

# FREEDOM OF EXPRESSION

## A normative justification of the legal protection of freedom of expression

In this paper I shall give a normative justification of the legal protection of freedom of expression; this is done by an analysis of presuppositions for three modern institutions: democracy, truth seeking, and individual autonomy. Moreover, I shall discuss a main ambiguity of the term "offense", namely, the difference between offense in terms of negative feelings and offense in terms of indoctrination and brainwashing.

### Preliminary Remarks

In the history of the Western World there are at least three classic and decisive legal cases concerning *freedom of opinion*, or, better, *freedom of expression*. For, in liberal constitutional States, what matters legally are *expressions*, not *opinions*. To make it explicit: consider, as a contrast, an orthodox version of Islam, according to which a Muslim is free to hold the opinion that Allah does not exist, but not to express this opinion in public; in some Muslim countries, one risks death penalty for doing so.

The first of these legal cases is the one against Socrates in Athens, probably in 399 BC. According to the sources, Socrates was condemned mainly for his speeches, not for his deeds.

The second case is the trial against Jesus of Nazareth, according to the sources in the year 33 after his birth. Here, too, the sources tell us that Jesus, at crucial points, was condemned for his words, not for his deeds. "Are you the King of the Jews?" (John 18:33); "Are you the Messiah?" (Luke 22: 67); "Are you the Son of God?" (ibid. 70). Pilate said, "I find no basis for a charge against him" (John 19: 6), and above the cross he had the inscription "Jesus of Nazareth, king of the Jews" (ibid. 19).

The third case is the trial against Galileo Galilei on June 22, 1633. This time, the new scientific theories were at the heart of the dispute. In a sense, it is of less importance whether Galileo was right in every detail. What is decisive is the principle of free research. Free

research has to face open discussion and contradicting views; therefore, it presupposes freedom of expression.

The Thirty Years' War, raging at the time, initiated a differentiation process in the relationship between religion and politics, which gradually made it possible to combine a common juridical-political system with a variety of religious views. Similarly, the process against Galileo was a harbinger of a differentiation process between theological and political powers and a public space for free exchange of opinions.

The philosophy of the Enlightenment supported the claim for free scientific research, against ignorance and outdated convictions. Freedom of expression in the public sphere expanded during the course of the 18th century. Initially concerned with scientific and philosophical questions, it gradually came to include political questions in the sense that it entailed the possibility to discuss all topics of public interest in the public sphere informed by a notion of free and enlightened exchange of opinions.

### **Freedom of expression as a necessary condition**

This conviction, rooted in the Enlightenment, refers to a modern notion of freedom of expression as a necessary condition for a free and open exchange of views on questions of general interest, led by enlightened persons in public space.

Here we have discussions of *different kinds*, with different demands when it comes to the competence of the participants and with different expectations with regard to a possible outcome: (i) Scientific debates generally presuppose specific competences among the participants, and, at the same time, combined with relevant research these debates may lead to well-founded answers, in terms of better knowledge. (ii) Epistemological and ethical debates may contribute to clarification, give us a more precise understanding, and see to it that counter-arguments are taken seriously. (iii) The same applies to discussions on religious and cultural issues; but here the expectation that this is likely to lead to universally valid answers is more modest. (iv) Political and juridical discussions may raise the expectation that discursive clarification and explanation may lead to fruitful learning processes and improve the quality of the debate. This would hopefully make upcoming political and legal decisions as well-founded and reliable as possible.

Against this background, we could tentatively formulate a *normative notion of freedom of expression*, a notion that is *historically situated* and *theoretically founded*.

In so doing we start from an updated interpretation of freedom of expression, with its origin in the Enlightenment.

In accordance with a generally accepted view, we shall emphasize three elements of such a normative notion of freedom of expression: (A) *personal autonomy, through the free formation of opinions by the individual*, (B) *joint search for a better understanding of public questions*, and (C) *deliberative democracy*.

In a condensed formulation, we may speak of *autonomous person, search for truth* and *deliberative democracy*. However, these terms are ambiguous and need to be explicated. Though, before we start, it is worthwhile to emphasize that these three terms are interrelated and thus constitute a whole.

#### **(A) Autonomous person (*mündige Person*)**

When we here speak of personal autonomy, we do not operate with an idealized picture of autonomous persons, nor with an idealized model of individuals endowed with innate, pre-political rights. What we have in mind is a rather sober idea of persons who are sufficiently reasonable, and fallible at the same time.

