

Rh Robert Henderson

Freedom speech Part 1, 2 and 3 with a conclusion

Part 1 of 3 – How Free is Britain?

‘And though all the winds of doctrine were let loose upon the earth, so truth be in the field [and] we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew truth put to the worse, in a free and open encounter...’ [Milton – Areopagitica].

Milton’s words perhaps contain more significance than he realised, for a society only becomes wholeheartedly tyrannical when censorship allows no effective opposition. To take a most dramatic instance, if the Nazis had been forced by frequently expressed contrary public opinion to explain their policy of genocide to the German people, it is highly improbable that the whole grisly business would have been mooted, for we know that even without any serious public opposition the Nazis went to considerable lengths, in the midst of a most tremendous war, to persuade the mass of Germans that Jews were simply being resettled or, at worst, used as forced labour.

Without free expression, democracy cannot function because the whole purpose of democracy is to allow any view to be put forward for public acceptance or rejection.

But although free expression is a golden prize, it is also one of the hardest things for men (of all political stamps) to practise, there being the most magnetic temptation for anyone to engage in the self-serving delusion that the suppression of contrary opinion is not an abrogation of free expression but the legitimate exclusion of dangerous ideas. Milton himself fell prey to this temptation once his political “side” gained the ascendancy during the Commonwealth and Protectorate.

The idea that free expression can exist whilst restrictions on what may be said are in force is a literal nonsense because free expression is indivisible. Its essence is that it is not a negotiable quality; you either have free speech or a range of permitted opinion, which may be altered at any point by the ruling elite, the mass media, unelected pressure groups, terrorists and the Mob.

Britain a free country?

It is often claimed – perhaps never more frequently than at present by our political elite – that Britain is a free country where a man may say what he wants. This has always been less than the truth and the limits of free expression are growing ever narrower both through pernicious effect of political correctness, which insists, like all totalitarian creeds, that the only permissible view is that of political correctness, and the ever expanding legal limitations through legislation and the rulings of judges especially in privacy cases.

A surprising number of laws restricting free speech now exist in Britain. It is presently circumscribed by the laws relating to libel, slander, confidence, blasphemy, obscenity, official secrets, equal opportunities and race/ethnic relations. Government departments and agencies, local municipalities, private corporate bodies and private citizens may also obtain injunctions to prevent both the expression of views and physical demonstrations. In addition, the police have practically unlimited powers to prevent a man speaking if it is judged that the words uttered are ‘likely to cause a breach of the peace’ and may limit public demonstrations almost at will.

There are laws that are not immediately obvious to the public as being restrictive of free expression. **The Race Relations Amendment Act (2000)** forces all taxpayer funded bodies to prove they are not

engaged in discrimination even unwittingly. **The Prevention of Harassment Act (1997)** makes contact with someone potentially illegal if they do it more than once after someone has said they do not want contact with you (this covers disputes with companies and officialdom as well as individuals). The **Public Order Act (1986)** reiterates and strengthens the provisions against inciting racial hatred in the **Race Relations Act (1976)**, but also has a very broad definition of harassment in a public place, which gives immense power for the police to intervene.

The other Acts which indirectly restrict free expression because they provide for increased police powers of arrest and powers of search include:

Police and Criminal Evidence Act 1984

Criminal Justice Act 1987

Criminal Justice and Public Order Act 1994

The Regulation of Investigatory Powers Act 2000

Terrorism Act 2000

The Police Reform Act 2002

Serious and Organised Crime Act 2005

Racial and Religious Hatred Act 2006

The full text of these Acts can be found here. Just put the title of the Act you want into the search facility.

To these legal barriers must be added the voluntary code of practice, which is policed by the Press Complaints Commission. This contains such widely drawn and imprecise restrictions as:

“The Press should avoid prejudicial or pejorative references to a person’s race, colour, religion, sex or sexual orientation or to any physical or mental illness or handicap.”

and

“It should avoid publishing details of a person’s race, colour, religion, sex or sexual orientation, unless these are directly relevant to the story.”

Nor is free expression guaranteed more securely by international treaty. **The 1951 European Convention on Human Rights states in Article 10 (now incorporated directly into English law in the Human Rights Act)** that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

All fine and dandy. ***But this is followed by:***

...The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary

in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Which caveats allow the state to do virtually anything by way of censorship.

