Cato's Letter

A QUARTERLY MESSAGE ON LIBERTY

SUMMER 2018
VOLUME 16
NUMBER 3

Lessons from Europe on Free Speech

JACOB MCHANGAMA

Not long ago, the idea that free speech and democracy were in retreat would have been an outlandish notion. From 1980 to 2003, the number of countries with a free press grew from 51 to 78, according to Freedom House. And this growth went hand in hand with an unprecedented spread of democracy and human rights at the global level.

But 2004 marked the beginning of a constant decline. Since then, we're down from 41 to 31 percent of the world's countries with a free press. Only 13 percent of the world's 7.4 billion people enjoy free speech, while 45 percent live in countries where censorship is the norm. And, unfortunately, it's not only China, Venezuela, or Saudi Arabia driving this development—Europe, too, has become less tolerant of controversial speech.

JACOB MCHANGAMA is the executive director of Justitia, a Danish think tank, and host of the podcast "Clear and Present Danger." He spoke at the Cato Institute in April.

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Of course, outlying states such as Russia and Turkey have long been essentially authoritarian. But the rot has now spread through Hungary and Poland and, although less dramatically, even to the very heartland of democratic Europe, including Germany, the United Kingdom, and France.

What is driving this development? First, it's important to note that attitudes toward free speech differ across the Atlantic. According to a 2015 Pew Research poll, more than 90 percent of Americans and Europeans think it's very important to be able to criticize the government—so far, so good.

But when we get more specific on where people say "I support free speech, but . . .," Europeans and Americans part ways. Sixty-seven percent of Americans think it's important to protect statements that are offensive to minority groups, and 77 percent support the right to offend religious feelings. Among European countries, the median percentages are 47 and 46 percent, respectively. And Germany in particular stands out. Only 27 percent of Germans support the right to offend minority groups, and a mere 38 percent the right to offend religious feelings.

> "Only 27 percent of Germans support the right to offend minority groups."

These differences in attitudes translate into laws. European free speech protections are less robust than the First Amendment and therefore leave governments more leeway to trim free speech around the edges.

Where have European governments curtailed free speech? I think three areas have been the main drivers: national security, multiculturalism, and populism.

Let's start with national security. I don't think any degree of relativism can disguise the fact that Western Europe faces a real and serious threat from jihadist terrorism. But several European countries have taken measures that target far more than actual terrorism. "Sympathizing" with terror has become a crime in many countries.

In Great Britain, a woman was sentenced to one year in prison for downloading Al Qaeda's *Inspire* magazine on her phone, even though she wasn't involved in terrorism herself. In my home country, Denmark, a man was prosecuted for adding a smiley to a Facebook post sharing the news of a terrorist attack. In Spain, a rapper was recently sentenced to three and a half years in prison for lyrics supporting Basque terrorist groups and insulting the king. If you applied that standard here in the United States, most of the CDs that I listened to as a teenager

would be contraband—artists like N.W.A, Public Enemy, and Ice-T would have spent a long time behind bars.

The second driver of limits on free speech is "multiculturalism" or "nondiscrimination." The idea that social peace in a diverse society requires limits on free speech has long been Europe's dominant approach. But this approach transforms the idea of tolerance from an obligation to tolerate even repulsive ideas to a determination to use law to protect individuals and groups from offensive speech.

Since 2008, European Union law has required countries to criminalize hate speech. And hate-speech laws are often vigorously enforced. Of course, some who are targeted under these laws are bona fide Nazis, but hate speech and offense laws tend to undergo what I call "scope creep."

> "There's little reason to think that restricting freedom of expression fosters tolerance and social cohesion."

Take Sweden, where not only was an artist sent to jail for exhibiting posters with caricatures of prominent black Swedes, but the owner of the gallery that displayed them was also convicted, and the posters were ordered destroyed by a court. In the United Kingdom, an atheist was convicted for religious offense after leaving caricatures of the pope, Jesus, and Muhammad in a prayer room in an airport. And in France, a mayor was fined for advocating a boycott of Israel.

But there's little reason to think that restricting freedom of expression fosters tolerance and social cohesion across a Europe increasingly divided along ethnic and religious lines, and where anti-Semitism and other forms of intolerance are on the rise. Instead, I think such laws fuel feelings of division by legally protecting separate group identities from offense rather than fostering an identity rooted in common citizenship.

