

Chapter 2

The Free Networks of the Enlightenment



In the seventeenth and eighteenth centuries, freedom of expression emerged as a central theme of the dawning Age of Enlightenment. This was caused not least by churches and princes maintaining strict political control of expressions of divergent opinions. The new Protestant state churches, Lutheran as well as Calvinist, turned out not to offer more freedom than the Catholic church. In fact, it was often less, which meant that religious, philosophical and political dissidents regularly ran into serious problems when expressing their ideas publicly. Thus, ideas of freedom of expression began to surface. One of the first urgent calls for freedom of expression came from Dutch-Jewish philosopher Baruch Spinoza, who in his “Tractatus Theologico-Politicus” (1670) called for *libertas philosophandi*—freedom of thought. As stated by British historian Jonathan Israel, Spinoza was the first major philosopher who was also a democrat. Spinoza believed it important to distinguish politically between people’s actions and their views and expressions. Whereas the former should be governed by legislators, the latter should not. This would create a more free and peaceful society—and if people had the possibility to influence the laws they were subject to, they might be more inclined to respect them.

Similar thoughts would gradually propagate in the “learned republic” of associated philosophers, journalists, publishers, bookstores, collectors, encyclopedists, writers, editors and others that emerged in the seventeenth and eighteenth

century. Compared to our day's focus on digital networks, it is thought-provoking that this "Republic of Letters" was in fact a self-organized "grassroots" network that challenged the ecclesiastical and absolutist hierarchies of the times. Historian Niall Fergusson (2017) gives a detailed mapping of historical periods in which networks have been able to threaten, upset or recalibrate established political hierarchies. This was made possible by new media, among them cheap printing of books and quicker transport of mail, but also by intensifying traditional procedures such as transcription, book loans and travel. These networks held the germ of many characteristics which are intensified in today's much larger and faster networks. They constituted a crucial historical sanctuary outside the reach of states and churches, a precursor of civil society. This naturally led states and churches to try to restrict and pursue these networks. In turn, the networks could react by organizing themselves in closed cliques, lodges, secret societies—focused gatherings where expression was freer, but which also subjected people to the dangers of echo chambers and information bias. In these networks, freedom of expression was increasingly practiced and expounded, to foster enlightenment based on the first-hand experience of believing, thinking or expressing oneself freely. Well-known names from the Enlightenment tradition include encyclopedists Pierre Bayle and Denis Diderot, English freethinkers like Anthony Collins and Matthew Tindal and German dissidents like Lorenz Schmidt or Theodor Ludwig Lau. But Christian dissidents also saw the need for free speech—an example is radical pietist Johann Konrad Dippel, alchemist, freethinker and a good candidate for a real-life Dr. Frankenstein. In 1706, he published *Ein Hirt und eine Heerde*, demanding full freedom of religion and expression as the only path to true faith. His writings were burned by the Danish government, and he was even sent to prison on the island of Bornholm for his outspokenness.¹

During the 1700s, freedom of expression became one of the key issues for this emerging international network, which

¹ See Mchangama and Stjernfelt (2016) p. 135ff.

eventually spread to large parts of Europe and to its American colonies. The ideas of the Enlightenment Age were at the heart of the most important political upheavals of the late 1700s, such as the American and French revolutions in 1776 and 1789, respectively. They both resulted in influential articulations of freedom of speech: the French Human Rights Declaration of August 1789 and the American Bill of Rights from 1791. The former pronounced: “The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law.”² The latter and more radical one, not containing the French restrictions regarding abuse, reads as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”³ This is the famous First Amendment. The emerging networks of the Enlightenment Age had managed to anchor freedom of expression in the constitutions of two large Western countries. These laws are fundamentally formulated in the negative, that is, in contrast to the absolutist and ecclesiastically dominated states of the time, these new states influenced by the Enlightenment *refrained* from preventing their citizens from expressing themselves freely. In his influential article “What is Enlightenment?,” German philosopher Immanuel Kant gave a more positive definition of the importance of freedom of expression in the Enlightenment movement.

