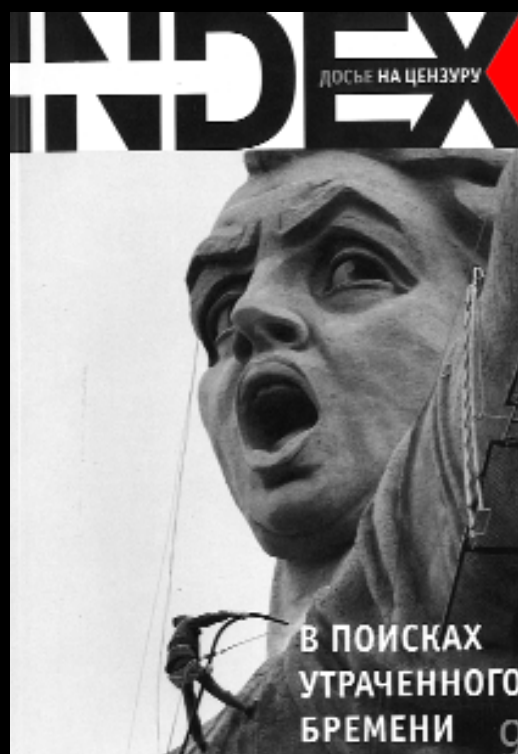
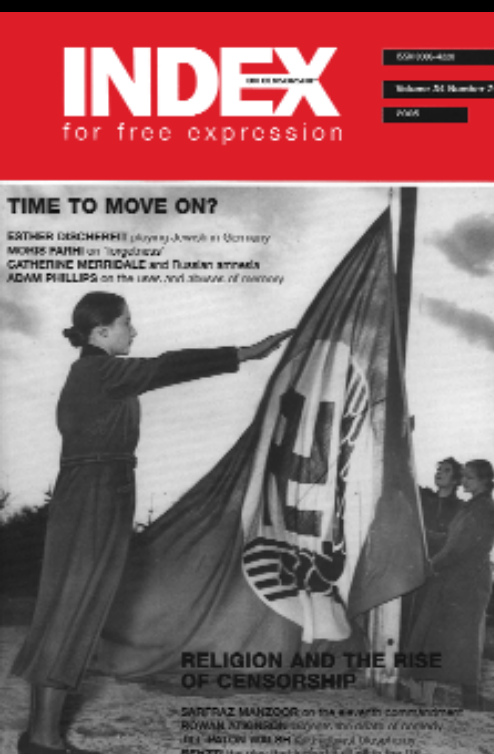


# WORDS & DEEDS

Incitement, hate speech &  
the right to free expression





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## Words & deeds

At the end of the Maastricht summit in 1992, the Council of Ministers reported on what they saw as a paradox of history: that racism had increased as democracy had spread through the post-communist world. Not such a paradox really. As Hans Magnus Enzensburger once said: ‘With democracy, all the dirt comes out.’

Index believes that free expression is the freedom on which all others are based. Ronald Dworkin famously said in its pages that free speech is what makes people feel human, makes them feel their lives matter. But we also need to be clear about our fierce defence of free expression – that there are prices to be paid for it – and we need to be clear about the cost, and who is paying it.

Hate speech – abusive, dehumanising, inciting discrimination and violence – is an integral part of the ‘dirt’ that goes with democracy, often directed at ethnic minorities, gays or women. It is certainly the most troubling matter for people who believe in free speech, and there has been fierce debate over the years about that difficult borderline between free speech and the demand for equality of respect – not least in the pages of *Index on Censorship* over its 33 years of existence.

But then, on 11 September 2001, the world changed, and hate speech acquired another, newer relevance. The ‘war on terrorism’ (a war that may never end, according to US Vice President Dick Cheney) put civil liberties under threat worldwide. And since then the right to free expression has too often become a fragile filling, sandwiched between the imperatives of security and fears about acts of terrorism. In these dangerous times, hate speech is centre stage, and the ways in which we respond to it are crucial to our future.

The importance of free expression is as great as ever, as is the need to debate openly difficult issues – ones which may cause pain, offence, anger. Nobody ever said free expression was easy. Index’s purpose is to do its small part in creating a world in which the right to speak for oneself becomes the condition for allowing those who speak antagonistic moral languages to hear each other. We hope *Words & Deeds* will play its part.

**Ursula Owen**

Editor in Chief, *Index on Censorship*

*Opposite: Filipino boys at an April 2005 protest in central Athens to mark European Day Against Racism*

*Credit: Thanassis Stavrakis / AP*





**No to racism**

**Legal**

The right to free speech  
and the right to live  
free from fear

RONALD DWORKIN &gt;&gt;&gt;

## A new map of censorship

*The old order changes, yielding place to the new – and freedom finds itself in disarray, under attack from new enemies among its old champions*

Is freedom of speech a universal human right? Or is it, after all, just one value among others, a value cherished by middle-class intellectuals in Western democracies, but one which other cultures, drawing on different traditions, might well reject as unsuitable for them, and which radical groups within those Western democracies might well challenge as no longer central even there?

Index on Censorship was founded in the first conviction: that freedom of speech, along with the allied freedoms of conscience and religion, are fundamental human rights that the world community has a responsibility to guard. But that strong conviction is suddenly challenged not only by freedom's oldest enemies – the despots and ruling thieves who fear it – but also by new enemies who claim to speak for justice not tyranny, and who point to other values we respect, including self-determination, equality and freedom from racial hatred and prejudice, as reasons why the right of free speech should now be demoted to a much lower grade of urgency and importance.

In part, this new hostility reflects reluctance to impose Western values on alien cultures. Free speech may be important within our own secular traditions, some critics say, but it would make no sense to graft it on to very different styles of life. We cannot reasonably ask peoples whose entire social structure and sense of national identity are based on the supreme authority of a particular religion to permit what they believe to be ridicule of that religion within their own borders.

How can we expect people who are committed to a particular faith, as a value transcending all others, to tolerate its open desecration?

John Stuart Mill's argument *On Liberty* says that we should tolerate even the speech we hate because truth is most likely to emerge in a free intellectual combat from which no idea has been excluded. People with passionate religious convictions think they already know the truth, however, and they can hardly be expected to have more confidence in Mill's doubtful epistemology than in their own bibles. Nor could Mill's optimism justify, even to us, tolerating everything that those who believe free speech is a basic human right insist should be tolerated. Pornographic images hardly supply 'ideas' to any market place of thought, and history gives us little reason for expecting racist speech to contribute to its own refutation.

If freedom of speech is a basic right, this must be so not in virtue of instrumental arguments, like Mill's, which suppose that liberty is important because of its consequences. It must be so for reasons of basic principle. We can find that basic principle, moreover. We can find it in a condition of human dignity: it is illegitimate for governments to impose a collective or official decision on dissenting individuals, using the coercive powers of the state, unless that decision has been taken in a manner that

respects each individual's status as a free and equal member of the community. People who believe in democracy think that it is fair to use the police power to enforce the law if the law has been adopted through democratic political procedures that express the majority's will.

But though majoritarian procedures may be a necessary condition of political legitimacy, they are not a sufficient condition. Fair democracy requires what we might call a democratic background: it requires, for example, that every competent adult have a vote in deciding what the majority's will is. And it requires, further, that each citizen have not just a vote but a voice: a majority decision is not fair unless everyone has had a fair opportunity to express his or her attitudes or opinions or fears or tastes or presuppositions or prejudices or ideals, not just in the hope of influencing others, though that hope is crucially important, but also just to confirm his or her standing as a responsible agent in, rather than a passive victim of, collective action. The majority has no right to impose its will on someone who is forbidden to raise a voice in protest or argument or objection before the decision is taken.

That is not the only reason for insisting on freedom of speech as a condition of political legitimacy, but it is a central one. It may be objected that in most democracies that right now has little value for many citizens: ordinary people, with no access to great newspapers or television broadcasts, have little chance to be heard. That is a genuine problem; it may be that genuine free speech requires more than just freedom from legal censorship. But that is hardly an excuse for denying at least that freedom and the dignity it confirms: we must try to find other ways of providing those without money or influence a real chance to make their voices heard.

This argument entails a great deal more than just that governments may not censor formal political speeches or writing. A community's legislation and policy are determined more by its moral and cultural environment – the mix of its people's opinions, prejudices, tastes and attitudes – than by editorial columns or party political broadcasts or stump political speeches. It is as unfair to impose a collective decision on someone who has not been allowed to contribute to that moral environment, by expressing his political or social convictions or tastes or prejudices informally, as on someone whose pamphlets against the decision were destroyed by the police. This is true no matter how offensive the majority takes these convictions or tastes or prejudices to be, nor how reasonable its objection is.

The temptation may be near overwhelming to make exceptions to that principle – to declare that people have no right to pour the filth of pornography or race-hatred into the culture in which we all must live. But we cannot do that without forfeiting our moral title to force such people to bow to the collective judgements that do make their way



*An August 2005 demonstration held in defiance of a new law that specifically prohibits such unauthorised protests outside Britain's Parliament*

*Credit: Michael Stephens / PA / Empics*

into the statute books. We may and must protect women and homosexuals and members of minority groups from specific and damaging consequences of sexism, intolerance and racism. We must protect them against unfairness and inequality in employment or education or housing or the criminal process, for example, and we may adopt laws to achieve that protection. But we must not try to intervene further upstream, by forbidding any expression of the attitudes or prejudices that we think nourish such unfairness or inequality, because if we intervene too soon in the process through which collective opinion is formed, we spoil the only democratic justification we have for insisting that everyone obey these laws, even those who hate and resent them.

Someone might now object that my argument shows, at most, only that free speech is essential to a democracy, and therefore does not show that it is a universal human right that may properly be claimed even in non-democratic societies. We may want to reply, to that objection, that democracy is itself a universal human right, and that non-democratic societies are tyrannies. But we need not rely on that claim, because we can distinguish democracy, as a form of political organisation, from the more basic obligation of government to treat all those subject to its dominion with equal concern, as all people whose lives matter. That plainly is a basic human right; and many of the more detailed human rights we all recognise flow from it. And so does a right of free speech. Even in a country ruled by prophets or generals in which ordinary citizens have no real vote, these citizens must nevertheless have the right to speak out, to cry for the attention or to buy the ear of those who will decide

their fates, or simply to bear witness, out of self-respect if nothing else, to what they believe to be wicked or unfair. A government that deems them too corrupt or debased or ignoble even to be heard, except on penalty of death or jail, can hardly pretend that it counts their interests as part of its own.

It is tempting to think that even if some liberty of speech must be counted a universal right, this right cannot be absolute; that those whose opinions are too threatening or base or contrary to the moral or religious consensus have forfeited any right to the concern on which the right rests. But such a reservation would destroy the principle: it would leave room only for the pointless grant of protection for ideas or tastes or prejudices that those in power approve, or in any case do not fear. We might have the power to silence those we despise, but it would be at the cost of political legitimacy, which is more important than they are.

Any such reservation would also be dangerous. Principle is indivisible, and we try to divide it at our peril. When we compromise on freedom because we think our immediate goals more important, we are likely to find that the power to exploit the compromise is not in our own hands after all, but in those of fanatical priests armed with fatwas and fanatical moralists with their own brand of hate.

>>> **Ronald Dworkin** is Sommer Professor of Law and Philosophy at NYU. His books include *Life's Dominion*, *Freedom's Law* and *Sovereign Virtue*. His forthcoming book is *Justice in Robes*. This article was first published in *Index on Censorship* in 1994

TOM STOPPARD &gt;&gt;&gt;

## Is there ever a time & place for censorship?

*If free speech is a basic human right possessed by each individual, surely that right trumps the interests of your neighbour? Well, no. Not always*

The idea that being human and having rights are equivalent – that rights are inherent – is unintelligible in a Darwinian world. It is easily and often overlooked that when Thomas Jefferson asserted, through the Declaration of Independence, that life, liberty and the pursuit of happiness were unalienable human rights, he did so on the ground that they had been endowed by God, our Creator.

That is how Jefferson deemed ‘these truths to be self-evident’. Yet, we do not find that insistence on human rights is the preserve of deists. Still less do we find the right of free expression being derived from God’s endowment. In any case, the idea that free expression is one of the unalienable rights which Jefferson left room for, but didn’t mention, is our presumption.

Is the right of free expression self-evident?

That I have the right to express myself freely at all times in all circumstances entails the idea that free speech is a ‘basic human right’ possessed by each individual, and, as such, trumps the interests of the society or group, including my neighbour.

But there is something odd about this. The trumper is, after all, a member of the group. The interests of the group is the only game in town. That’s why the group is a group. The trumper is trying to trump himself. He has produced from his sleeve a card which was never in the pack and which he insists wins the trick.

So it might, if we believe the card was divinely bestowed, that there is a ‘superior’ game going on. If, however, we don’t believe that (and even those who believe in our divinity do not generally believe that God said, ‘Let there be free speech’) then it follows that ‘rights’ are a psycho-social phenomenon, and that there are no rights which are more human than others; no trumps.

This looks bad for the principle of free speech. It seems to have no foundation. It is not impossible to imagine a group – a society – deciding collectively that censorship is desirable. On what ground can we stand and declare the decision to be deplorable? We may say that it’s deplorable because, for example, it would lead to that society becoming moribund, or for other practical reasons. But it’s hard to see how we can say that the members of the group are being denied their rights.