What we have in mind are persons who to some extent are capable to participate in public disputes. Hence, not all human beings are persons in this sense. Toddlers, for example, are not. Others have to speak for them. Moreover, those who are capable to act as mature (*mündige*) persons in this sense, do not act in this way in all settings. We all hold different roles, between which we alternate. We do not always act as serious debaters, discussing things of public interest in public arenas. Often we deal with quite different issues. Moreover, often we express ourselves as private persons, or we talk about publicly irrelevant matters, or we express ourselves in a way that has nothing to do with in serious discussions. That is why, in this paper, we focus on persons who are able to participate in public disputes, when they do so.

Major persons, who to some extent are discursively competent, can be described as reasonable. But they are also *fallible*. Precisely because such persons are reasonable as well as fallible, it is vital to have an open and enlightened exchange of ideas and opinions, based on freedom of expression: We are fallible, we see "in part" (as it were), and therefore we need to expose ourselves to counter-arguments and alternative perspectives.

“There is the greatest difference between presuming an opinion to be true because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.” (John Stuart Mill, *On Liberty*, Chapter II, Of the Liberty of Thought and Discussion)

It is decisive that freedom of expression is indispensable for such persons who are fallible as well as reasonable. This is an important argument in the justification of freedom of expression.

### **(B) Search for truth**

When we here speak of freedom of expression we rely on this kind of argumentation (as given by John Stuart Mills): If we want to know whether a position we consider to be well founded, really is well founded, we need to know the counter-arguments. Being reasonable and fallible persons, who seek to find our way through complicated matters, we have no other way than a free and open exchange of opinions, whereby different views are tried out, the one against the other, and where relevant research results are discussed critically. Hence, freedom of expression is not merely a preference, a value along with other values (at the same level, as it were), but a prerequisite without which we cannot reach reasonable views. For us, citizens of modern societies, who want to be able to distinguish between more or less tenable and untenable views on complicated issues, freedom of expression is an indispensable condition.

The strength of this argument is double-sided. On the one hand, it is rooted in the negative self-reference, the self-referential inconsistency that occurs when we try to deny the necessity of knowing relevant counter-arguments to our truth-claims; and on the other hand, it is located in the fact that a fallible search for truth represents a basic feature of modern science-based societies.

Since we are fallible, in order to have confidence in our own views, that is, in what we by now hold to be the best founded view, we need to listen to the other persons and to be open for their arguments and modes of reflection. In this sense, we need to seek better arguments and to stick to the best arguments.

However, for this to happen, all participants have to be able to express themselves freely. Freedom of expression is a precondition – a necessary but not a sufficient condition. Other conditions are also to be met. For example, serious discussions presuppose that the

participants recognize each other as reasonable and fallible persons. Hence, we have a moral norm: It is a prerequisite for such discussions that the participants recognize each other as equal (in this sense, of being sufficiently reasonable, and fallible).

This is the decisive point: To promote a joint search for better points of view, on issues of public importance, freedom of expression is essential. To undermine this freedom is a violation against this kind of argumentative search. This is an important element in the justification of freedom of expression in modern science-based societies that are dependent on such fallible search for better arguments and more well-founded views.

### **(C) Deliberative democracy**

When we speak of deliberative democracy, what we have in mind is a modern representative democracy, based on free elections and majority rule, but also on an institutional system and a political culture whereby issues of public interest are discussed freely and fairly in the public sphere. All well-functioning democracies have compulsory school education. That is not accidental. Legal adults, as citizens (*mündige Staatsbürger*) in modern democracies, ought to be adequately educated and enlightened. These are institution-inherent norms.

In other words, within the notion of a deliberative democracy, the notion of reasonable and fallible persons and the notion of a joint search for better points of view on public questions are already included. Thus, the three notions form a whole: reasonable-fallible persons in a joint search, by free and enlightened discussions and opinion formation, to obtain reasonable common views on issues that are politically relevant. Hence, freedom of expression is indispensable. If we want to have such a democracy, we have to insist on freedom of expression. Freedom of expression is a necessary (but not a sufficient) condition of democracy, and hence freedom of expression cannot be an issue that is open for voting in a democracy. Freedom of expression is a normative principle of a constitutional and constitutive nature. It sets the limits to what can be decided by voting in a modern democracy consisting of fallible citizens who care for reasonable answers to public questions.