In this article from 1784, Kant suggests that enlightenment is man’s “emerging from his self-imposed immaturity”⁴, that

²Our translation of “Déclaration des Droits de l’Homme et du Citoyen de 1789” Conseil Constitutionnel. Last visited 08-04-18: conseil-constitutionnel.fr/—Translations in the book are our own, except when citing already translated works.

³“First Amendment” *Legal Information Institute*.

⁴“Immaturity” translates German “Unmündigkeit”; literally referring to the nonage state of underage citizens without full autonomy and citizen rights.

enlightenment consists of the *public* use of reason, in which the individual as an intellectual being may express what he cannot do in his official capacity: “[...] the public use of one’s reason must be free at all times, and this alone can bring enlightenment to mankind. On the other hand, the private use of reason may frequently be narrowly restricted without especially hindering the progress of enlightenment. By ‘public use of one’s reason’, I mean that use which a man, as *scholar*, makes of it before the reading public.”⁵ Private use of reason refers not only to private life but especially to those appointments and offices that may impose restrictions upon the individual concerning what may be said—something less common today, but which we recognize from the professional confidentiality upheld by doctors and social workers, among others. Kant argues that, contrary to such restrictions on one’s office, when addressing a general public, anyone should be able to make public use of their faculty of reason in front of an audience—thus making such a freely addressed public sphere the framework of an enlightened society.

Historically, the “general public” Kant refers to had emerged from the learned networks of the Enlightenment Age as a self-organized communications forum with its own media, outside of and across the narrow public spheres maintained and controlled by churches and courts. In principle, this general public, beyond the control of governments and religions, now lends legitimacy to the new democratic states. The general public, as in the civil society and their networks, organizations and the media which thrive off them, enables enlightenment to take place. Mistaken ideas are corrected; arguments are developed and contradicted; new ideas and science are formed; viewpoints clash; criticism of and protests against policies are articulated; political agreement and disagreement can be formulated, and last but not least: informed elections can take place. It is well known that the realization of this ideal public sphere has shown its disadvantages, as mapped by disciplines such as mass psychology and cultural criticism: fads, seduction of the masses led by charismatic

⁵Kant (1784) pp. 484–85.

figures, the public impact of culture and pop industries, not to mention what we today refer to as echo chambers and filter bubbles. However, despite these built-in disadvantages, most theories of democracy agree that free debate is a fundamental condition for modern liberal democracies.

The Kantian argument for freedom of expression is closely linked to his idea of the autonomy of the individual: Human beings possess a particular dignity because they have the ability to take a step back and morally judge their own opinions and actions. This autonomy may only be expressed fully if political circumstances allow everyone to think and express themselves freely. In this sense, freedom of expression has a central place among the natural rights of humans—in the tradition of natural justice going back to the seventeenth century and all the way back to the Stoic view of humans as creatures of reason and political equality.⁶

At the beginning of the nineteenth century, Jeremy Bentham criticized this very idea of natural rights as “nonsense upon stilts”—to him the only legitimate rights were those guaranteed by a political authority. This led to an alternative, utilitarian justification of free speech that found its classic articulation in John Stuart Mill’s *On Liberty* from 1859. To him the *utility* of freedom of expression is the measuring stick and the central argument is that if a given society lacks freedom of expression, not all possible suggestions for the solution of a given problem will be expressed, and it will then not be possible to reach the best solution. Obviously, this basic reason for having freedom of expression is completely different from the one found in Kantian thought—but this should not block our understanding that the two reasons are oftentimes in agreement with each other, and that in most concrete cases, they work well together. As it is notoriously difficult to measure utility, at the end of the day the utilitarian argument is hardly less speculative than the Kantian one. Is it useful for a democratic society to accept anti-democratic statements from Nazis, Communists and Islamists? At first

⁶See the chapter on “Homo humanitatis” in Budtz Pedersen et al. (2018).

glance, probably not. But the counter-argument goes: Such acceptance might be useful after all, since the knowledge of anti-democratic views may help immunize the public against those very views. It is generally useful to have an uncensored public sphere that assures people that others mean what they say and are not forced to pretend or lie because of legislation. Unlike the Kantian definition, the utilitarian one emphasizes the pragmatic, social benefits of free expression. In a sense, this dimension complements a rights- and individual-based definition so important for this book, which has as its core topic the tech giants' transformation of the public sphere. However, the emphasis on benefit to the public must always be counterbalanced by freedom of expression as an individual right. In cases where the two definitions clash, in our opinion the latter should outweigh the former.