A ‘human right’ is, by definition, timeless. It cannot adhere to some societies and not others, at some times and not at other times. But the whole parcel of liberties into which free expression fits is fairly modern. To St Augustine, religious tolerance would have been an oxymoron. The concept of pluralism as a virtue is a thousand years more modern than St Augustine. To say, therefore, that the right of free speech was always a human right which in unenlightened societies was suspended from the year dot until our enlightened times is surely beyond even our capacity for condescension.

Nevertheless, we are relatively enlightened, let’s say, we western liberals, and when we aver that free expression is, with or without exceptions, desirable, we mean more than that it is congenial to western liberalism. To use an old-fashioned phrase, we mean that it is good in itself.

How can we support this idea, other than pragmatically?

Freedom of speech as a stand-alone ‘right’ is a ghost, the flip side of inherent human rights being unintelligible: ie you have no inherent right to limit my freedom of speech, therefore I have the right of freedom of speech.

Now things are looking even worse for the western liberal shibboleth. Freedom of speech, far from being an absolute, a given, seems to have less to do with rights than with rules; in the best-case society, rules collectively agreed; in the worst case society, rules imposed by power.

But that’s the good news. Now we can avoid the clash of absolutes, the endless, enervating, futile confrontation of irresistible forces and immovable objects.

But how did the concept of free speech as an inherent human right get into such a mess? It did so because we persist in the notion of a ‘right’ as something to be claimed rather than accorded. While claim and counter-claim are presented as absolutes, this is a debate which not only will have no resolution but cannot have a resolution.

‘Is there ever a time and place for censorship?’ On the one hand we have Voltaire: ‘I disagree with what you say but I will defend to the death your right to say it.’ On the other hand, we have hate speech. I have not used my space to cast my vote, but I will add something personal. I was proud to be British before I was British. I arrived in 1946 when I was eight, and that was that. Czechoslovakia, which I couldn’t remember; Singapore, which I could barely remember; and India, which I enjoyed, fell away like so many ladders. It was a love affair, and I was not very much older when I first articulated to myself what it was that was the foundation of my anglophilia. It was the Voltairean credo, enshrined in my adoptive country.

But note: the appeal of the Voltairean credo was precisely that it was voluntary, his choice. He was not conceding his antagonist’s possession of an overriding right, he was choosing to accord that right. He was putting down a marker for the kind of society he favoured, for an ideal. The underlying question remains as before: does Voltaire’s credo hold good at all times in all circumstances?

I have used my space to say why I think the ‘human right’ of free speech is a non-starter. It is not an absolute to be claimed for any and every position. It will prevail when we accord it. The rules are ours to make, and modify for different situations. ‘We need wit and courage to make our way while our way is making us. But that is our dignity as human beings.’ (Alexander Herzen in *The Coast of Utopia*)

>>> **Tom Stoppard** is a playwright and screenwriter

ARYEH NEIER >>>

## Clear & present danger

*When is hate speech a suitable case for censorship? When there is 'clear and present danger' of the word becoming the deed*

In 1977, I helped to defend freedom of speech for a group of American Nazis. There was nothing particularly unusual in this: the American Civil Liberties Union has frequently defended Nazis, members of the Ku Klux Klan and others engaged in hate speech. Yet it aroused great controversy because of the drama of the situation: the Nazis wished to march through Skokie, Illinois, a town with a large population of Holocaust survivors. I thought then, and think now, that it was important to protect free expression even for such a repugnant group.

Two cases that could be considered by UN Security Council tribunals – the prosecution of a Rwandan radio station operator on charges of incitement to genocide and the possible prosecution of Radio Televisia Serbia (RTS), the former Yugoslav state broadcasting company – appear to raise some of the same issues as the Skokie case. But in the Rwandan case, and perhaps also in the Serbian one, I find myself on the opposite side. Comparing these three situations might help to clarify some of the issues around the vexed problem of free expression and hate speech.

In the 1970s, a small group of US Nazis was trying to exploit a tense racial situation in Chicago. In Market Park, which divided a white working class neighbourhood from a predominantly black one, the Martin Luther King Junior Coalition was holding demonstrations calling for desegregation. The Nazi group rented a store-front next to the park and started to organise counter protests. Concerned about the possibility of open conflict, the Chicago authorities demanded that the Nazis post a bond of US\$250,000 to repair any damage that might result – a typical way in which US city authorities restrict the right of speech and assembly for despised groups. The local office of the ACLU agreed to challenge the bond requirement, but while the lawsuit was underway, the Nazi group was shut out of Market Park.

Searching for a way to keep itself in the public eye, the group sent letters to all the suburban communities and towns near Chicago asking to hold demonstrations there. Most of them wisely ignored the request, but Skokie responded with an angry refusal and quickly adopted a series of ordinances forbidding marches with Nazi symbols and repeating the city of Chicago's bond requirement. The Nazi group again came to the ACLU – which takes every case brought to it involving freedom of speech – to ask for representation. The ACLU agreed to file a lawsuit against the town of Skokie.

During the debate that raged throughout the fifteen months of the trial, many people argued that the Nazis should not be allowed to march. Several of them drew on the doctrine of 'clear and present danger', which the US Supreme Court had used on several occasions to limit freedom of speech. The doctrine of 'clear and present danger' stems from the period after World War I which saw



*Rwandan journalists Ferdinand Nahimana (left) and Hassan Ngeze on trial in Arusha in December 2003 for using hate media to incite the 1994 genocide*

*Credit: Stella Vuzo / AFP / Getty Images*

some 1900 federal prosecutions for peaceful speech, mostly for statements that were deemed to encourage subversion – among them the prosecution and imprisonment of the leader of the American Socialist Party, Eugene V Debs. The doctrine was broadened in 1951 during the prosecution of 11 top US Communist Party leaders, when the Supreme Court ruled that if the climate is right for an evil to occur, the government may imprison people whose advocacy could create that evil at a future point.

In countering these arguments, free speech advocates held to the narrower definition of 'clear and present danger' which demands that there be no separation between the speech that incites a crime and the crime itself – as in Justice Oliver Wendell-Holmes's classic example of someone causing panic by shouting 'Fire!' in a crowded theatre. In Skokie, a town hostile to fascism, there was no chance that people would be incited to violence by a group of Nazis. Since the time and place of the march were known, there was every opportunity for the police to be present and prevent disorder. And there was plenty of room for free speech to operate and for other points of view to be heard.

In Rwanda, this was very far from being the case. A year before the 1994 genocide, the Rwandan government had given a broadcasting license to a radio station called Radio Mille Collines. From the time it was established, this station had called for Hutus to engage in violence against the Tutsis. On 6 April 1994, when a plane carrying the presidents of

Rwanda and Burundi was shot down, the radio station immediately started broadcasting orders to kill people: 'You have missed some of the enemies. Some are still alive. You must go back there and finish them off. The graves are not yet quite full. Who is going to do the good work and help us to fill them completely?' There was no licensed radio station broadcasting a different point of view: the government-owned Radio Rwanda was essentially saying the same thing as Radio Mille Collines in less explicit terms.

About four days after the genocide started, Radio Mille Collines broadcast the information that a group of Tutsis were hiding in a Kigali church and urged people to go and get them right away. A crowd arrived. The Tutsis had barricaded themselves behind a steel door. Following the explicit direction of the radio station, the crowd threw grenades through a window and killed all the people who were hiding in that church.

The licence for Radio Mille Collines was given to a person prominently associated with the government of Rwanda who had a private militia that was deeply involved in the genocide. The person operating the radio station had an exclusive opportunity to speak to people in Rwanda, did so with the support of the government and was directly engaged in the killing. There was a direct relationship between the speech and the killing – a 'clear and present danger'. In those circumstances, arguing that what was said over that radio station should be protected as free speech is out of the question.

The Serbian case is more difficult. Before war broke out in former Yugoslavia, there were a certain number of opposition publications and opposition broadcasters; most had a limited reach. Only the state radio and television network, RTS, speaking on behalf of the authorities, could reach most regions. This network fomented the war through constant denunciations of Croats as Ustashe and Bosnian Muslims as Mujahadin, broadcasting accounts and faking films of atrocities that never took place. Nevertheless, there was more separation than in Rwanda between the incitement of the crimes and the crimes that were committed, and there were other voices being heard. On the other hand, these were government media speaking on behalf of the government, not citizens whose rights to free speech needed defending against the authorities.

The precedent that the UN tribunal considered in conjunction with this case is the trial at Nuremberg of Julius Streicher, publisher of the anti-Semitic newspaper *Der Stürmer* (*The Attacker*), for which he was convicted and hanged. During the Third Reich, *Der Stürmer* had a vast circulation of up to 600,000 and probably did more to incite anti-Semitism than anything else in Germany at the time. However, by the time the war started, Streicher had been pushed out of his powerful position as a *gauleiter* because of his bizarre sexual tastes, and *Der Stürmer's* circulation had dropped to about 15,000. Though the Nuremberg tribunal's jurisdiction only covered the war years, in convicting Streicher of inciting crimes against humanity it was mainly influenced by his activities prior to the war, which continued during the war in a diminished form. If one applies the Nuremberg court's decision as a precedent in the case of RTS, the network could appropriately be prosecuted. But that decision has not yet been made by the UN tribunal, and may not be made – partly because of limited resources.

The Rwandan and Serbian cases show why it is vital to defend freedom of speech even in unpleasant circumstances, as the ACLU did in Skokie. The reason the media were so effective in inciting violence in Rwanda and Yugoslavia is precisely that they had an exclusive capacity to communicate. If a variety of views were being expressed and heard in Rwanda, even the vilest radio station could not have incited a genocide in which 800,000 people were killed during a period of three months. If there had been an opportunity for other voices to be heard in Serbia in the period when RTS and the nationalist press were monopolising communication, the influence of those voices would not have been so extreme. Freedom of speech is ultimately the greatest protection against the kinds of crimes that took place in Rwanda and in the former Yugoslavia, and against the crimes that Julius Streicher was able to incite in Nazi Germany. It is the exclusive capacity to communicate that produces the link between incitement to violence and violence itself.

› › › **Aryeh Neier** is president of the Open Society Institute. This item was originally published by *Index on Censorship* in 1998

## VALERIU NICOLAE >>> Words that kill

*The Palestinian academic Edward Said once said, 'Gypsies are the only group about which anything can be said without challenge or demurral.' Across Europe this truth is reiterated daily, in the media, in politics, in every corner of daily life*

Fuck you and your dead ones, you mother fucker, stinky nomad. Go back to your fucking Indians. You [Gypsies] are a nation of stinky thieves, beggars and cons; if I could I would gather you all together and light you up.

You [Gypsies] are the scum of all societies. Damned be the people who brought you to Europe and those who didn't kill you in time, you bloody parasites of the human race.

Your people are not only useless but also damaging for any society which makes the mistake of hosting you. As any other carcinoma, you need to be extirpated and destroyed. If you [Gypsies] disappeared tomorrow the world would take a step forward.

These are fragments from a few of 104 similar letters I received over two days in September 2005, following UEFA's suspension of the Romanian football team Steaua Bucuresti on grounds of racism in the stadium, and my public statement against racism in football in Romanian stadiums. The language in most of the letters was too offensive to quote here. The letters were mostly from undergraduates or graduates; they had taken time and considerable effort, first to find my email address and then to write letters which were on average over 600 words long.

Often when I use such materials as examples of racist or hate speech, non-Roma audiences become defensive and explain that these are exceptional cases – lunatics, right-wing extremists, liars. They seem more concerned about exposing my bias than the blatant hate speech, and the potential of such material for incitement to violence.

While many non-Roma describe such examples of hate speech as isolated incidents, opinions not held by the majority, hate mail delivered via email is simply the latest manifestation of a long history of prejudice and the dehumanisation of Roma. Whether the majority of the population denies, ignores, accepts or supports them, such materials have the power to incite and, in a more modern development, to justify violence against Roma.

A Gallup poll following research conducted at the end of 2004 in Romania found that of 1,004 young people interviewed (18–35 years old, around 20 per cent of them undergraduate or graduate students), 91 per cent would not take Roma home to their families. In September 2005, some research was published by the European Commission Delegation in Romania, revealing that 46 per cent of Romanians believed that there are superior and inferior races. Forty two per cent of those interviewed considered that the relationship between Romanians and Gypsies was irreconcilable. The report, produced by a Romanian polling company (IRSOP), didn't even bother to use the correct term Roma.

Polls consistently demonstrate that anti-Gypsyism is widespread in Europe and that Roma are the most hated

ethnic group. Worse still is the fact that public hate speech at all levels is neither criticised nor punished. Declarations suggesting the burning of Roma, presenting Roma as animals or dangerous for the health of the majority and linking them to the most heinous crimes are not espoused just by lunatics but also by public figures, making blatant human rights violations of Roma seem acceptable in the eyes of the mainstream public. Here are a few examples:

Residents are ready to start setting the Gypsies' houses on fire, and I want to be at the head of this plan. (Russian municipal legislator Sergei Krivnyuk, for Volgainform, 17 November 2004)

Nomads, they are animals. (Councilman Pierpaolo Fanton on TV news in Treviso, Italy, in 2005. He went on to suggest a vaccine for Roma children who, with their saliva and spit, might 'infect' Italian children attending the same schools)

Roma steal children and then sell them, sometimes in parts. (Pietro Zocconali, President of the National Association of Sociologists of Italy, February 2005, according to the Italian press)

Since the early 1990s, similar talk was deployed by politicians aiming to boost their electoral support:

If we don't deal with them now, they will deal with us in time. (Prime Minister Vladimir Meciar of Slovakia, in 1993. He also described Roma as 'mentally handicapped' and 'breeding machines')

[I will] ... isolate the Roma criminals in special colonies ... [in order to] ... stop the transformation of Romania into a Gypsy camp. (A 1997 election promise from Romanian senator Corneliu Vadim Tudor)

At the present time, I believe that the Roma of Zámoly have no place among human beings. Just as in the animal world, parasites must be expelled. (Dezső Csete, mayor of Csór, Hungary, on 27 April 2000)

If you don't want Gypsies, Moroccans and delinquents in your house, be the master of your own home in a city you can live in and vote Lega Nord. (A 2002 electoral message of Italian political leader Umberto Bossi)

None of these politicians was fined, sued or prosecuted for their statements. I believe that the general acceptance and tolerance of such statements is one reason that anti-Gypsyism and ethnically motivated violence against Roma are increasing in Europe.