The **Human Rights Act (HRA) 1998** has also had a directly pernicious effect on free expression because of **clause 8**, which runs:

“Everyone has the right to respect for his private and family life, his home and his correspondence.

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

This has been used by British judges to create extremely powerful restraints dubbed “super injunctions” which outdo Kafka by making it a contempt of court to reveal the existence of the injunction. Amidst a raft of footballers, TV presenters and actors, there are those who have or have had a serious public role, for example, Sir Fred Goodwin who was chief executive while the good ship Royal Bank of Scotland crashed into the financial rocks, and the BBC’s then political editor Andrew Marr .

Goodwin had an affair with a subordinate at RBS who was twice promoted after the affair began; Marr laid himself open to a charge of gross hypocrisy on two counts: he spends his working life quizzing politicians and other public figures about their private lives and misdemeanours, and the fact that he is a journalist means he should defend free expression not engage in censorship.

Such injunctions are obnoxious both because of the censorship and because they are only available, as with libel and slander actions, to the rich. Happily their potential for mischief has been much reduced by the impossibility of preventing the information protected by the injunctions being put on the Web in one way or another – Twitter was the main agency used in recent months. However, there will be injunctions whose details are known only to a few that will never appear in public because those who know either have vested interest in keeping quiet or do so out of fear.

Below the super-injunctions come ordinary injunctions and under them the use of confidentiality clauses in contracts and agreements to settle disputes between two or more parties. Confidentiality clauses keep a great deal of important information of genuine public interest from the public. Take the case of Andrea Hill, the chief executive of Suffolk County Council. She has sanctioned “payouts for 13 employees which cost the authority £405,665.90” with confidentiality clauses allegedly to keep silent employees with complaints about the council. Such clauses may hide more matters of public interest than super-injunctions.

Part 2 – The restraints of custom and ideology

But perhaps more potent than formal laws and treaties – for they are unlimited and cannot be challenged in the courts – are the restraints imposed by custom and ideology.

Although we have never had freedom of expression, for most of the past century and a half the range of permitted opinion has been broad and the restrictions on what might be said have had more of a social content than a political one. Fifty years ago bad language and mention of matters such as illegitimacy and homosexuality were considered to be impolite, but the idea that whole areas of political discourse should be ruled out of public discussion was alien to the British.

In the past half century the range of what is not acceptable in “polite” company has shifted very much to the political. Gradually what has become known as political correctness has restricted public discourse on a large swathe of centrally important political questions to very narrow limits. Most particularly, anyone in public life or in the public eye, knows that it is death to their careers if not worse, to fail to pay at least lip service to the credo of the unholy trinity of political correctness: race, gay rights and sexual equality. To this “Trinity” may be added the more minor non-PC sins such as not being “green”, opposing any attempt to make society “safer” by passing laws which are sinister in their effects and generally unenforceable, or the advocacy of any idea which is not ostensibly directed towards the end of an undefined general equality.

But it is not only those that have a degree of celebrity or enhanced status within the public realm who need fear. Political correctness is by its nature totalitarian – the only acceptable view on any pc subject being the pc one – and all must heed its demands. Hence, all public employees, no matter how humble, must not only endure the humiliation of race awareness courses and sexual equality seminars, but live in fear of demotion at best and dismissal at worst if they are deemed to have shown non-pc behaviour or displayed non-pc thoughts. What applies to public service is mimicked increasingly by private businesses, especially the larger ones.

It is not that a person need be racist, homophobic or misogynist in any meaningful sense known to past generations to incur the wrath of the pc police. The politically correct have reduced the definition of what it is to be racist, homophobic and misogynist to such a narrow condition that any human being is in danger of falling foul of those who would cry bigot in the enthusiastic manner of the competing sides in the Reformation who cried heretic. Express a preference for one culture or nation over another and the speaker is racist. Let a pub landlord dare to mention that he prefers to employ good-looking girls as barmaids, and he is sexist. Mention that the legal approval of sexual acts by Gays in public lavatories might not be in the public interest and wait to be called homophobic.

Ironically, many members of the “protected” groups see that such behaviour is not to their advantage because it is both unreasonable in itself and likely to inflame prejudice against them. However, they have great difficulty in speaking out because not only do they face the usual abuse directed at anyone who stands against political correctness, but also attack from the most fanatical of activists from within their own minority group for being in effect Uncle Toms.

