

# The War on Free Expression

**IN SEPTEMBER 2005**, the Danish newspaper *Jyllands-Posten* printed a dozen cartoons—prompted by recent examples of self-censorship by the European media—related to Islam, one of which depicted the Muslim prophet Muhammad with a bomb wrapped in his turban. Their publication quickly spiraled into a violent international uproar, as Muslims around the world erupted in protest and the paper’s culture editor was branded by some as “the Danish Satan.” In *The Tyranny of Silence*, a book published by the Cato Institute in November, Flemming Rose grapples with the difficult issues surrounding his decision to run those cartoons. At Cato’s 27th Annual Benefactor Summit in Naples, Florida, Rose spoke about the lessons he learned in the process of reconciling the tension between respect for cultural diversity and the protection of democratic freedom.

**W**hen I was writing my book back in 2009, I interviewed Salman Rushdie and he said something very important to me. I’d been having difficulty coming to terms with the fact that others were telling my story without, I felt, knowing who I was. Rushdie observed that from childhood, we use storytelling as a way of defining and understanding ourselves. It’s a phenomenon that derives from a language instinct that is universal and innate in human nature. It’s in fact one of the things that makes us different from other creatures.

Any attempt to restrict that impulse and put limits on speech therefore isn’t just a violation of our political rights. It’s an act of violence against human nature, an existential assault that turns people into something

they are not. What differentiates open and closed societies is the right to tell and retell our own and other people’s stories. In a democracy, no one can claim that exclusive right, be it an oppressive state or a minority.

Rushdie told me that the conflict over the right to tell a certain story was at the center of his own controversy. He said: “This goes back to the question of what sort of society we want. If you wish to live in an open society, it follows that people will talk about things in different ways, and some of them will cause offense and anger. From the moment you begin to talk about limiting and controlling certain expressions, you step into a world where freedom no longer reigns, and from that moment on, you are only discussing what level of un-freedom you want to accept. You have already ac-

cepted the principle of not being free.”

Rushdie’s words came just at the right time for me. They opened my eyes and helped me define my own project. Even though the Muhammad cartoons were conceived in a Danish and European context, the debate is global. It touches on issues fundamental to any kind of society: freedom of speech and of religion, tolerance and intolerance, immigration and integration, Islam and Europe, majorities and minorities, and globalization, to name but a few. And what I realized is that we are all entitled to tell whatever story we wish.

That insight is very fundamental. It goes to the heart of the relationship between the person who speaks and those who hear—between individuals and communities—and to what extent individuals, groups, and institutions have a right to determine speech limits. In the U.S. constitutional system, there is more focus on the speaker, on the individual. You have the right to autonomy.

In much of the rest of the world, including the European Union, it’s the other way around. The community—those on the receiving end—have broad powers to determine what an individual is allowed to say. And this difference in approach has had far-reaching consequences for the concept of tolerance. Originally, tolerance implied one’s ability to bear what one couldn’t stand. Freedom of speech meant freedom for the speech we hate—that’s how Justice Oliver Wendell Holmes put it. But because the receiver of speech has so much discretion in many parts of the world, tolerance has been turned on its head. That’s a very dangerous development.

There are two factors that are driving the challenges of free speech in a globalized world. The first is migration: the fact that people are moving across borders in numbers never before seen in human history.

Every society is getting more and more diverse in terms of culture, ethnicity, and religion, which means that it's a lot easier to get offended by what people around you say because we are increasingly exposed to different ways of living. How do we negotiate the right to freedom of expression and freedom of speech in this increasingly multicultural world?

The other factor that is driving this process is the digitization of communication technologies. Now when something is being published in one place, it is immediately published everywhere. And when information travels, context is lost. This creates a huge space for misunderstanding, not to mention outright manipulation. That is something I experienced personally during the cartoon crisis.

But migration and digitization also means that all of us are being impacted by what's going on outside our own country. You have competing approaches to free speech that are beginning to clash. The disappearance of borders and the spread of technology means that there is a need for universal standards no matter where you live. To a certain extent this goes on within the United Nations. But often things seem to be moving in the opposite direction. More and more countries are passing laws that fragment and undermine any universal standard, a point stressed by Miklós Haraszti, the former representative on freedom of the media for the Organization for Security and Co-operation in Europe. Haraszti writes that "the very notion of an international standard for limits on free speech become obsolete if the fragmentation into separate content-oriented, historically based, culturally defined, politically shaped, country-specific approaches to speech restriction becomes accepted."

In other words, no international advocacy for free speech is possible without a shared assumption that only incitement of actual crimes should be illegal. Otherwise

offensive speech should be countered by speech, not courts. Unfortunately, this fragmentation of the international standard, to a certain extent, started in Europe with the passing of Holocaust denial laws. And one of the big surprises I experienced writing my book was to find out that the vast majority of these laws were in fact passed *after* the fall of the Berlin Wall. This indicated to me that they were not passed right after the Holo-



“We are all entitled to tell whatever story we wish.”

caust to prevent incitement to violence, but for other reasons. It's important to note that the horror of the Holocaust serves as the founding narrative legitimizing European integration, and it is the key motivation for hate-speech laws on the continent.

The Council of Europe Commissioner for Human Rights has called for all 47 member states to pass laws against Holocaust denial, based on a widely accepted interpretation of what led to the Holocaust. It says that anti-Semitic hate speech was the decisive trigger—that evil words beget evil deeds—and that if only the Weimar government had clamped down on verbal persecution of the Jews in the

years prior to Hitler's rise to power, then the Holocaust may never have happened.