Recent European Commission and European Union Monitoring Center (EUMC) reports have found Roma to be

the most discriminated ethnic minority in Europe. However, in practice Roma are disregarded, as a subhuman species, or viewed as unable to defend their own point of view, 'requiring' the paternalism of everybody from decision-makers to journalists. Public authorities tend to speak for or about Roma without asking Roma for their opinion. Even high level officials within European institutions have made statements on the edge of racism, without a Roma representative available for comment.

For example, in an interview broadcast on Dutch TV on 1 May 2004, Eric Van der Linden, EU Commission Ambassador to Slovakia, proposed to remove Romani children from their parents and put them in boarding schools. 'It may sound simplistic,' he said, 'but it is, I think, at the root of our cause that we need to strengthen education and organise the educational system in such a way that we may have to start, I'll say it in quotation marks, to "force" Romani children to stay in a kind of boarding school from Monday morning until Friday afternoon, where they will continuously be subjected to a system of values which is dominant (*vigerend*) in our society.'

When a journalist objected that Roma might be opposed to such a measure, Van der Linden said 'we live in a democracy, so you cannot force it, but you can of course try to let it develop more smoothly with financial incentives'. He said he expected Roma families to accept the 'financial incentives' and send their children to schools where they 'will be educated and at the same time raised' and in that way 'will fit better into the dominant society' and 'co-operate in a productive way in the growth of the economy'.

The media, in general, focuses on problem areas and has a marked tendency to reinforce stereotypes. Roma victims of racist attacks receive very little media coverage. Exceptionally, there is some media interest, often in cases where the Roma are saved or helped by non-Roma, so reinforcing the positive stereotype of a tolerant and helpful majority and accentuating the half-human, half-beast image of Roma.

On 27 February 2004, Radio Prague broadcast a programme focused on measures needed to 'stop the exodus of Roma' into the Czech Republic. The Minister of the Interior, Stanislav Gross, was interviewed and affirmed his strong stand against Roma migrants from Slovakia. The broadcast focused on the 'violent riots and looting' carried out by Roma during social unrest in Eastern Slovakia. The reporter failed to mention the reason for the unrest in Slovakia, focusing strictly on the restrictive measures against a 'possible Roma invasion'.

At the beginning of 2004 a racist campaign against Roma was initiated by the UK tabloid press, appearing to respond to and play on fears related to the enlargement of the European Union. A similar campaign occurred in 2005, in the run-up to the UK general election. There was a close fit between the anti-Roma discourse in the media and the hostile rhetoric of politicians from both the Conservative

and Labour parties. Tabloid headlines talking about 'incoming hordes' and the incredible 'Stamp on the Camps' campaign launched by the Sun dehumanise Roma. Once Roma have been dehumanised, violence against us is justifiable, or even called for, as in the Sun's campaign.

Between 1990 and 1993, both left- and right-wing political leaders of the new Romanian democracy were quick to blame the Roma for almost everything that went wrong. A series of ethnically motivated incidents culminated in the pogrom in Hadareni, where 13 Roma houses were burned to ashes and three Roma men were killed. One of the victims died as a result of 89 stab wounds.

Since then, the situation in Romania does not seem to have improved much. Recent events point to an increased and more acute anti-Gypsyism. On 4 May 2005, the Mayor of Craiova (one of the largest cities in Romania) said publicly, 'I pee on them, those mother fuckers, Gypsy jerks and hooligans.' A local politician from the ruling Social Democrat Party made it clear what he thought of Roma: 'stinky ugly Gypsies', 'shits', 'jerks', 'dirty', 'hooligans'. He described a 'war' against Gypsies and his wish to deport them from his city.

On 25 October 2005, the police found over a hundred pieces of what had been the body of an 11-year-old Roma girl, raped and afterwards killed, in the flat of an ethnic Romanian. The Romanian newspaper *Adevărul* published the news on 26 October 2005. If the case had involved an ethnic Romanian girl raped and brutally murdered by a Roma man, it would likely have triggered another anti-Roma pogrom, like the one in Hadareni. The same evening, a regular talk show on the Romanian TV station OTV featured two items concerning Roma: one about the brutal murder mentioned above, and the other about a fight between Roma. The main reaction of the audience regarding the murdered Roma girl was that Roma parents are unable to take care of their children. The second subject brought in a caller who said that 'Gypsies should be shot dead.'

Legislation seems ineffective, perhaps because the overwhelming majority of lawyers and judges hold, to some degree, to the damaging stereotypes about Roma. The anti-discrimination legislation adopted by the European Union in 2000, and at national levels in 2003 and 2004, is considered by the self-congratulatory European Commission 'a quantum leap' in the protection of human rights. The Race directive 43/2000/EC, which should protect the rights of Roma, has been implemented in all states mentioned in this article except one (Russia). Considering what is actually happening in these countries, it looks as if the anti-discrimination legislation was such a big leap that nobody believes it actually happened.

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REMZI LANI &gt;&gt;&gt;

## Hate speech & hate silence

*Albania is a country where inter-ethnic relations are generally characterised by tolerance and coexistence. But its record of hate speech bears close examination*

Although Albania does not have a history of inter-ethnic conflict, it is still considered vulnerable in this respect. Ethnic relations in neighbouring countries, especially in Kosovo, a difficult social and economic situation and the country's fragile democracy – all of them contribute to this vulnerability.

When we analyse the Albanian media we can safely say that ethnic relations are not among their main topics. This seems to be related, on the one hand, to the fact that inter-ethnic problems are not among the major problems society is coming up against at this moment, while, on the other, to the fact that the myth of a homogenous society is still very strong among Albanians.

When speaking about hate speech in Albania, we can say that while ethnic hate speech is subdued, though not absent, political hate speech is predominant. But you cannot discuss hate speech in a political context alone.

Political hate speech in the media reflects the usually polarised and strained political atmosphere of the country, which reached its culmination point in 1997, which was not an ethnic, regional, religious, language or civil conflict but, first and foremost, a political conflict. Political hate speech, refusal of the political 'other', had an influence on the course of events before, during and after this crisis. But in this article, we are dealing only with ethnic hate speech, which is rarer in Albania.

On the other hand, a comparative view would be interesting on another plane: between hate speech and hate silence. If we take the number of items in which hate speech is present, we will see that their number is very limited. However, to conclude that the Albanian media is free of hate speech stereotypes, prejudices and language would be superficial. In this case, hate speech is replaced by hate silence. The influence of the media on their audiences 'is not manifest only through what they say, but, more importantly, through what they don't say'.

It is important to stress here that, when we say hate speech, we do not only mean the work of the mainstream media. In Albania, just as in the other Balkan countries, there are small marginal papers which use a much more aggressive terminology than those of the mainstream media. One of them is *Rimekembja Kombetare* (National Revival), which actually reproduces most of the articles of the Kosovar daily *Bota Sot*, which appears in Switzerland.

This is a newspaper typical for its differentiation discourse, according to which Albanians are always painted in bright colours and the others in dark ones. This is also typical of the victimisation discourse, according to which Albanians are always victims of the others: Serbs, Greeks, Italians etc. This paper's print run is almost negligible in Tirana and its influence hardly felt. Giving attention to this paper would only give it an importance which it does not have.

Hate speech is first of all a phenomenon of the written media, apparently due to its very nature. However, this does not mean that negative stereotypes are not present in the electronic media.

Reading the Albanian press one comes across stereotypes that are linked to the Greeks, Serbs, Roma or Vlachs. The image of the Greek as foxy; of the Serb as an enemy; of the Roma as a thief; of the Vlach as a non-Albanian etc is more or less present in the Albanian newspapers.

Despite the historically difficult relations between the Albanians and the Serbs, in which the Kosovo issue is prominent, it is not anti-Serbian but anti-Greek stereotypes and prejudices that predominate in Albanian society and press. This calls for some explanation.

First, the area of contact between the Albanians and the Greeks is broader than that between the Albanians and the Serbs. Suffice it to say that currently about half a million of Albanian emigrants work in Greece. Most of them live and work there without problems, but some of them come up against maltreatment or violence on the part of the local police. Reports on these incidents in the media have an influence on keeping anti-Greek feelings alive in Albania.

Second, Greek business is very much present in the Albanian economy; among other things, it controls Albania's two cell-phone companies and part of the banking system, which makes a section of the public, and also the media, see Albania as Greece's 'vassal'.

*An elderly Roma woman huddles in a shack 30 kilometres outside Tirana*  
Credit: Gent Shukullaku / AFP / Getty Images



Third, relations between the two countries can on a whole be characterised as consisting of 'intrigue and love'. Officially the two countries entertain good relations, they also have a Treaty of Friendship and Cooperation, while on the other hand they are technically in a 'state of war'. Greece still keeps in force a wartime law, the Law on the State of War with Albania, which, although it is a ghost law, still has an effect on the issue of Albanian property in Greece. Among other problems inherited from history and keeping anti-Greek feelings alive there is also the issue of the ethnic Albanians (Cams) expelled from Greece after the war. It is no accident that the Albanian journalists of Cam origin are also harsher critics of Greece.

It is important to note that this climate, although it has an influence, is not always translated into hate speech against the ethnic Greek minority in Albania.

Still, hate speech and anti-Greek stereotypes work, in the first place, through generalisation and homogenisation, in which there are no individuals and the group predominates. In the case of the ethnic Greek minority in Albania the discourse is not related to the 'us' and 'them' binomial, but to the suspicion syndrome, otherwise called the Trojan Horse syndrome.

It would be a mistake to think that everything that is written about the Greeks and Greece in the Albanian press belongs to the hate speech stereotypes. Paradoxically, the neighbouring country is seen, on the one hand, as the open portal to Europe which is the main aspiration of the Albanians and, on the other, as a threat causing anxiety. Or perhaps this is no paradox, but a Balkan reality.

As for anti-Serbian stereotypes, they are not so numerous, but undoubtedly older and more deeply rooted. The main stereotype is that of the Serbs as 'enemies of Albanians', a stereotype that emerges especially in reports on the Kosovo issue. It must be said, however, that the press is ever more positively reflecting the improvement of relations between Tirana and Belgrade and the intensification of economic relations between the two countries. In the meantime, *Gazeta Shqiptare* and *Korrieri* have also carried objective reports about the Serbian enclaves in Kosovo. To a larger degree, anti-Serbian stereotypes reflect not an aggressive Albanian nationalism, but some sort of nationalistic conformism and an attempt not to be misunderstood in Prishtina.

As we said above, the coverage of the Roma constitutes rather a case of hate silence, although in the few writings or radio and TV programmes about them there emerge racist

stereotypes and prejudices and hate speech, at times open, at times camouflaged. The press deals often with Roma problems which, translated, means that it sees the Roma as a problem for Albanian society. They are different from us, they imply. They are a 'black population'. They are poor, uneducated, dangerous, thieves. Certainly they are good musicians, but nothing more.

Many NGOs are doing things for them, but not with them. They are the victims of the illegal trafficking that goes on across the Balkans. As a rule the Roma are not individuals – the homogenisation strategy does not allow that – but part of a group from which they cannot escape. Journalistic writings about the Roma rest on the assumption that the Roma are different from us. The construction of 'us' and 'them' is built in opposing terms. They are what we are not, and vice versa.

In the most frequent cases they are 'them'. In the worst of cases they are thieves. In the best of cases they are victims. But they are never normal people. Their coverage in the media shifts between hate speech and melodrama, in both cases stereotyped.

The integration level of the Roma population into Albanian society is almost nonexistent. They live in separate communities, they have a low communication level with the majority of the population and the existing barriers are clear and difficult to overcome.

'The most important minority in Albanian society is the Roma minority, which, although it is made up of 120,000 people, is its forgotten part,' writes Italian artist Mario Rizzi.

Finally, it must be said that the Vlachs, who are the best integrated minority in the country, have not escaped hate speech and negative stereotypes either. In the summer of 2004, some dailies started an anti-Vlach campaign, describing the Vlach community as non-Albanian in the meaning of anti-Albanian, or at least non-loyal Albanian.

Systematic policies to change public attitudes and perceptions are needed. These include developing media policies and standards for journalists reporting on ethnic relations and minority issues, developing media products that promote diversity and provide positive examples of this practice. This should also be part of information campaigns on European integration, thus building a broad-based awareness of human rights, both as part of democracy and for its benefit.

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OLEG PANFILOV &gt;&gt;&gt;

## The rebirth of nationalism

*A new page in the history of Russian nationalism was opened on 4 November 2005  
– and the Kremlin's fingers were doing the page turning*

On 4 November 2005, more than 3,000 activists of nationalistic organisations, giving Nazi salutes and with stylised swastikas on their banners, marched through the centre of Moscow to Slavyanskaya Square, which is located between the Kremlin and the headquarters of the FSB (KGB). If the aims of the marchers had not been clear enough from the line of drummers and young people wearing quasi-military uniform, they were soon evident from their slogans: 'Sieg Heil!', 'Hail Russia', 'Russia for the Russians', 'Who owns Russia? – Russians!', 'Russia is All, All Else is Nothing!'