Revolutions notoriously devour their own. Just as the religious in the time of the Reformation had to go to ever greater extremes to prove their orthodoxy, so do the practitioners of political correctness become ever more extreme, some from a desire to be the most advanced and others from a fear of having their “soundness” questioned if they remain behind the ideological leaders.

The “right” sort of discrimination

The obnoxious contraction of what is permitted has a further danger for the unwary. Although the dictates of political correctness are in theory universal in practice they are applied with vastly greater

enthusiasm against certain groups than others. In 2001 the television presenter Anne Robinson made what was obviously a joke about the Welsh on a programme entitled Room 101. The idea of the programme was for those appearing to consign something or someone to Room 101, the place in George Orwell's 1984 where "the most terrible thing in the world happens". Anne Robinson consigned the Welsh with the comment "What are they for?"

A day or so after the programme she became the subject of a police investigation for inciting racial hatred and a file was sent to the Crown Prosecution Service. Some weeks after it was quietly announced that she would not be prosecuted. .

Compare that eager police response with that which occurred after the current director-general of the BBC, Greg Dyke who in 2001 described a meeting of BBC managers as "hideously white".

As the law stands, the statement is unambiguously racist because Mr Dyke is making a claim about a recognised racial group and the use of the word "hideously" is highly inflammatory. The extremely unpleasant nature of it can be seen by substituting black or Asian for white: "hideously black", "hideously Asian". Its effect can only be to incite racial hatred against whites. The severity of the offence is greatly magnified by Mr Dyke's then position as the head of our state funded broadcaster.

To test the pc water I made a complaint to the Metropolitan police. They refused to act, despite the fact that Dyke's comment was not a joke and his public position was a very important one.

Equally worrying is the attempt by certain police forces to give quasi-official approval of a law which does not exist. The Public Order Act 1986 covers so-called hate crimes, which the Metropolitan Police define as "abusing people because of their race, faith, religion or disability – or because they are lesbian, gay, bisexual or transsexual" (Daily Telegraph 10 11 03). In fact, the Act does not include any crime which is committed for reasons other than racial hatred.

In 2005 prosecutions were brought against the BNP leader Nick Griffin and BNP member Mark Collett for inciting racial hatred with evidence provided by the BBC (this from an organisation which initially refused to hand over film of IRA killings of two British servicemen in Northern Ireland). The BBC secretly filmed a closed BNP meeting in which Islam was represented as a menace to British society. The attempts at prosecution (there were two trials after the first one resulted in a hung jury on three charges and acquittals on others), failed to convict, but sent out a clear message of the extent to which those with power in Britain are willing to suppress free expression. It is not necessary to have any sympathy with the BNP to see the dangers in allowing politicians (and it required a politician, the attorney-general, to sanction the prosecution) to initiate criminal prosecutions against members of other political parties.

Sometimes the police enthusiasm to be pc makes them the object of ridicule. In 2007 a Lancashire shopkeeper found himself threatened with a public order offence for displaying golliwogs in his shop window. The police seized the golliwogs (doubtless for interrogation) and the shop keeper had to endure the suspense of what would happen next. This turned out to be nothing because the police admitted no crime had been committed. Farcical as the circumstances of this episode were, it is typical of many of these police "investigations" into what they classify as hate crimes: the police investigated but no prosecution or caution resulted. The effect of this behaviour, whether intended or not, is to intimidate the native British who now commonly think they dare not say anything critical about any ethnic minority, nation other than England, women or gays for fear of feeling the heavy

hand of the constabulary.

The opportunities for prosecutions based on racial hatred have been greatly widened to include not merely incitement to racial hatred but to punish more heavily any crime deemed to have a racial motive. As racism is defined ever more widely to include virtually any distinction between peoples, the courts and the police have a very great opportunity to include a racial motive in a prosecution. In addition, there are growing calls for laws to extend to the areas which the police, and especially the Metropolitan police, fondly fantasise are already covered.