The crucial point is thus: freedom of expression is essential for such a political system. A violation of freedom of expression is a violation of a discussion-based democracy. This is a crucial argument for the justification of freedom of expression in modern societies with deliberative democracy.

These three interwoven notions – autonomous personhood, joint search for a better

understanding of public affairs, and deliberative democracy – taken together, represent a strong justification for the legal protection of freedom of expression.

Here, the main concern is that of discursive utterances in the public sphere about public affairs. These are the utterances that are primarily protected by these arguments. From these paradigmatic cases there are gradual transitions to other types of utterances, themes and arenas. To explore these gradual transitions is in itself a main task of enlightened public discussions and legal testing.

For clarification, it may be useful to outline the contrast, i.e. to name those arenas, issues and utterances that do not primarily fall under the paradigmatic cases that require strong legal protection in our society:

*Private sphere.* What you utter to yourself in the shower, or to your cohabitant during a meal, is uttered in private space, not in public. Even if the topic could be of public interest and the form of the utterances is communicative and argumentative, these utterances would not belong to what is primarily in need of a legal protection of the freedom of expression in our society. (In totalitarian societies, that would be different.) Such utterances should be legally protected solely because they are uttered in private space, but they have little to do with the paradigmatic cases outlined above.

*Private issues.* If someone carries a sign in a public street with the inscription "I love my dog", she expresses herself in the public space, but to a purely private topic, without any public interest. Such expressions, too, deserve an appropriate legal protection. However, considering our notion of freedom of expression, they do not belong to the kind of utterances that need a special legal protection.

*Strategic utterances.* Primarily, utterances of a deliberative and argumentative nature hold a special legal protection according to the normative notion of freedom of expression presented here. Strategic statements that aim to manipulate or indoctrinate other persons do not enjoy any privileged protection according to this notion. However, argumentative and strategic utterances cannot always be sharply separated. There are multiple and ambiguous overlaps. Hence, in such cases, it is often difficult to decide where to draw the line for a legal protection of the freedom of expression.

## Limitations

### (I) Institutions

To begin with, we recall some general points about social institutions. In ideal-type sociological terms, we may say the following: The normative notion of freedom of expression outlined in this paper is primarily located in the public sphere and in civil society. This notion of freedom of expression is not primarily located in market interactions, within economic institutions. Why? Because it is difficult to see how events on the market and in economic life could be said to get their normative justification essentially by the three normative notions that constitute the justification for freedom of expression. Economic actions are primarily justified by welfare arguments, in a utilitarian sense, with regard to economic benefits. We could also say that actions and utterances on the market gain legitimacy by being functionally necessary or useful to the economic institution, a subordinate argument being that in modern societies we cannot cope without such an institution. (Though a well-functioning market presupposes some legal and ethical principles – as emphasized already by Adam Smith.) Anyhow, economic actions and utterances do not derive their justification from the justification of deliberative democratic actions and utterances, founded in a fallible joint search for truth, and efforts to improve personal autonomy. However, in professional life, private and public, the legal protection of "whistleblowers" is an important issue.

### (II) Types of utterances and notions

This institution-based, normative notion of freedom of expression is primarily intended not only to benefit certain institutions (or forums, arenas – as pointed out in the former section), but also certain types of utterances – that is, utterances concerning public issues in the public sphere.

Of course, utterances that are protected under the principle of freedom of expression could at the outset be defined more widely and vaguely. However, *in practice*, we would nevertheless have to *differentiate* between different utterances with regard to how much legal protection they deserve. Therefore, in my opinion, it is better to start from a more precise and well-founded notion of freedom of expression, which can then be followed up by public discussions and legal considerations concerning the degree of legal tolerance, and legal protection, that the various other utterances deserve, in their different contexts and institutions.

There is, for instance (as already indicated) an important analytical distinction between communication and manipulation, between discursive and communicative utterances on the one hand, and strategic and indoctrinating utterances on the other. In the empirical world, these distinctions are gradual, but still politically important: manipulative utterances, trying to influence the decisions of fellow citizens, trying to change their personal preferences and identity-supporting narratives - that is, trying to undermine their personal autonomy (and their enlightened search for truth) - such manipulative utterances and actions are highly problematic and potentially detrimental for a genuine freedom of expression. Such strategic activities contradict the very principle that constitutes the normative justification of freedom of expression as it is defined here - that is, they would undermine deliberative democracy, open and enlightened search for truth, and personal autonomy through open and enlightened will-formation.