The organisers of the march had been given official permission for the demonstration. Several radical nationalist and fascist organisations, including the skinheads' movement, made no secret of the fact that their main aim was to drive all 'non-Russians' out of Moscow. Anti-Semitic utterances were also to be heard at the meeting.

On that same day, 4 November, the traditional 'grey briefing' took place in the Kremlin for the directors of federal television companies, at which officials of the Administration of the President of Russia distributed a 'list of terminology'. The document advises against 'distorting' the Russian language and employing 'correct terminology' in television news programmes.

Terms in use	Correct terms
jamaat	terrorist organisation, grouping
shahid	terrorist, suicide bomber
mujahad	fighter, terrorist
amir, emir, imam, sheikh, field commander	head of a group formation
Wahhabi	Islamic extremist
shahid's belt	belt with explosives
jihad	terrorist sabotage
Chechen terrorism, Islamic terrorism	international terrorism
Caucasian, North, South etc. fronts, brigades	Chechen terrorist groupings active in the Caucasus
Chechen separatist	Chechen terrorist, fighter
fighters' military operation, troop operation of mujahaddin	action by terrorist fighters outrage by terrorist fighters
emissary of the Chechen separatists (Ahmed Zakayev)	spokesman of the Chechen fighters

At first sight, these events seem unrelated, but there is one very important detail to note: not one of the nationwide federal television stations screened a report on the march of the nationalists and fascists. In all likelihood, that decision was taken that same day in the Kremlin.

It is my belief that 4 November started a new page in the history of Russia, the rebirth of nationalism. This rebirth was initiated by the government, beginning in 2000, after personnel changes in the Kremlin administration and the

revival of the traditions of Soviet propaganda and xenophobia became component parts of official and unofficial ideology. It is manifest in the colourful expressions frequently used by Vladimir Putin, for example, 'beat the crap out [of the Chechen resistance] in the shithouse' or about men becoming 'circumcised radical Muslims'. Xenophobia is endemic both among the leaders of political parties ideologically close to the Russian government and among those comprising its opposition.

Russian xenophobia has gradually evolved from being anti-Semitic into being anti-Caucasian and anti-Islamic. The development of xenophobia is encouraged, not only by the public speeches and acts of politicians, but also by the mass media: the state-owned media because they are obliged to broadcast the comments of politicians, and the non-state owned media because they reflect the general nationalistic mood of society. Only a small proportion of the liberally minded mass media resist the spreading of xenophobia in Russian society. Unfortunately the influence of a few Moscow newspapers and a few dozen provincial newspapers cannot substantively alter the situation.

Neither can the internet, despite being completely uncontrolled by the government: the freedom of the internet has made possible not only the uncontrolled delivery of alternative news, but also the appearance of a large number of nationalistic and fascist websites.

There are several reasons for this reappearance of Russian xenophobia.

Observers usually see Putin's coming to power as being directly linked to the re-starting of the war in Chechnya, and the population wanted to see someone with a firm hand in the Kremlin. This is entirely plausible, because many Russian opinion polls in the late 1990s, that is in the last two or three years of Boris Yeltsin's rule, pointed to disillusionment after the first war in Chechnya ended in 1996. Many described the peace treaty with the Chechen President Aslan Maskhadov as a 'shameful defeat'.

The 'news war' against Chechnya intensified immediately after the signing of the peace treaty in 1996, and the Russian state-owned mass media increasingly began to refer to 'Chechen bandits' and 'Chechen terrorists'. During this period, however, the independent television company NTV was still functioning, and the Echo of Moscow radio station was developing. The internet had become widespread, and independent newspapers were being published. It was possible to discuss and debate the problem of Chechnya. The levels of xenophobia in the mass media could be seen as a manifestation of popular nationalism unrelated to government policy. Only radical politicians and the military claimed that the one way they could resolve the Chechen problem was by means of military force.

This situation began to change in August 1999 after the Russian army's campaign in Dagestan, a federal republic

adjacent to Chechnya, where Chechen and Dagestani separatists were organising resistance. This was the first military operation conducted under a news blackout. Almost nothing was known about it, because journalists were stopped at the approaches to Dagestan. Only a few journalists working for independent publications managed to report on the operation and its consequences, and their information differed markedly from officially approved news.

Almost as soon as Putin was appointed Prime Minister in August 1999, he started 'winning round' journalists. Newspaper editors and the directors of television companies began receiving frequent invitations to the Kremlin. After the first few such meetings a number of heads of independent newspapers began publishing commentaries on their conversations with Putin. When Putin was elected President of Russia in March 2000, he continued to socialise with the heads of the mass media, but in recent years only 'reliable' journalists, who keep their mouths shut and don't give away secrets, are invited to the Kremlin.

When two blocks of flats were blown up in Moscow in September 1999, there was no investigative journalism from the Russian media. Within a few hours, all the television channels were broadcasting interviews with politicians who spoke of 'clear signs of Chechen involvement', but since then neither the official enquiry nor any other investigation has come up with evidence to suggest the leadership of the Chechen republic was involved. In spite of this, the television channels did what the government needed them to do: they created a public consensus on who was behind the Moscow atrocities.

The Kremlin's policy on news was finalised when, in September 2000, Putin signed a strange document titled 'Doctrine of Information Security'. This is neither a law nor a legally binding document, but is rather a government action programme. The Doctrine refers to the leading role of the state press and makes mention, several times more often than it mentions freedom of speech, of 'news war' and the 'news weapon'.

The provision of news in Russia began to change from 2000, as persecution of the independent television company NTV and of journalists on independent newspapers began; this was accompanied by the creation of new state-owned television companies, newspapers, agencies and websites. Government bureaucrats began routinely to bandy about a new concept, 'unified news provision', which on closer inspection proves to be none other than the familiar Soviet concept of propaganda. The main aim has been achieved, in that Russian society now hears what is going on in Chechnya only from official sources. The government has introduced rigorous controls on Russian journalists, restricting visits to territory where the so-called 'anti-terrorist operation' is being conducted, that is, to Chechnya. Similar controls have been applied to foreign journalists. Journalists who wrote extensively about the First Chechen War have been neutralised by being refused visas and accreditation by the Russian Ministry of Foreign Affairs.

News about events of any description in Russia is now strictly controlled by the government: all the national tele-

vision companies and radio stations are state-owned. Only a small proportion of news sources, newspapers and the internet are in a position to deliver alternative news, and their influence on public opinion does not compare with that of radio and TV.

The essential conditions for spreading the language of enmity have been created in Russia. Television is free: it is financed out of the state budget and by advertising revenue. Anybody living in Russia has only to press the button on their remote control to access five national channels, only one of which is dedicated to culture, while the others include news bulletins or news analysis.

There is at present no public service television network in Russia and, to judge by the Duma's postponing of discussion of the legislative proposal, there is unlikely to be one in the near future. Public control of the programming of television companies would be detrimental to the government, since the Kremlin would lose its principal disseminator of propaganda.

Only subscribers to cable television packages can access non-official news from Euronews, BBC or CNN programmes translated into Russian. In 2002 there were 12 million users of cable networks in Russia out of a population of 145 million. Accordingly, more than 90 per cent of the population is able to obtain news only from programmes broadcast by state television. The independent television companies in the Russian provinces have their own news and news analysis programmes, but are subjected to pressure by the local authorities. For the most part they try to avoid dealing with topics which might cause trouble.

The situation with radio is just the same. The only independent news radio station is Moscow Echo, which is able to rebroadcast its programmes in 41 Russian cities. This gives it a potential audience of 22,400,000, but obviously not all of them listen to the station's programmes. Probably, as in Moscow, only 8–9 per cent tune in. The other independent radio stations (of which there are about 1,000) broadcast music and devote 3–6 minutes in the hour to news. Foreign radio stations broadcasting in Russian, Radio Liberty, the BBC, Deutsche Welle, continue to have a modest following.

The other source of news is, of course newspapers. Traditionally those published in Moscow are considered the most liberal, but their circulations are not large enough to sway public opinion in Russia as a whole. Some idea of their readership is given by counting visitors to their websites. The table opposite gives figures for the print-run and average number of hits per day on their websites and hosts.

Of course, several dozen liberal newspapers are published in the provinces, but the standard of living and hence the purchasing power of the population is lower than in Moscow, with the consequence that the print run of these newspapers is much lower than in the capital.

So government influence on presentation of the news by television companies, radio stations and some newspapers is very strong. As long as attempts to legislate for the creation of a public service television network continue to be stymied by the Duma, the greatest impact will continue

Title	Reported daily circulation in print	Daily web hits/unique visitors
<i>Nezavisimaya gazeta</i>	140,000	100,000/ 28,000
<i>Kommersant</i>	145,500	300,000/ 40,000
<i>Novaya gazeta</i> (twice weekly)	583,000	40,000/10,000 per issue
<i>Izvestiya</i>	241,000	240,000 / 53,000

to come from officially sanctioned television, which is free to users.

The government is unwilling to give up its control of television since TV news bulletins and news analysis programmes are crucial in forming public opinion. Statistics for February 2004 on the database of the Public Opinion Institute (Fond Obshchestvennoe mnenie), reveal that ORT (the First Channel) is received by 95 per cent of the survey's respondents, RTR (the Rossiya Channel) is received by 93 per cent. The figures for the remaining television companies are much lower: NTV – 69 per cent; TVTs – 48 per cent. All television channels are state-owned.

The only area of news provision over which the government has no control is the internet. As yet there is no law in Russia regulating internet activity and no statutory obligation to register websites. A large number of nationalist and fascist websites have been created on the Russian internet (RuNet). Almost every organisation preaching racial or national hatred and intolerance has its own website.

RuNet is developing rapidly and is used by 10–12 per cent of the population, but only a small number of users appear interested in political information.

Russian legislation makes it an offence to publish materials instigating or aggravating national and religious discord. Russia also has a Public Prosecutor's Office whose job it is to monitor the observance of laws and punish those who flout them. Despite this, hundreds of newspapers daily publish articles whose xenophobic content falls within the provisions of these articles of the Criminal Code: it is extremely rare for cases to be brought on these grounds. The courts deal leniently with those accused of distributing jingoistic publications.

Xenophobia in the Russian mass media has undergone changes. In the early 1990s, the euphoria of freedom put large numbers of anti-Semitic publications on the counters of Russian news stands. The xenophobia of the Russian press is now directed against Chechens, people from the Caucasus, and Muslims. Xenophobic materials are to be found not only in nationalistic publications, but indeed primarily in the popular press, in newspapers like *Komsomolskaya Pravda* and *Moskovsky Komsomolets* with huge circulations of 2–3 million.

It is quite clear that anti-Chechen xenophobia has been whipped up by the authorities, both military and political, who are eager to ensure that society continues to believe in

the necessity of the military campaign in Chechnya.

The state's bureaucrats did use propaganda during the First Chechen War, but from the beginning of the Second Chechen War all rhyme and reason disappeared from the news they distributed. Official sources appeared totally unconcerned whether the news they were releasing was subsequently discredited, or was seen to be totally ridiculous even by those without specialist military knowledge. For example, on 6 October 1999, the ITAR-TASS news agency, quoting one of the leaders of the North Caucasus Military District, announced that 'the Chechen bandits are themselves mining residential blocks and, when federal aircraft appear in the sky, blow them up. This is being done in order to turn the Chechen population against the actions of the federal authorities in the northern Caucasus. At the same time, military sources state that the civilian population is being increasingly disaffected by the actions of the bandit formations.'

Hatred of Chechens is always encouraged, in particular by the Russian military, whose press centres disseminate absurd 'news'. For example, after the Kursk submarine disaster in 2002, ITAR-TASS, citing an anonymous FSB officer, reported that Chechens were planning to hijack a submarine. A year earlier the intelligence services disseminated a story that the blueprint had been discovered in a cave in the mountains of Chechnya of a Boeing similar to one used by terrorists to destroy buildings in New York on 11 September 2001.

Anti-Chechen propaganda is spread not only via news or news analysis programmes. In the last five years Russian television channels have shown a large number of feature films in which, as in some Indian cinema, the heroes, their characteristics and the ending are already familiar to the audience. These are films about the Chechen war, in which the good guys are invariably Russian soldiers and officers and the bad guys are Chechens or, more generally, Caucasians.

State control of the mass media is the principal cause of the growth of xenophobia in Russia, with television the main 'weapon' in the armoury of Russian state propaganda.

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Translated by Arch Tait

HANEEN ZOUBI &gt;&gt;&gt;

## Follow the tune, relay the message

*Palestinians in Israel now number about 17 per cent of the total population and consider themselves to be both Palestinians and Israeli citizens. But Israel defines itself as a Jewish state, not a state for all of its citizens*

The media is the most powerful ideological, political, and cultural tool shaping public opinion in Israel. It enjoys a large measure of freedom of expression regarding coverage of internal affairs, except one internal affair, that of Arab citizens inside Israel.

Both the State and the media consider Arab citizens as a foreign affair, more specifically, a security one. In covering the Israeli–Arab struggle, the occupation and international matters such as the political attitudes of the Arab world, the criticisms of the international community, the work, roles and agreements of the UN, the Israeli media tends to behave as a propaganda tool. It forgets all the norms of pluralism of opinion, criticism, even basic accuracy.