Secrecy

Secrecy is the obverse of the censorship coin. To be actively prevented from knowing something is a form of censorship. Most particularly it eats away at democratic control. Unless an electorate has the right to know what the state is doing in any aspect of its work, unlimited mischief can be perpetrated. Justice can be perverted, crimes commissioned, treason committed, political policies subverted, elections manipulated and the lives of individuals maliciously ruined, all with little chance of discovery and next to no chance of prosecution even where the public does find out about the wrongdoing. The most enraging document I have ever read is the Hansard report of the Commons debate the day before war was declared in 1914 and Britain entered the most disastrous conflict in its and Europe's history. It is clear from Hansard that the grave and novel dangers of entering into a war with modern technology were understood by many MPs. Worse, from the pathetic evasions of the Foreign Secretary, Sir Edward Grey, it is clear that Parliament and consequently the British people had been kept in the dark over secret agreements between the British and French Governments, which obligated Britain to go to war if France was attacked. So off Britain went to war, ostensibly because of an 1839 treaty Britain had signed guaranteeing Belgium's sovereignty, but in reality because the British elite of the time had committed itself to the French elite without any Parliamentary oversight or agreement.

It is absolutely important to understand that free expression and a free media are an integral part of democracy, but they can formally exist and yet be restricted greatly if secrecy is practised by government. Democracy and openness of government go hand in hand. Take away openness and democracy is breached.

Tomorrow, we publish the Final Part – Democracy and freedom of expression

Free expression or permitted opinion: that is the choice - UKIP Daily | UKIP News | UKIP Debate

Part 3 – Democracy and freedom of expression

Opposition in the modern world means reasonable access to the various mass media. Without that, free expression is an empty shell for, as wise dictators have always known, two shepherds on a hillside defaming the government is nothing while a hundred thousand people demonstrating in the capital city or a television station broadcasting criticism of government is much. But our public life, including politics, is currently rigidly controlled on all matters except perhaps the economy, by those who broadly subscribe to a left/liberal programme – what might be termed The Liberal Ascendancy. Think, for example, of what educationalists did to sabotage Tory attempts to right the decline in educational standards between 1979 and 1997.

The only true democracy lies in freedom of expression, which requires both the absence of restrictive laws and the statutory guarantee of its exercise to be meaningful. Unless the current embargo on views contrary to those of the Liberal Ascendency is broken, Britain's claim to political liberty is a sham. It is, indeed, a strange kind of freedom which is so hemmed by law and circumstance.

The primacy of the individual, which is the bedrock of western morality, is a fragile psychological edifice which can only be guaranteed by free expression. Moreover, it is a concept which is constantly under threat because the primacy of the individual is little valued by most societies and its social corollary – a practical concern for individual liberty – is an even rarer cultural artefact. Indeed, it is scarcely an exaggeration to say that only in English society, and those societies deriving from it, is the notion of individual liberty built into the social fabric. The English have been free not primarily because of legal rights, but because it is their evolved social nature. They accept liberty because it seems natural to them. But that freedom has always rested on the willingness of the Public Class to both behave in a reasonable fashion and to allow criticism. Hayek, coming to England as a foreigner between the wars, noted both the special quality of English life and the threat to its continuance:

...it is one of the most disheartening spectacles of our time to see to what extent some of the most precious things which England has given to the world are now held in contempt in England herself. The English hardly know to what degree they differ from most other people in that they all, irrespective of party, hold, to a greater or less extent, the ideas which in their most pronounced form are known as liberalism...[Road To Serfdom 1944 chapter XIV. Hayek, of course, used liberalism in its uncorrupted individualistic sense.]

How to safeguard freedom of expression

We should begin with a bonfire of most of the legal restraints. Libel and slander may be replaced by a statutory right of reply; the equal opportunities and race-related statutes should be repealed completely for they not only restrict free expression but practically abrogate the principle of equality before the law; blasphemy and obscenity should depart on the grounds that no group has the right to constrain another simply on the grounds that views are offensive to one side. Legal restrictions relating to confidence and the Official Secrets Act could be replaced by a law of contractual confidence which clearly states any obligations placed on the person accepting an overt (not implied) contract of employment. No other law of confidence should exist.

A really potent freedom of information act is needed (the present one is an insult to the intelligence with its manifold exemptions and the inability of the Information Commissioner to act within a reasonable time against recalcitrant public bodies which refuse to provide information – at present it takes around two years to get the Commissioner to issue a judgement). It should allow access to all government and municipal papers of general interest – that is everything which is not related to a particular individual – except papers concerned with limited and clearly defined military matters such as battle plans, equipment specifications and computer codes relating to such things as the launch of nuclear missiles. The stipulation of papers relating only to matters of a general interest would prevent public prying into such records as individual tax returns. The passing of such an act would also place severe limits to the contractual limitations on free expression placed on public servants.