Of course, minorities may be offended by disparaging comments, but limiting free speech to protect them from racism and offense is a very dangerous game. At the time of the cartoon affair in my home country, Denmark—when a Danish newspaper published cartoons of the Prophet Muhammad that offended Muslims all over the world and caused Danish Muslims to call for the editor responsible to be convicted for blasphemy and hate speech—the center-right said it would never compromise on free speech.

Now, a decade later, we have a center-right government in Denmark that has adopted more restrictions on free speech than any other Danish government since

World War II. And guess what? Almost all of those restrictions on free speech are aimed, in practice, at Muslims. For instance, preachers can now face up to three years in prison if they expressly condone certain illegal acts, such as polygamy. So if you're an imam and you say, "Polygamy is part of Islam and that's a good thing," you could go to jail. In May, Denmark passed a ban on face-covering religious garments.

By supporting restrictions on speech, I think Danish Muslims have essentially paved the way for majoritarian laws aimed at themselves. And this is small fry compared to what would be in store if someone such as, say, the Dutch politician Geert Wilders came to power in the Netherlands. He wants to ban the Koran and the construction of mosques.

Ultimately, the only things that protect minorities in Europe are freedom of speech and freedom of religion. By eroding those standards, no one is more than a political majority away from being the target, rather than the beneficiary, of laws against hatred and offense.

The third issue driving the decline of free speech in Europe is populism. Brexit, the growing effect of fake news and social media on public opinion, Russian influence in democratic elections, the refugee and immigration crises, and, of course, the rise of so-called populist parties have left traditional European political elites fearing institutional breakdown and the rise of populist forces opposed to European integration, immigration, and liberal democratic values.

I very much see the recent German social network law as a response to populism and the spike of anti-immigration sentiments in Germany. This law requires online social networks such as Facebook and Twitter to remove illegal content within 24 hours or risk a fine of up to 50 million euros.

This means that Facebook now has a setup in Germany that would make the Medieval Inquisition envious: the company has 1,200 people working to review what must be a depressing mix of cat videos, duck-face selfies, and swastikas. A member of the German-Jewish community had his Facebook account deleted when he uploaded a video documenting an anti-Semitic rant aimed at a Jew. And Twitter has blocked the account of a satirical magazine that parodied a far-right politician.

The German law is so wide-ranging that this past year, when members of Vladimir Putin's United Russia party proposed their own social network bill in the Duma, Reporters Without Borders called it a "copy and paste" of the Ger-

man law. When dictatorships copy the policies of democracies, red lights should be flashing. But just recently I saw a poll that indicated only 5 percent of Germans disapprove of the law.

The next frontier in combating populism is, of course, that most elusive of concepts, "fake news." French President Emmanuel Macron has already proposed a law targeting false information. If we establish a precedent in Europe that governments get to determine what news or information is true or false, then we're beyond the slippery slope.

Measuring the effects of free speech is extremely complex, but it's something I've taken a stab at, along with political scientist Rasmus Fonnesbaek Andersen, in a yet-to-be-published report. Our analysis finds that most of the concerns regarding freedom of expression, such as its potential detrimental effect on social conflicts, by and large are not supported by the evidence. Only in the world's most closed societies do we see that the liberalization of speech risks exacerbating existing conflicts.

> "Ultimately, the only things that protect minorities in Europe are freedom of speech and freedom of religion."

For the rest of the world, we find that free speech protections decrease social conflict, similar to Pew's findings regarding such protections and religious conflict. We also find that stronger protections for freedom of expression are highly correlated with better human rights standards and lower corruption; and in democratic states, they are correlated with better conditions for democratically minded opposition parties. We also find a positive relationship between freedom of expression and economic innovation. These findings mean that we should worry about the direction Europe is heading when it comes to free speech.

Finally, what's the lesson for America? I'm not a U.S. citizen, but if I were, I would shudder to think of weakening the protection of free speech in these times of extreme political tribalism, identity politics, and polarization.

In a situation where the U.S. president has repeatedly threatened to change libel laws; where a plurality of Republicans favor shutting down news outlets for biased or inaccurate reporting; where college students demand ideological purity on campuses; where accusations of treason are flying left, right, and center; and where good faith, consistency, and principle in political discourse have become a rare commodity; it seems to me that the First Amendment is also the first line of defense of American freedom and democracy. ■

SCHOLAR PROFILE

James A. Dorn

JAMES A. DORN is Vice President for Monetary Studies, editor of the *Cato Journal*, and a senior fellow. He has edited more than a dozen books, including, most recently, *Monetary Alternatives: Rethinking Government Fiat Money* (2017) and *Monetary Policy in an Uncertain World* (forthcoming). He holds a PhD in economics from the University of Virginia.