Suddenly the policy of the national government becomes the definitive reference, instead of being one source among several. In most cases the media does not offer a Palestinian version at all. When it does, it comes preceded by the words: ‘According to the Palestinians . . .’

The media identifies more and more with the army and the government the deeper the conflict becomes. The other side is dehumanised. Palestinians who are killed are not identified while Israeli casualties are named and described in detail. In the Israeli media there is no differentiation between civilian and armed Palestinians and no differentiation between attacks on Israeli soldiers or settlers inside the occupied territories and Israeli civilians attacked inside

*Hate imagery from 1995 on Israeli flyposters caricaturing Yasser Arafat and Itzhak Rabin*

*Credit: Abbas / Magnum Photos*



Israel proper – even though international law and international conventions on human rights do differentiate.

Arab and Jewish journalists working in Arabic-language services run by the Israeli media have been given explicit security ‘guidelines’ to abide by. Every Arab journalist who applies to work on these programmes has to be vetted by the security services and work under clear directives:

- Don’t use the word ‘victim’ when referring to Palestinians killed in violence. Use it only in the case of Israeli deaths.
- Don’t use the word ‘version’ when referring to a press release issued by the Israeli Army in case audiences believe that the journalist has any doubts about the statement. You can, however, use this word in relation to Palestinian accounts.
- Don’t use the word ‘occupation’.
- Don’t begin a news story with quotes from Palestinian or Arab figures.
- When there is dispute between accounts from the Palestinian and Israeli sides, do not state that the Israeli side ‘disagrees with . . .’ Instead say the Israeli side ‘emphasises’ the untruth of the other version.
- Don’t use the term ‘assassination’.
- Don’t say the ‘Israeli–Palestinian struggle’ or the ‘Israeli–Arab struggle’. Say the ‘Palestinian–Israeli struggle’ or the ‘Arab–Israeli struggle’.
- Where there is disagreement between the Prime Minister and a Knesset member, don’t use words like ‘contradict’, ‘defy’ or ‘confront’ to describe it.

While the Arabic-language media in Israel is directed to report in a certain way, the Hebrew-language media does so of its own volition. It is not laws or regulations, government censorship or lack of sources that drive it, but instead the identification of the media with the aims of the army and the government. This state of media affairs is a self-regulated one, motivated by journalist and editor, and overseen by a state proud of its media’s patriotism.

According to Israel’s Broadcasting Law, the mission of the media is to reinforce the Jewish character of Israeli society, to promote Jewish culture and foster closer relations with the Jewish diaspora. It therefore either ignores the presence, culture, identity and reality of the Palestinian community in Israel, which represents 17 per cent of the population, or treats them as unwanted guests, invaders or demographic and security threats.

We have found:

- From all journalistic reports in Israeli newspapers, only 2 per cent deal with issues related to Palestinian society in Israel and 80–90 per cent of those are negative. What coverage exists usually portrays them as a threat to the security of the state, and ignores social, cultural and daily events related to this community.
- The terminology used by the media to speak about Jewish citizens and Palestinian citizens is fundamentally different. In October 2000 the former were being referred as ‘citizens’ or ‘demonstrators’ while the latter were only ‘residents’ or ‘agitators.’
- After October 2000, the Israeli media followed a request made by official government representatives to refrain from interviewing Palestinian leaders, even if they are democratically elected Knesset members.
- Palestinians make up between 0.03 and 1 per cent of the Israeli media workforce. They run constant risk of being fired if they question or criticise internal policies of the state or of the media.

This media performance is built on convictions entrenched in Israeli society: that Arabs want to destroy Israel; that Arabs don’t want peace; that they are dishonest negotiators; that the Israeli Army is doing its best not to kill civilians in the occupied territories; that all acts of resistance by Palestinians are acts of terrorism.

The media confirms and corroborates these simplistic notions in its day-to-day reporting of current events. Only by choosing to neglect a very basic professional standard of objectivity, accuracy and the need to cite diverse information sources can the Israeli media act in this way. The Israeli media must also, conveniently, forget basic international law and human rights conventions.

This uncritical media coverage has three very dangerous consequences. It reinforces paranoia, instead of trying to mitigate its effect. It reinforces and strengthens racist attitudes. It denies all rational creative methods of dealing with our complicated reality.

And it eventually makes the media an integral part of the war machine.

> > > **Haneen Zoubi** is the director of I’lam: Media Center for Arab Palestinians in Israel



*Jewish comedian Jackie Mason in performance: 'I did this show in Israel. I was a hit. I did the same show in Egypt. Same gags and everything. Nothing.'*  
Credit: Mok Yui Mok / PA



## JONATHAN FREEDLAND ›››

### Where the lines are drawn

*Jews are happy to listen and reply to their critics' opinions if the critics themselves want to see Jews survive and thrive*

Jews and free expression? It feels like the cue for a joke. The hoariest of the form would be the one that says 'Find two Jews and you'll have three opinions.' If Jews are the people of the book – they are also the people of the word, the sentence and the paragraph. Jewish civilisation is all but built on talk and argument. Free expression is not just a right Jews demand and cherish, but something close to the heart of Jewishness itself.

One knows that instinctively and anecdotally. Enter a synagogue, and you'll find not the hushed decorum of a church – but a constant thrum of chatter. Few rabbis expect to deliver a sermon unchallenged: tradition holds that they are teachers, who will be bombarded with questions, rather than oracles of wisdom. Glance at a page of Talmud: it contains not a statement of infallible doctrine, but a series of commentaries and responses, built up over centuries.

If that is the default position, a religious tradition which has no real concept of heresy, the reality is not quite so straightforward. In practice, Jews, including those who may have moved away from religious belief entirely, do draw unseen lines, demarcating what is and is not acceptable speech. In diaspora Jewish societies, this can never become a ban – there is no authority to do the banning – and there is next to no history of violence meted out to offenders, but the social mechanisms of ostracism that might operate in any community operate here too.

The two most sensitive areas are the Holocaust and Israel. To demean or trivialise the Holocaust is the closest one can come to committing a Jewish heresy. Forceful criticism of Israel is not officially off limits, but the harsher the attack, the more scrutiny one will invite: Jews will be listening closely to hear if this critic of Israel is not faulting the conduct of a state, so much as questioning the Jews' very right to exist collectively.

If these two neuralgic spots come together, then many Jews will feel the limit of free expression has been reached. The key example was Jim Allen's play *Perdition*, which alleged collusion between a group of Hungarian Zionists and the Nazis. Several Jewish groups campaigned hard for the play not to be staged, prompting accusations of censorship and an attempt to deny Allen's right to free speech.

Similarly, those who have compared the conduct of contemporary Israel with Nazi Germany are seen to have entered forbidden territory – as Tom Paulin discovered when he wrote of the 'Zionist SS' in a poem published in the *Observer* newspaper in 2001.

As with other ethnic groups, a key factor is, inevitably, the identity and affiliation of the speaker. Just as African-American audiences can guffaw at a Chris Rock routine peppered with the N-word, so Jews could probably tolerate a smattering of uncomfortable vocabulary or imagery when it comes from a Jewish speaker. (And some Jews have informally 'reclaimed' the word 'yid' for use among themselves.) Most will agree with the old saw that a Jewish joke is funny

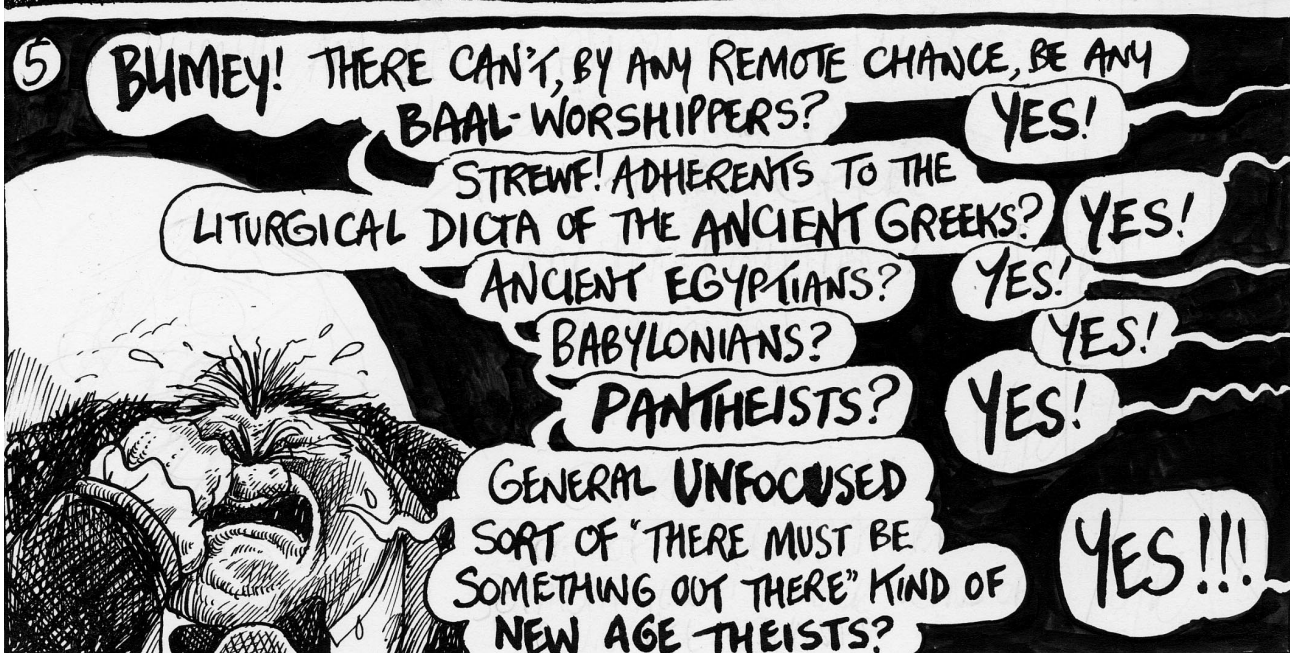
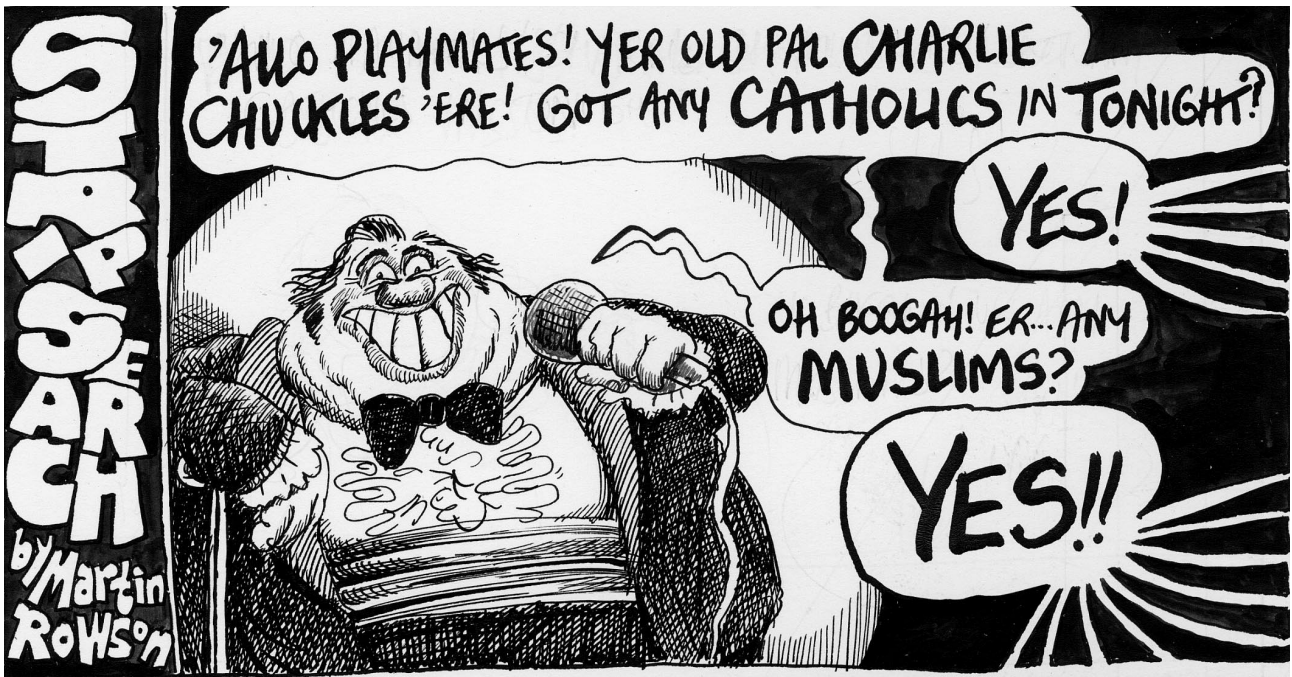
when told by a Jew, but suddenly falls flat when repeated by an outsider. This distinction applies even to the word 'Jew' itself. Said by a Jew, it causes little trouble. But, such is its history, it can sound too harsh, too stark, when used by a gentile. An apparently harmless phrase – 'Isn't he a Jew?' – will strike many as vaguely anti-Semitic if used by someone on the outside. Unfair perhaps, but true.