Moreover, analytically and paradigmatically there is also a difference between manipulation and public campaigns, e.g. health campaigns (as against smoking or in favor of healthy food), to the extent that the latter (public campaigns) are explicit and open, and the former (manipulations) are implicitly and covertly designed in order to influence and change other people without their awareness of what is going on. Then, of course, there are intermediate cases, for example, when public authorities want to improve the health of certain groups in the population (so to speak, therapeutically) by the use of hidden psychological means.

There is also an analytical and paradigmatic difference between manipulation and education, as well as between religious or political indoctrination on the one hand and public and enlightened education on the other, to the extent the latter aims at furthering the maturity and autonomy of other people, especially of children, whereas the former, in the worst case, aims at imposing a lifelong immaturity for other people.

Surely, in the empirical world there are all sorts of intermediate cases; but that does not undermine the analytical significance of these paradigmatic differences.

### **(III) Main limits to freedom of expression**

As typical limitations of the legal right of freedom of expression we have the question of where and how we evaluate this fundamental right (a) in the face of the danger of political



chaos or fatal instability and (b) with respect to various cases of offense (insult, and harm).

### **(A) Political chaos**

A positive answer to the first question – limits set to the freedom of expression due to a danger of political chaos or fatal instability – should in any case be well-founded and well justified, as far as possible, with regard to the question: What can society tolerate here and now? Which, and how many provocative statements?

Let us consider a few examples:

The official Chinese response to the utterances of Liu Xiaobo has been heavily criticized. Suppression of freedom of expression by an authoritarian regime! Yes certainly. But how could we possibly reconstruct arguments for these drastic measures? A guess: The political leaders were afraid of social instability, if that kind of criticism goes on. Generally speaking, the political elite in China is afraid of losing control. Or, perhaps it is not just about their power, but about the stability of the regime. (Consider the fate of the Soviet Union, or bitter experiences from Chinese history.) Then the question: nervousness for the stability of this regime, or for the State, the Nation? If that were the case, would then the party, seen from the inside, have sufficient grounds to limit the freedom of expression of a fellow-citizen, with such drastic measures?

Consider Julian Assange (or Edward Snowden, or Mordechai Vanunu): Through Wikileaks, Julian Assange (2010) published numerous statements from the North American Secret Service. Washington reacted sharply. According to Hillary Clinton, Assange has not only done harm to North American security, but also to the international community. Washington demanded his extradition, to bring Assange before the court in the US. It is as in warfare: First comes the national security and then (if possible) international control. The freedom of expression of fellow citizens comes second.

In these cases, it is a problem that it is often unclear which consequences a particular utterance will have. The attempt to predict politically fatal effects is problematic, already because human actions and their consequences are never fully predictable. We are thus entering an ambiguous field, in which we are faced with questions such as the following: If an Israeli in Hebron shows off a poster on which the prophet is portrayed as a pig - to what extent can we then know whether this utterance would lead to an escalation of the conflict and eventually to an intensified warfare in the Middle East?

When Western politicians conceived the Mohammed cartoons as difficult and frustrating, it was perhaps not only because of the emotional insults felt by many Muslims, but also (or perhaps primarily) for fear of increasing conflicts and political instability.

In short, in modern "risk societies", almost everything, at least potentially, is associated with risks. If we ask: "What utterances, verbal and non-verbal, could and should be prohibited as a protection against possible political chaos and instability, but at the expense of freedom of expression?" - we do indeed ask a notoriously difficult question.

However, all in all, this means (I would say) that we should normally proceed from the assumption of a robust stability, in our society, and not, due to negative, but uncertain eventualities, prematurely give up the right to freedom of expression.