Both theories are compatible with the idea of freedom of expression as a means of testing authorities and established legislation—and ultimately breaking with them. Two of the many examples from modern times are the decline of slavery around 1800 and women's right to vote around 1900—both changes became possible through extensive public debate prior to their realization. In this sense, a free public sphere enables the articulation and breakthrough of new political views and movements in a democracy.

The abolition of censorship in most modern democratic states took place from the 18th to the twentieth centuries and has, as a tendency, gone hand in hand with a greater tolerance of divergent views and opinions—be they religious, political, ethnic, etc. As mentioned earlier, this does not mean that freedom of expression is absolute. In a certain way, the ongoing negotiation of its boundaries is a central theme in modern democratic politics, due to the idea of freedom of expression as a fundamental right, which should only be limited in cases where very convincing counter-arguments to do so are present. Threats, explicit incitement or planning of violence and false personal defamation belong in this category. More debated examples include “hate speech,” which is not a crime in the US, but which has been criminalized in many European countries in various ways. Other controversial examples are

criticism of religion and blasphemy, which are no longer prohibited in most modern democracies since the Enlightenment. This is not the case in many Muslim countries, which are working on enacting such laws internationally through the UN and by formally or informally pressuring public opinion in countries without such prohibitions.

In a certain sense, freedom of expression is counterintuitive—why not just silence abhorrent statements? The tolerance that freedom of expression implies is not easily achieved. It includes the duty, both of the government and of the individual, to tolerate views, statements, pictures and books which may be considered abominable and grotesque, but which also have a right to reach the public. As has so often been said, tolerating views one agrees with is the easy part. But the fact that also Nazis, Islamic extremists or Communists should have the right to express their views on reality and the future is something that many people need a certain degree of self-reflection to accept. Something similar applies in the case of “hate speech”, which is why some argue that it should be tolerated and not banned. “Hate speech” is a notoriously ill-defined category, and in the laws of many countries, it is only described by simply listing a number of somewhat randomly selected groups of people—labelled for example religious, ethnic, sexual, racial, etc. These groups cannot be criticized beyond a certain limit, but it is a difficult limit to define accurately—“insult”, “mockery”, “degradation”, etc. are imprecise terms often used. Compared to threats, which are usually covered in a separate clause, “hate speech” is less clearly defined. “Hate speech” legislation is not just a collective libel clause either. Most often, the definition of “hate speech” differs from that of libel in that it does not involve any assessment of the veracity of the statement (in the case of libel, charges may be dropped if the allegations are proven to be true, which is usually not the case with “hate speech”). Very often, “hate speech” legislation and verdicts end up applying also to the political criticism of the behavior of such groups. Such criticism is not necessarily untrue or politically illegitimate; most political activity naturally includes the discussion and changes of the general conditions of different

groups in society (rich, poor, public employees, entrepreneurs, refugees, retirees, etc.) who are therefore addressed in general terms. It is therefore difficult and maybe even impossible to maintain “hate speech” legislation and at the same time avoiding its misuse to silence legitimate political standpoints and even true statements about problems concerning different groups in society. As Professor at Law Nadine Strossen remarks, the introduction of “hate speech” legislation very often results in its use against those marshaling it, because different governments may use it to try to silence their opponents, once a “hate speech” law is accepted.

However, it is a defining feature of modern, liberal democracies that the very discussion *itself* of such boundaries must take place in full public view. Such discussion makes use of freedom of expression, which guarantees people the ability to *cite* examples of prohibited content or of what others would like to see prohibited. This is unlike what happens in dictatorships or absolutist states. Here, both the general boundaries of statements and their translation into individual decisions and decrees may be decided secretly in the government apparatus without legal trial or public insight or discussion. In this sense, the limits of freedom of expression are and should be the subject of ongoing, public and free debate.

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