In my research, I looked into what actually happened in the Weimar Republic and found that, contrary to what most people think, Germany did have hate-speech laws that were applied quite frequently. The assertion that Nazi propaganda played a significant role in mobilizing anti-Jewish sentiment is irrefutable. But to claim that the Holocaust could have been prevented if only anti-Semitic speech had been banned has little basis in reality. Leading Nazis, including Joseph Goebbels, Theodor Fritsch, and Julius Streicher, were all prosecuted for anti-Semitic speech. And rather than deterring them, the many court cases served as effective public-relations machinery for the Nazis, affording them a level of attention that they never would have received in a climate of a free and open debate.

In the decade from 1923 to 1933, the Nazi propaganda magazine *Der Stürmer*—of which Streicher was the executive publisher—was confiscated or had its editors taken to court no fewer than 36 times. The more charges Streicher faced, the more the admiration of his supporters grew. In fact, the courts became an important platform for Streicher's campaign against the Jews. Alan Borovoy, general counsel of the Canadian Civil Liberties Foundation, points out that cases were regularly brought against individuals on account of anti-Semitic speech in the years leading up to Hitler's takeover of power in 1933. "Remarkably, pre-Hitler Germany had laws very much like the Canadian anti-hate law," he writes. "Moreover, those laws were enforced with some vigour. During the 15 years before Hitler came to power, there were more than 200 prosecutions based on anti-Semitic speech... As subsequent history so painfully testifies, this type of legislation proved ineffectual on the one occasion when there was a real argument for it."

The same can be said about Yugoslavia. Before the 1990s, Yugoslavia had rather tough laws criminalizing incitement to national, racial, or religious hate. In fact, people were being put in jail for telling an ethnic joke. Obviously, these laws did little to help prevent the ethnic violence that we saw in the wars following the disintegration of Yugoslavia.

Nevertheless, the dominant view in Europe is that too much freedom of expression will destroy the peace. In that sense, the EU is driven by a vision of what I call a benign utopia, one that aims to eliminate hate and create an insult-free public space. This became particularly evident in 2012, when it was awarded the Nobel Peace Prize. In receiving the prize, the leaders of the EU made no reference to the close relationship between freedom and peace. Instead they focused on the EU's efforts to avoid division and create a continent without conflict.

I believe that Europe would do itself a great service if the narrative about the Holocaust was integrated into a broader anti-totalitarian framework. Hate speech wasn't the trigger for mass murder during World War II. It was the clash between two totalitarian powers in the center of Europe—the Nazi regime and the Soviet regime—that was the primary cause. And if

that's the case, it means that the destruction of Jews in Europe was closely connected to the destruction of freedom. Moving forward, it would mean that the struggle against evil doesn't require less freedom, but

“Freedom and tolerance are, to me, two sides of the same coin, and both are under pressure.”

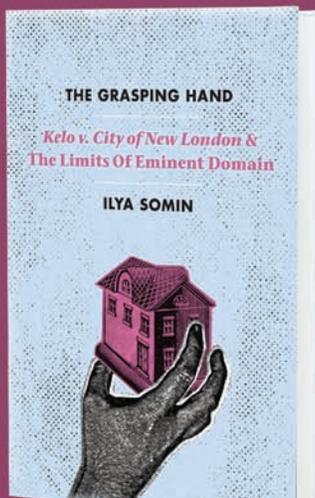
in fact, quite the contrary.

It seems there are two available responses to threats against free speech. One option is, basically, “If you accept my taboos, I'll accept yours.” If one group wants protection against insult, then all groups should be so protected. If denying the Holocaust or the crimes of communism is against the law, then publishing cartoons depicting the Muslim prophet should also be forbidden. But that option can quickly spiral out of control: before we know it, hardly anything may be said.

The second option is to say that, in a democracy, there is no “right not to be offended.” Since we are all different, the challenge is then to formulate minimum

constraints on freedom of speech that will allow us to coexist in peace. A society comprising many different cultures should have greater freedom of expression than a society that is significantly more homogenous. That premise seems obvious to me, yet the opposite conviction is widely held, and that is where the tyranny of silence lurks. At present, the tendency in Europe is to deal with increasing diversity by constraining freedom of speech, whereas the United States maintains a long tradition of leading off in the other direction. And it appears that the United States will increasingly stand alone with its tradition of upholding near-absolute freedom of expression.

My personal view is that the Americans are right. Freedom and tolerance are, to me, two sides of the same coin, and both are under pressure. As noted earlier, the world is undergoing rapid change. Taking offense has never been easier, or indeed more popular: many have developed sensitivity so exquisite that it has become excessive. It almost tempts one to ask Europe's welfare states to spend some money, not on “sensitivity training”—learning what not to say—but on insensitivity training: learning how to tolerate. For if freedom and tolerance are to have a chance of surviving in the new world, we all need to develop thicker skin. ■



## New Book from the Cato Institute

“Somin’s thorough rebuttal of the constitutional reasoning and philosophical implications of the Supreme Court’s *Kelo* decision demonstrates why that ruling was a constructive disaster: It was so dreadful it has provoked robust defenses of the role of private property in sustaining Americans’ liberty.”

—GEORGE F. WILL

CATO  
INSTITUTE

A CATO INSTITUTE BOOK PUBLISHED BY  
THE UNIVERSITY OF CHICAGO PRESS  
AVAILABLE JUNE 5TH.