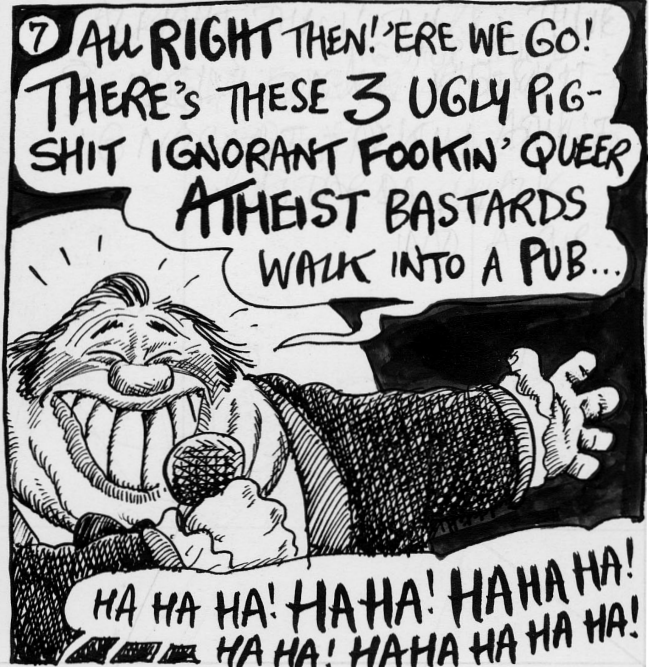
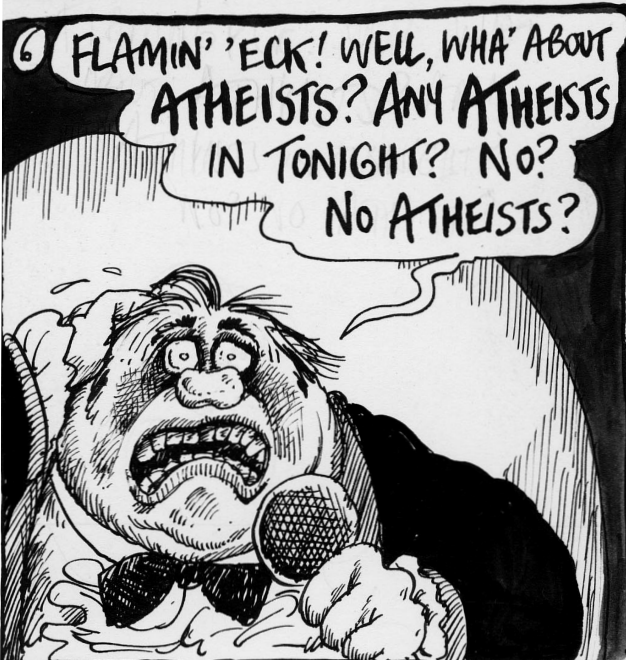
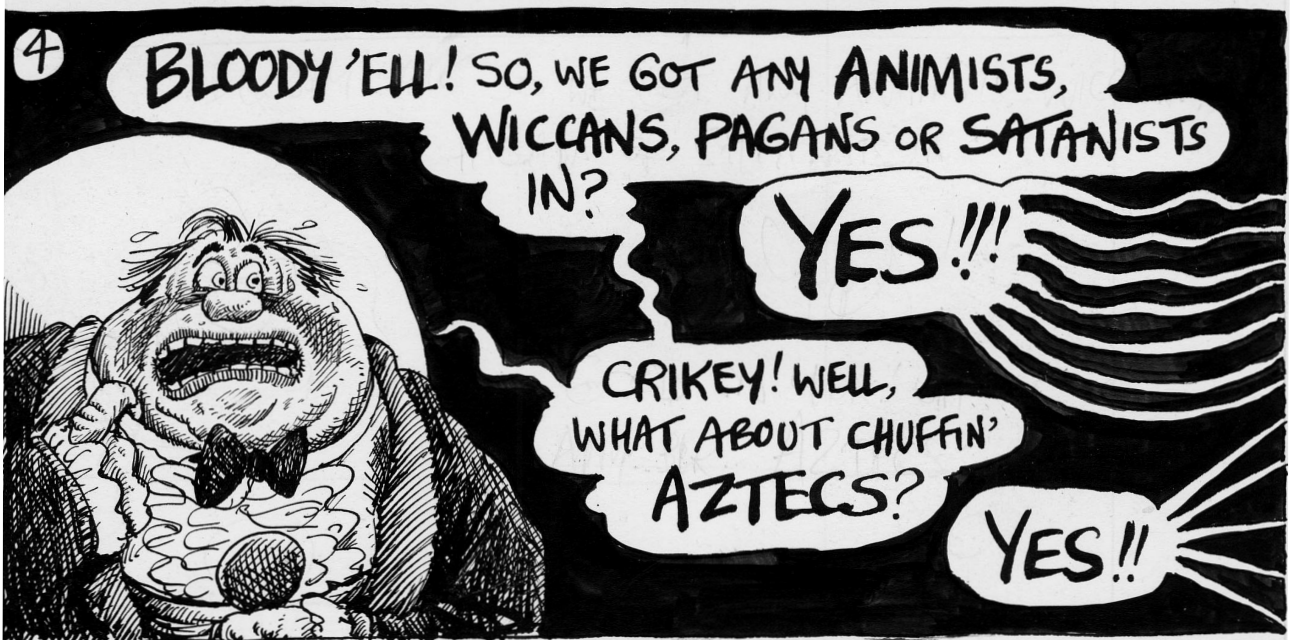
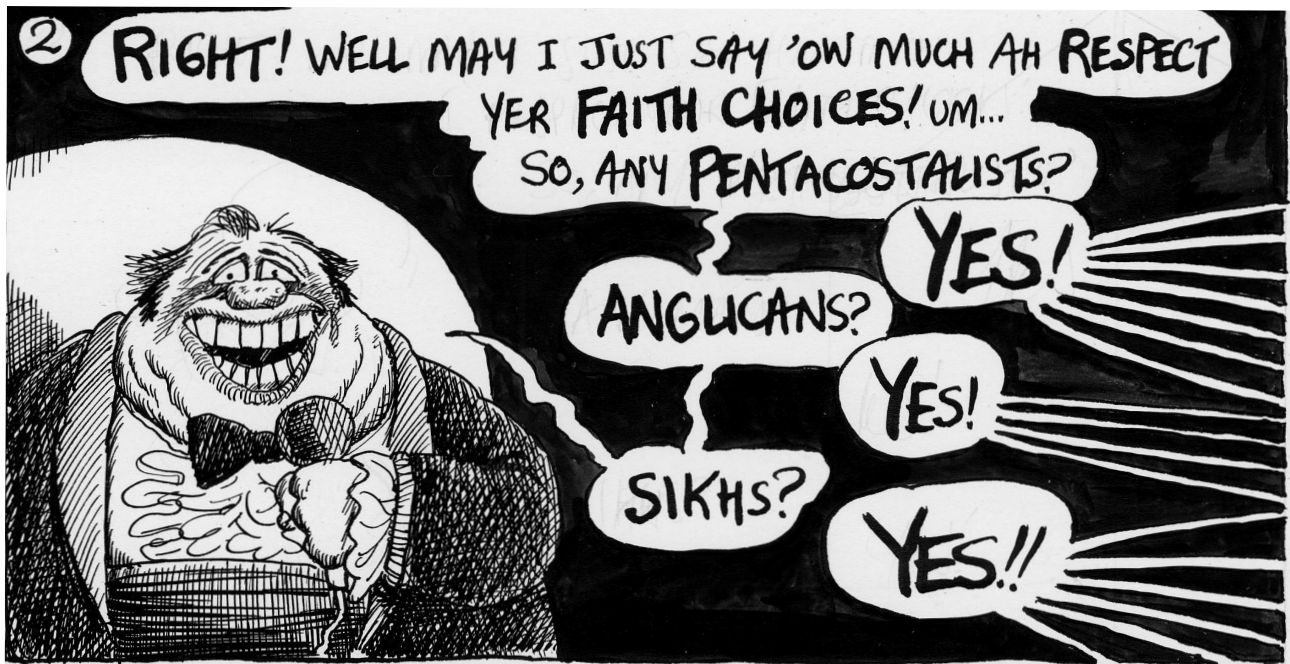
Nevertheless, merely being Jewish does not allow free rein to break through Jewish taboos. On the contrary, several of those accused in recent years of crossing lines they should not have crossed have themselves been Jewish. The textbook case is Norman Finkelstein, author of the polemic *The Holocaust Industry*. Many Jews believed he had committed a kind of sin, even in the very title of his essay. Any defence relying on his own Jewishness was easily dismissed. Just as there are black racists, ran the logic, so there can be Jewish anti-Semites. Indeed, there is a ready psychological explanation for such people: they are self-hating. Nor will it do any good to claim a Jewish wife, cousin or schoolboy chum as character witnesses. We all know the cliché of the man seeking to soften an anti-Semitic remark by swearing that some of his best friends are Jewish. (Hence the ridicule heaped on the former Labour MP, Tam Dalyell, in 2003 after he claimed he could not possibly be anti-Jewish – despite having said that Tony Blair was in thrall to a Jewish 'cabal' – because his son had spent time on a kibbutz.)

No, the key issue is not one's own ethnicity or family connections. What matters most is the speaker's *intention*. There are plenty of fierce and angry critics of Israel, for example, who nevertheless get a respectful hearing from Jews. (Israeli writers Amos Oz or David Grossman would be Jewish examples.) That's because Jews believe these critics are motivated by concern for Jews and their well-being. They criticise because they want to see Jews survive and thrive. If mainstream Jewry believe this is the motivation, they will listen. An example: Peter Novick made many of the same points as Finkelstein in his earlier book, *The Holocaust and American Life*. But Novick's language was temperate and sympathetic; he was sensitive to Jewish pain in a way that Finkelstein was not. Novick was welcomed, Finkelstein was cast out.

Who decides such things? Those who have been ostracised would speak of 'the Jewish establishment', 'the Zionists' or, resorting to an old, lamentable trope, 'clandestine Jewish power.' The reality is more prosaic. As with any other ethnic group, such 'decisions' actually consist of nothing more than the prevailing direction of community opinion. If black Americans decide Chris Rock has crossed the line, they will not need a formal edict to say so. He'll know. And that's how it is with Jews.

› › › **Jonathan Freedland** is an award-winning journalist and broadcaster







Free expression, incitement  
& hate speech: addressing  
the problems





*The European Court of Human Rights, Strasbourg*  
Credit: Ronald Wittek / DPA / Empics

SARFRAZ MANZOOR &gt;&gt;&gt;

## Thou shalt not give offence

*Today religious groups are better organised against a common enemy: those who believe that freedom of expression includes the right to offend*

It was Nietzsche who declared with impressive certainty that 'God is dead.' That was 122 years ago and, from the vantage point of the late nineteenth century, the declaration felt persuasive. Since the Enlightenment, the seemingly relentless march of secular modernism had squeezed religion out of public life and left it, if not dead, then hidden in the private realm. It did not seem too fantastical then to argue, as Nietzsche was doing, that God had ceased to be a reckoning force in the lives of most people.

More than a century on, and it seems that rumours of the death of God were exaggerated. The recent attempt by Evangelical Christians to prevent the BBC from broadcasting *Jerry Springer: The Opera* and the cancellation of the play *Behzti* (Dishonour) in Birmingham suggest that God, or more accurately religious belief, has made an unexpected return into the public sphere. This is not an exclusively British phenomenon as the murder last year of a Dutch film-maker for producing a film that was considered offensive to Islam vividly demonstrated. Just as the re-emergence of religion has been pan-national there is a similarly global challenge to the Enlightenment values of rationalism, tolerance and freedom of expression.

To try to explore possible strategies for responding to this challenge it is important to explore the origins and characteristics of this new religious revivalism.

The re-emergence of religion into British society was, until recently, most closely associated with Britain's Muslim community. Ever since the protests and book-burnings that followed the publication of Salman Rushdie's *The Satanic Verses* 17 years ago, it has been Muslims who have represented the greatest religious challenge to the principle of freedom of expression. The demonstrations against Rushdie's novel seemed to suggest that Muslims were intent on operating under different rules from the rest of society. The principle of freedom of expression was not as important as the right not to be offended. This attitude was dismissed as being antithetical to the values of a liberal democracy and the episode was dismissed as an unfortunate aberration.

In the aftermath of 11 September and the subsequent wars in Afghanistan and Iraq, there was a further hardening of British Muslim identity. One of the consequences of this was a rise in the numbers of people who chose to identify themselves by their religion rather than their ethnicity. This was not only true for Muslims but also for Hindus and Sikhs, who were apprehensive at being associated with what they saw as trouble-making Muslims. This assertion of religious identity, initially by Muslims and later by other groups, created the environment for the religious protests of the past year.

Was this religious revivalism inevitable? My view is that it is possible to argue that what we are seeing today is the price to be paid for multiculturalism. The fact that Muslims, Sikhs and Hindus are able to organise and vocalise their

complaints about how their religions are being portrayed is a reflection of the confidence of Britain's ethnic communities. In previous decades such communities might have felt insecure about complaining for fear of being challenged about their right to complain. Today, there is a greater sense of confidence among British Asians that this is their country; and with this confidence has come the demands that others respect their cultural sensitivities. It is this that could be seen as one of the consequences of multiculturalism.

Multiculturalism implies that different ethnic groups can exist alongside each other maintaining their own distinct identities. This concept is appealing but dangerous. Defining Britishness is an imprecise pastime, and trying to locate British values has been a similarly frustrating task. Encouraging patriotism or pride in Britain has traditionally been discouraged by liberals and in the absence of a clear and compelling sense of British identity it has been easier for some to align themselves with a religious identity. This can lead to conflict.