## **(B) Offense**

Utterances that offend someone else may count as cases where freedom of expression can be legally limited. This applies to serious cases where someone is severely offended – insulted, injured – by certain utterances. However, in modern liberal democracies, this applies only to living persons, not to the dead, not to theories, not to traditions and cultures, not to confessions or religions.<sup>1</sup> It applies to living persons, as a defense of their self-feeling, identity and autonomy.<sup>2</sup>

Nevertheless, a hard and persistent criticism of the cultural background of certain groups of living people may seriously offend the group members and do harm to them as autonomous persons. However, in cases of offense and insult, what matters is not only *what* is asserted, but also how it is uttered. The *how* is important. One and the same assertion can be

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<sup>1</sup> Cf Norwegian Penal Law (*Straffelova*) § 135a (which is subordinate to the Constitution): «*Den som forsettlig eller grovt uaktsomt offentlig setter frem en diskriminerende eller hatefull ytring, straffes med bøter eller fengsel inntil 3 år. Likt med en offentlig fremsatt ytring, jf. § 7 nr. 2, regnes en ytring når den er satt frem slik at den er egnet til å nå et større antall personer. Som ytring regnes også bruk av symboler. Medvirkning straffes på samme måte. Med diskriminerende eller hatefull ytring menes det å true eller forhåne **noen**, eller fremme hat, forfølgelse eller ringeakt overfor **noen** på grunn av **deres** (a) hudfarge eller nasjonale eller etniske opprinnelse, (b) **religion eller livssyn**, eller (c) homofile legning, leveform eller orientering, (d) nedsatte funksjonsevne.*» (Our usage of bold letters.) Worth noticing: possible restrictions are related to persons ("noen", somebody in Norwegian), not to religious and ideological theses or convictions. In short, according to this law, there are no restrictions on our critique of religion.

<sup>2</sup> Cannot dead persons be offended? Yes, in a sense. Their reputation can be offended, by critical utterances. But the persons themselves? The Prophet is said to be offended by blasphemous utterance. What about Ramses the Second? Can Ramses the Second be offended by hate speech? Hardly. What is the difference? My suggestion: Nobody believes in Ramses the Second; no living person cares, with devotion, for the reputation of Ramses the Second. So the difference is one among living persons; it is not located in the dead ones, themselves. (That kind of concern, for the reputation of dead persons among living persons, is addressed in next paragraph, on "cultural background" and personal autonomy among group members.) In short, when a person is dead, the dead person, her- or himself, cannot be offended, not anymore. Not even the Prophet. Though his reputation can be discussed, criticized or praised, among living people, as long as somebody cares, one way or the other.

uttered either aggressively or with respect and sympathy. The *place* is also important; moreover, it is reasonable to distinguish between utterances for which we are accidentally and involuntarily exposed, as in advertising and propaganda, and those which we seek voluntarily and with a personal effort, for example in books and magazines. The Mohammed cartoons in Jyllandsposten belong to the latter.

Recently, new technologies and social media have revolutionized the whole field. More people take part, freely, and without the filter of an editor. Hence, the atmosphere has often become more implacable and crude, with frequent insults and offenses. However, there is a problem here, since the claim of being offended by certain utterances may function as a power strategy, as a triumph card, that kills the debate. Consider the proposal in the United Nations, raised by States with a Muslim rule, to ban criticism of a religion, because this criticism is said to offend the Prophet, the Koran, and the feelings of the Muslims.

The claim that certain utterances offend other people is an ambiguous one. Hence, it is vital to care for a precise language. Here we shall consider two interpretations, two notions that ought to be kept apart: (i) Offense by utterances that are provocative and cause bad feelings; anger, grief, rage. (ii) Offense by utterances that break down the autonomy of another person, through brainwashing, indoctrination, manipulation, harassment.

### **Offense (i)**

For the former notion of offense, emotions and feelings are decisive. For example, consider the following quotation from the former Prime Minister of Norway, Jens Stoltenberg, in response to the violence in the Muslim world after the publication of the Mohammed cartoons in Jyllandsposten in autumn 2005: "It is important that we respect the feelings (*følelser*) of other people."

However, feelings (*følelser*) are ambiguous phenomena. There are e.g. distinctions to be drawn between sensations, feelings, and moods, where the latter two are co-determined in different ways by social and cultural factors. In short, sensations are "given", physically, physiologically, or otherwise, whereas feelings and moods are dependent on cultures and traditions, or religious and other convictions that are not shared by everyone. Moreover, some of our feelings and moods may depend on our own understanding of a particular situation, or on our own beliefs about controversial religious and metaphysical questions. In other words, in some cases (but not in all), we are co-responsible for our own feelings and moods – either because we should have avoided certain situations and not taken part in certain activities, or

because we should have behaved in a more mature and enlightened manner, as to our own attitudes and convictions.

To put it plainly: those who feel offended and injured by utterances from other persons should not always have a veto right in such cases. In short, we should not always have respect for the feelings of other people.