The mention of freedom of information acts always brings knowing scoffing from the self-identified political sophisticates of politics and the mass media. Faced with such a proposal they nudge one

another and sigh with a resigned, patronising smile before saying that all that would happen is that politicians would decide things privately whilst dissembling in public. I should be most interested to know exactly how such duplicitous behaviour could be translated into practical measures. If, for example, the present Cabinet secretly wished to re-nationalise the railways whilst publicly supporting privatisation, it could not carry the denationalisation through and expect no one to notice.

It is true, of course, that legislation may be presented as something it is not, but that is a present evil without the existence of a meaningful freedom of information act. With such an act misrepresentation would be, in principle, subject to greater and more informed scrutiny and consequently open to fiercer pressure for amendment. Nor do I believe that politicians would be able to dissemble successfully in public all of the time.

Injunctions to prevent the expression of views and physical demonstrations are a problem, for they are a potent weapon of suppression in the hands of the influential and powerful, especially if those hands form the government of the day. In addition, the police have practically unlimited powers to prevent a man speaking if it is judged that the words uttered are 'likely to cause a breach of the peace' and may limit public demonstrations virtually at will.

As for the customary restraints, a statutory right of reply would go a long way to ensuring fair play for the individual in their relations with the press. There would remain a problem in the case of books and pamphlets, but rarely is someone attacked in a book or pamphlet with a wide circulation who does not have access to the media.

Broadcasts present a different problem from printed matter because their numbers are practically limited with current technology; in the case of terrestrial national channels severely limited. There is also a considerable difference between writing a letter or article for publication, which most people should either be able to do or to find someone who is willing to write on their behalf, and broadcasting a coherent reply, which would be beyond many people. However, many would be able to cope with the demands of a pre-recorded broadcast and those who could not cope could have a written statement read on their behalf.

The great problem is that of a general bias within the elite, especially the mainstream media. In the case of broadcasters there are already formal restraints on bias, but these are honoured almost entirely in the breach. To a degree bias is mitigated by the internet, but we are still a very long way from equality of readership or prestige between the mass media and the Internet. A right to reply would further shift the balance towards fairness, but there would still be a massive advantage for those who share the liberal internationalist ideology currently favoured by our elite.

There is an obvious danger in governments becoming directly or even indirectly involved in controlling what the media should publish. Nonetheless, the danger of government censorship and propaganda can be largely obviated if a law places the regulation of the media in the hands of the ordinary citizen through a mechanism which contains two facets. The first is that the obligations it places on the media must be properly defined. For example, the law must not merely state that balance must be achieved, which it does in connection with broadcasting already, it must clearly define what balance means in practice. This could mean that in any television or radio debate on a contentious subject the participants in the debate must be balanced in numbers as well as views – goodbye to the beloved BBC 'balanced' interview of three liberal internationalists 'debating' a

subject.

The second facet is that the enforcement of the law must be free of government influence such as one will invariably get in the appointment of a regulatory authority. Such a mechanism could be the right of any individual to challenge imbalance in the courts not as a matter of judicial review, which is expensive and contentious in its application, but through a relatively cheap and simple procedure, such as exists in the application for an injunction.

To prevent political restrictions on free expression, we need a written constitution which explicitly guards the right to free expression. To do that it must forbid any government from introducing either laws which restricts it or practices such as codes of conduct for public servants which gag them from exposing bad behaviour in public bodies or force them to promote political views, such as happens now with the practitioners of political correctness.

The constitution should also contain provisions to ensure that the police (1) do not abuse their powers to harass and intimidate those whose views do not meet with the approval of those with power and influence and (2) apply the law equally to all, something they manifestly do not do at present in politically inconvenient cases.

Conclusion

At present we have a very restricted range of permitted opinion, which is becoming ever narrower through new laws and the tightening grip of political correctness. The fact that public figures bleat ever more frenetically of our 'right to free expression' reminds me irresistibly of the lines:

'The more he spoke of his honour,
The faster we counted our spoons.'

The dangerous truth is that we are moving towards a situation where we shall not only have no free speech spoons to count; we shall not even be allowed to mention their loss. If we wish to preserve our freedom, we must realise that such liberty as we enjoy is an ineffably hard won and fragile right which has been won over four centuries or more and that what was gained so slowly may be lost in a day if a government has the tyrannical urge.

Freedom of expression is an absolutely necessary condition for a free society. It is the fulcrum of freedom because he intellectual point at which a society may place a moral lever to lift it above tyranny.

Robert Henderson

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