How did you end up at Cato?

In 1981, Cato decided to move to Washington, D.C., to have greater visibility and a better chance to steer the policy debate in the direction of limited government, peace, and free enterprise. At that time, Ed Crane, who had read a draft of a paper I had written, "Trade Adjustment Assistance: A Case of Government Failure" (later published in the *Cato Journal*), asked me if I might be interested in joining Cato and working on the *CJ*. I was impressed with Ed's plans for Cato and thrilled to have the opportunity to edit the *CJ* and to help make it a leading journal of public policy analysis from a libertarian perspective.

You have edited the *Cato Journal* since 1982—what have been some of your favorite articles?

I have edited more than 100 issues of the *CJ*, so it's hard to single out my favorite articles. Several special issues of the *CJ*, however, stand out: *The Search for Stable Money* (1983), later turned into a book coedited with Anna J. Schwartz for the University of Chicago Press; *Economic Liberties and the Judiciary* (1984), which included a classic debate between Antonin Scalia and Richard Epstein and was later published by George Mason University Press, coedited with Henry Manne; *Economic Reform in China* (1980), revised and published by the University of Chicago Press, coedited with Wang Xi; and *From Plan to Market: The Post-Soviet Challenge* (1991), later translated into Russian, coedited with Larisa Piyasheva, and published by Catallaxy in Moscow.

This past year marked your 35th Annual Monetary Conference—what are the most striking trends you've witnessed over time?

There is still no monetary rule guiding Federal Reserve Bank policy. Members of Congress have called for a Centennial Monetary Commission to evaluate Fed policy and consider alternatives to the current discretionary government fiat money regime. The debate over rules vs. discretion in the conduct of monetary policy continues, as does the debate over central vs. free banking. It seems that in monetary policy the same fallacies reappear, such as the idea that the Fed can exploit a presumed trade-off between unemployment and inflation (the Phillips curve). It requires constant effort to expose these fallacies and to make the case for monetary rules and freedom.

What have you learned from your studies of China's economic liberalization?

The major lesson is that China's extraordinary development since 1978 has stemmed largely from the growth of the nonstate sector as individuals were allowed to experiment with market alternatives to central planning and control. However, the Chinese Communist Party has retained a monopoly on power, and people continue to suffer from the lack of a free market in ideas and an unjust legal system that fails to protect persons and property. What China needs is not market socialism but what I have called "market Taoism"—that is, a system of just laws that limits government power and allows the spontaneous order of the market and civil society to fully emerge. ■

Arming Students with the Constitution

Cato's pocket Constitutions are a cornerstone of the Institute's outreach—over six million have been distributed to date. And thanks to the generosity of Cato's Sponsors, including those who have created planned gifts for our educational programs, we are able to donate copies to students across the country.

In some cases, our pocket Constitutions—which also contain the Declaration of Independence, the Bill of Rights and the subsequent amendments, and a preface on the meaning of these documents by Cato's Roger Pilon—are students' first introduction to these vitally important writings. Like so many generations of Americans before them, these young people are profoundly affected by learning about the timeless principles of freedom and equality that animated the Founding.

Here are just a few thank-you notes we've received recently, from students at Slidell High School in Louisiana:

> "[Our teacher] gave each of us one at the beginning of the school year and we've used them for class ever since. I would like to thank you for donating them. **I'm not quite sure what I'd do without mine**."

> "Thank you for providing a way for us to learn more about our nation's great principles. . . . I have used my mini Constitution so much—this book has helped me have **a better understanding of what our government is doing right and wrong** according to the different amendments and the Constitution. . . . I have been able to learn numerous things that I had never known before about the Declaration of Independence, Constitution and the Bill of Rights."

> "I did not have a very good understanding of the Declaration of Independence and the Constitution . . . but thanks to you I was able to actually learn and understand more. I really do appreciate the generous donations because **now I have a little Constitution with me that I can use and refer to** very quickly if I ever need to."

We thank our Sponsors for helping us empower these students with the knowledge of their rights and liberties. Getting the Constitution into the hands of the next generation is an important step in our shared battle to secure a future of freedom, prosperity, and limited government. ■

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