeds". This does not necessarily mean that Denmark has more freedom of expression than Sweden, only that public Denmark has crossed an unwritten limit that public Sweden still respects. In Denmark, this has been done at the cost of excluding

its Muslim population from the process of tuning and adjusting the informal rules of public discourse. Muslims have quite simply not been seen as having any right to influence these rules, and even less so as having anything to contribute that "genuine" Danes ought to take into consideration. Danish freedom of expression has therefore served to produce conflicts instead of dealing with them — a sign of weakness and not a sign of strength.

This does not mean that the problem is unique to Denmark. The Danes have just handled it particularly badly and thereby made it particularly visible. The general problem is that the informal adjustments and tacit agreements that are a prerequisite for making freedom of expression politically and socially sustainable have become ever harder to establish and maintain. This is in part because it is easier to produce, intentionally or not, misunderstanding and non-understanding in societies where the cultural, linguistic, and religious frames of reference have become numerous and estranged than in societies where they are few and familiar. But it is also because communications technology has made it possible for any expression, from any cave or cellar anywhere in the world, produced with any kind of intention, to instantly present itself in the public arena of any society in the world. In societies where anti-Semitism by informal agreement is impossible to propagate in the national public sphere, anti-Semitism will nevertheless be propagated in all kinds of new and parallel public spheres, where wholly different rules and agreements apply as to what can be publicly expressed.

Freedom of expression without common public spheres and common informal agreements will, as in Denmark, produce and intensify social and cultural conflicts. When citizens are unable to talk to and with each other, or see no need to do so, they will increasingly talk past and against each other, and thereby will increasingly misunderstand and mistrust each other. Freedom of expression will thus be rendered useless for the kind of public discourse that is the oxygen of democracy.

The main challenge to the freedom of expression is currently not external censorship or controls. No one can effectively prevent anyone from saying what they want to anyone anywhere in any context. No, the main challenge to the freedom of expression is the lack of informal controls and agreements, a result of the rapid division of our societies into separate public spheres that no longer communicate with each other, and that therefore cannot work out any informal agreements about how public expressions might or might not be understood.

The increasing technical possibility to turn our backs to each other, to disconnect from the unwritten agreements of our societies, and to connect to any agreement in any society anywhere, is here to stay. The democratic necessity of a political vision that compels us not to do so has been instructively demonstrated by the Danish caricatures and their aftermath.

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