Until December last year, when Sikh protestors managed to halt the performance of the play *Behzti* at the Birmingham Repertory Theatre, this could have been dismissed as an academic debate about religion and identity.

The protestors were outraged by the play's depiction of sexual abuse and violence inside a Gurdwara or temple. Faced with death threats the playwright went into hiding and the play was cancelled.

The *Behzti* affair demonstrated not only the power of protest but also the dilemma that liberals face between respecting freedom of expression and cultural sensitivities. Home Office minister Fiona MacTaggart claimed that the protests against the play were as much part of the British tradition as free speech. Among those who spoke out against the play was Vincent Nichols, Roman Catholic Archbishop of Birmingham, who argued that 'such a deliberate, even if fictional, violation of the sacred place of the Sikh religion demeans the sacred place of every religion. People of all faiths, therefore, will be offended.'

By demonstrating support for the critics of *Behzti* Nichols was illustrating one of the most important characteristics of this new age of religious censorship.

Whereas the Muslims who protested against Rushdie in the 1980s were isolated and criticised, today there is greater solidarity between religious groups against their common enemy: those who believe that freedom of expression includes the right to offend. Among those who learned the lesson that effective protests can force change was Stephen Green, director of Christian Voice. The group was established ten years ago to 'pray for national repentance'. For Green, 'the enemies of God are all having their say. It's time to hear the Christian Voice'.

Although Christian Voice had been in existence for over



*David Soul as the eponymous host in the controversial stage show Jerry Springer: The Opera. Pressure group Christian Voice's national director Stephen Green complained that BBC TV ignored 47,000 viewer complaints before it screened a performance of the show in January 2005*

*Credit: Dan Goldsmith*

a decade, it only gained national prominence earlier this year with the announcement that the BBC were intent on broadcasting *Jerry Springer: The Opera*. Inspired by how the Sikh community had managed to halt *Behzti*, Christian Voice marshalled its members to protest at what it condemned as a blasphemous attack on their religion. The BBC refused to capitulate, prompting Christian Voice to bombard the corporation with thousands of emails. The names, addresses and telephone numbers of BBC executives were posted on the website and the controller of BBC2 who had commissioned the programme was forced to have security guards outside his home. The BBC went ahead with the broadcast but faced legal action from another Christian group, which claimed that the BBC was in breach of the Human Rights Act as well as its own Royal Charter.

When Martin Scorsese's *The Last Temptation of Christ* was broadcast on television in 2001 it drew 1,554 complaints. *Jerry Springer: The Opera* attracted 55,000 complaints prior to its broadcast and a further 8,000 afterwards. Religious groups like Christian Voice have learned how to marshal the power of the internet to further their cause. This is a new development that can put organisations such as the BBC under great pressure. Despite the well-organised campaign against the BBC, it went ahead with *Jerry Springer* and the corporation's programme complaints committee voted not to uphold the complaints because, it argued, the programme's artistic significance outweighed any offence that might have been caused. The ruling is clearly one that would be supported by those who support the right to free expression. But knowing that well-organised religious groups are watching and waiting to spot anything that might be considered offensive means that television executives can end up censoring themselves.

Earlier this year, I wrote and presented a documentary for the BBC that explored the Pakistani Muslim community in my hometown of Luton; one of its themes was the role of Islam in the community. A common complaint among Muslims about their portrayal in the media is that they are crudely stereotyped and that false conflicts are depicted between Christians and Muslims. To illustrate that rather than a clash of civilisations both religions have a great deal in common, I edited a sequence where scenes of Muslims praying in a mosque was accompanied by a gospel song entitled 'I've got that old time religion in my heart'. The intention behind this was fairly clear: I was drawing a parallel between the gospel-loving white American Christians who love God and the British Pakistanis Muslims who are demonstrating their devotion to Allah through prayer. When I tried to include the sequence in the programme, however, I was told that I would have to remove it on the grounds that it was potentially offensive to Muslims. The fear was that viewers might feel that I was insulting Islam. I was adamant that the sequence was not offensive and refused to remove it. Eventually a compromise was reached and a researcher was sent to the mosque in Luton to play them the clip to see if they were offended. It emerged that they were completely comfortable with the sequence and so it remained in the programme.

Following the furore over the *Jerry Springer* broadcast, a number of BBC executives made speeches in which they warned that broadcasters would need to get used to pressure from religious group such as Christian Voice. What was interesting about my experience making the documentary was that the concern about the music was not raised by any Muslim groups but by people inside the BBC who were concerned that others might be offended. This could be viewed as an admirable sensitivity to the dangers of giving offence, but it does highlight the tensions between the right of free expression and the desire to be culturally sensitive. Today, the fear of causing offence appears to be in the ascendency; for those who believe in free speech this can only be worrying.

As I suggested earlier, this renewed religious consciousness is not confined to Britain. The influence of the Christian right in the USA is well known (*Index on Censorship* issue 4/2004: *Does God love democracy?*), but in Europe it is once again Islam that is forcing people to ask the hard questions about the limits of tolerance, as illustrated by the murder of Dutch film maker Theo Van Gogh.

It might seem inappropriate to attempt to draw a parallel between the controversy over *Jerry Springer: The Opera* and the murder of Van Gogh, but in one crucial sense the episodes are connected. Those who are not believers are equally bewildered by both incidents: it is impossible for most progressives to comprehend the hurt and fury that the protestors against *Jerry Springer*, Van Gogh's film *Submission* and *Behzti* felt. This, perhaps, is the central challenge facing all those who would support free expression: how do we reach any form of compromise or understanding with people who have a depth of faith that feels utterly alien?

While the media may not be dominated by believers, society at large is. As the BBC director general Mark Thompson pointed out in an under-reported but deeply thoughtful lecture in March: the BBC is not here to promote a secular world view as opposed to a religious one, or so-called progressive values over traditional ones. We live in a country where more than 70 per cent of the population describe themselves as Christian. There is more we could do to connect with them.

It is, perhaps, unsurprising that Thompson, a practising Catholic, might voice such sentiments; and 'connecting' with the faithful is not the same thing as bending to the demands of everyone who claims to find a play, programme or film offensive. But if the controversies over *Jerry Springer: The Opera* and *Behzti*, and the murder of Van Gogh prove anything, it is that Nietzsche was wrong: God is most certainly not dead. The challenge for unbelievers is how to continue to ask awkward questions and uncover uncomfortable truths when the supporters of religion are armed with ever more sophisticated tools of protest. In this environment, the media and governments must be resolute in arguing that the right to offend might sometimes be the price to be paid exposing truths or producing challenging art.

>>> **Sarfraz Manzoor** is a UK-based writer and broadcaster



KENAN MALIK &gt;&gt;&gt;

## Are Muslims hated in Britain?

*A Muslim writer and broadcaster asks whether 'Islamophobia' is really a problem in the United Kingdom*

**Kenan Malik** 9/11. For the West, the attack on New York's World Trade Center conjured up a terrifying new enemy: Islamic fundamentalism. For Muslims it appeared to open the floodgates to a new wave of hatred and discrimination. Suddenly, it seemed, racists had licence to attack them, police to harass them, politicians and journalists to revile their religion. Not only Muslim leaders, but everyone from anti-racist activists to government ministers want to convince us that Britain is in the grip of Islamophobia – an irrational hatred of Islam. But does Islamophobia really exist? Or is the hatred and abuse of Muslims being exaggerated to suit politicians' needs and silence the critics of Islam?

**Iqbal Sacranie** (Muslim Council of Britain) Since 9/11 there is ample evidence of evil in terms of attacks on Muslims purely because of the faith they belong to.

**Yasmin Alibhai Brown** (Muslim journalist) I would never deny that Muslims have had a hard time and are still having a hard time in this country. But I think it would be dishonest of me if I didn't say that all too often Islamophobia is used as an excuse in a way to kind of blackmail society.

**KM** These days I'm a writer and an unbeliever. And this is Brick Lane where I spent much of my youth fighting racists. I'm the kind of person who ought to rage against Islamophobia. But I don't. I believe discrimination against Muslims isn't as great as is made out. Criticism of Islam should be greater. When I was growing up racism was vicious, visceral and often fatal. There is a park at the end of Brick Lane named after Aftab Ali, a Bengali man who was stabbed to death by racists in 1978. His was one of eight racist murders that year. Some 10,000 Bengalis marched from Whitechapel to Whitehall in protest. Can it really be that we've now returned to the bad old days of the 1970s and 1980s, but this time with people victimised because of their faith rather than their skin colour? Twenty years ago we'd never heard of Islamophobia. Now everyone's talking about it.

**First young man** I think Britain is Islamophobic; not perhaps all the British people but I think it's pushed by the establishment.

**Second young man** Definitely you'd say it's an Islamophobic government and system.

**Young woman** The situation is getting worse for the Muslims.

**Richard Stone** (author of first report on Islamophobia in 1997) Islamophobia is an unreasonable and largely unfounded hate or fear of people who have a Muslim background and

it applies to people who are perceived to be Muslim. Colour prejudice, racism is still as dangerous and divisive as it always was. But it's my feeling, from what I've heard and what I've seen, as far as I'm concerned, anti-Muslim prejudice has now joined it as an equally powerful negative divisive force in this country.

**KM** After 9/11, concern over an increase in religiously motivated physical assaults on Muslims was such that even the EU commissioned a special report. The author was Birmingham University's Chris Allen. Chris Allen, what evidence is there of a general climate of virulent and systematic attacks on Muslims?

**Chris Allen** When you're looking at evidence, hard evidence, it's very difficult to find the actual data and statistics to actually prove this. It's not to say that it's not happening, but actually regarding the monitoring of these types of attacks it is very difficult to find.

**KM** The EU report did find cases of mosques being vandalised and Muslims being insulted and threatened. But, in the four months after 9/11, there were only around a

*British Prime Minister Tony Blair  
meets Muslim students in Leeds*

*Credit: Owen Humphreys / WPA rota / PA*



dozen serious physical assaults on British Muslims. It doesn't speak of a generalised climate of physical attacks on Muslims, of Islamophobia in that sense, does it?

**Allen** You're quite right, when it comes to the top level of virulent attacks, there really was not the statistical evidence to actually categorically say yes, these were. What we found was much more a change in attitudes, a change in opinions. A change in the way people understood Muslims.

**KM** The most recent annual figures available show just eight convictions for religiously aggravated incidents. But the Muslim press paints a different picture.

**Ahmed Versi** (editor, Muslim News) After September 11 we had the largest number of attacks on Muslims. Unfortunately there are no statistics available, but I believe it was hundreds.

**KM** When you look at the actual evidence – for instance the EU report found about a dozen cases of serious physical assault.

**Versi** The EU did not monitor the attacks after September 11, they relied on published material. You have to understand that a lot of attacks that take place are not reported to the police because the Muslim community take it as quite normal in their lives to be attacked and even if they do take these cases to the police they might not register these as Islamophobic attacks, they might register them as racist attacks.

**KM** But even if such attacks are not being reported to the police, you'd expect Muslim organisations to know about them. The Islamic Human Rights Commission, however, monitored just 344 Islamophobic attacks in the 12 months following 9/11, most of which were minor incidents like shoving or spitting. That's 344 too many, but it's hardly a climate of uncontrolled hostility towards Muslims. Certainly, it's nothing like what I remember from the 1980s. In the ten years after Aftab Ali was killed in 1978 there were 49 racially motivated murders. And 1985 was known as the year of the fires because of the huge number of arson attacks on Asian homes. The National Front was a constant menace on the streets. And what made it worse was that you were as likely to get a beating from the police as from the skinheads. You rarely see scenes like this nowadays. Yet Muslims still perceive themselves as constantly harassed by the police. When Home Office figures released last July revealed a huge increase in the stop and search of Asians under the government's anti-terror laws, journalists, Muslim leaders and even the Home Office, all shouted 'Islamophobia'. Would you say that there's a fear within the Muslim community that any one of them could be a target for police stop and search?

**Sacranie** I think there is real concern being felt in the community at the moment; the statistics are very clear on

that. Ninety-five to 98 per cent of those people who have been stopped and searched or those who have been, you know, visited in terms of the anti-terror laws, are Muslim, and that perception is felt in the community as though it's the Muslim community that's being targeted and are the victims.

**KM** But it's a perception at odds with the facts. What the Home Office figures actually showed was that Asians comprise just 15 per cent of those stopped and searched under the anti-terror laws. And while a 300 per cent increase in the numbers stopped and searched gives the impression of constant harassment, the actual numbers were tiny – just 3,000 Asians out of a population of more than two million. And not all of them Muslim. Around 21,000 were stopped under the Terrorism Act 2000 in the past year. So it is not true that the majority of those stopped and searched under the Terrorism Act were Muslim.

**Sacranie** I think under the anti-terror laws 2000 and 2002, that is very clear. In terms of the numbers of houses raided and people arrested, the vast majority are Muslims; there is a clear statistic on that.

**Marian Fitzgerald** (criminologist; Britain's leading expert on stop and search) I think there's a lot of confusion about statistics and I think that a lot of confusing messages were put out when those figures first came out. Most searches aren't under the Prevention of Terrorism Act, but when the figures are produced the Home Secretary did particularly emphasise this 300 per cent increase in searches on Asians. I think that's confused people into thinking that that there are an enormous amount of searches under this power, which there aren't, and also further into thinking that almost all of those are on Asians, which they aren't.