### **Offense (ii)**

Offense here is that of the degradation and humiliation of other persons by breaking down their personal autonomy, either by explicit harassment and disregard, or by manipulation and indoctrination. As for the latter, consider advertising on the market and strategic communication in politics, as well as religious preaches, aimed at a specific personal formation of other human beings, perhaps particularly of children. Freedom of religion - yes, for educators, for preachers, but what about those who are "educated" in this way? What about the children? They are often brainwashed without the possibility of independent reflection and personal autonomy at a later stage. This is an important point which is often overlooked in the ongoing discussion on freedom of expression and freedom of religion.

Here are two statements by Ludvig Holberg (quotes from *Moralske Tanker*, my translation):

"Children should become human before they become Christians. ... But one begins to dig into divine catechisms, whereby each person persistently defends the sect in which he was reared, and is thus insensitive for other arguments, at a later stage. "

"Therefore, whoever learns theology before he has learned to be a human being, will never be a human being."

Certainly, children are always raised within some specific sociocultural environment. The problem arises when these socialization processes take the form of an indoctrination that undermines their personal autonomy. Surely, this is not a problem for culturally modern believers, as it used to be in Western Europe, but for those who are not culturally modern it is a problem.

These points, about manipulation and brainwashing, are not of secondary importance. To break down the personal autonomy of another human being through verbal manipulation

and indoctrination, is often regarded as mortal sin, and rightly so.<sup>3</sup> In many ways, this is worse than utterances that lead to anger and rage.

Moreover, we recall that to offend the autonomy of another human being, to do harm to “the individual’s freedom to form opinions”, is an attack on the normative foundation of freedom of expression, for instance as it is defined by the Norwegian Constitution § 100: “No person may be held liable in law for having imparted or received information, ideas or messages unless this can be justified in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the individual’s freedom to form opinions.”

### **Final remarks**

This normative notion of a legal protection of the freedom of expression has its peculiar strength: It includes a balancing of various values and concerns; and this is done on the background of a normative conception of freedom of expression as a presupposition for three basic modern institutions: truth-seeking, deliberative democracy, and individual autonomy. Hence, this notion may serve as a norm by which various values and concerns can be examined and weighed in the courts (cf the Norwegian Constitution, § 100), and also as a meta-norm, prescribing basic normative requirements for future legislation.

These points are not only theoretically important:

Firstly, the demand for a strong and universal justification of freedom of expression is particularly important in certain political situations, e.g. for the discussion on the relationship between legal conceptions in the West and in other traditions, e.g. Chinese or Muslim. The importance of such cross-cultural dialogues and discussions, looking for a common ground, was realized already at the time of the Rushdie case.

Secondly, these discussions are also important since they open for an awareness of some basic conceptual distinctions, like the one between communicative and discursive utterances on the one hand and strategic and instrumental ones on the other. In other words, we do not only obtain a justification for a legal defense of freedom of expression, in terms of an analysis of presuppositions in modern institutions, we also get discussions about more or less appropriate notions, such as different interpretations of legally relevant offense.

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<sup>3</sup> Here we focus on verbal utterances in terms of indoctrination and manipulation. The critical point gets even stronger when rituals and social practices are added, for instance by religious schools, special and spectacular cloths, and intended social segregation, together with a lack of cultural and epistemic modernization.

Summing up, it is my claim that this conception of a legal defense of freedom of expression gives us a fair normative justification, and also some fruitful notions when dealing with practical cases.

### **Post Scriptum**

This essay deals with the *legal* protection of freedom of expression. We do not address the various social challenges for freedom of expression, such as control within social and professional groups, with loyalty expectations and moral sanctions, or the power of money, in the media and on the market, as well as in relation to politics and politicians.

In this paper we focus on the legal protection of freedom of expression as a necessary, not as a sufficient condition for truth-seeking, deliberative democracy, and personal autonomy. For surely, there is also a need for freedom of assembly and freedom of organization, as necessary conditions, legally and in reality. Moreover, there are socio-economic and political conditions, such as a common educational system, decent working conditions, basic social security, and moderate socio-economic differences.

In short, a legal protection of freedom of expression alone will not do. Taken alone, without various other conditions, legally free discussions may turn out to be quite powerless, or go astray, or even lead to conflict and polarization. Nevertheless, especially in a time of global crises and serious challenges, it is imperative to promote a universal normative justification of the legal protection of freedom of expression. The alternative is self-defeating.