**KM** If you look at all stop and searches, just seven per cent are made on Asians – roughly on a par with their population. Stop and search is used in a racist way. But the victims aren't Asian. They're black. You're now five times more likely to be stopped and searched if you're black than if you're Asian – though you wouldn't know that from all the hoo-hah about Islamophobia. The Muslim Youth Helpline is a much-praised counselling service for young Muslims. If Islamophobia was such a big issue you'd imagine that the workers here would be the first to know. People look at the Muslim community and the issue they always focus on is Islamophobia. Do you see that as a major problem?

**Shareefa Fula** (Muslim Youth Helpline) I think sometimes that can mask the real issues that are going on on the ground. When you look at our statistics of the issues that people call in about, Islamophobia doesn't feature very prominently. That's not to say that it's not going on, it does happen, but there are other issues as well. The main things we deal with are depression, mental health, suicide and suicidal feelings, substance abuse – be it drugs or other forms of substances – sexual abuse, self harm, relationships, those sorts of things;

and they're no different to the issues that young people in general face as they're going through adolescence into adulthood.

**KM** There is undoubtedly ignorance and fear of Islam in this country. Muslims do get attacked because of their faith, and I believe that Britain's anti-terror laws are an affront to democracy. But it's hard to find evidence of a general climate of Islamophobia. Muslim leaders, nevertheless, worry about its impact.

**Sacranie** When you start targeting a community there is that feeling of anger, the frustration and hatred that comes in and that brings the young people away from the community and goes into the extreme hands.

**KM** It's not Islamophobia, but the perception that it blights Muslim lives, that creates anger and resentment. That's why it's dangerous to exaggerate the hatred of Muslims. Even more worrying is the way that the threat of Islamophobia is now being used to stifle criticism of Islam. 'You're an Islamophobe,' they shout at anyone who does not give Islam due respect. But why should I respect Islam? Why shouldn't I be able to say I despise or detest the religion and its often misogynist, homophobic and reactionary practices? Isn't that part of democratic debate? Even practising Muslims are getting worried. Yasmin Alibhai Brown disagrees with me about the extent of Islamophobia. But, like me, she too is worried about the way the idea of Islamophobia is often exploited by Muslim leaders.

**Alibhai Brown** I've heard powerful Muslims say this, they want the same power that the Jewish board of deputies has. 'Look at how they've used anti-Semitism, we can use Islamophobia'. But there's another much more dangerous thing than that. By and large, the lowest achieving community in this country, whether we're talking about schools, universities, occupations, professions and so on, is the Muslims. When you talk to people about why this is happening the one reason they give you, the only reason, is Islamophobia. It is not Islamophobia that makes parents take 14-year-old bright girls out of school to marry illiterate men, and the girl has again to bring up the next generation who will again be denied not just education but the value of education. What Islamophobia does is it just becomes a convenient label, a fig leaf, a reason that is so comfortable for Muslims whenever they have to look at why they aren't in the places that they have to be.

**KM** Now the government is introducing new legislation to outlaw incitement to religious hatred. Supporters claim that the law will extend to Muslims, and other faith groups, the same protection that racial groups already possess. But you

can't choose your skin colour; you can choose your beliefs. How can we protect beliefs without undermining free speech? The man who will have to apply the law is Director of Public Prosecutions, Ken MacDonald QC.

**Ken MacDonald** This legislation is controversial and there isn't a general consensus on this. Many religious groups are opposed to this law. Some people take the view that banning incitement to racial hatred is one thing but banning the incitement of hatred in relation to belief systems is another; that people should be allowed to be as offensive as they like about other people's belief systems. That's a perfectly legitimate view which people have argued strongly. In the United States, these laws would be inconceivable because of the First Amendment to the Constitution guaranteeing free speech. Parliament says it wants this law, and we as prosecutors will have to prosecute. I'm not sure it's entirely predictable who will be prosecuted.

**KM** I've already been stopped from quoting from *The Satanic Verses* because of the editor's objections to an article Salman Rushdie wrote in the *Independent* newspaper ten years ago. How much more restrictive will it be when the new law comes in? Human rights campaigners are particularly concerned. Maryam Namazie is a refugee from the sexual oppression of the Islamic Republic of Iran . . . Already, Maryam is branded as an Islamophobe for speaking out against the Iranian regime. Now she's worried that the law against religious hatred will make her life even harder.

**Namazie** You have people telling you what you are saying actually in defence of humanity is now racist. But in reality, the real reason behind support for this law is they want to silence critics; in effect they're gonna use it against me and against people like me who are standing up to the Islamic movement, criticising Islam and the political Islamic movement.

**KM** This programme has revealed the huge gap between the perception of Islamophobia and its reality. Muslims live in fear of a threat that has been exaggerated by community leaders, anti-racists and government ministers. We've found little evidence of a major backlash against Muslims – but plenty of evidence that the threat of Islamophobia is being used to silence critics of Islam. Pretending that Muslims have never had it so bad might bolster some community leaders and gain votes for politicians, but it does neither Muslims nor non-Muslims any favours. It's time, for all our sakes, to challenge the myth of Islamophobia.

> > > An edited version of *Are Muslims Hated?*, written and presented by **Kenan Malik** for C4 TV's *30 Minutes* current affairs series, broadcast on 8 January 2005

AGNÈS CALLAMARD &gt;&gt;&gt;

## Striking the right balance

*Scores of nations have introduced laws that impact negatively on human rights since 9/11, while hostility towards communities linked to terrorists has increased*

The events of 11 September 2001, and the subsequent so-called war on terror, triggered a number of human rights setbacks. Over the past four years Article 19, the global campaign for free expression, has monitored worldwide the growth in anti-terrorist legislation and state secrecy laws, increasing use of defamation laws, media censorship, self-censorship, and media biases. The UN Special Rapporteur on Freedom of Expression noted that several states responded to the events of 11 September by adopting laws which have negative implications for certain rights, including freedom of expression.

Article 19 has also recorded growing hostility towards minority groups, or communities deemed to be associated with 'terrorism' throughout the Caucasus, Western Eurasia, Western, Central and Southern Europe as well as in Latin America and Asia. In parts of Africa, hate speech and hate media have also resurfaced. The UN Special Rapporteur on Contemporary Forms of Racism has said recently that the legitimate struggle against terrorism has led to new forms of racial discrimination. He particularly highlighted the encroachment across all continents of racist and xenophobic political platforms, and their gradual, covert assimilation by democratic parties. As a result, he said, racist and xenophobic discourse was becoming more acceptable and this posed grave threats to democracy.

This trend has been accompanied by the intellectual legitimisation of racism and xenophobia, not only in the media but also in works of literature. Article 19 has also noted with increasing concern instances of community-based censorship, often through the use of mob violence – for example the enforced cancellation of the play *Behzti* (Dishonour) in the UK in 2004. Artistic free expression (whether or not from within a community) is being targeted by members and gate keepers of the community, on the grounds that it is offensive or insulting. At its worst, intolerance of artistic free expression has resulted in the killing of the artist, as in the case of the murder of Dutch artist Theo van Gogh. These incidents raise a central question: should people in a diverse, multicultural society be protected from offence and insult in the name of religion or culture, curtailing free speech where necessary?

The right to freedom of expression is well-established in international law, which also requires that states refrain from interfering with this right unless the interference is necessary to protect a legitimate interest, and is provided by law. At the same time, international law requires states to prohibit the advocacy of any national, racial or religious hatred. Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) states: any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Freedom of expression, in practice, can be limited in the

name of prohibiting the incitement of hatred only if there is a close nexus between the expression in question and the risk of harm, and when the risk is imminent. Intent must be shown and the anticipated danger should not be remote or conjectural and the expression concerned should be intrinsically dangerous to the public interest. Furthermore, the state should ensure that the restriction imposed is the least restrictive means possible for protecting the interest threatened. In other words, international law calls for a careful balance to be struck between protecting the right to freedom of expression on the one hand, and prohibiting advocacy for hatred on grounds of nationality, race, and religion on the other.

Countries abiding by international or regional standards (eg Europe, Africa, and the Americas) may interpret them differently. Nowhere is it clearer than in the European Union, where countries have approached and dealt with hate groups and hate speech in very different ways. For instance, France and Germany have taken a much more prohibitive approach to hate speech (eg with regard to Holocaust denial, or incitement to religious hatred) than the United Kingdom. The American approach, on the other hand, protects hate speech unless the speech actually incites to violence and the speech is likely to give rise to imminent violence. This is a very stringent standard indeed; as a general matter at least, even the most virulent racist speech, even speech advocating violence and filled with racial insult and slurs, will be protected unless it can be shown that violence is likely to occur virtually immediately.

The relative effectiveness of these various approaches is difficult to assess. Yet, as the events in November 2005 in France demonstrate, the existence of fairly stringent hate speech legislations has not prevented young people in disenfranchised communities from rioting and by so doing demonstrating the failures of the French system to uphold the right to equality. Similarly, the (relative) absence of hate speech legislation does not mean that discrimination has been eradicated, or that freedom of expression is fully and completely protected, as the situation in the US underlines.

Evidence gathered by Article 19 over the years does raise serious concerns, however, about the negative impact of hate speech court rulings on freedom of expression. In Russia, for instance, Article 19 has witnessed the use of legislation prohibiting the incitement of religious hatred to suppress critical and dissenting voices in the arts world. On the face of it, Russian law is in line with international requirements. The Russian Constitution protects the right to freedom of expression, freedom of religion and the principle of non-discrimination, and it prohibits the incitement of 'religious strife'. Article 282 of the Criminal Code criminalises the incitement of hatred on grounds of religion. Yet, in practice, Article 282 is rarely applied in attacks against religious minorities by ultra-nationalist, neo-Nazi and anti-

Semitic groups, instances where it could justifiably be used to safeguard democracy, while it has been used against artists. This suggests selective implementation of the legislation, contrary to the requirement set out in Council of Europe recommendation that prosecutions be based on 'objective criteria'.

The guarantee of freedom of expression requires that hate speech laws are carefully drafted. The need for care is highlighted by the fact that the laws are sometimes used by states against the very minorities they are designed to protect. In some cases, they are even used to restrict minorities from promoting their culture and identity, or from expressing concern about discrimination against them by the majority. Turkey frequently uses Article 312 of the Penal Code – which provides for up to three years' imprisonment for anybody who 'incites hatred based on class, race religion, or religious sect, or incites hatred between different regions' – against those who espouse Kurdish nationalism or even express pride in Kurdish culture. In Central Asia, hate speech laws are used to repress all forms of Islamist movements, including those that have publicly stated that they are committed to non-violence, such as Hizb-ut-Tahrir. There is no evidence that censoring or banning such groups has any impact on their existence or rising influence. In fact, most evidence testifies to the fact that criminalising such groups too often results in their radicalisation. Penalising the expression of their ideas does not reduce the problem or make the proponents of such ideas disappear. On the contrary, hate speech legislation in such cases constitutes a blunt instrument, a double-edged sword that too often amounts to political expediency rather than well thought-through strategies to tackle discrimination, prevent violence and protect the right to life and to equality.

The right to freedom of opinion and expression is a fundamental right which safeguards the exercise of all other rights and is a critical underpinning of democracy. It is, as stated by the European Court of Human Rights, 'applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society".'

Equally fundamental to the protection of human rights are the principles of the inherent dignity and equality of all human beings and the obligation of all member states of the United Nations to take measures to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion'.

There is no denying that certain forms of hateful expression can threaten the dignity of targeted individuals and create an environment in which the enjoyment of equality is not possible. Article 19 believes that an effective response to vilifying expression requires a sustained commitment on the part of governments to promote equality of opportunity, to protect and promote linguistic, ethnic, cultural and religious rights, and to implement public education programmes about tolerance and pluralism. All these

depend on respect in practice for the right to freedom of expression. The media also has a crucial role to play in preventing and counteracting discrimination.

Article 19 recognises that reasonable restrictions on freedom of expression may be necessary or legitimate to prevent advocacy of hatred based on nationality, race or religion which leads to incitement to discrimination, hostility or violence. We insist that any so-called hate speech restriction on freedom of expression should be carefully designed to promote equality and protect against discrimination and, as with all such restrictions, should meet the three-part test set out in Article 19 of the ICCPR, from which our organisation takes its name. According to this, an interference with freedom of expression is only legitimate if: it is provided by law, pursues a legitimate aim, and is 'necessary in a democratic society'.

Specifically, any restriction should conform to the following:

- it should be clearly and narrowly defined;
- it should be applied by a body which is independent of political, commercial or other unwarranted influences, and in a manner which is neither arbitrary nor discriminatory, and which is subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal;
- no one should be penalised for statements which are true;
- no one should be criminally penalised for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;
- the right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- prior censorship should not be used as a tool against hate speech;
- care should be taken to apply the least intrusive and restrictive measures in recognition of the fact that there are various available measures, some of which exert less of a chilling effect on freedom of expression than others; and
- any imposition of sanctions should be in strict conformity with the principle of proportionality and criminal sanctions. In particular, imprisonment should be applied only as a last resort.

Restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals holding specific beliefs or opinions, rather than to protect belief systems from criticism. The right to freedom of expression implies that it should be possible to scrutinise, openly debate, and criticise, even harshly and unreasonably, belief systems, opinions, and institutions, as long as this does not amount to advocating hatred against an individual.

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ANTHONY HUDSON &gt;&gt;&gt;

## Free speech & bad laws – what can be done?

*Defenders of free speech must be resourceful when combating bad laws. It is not always easy*

The ongoing battle between the government and the House of Lords over the Racial and Religious Hatred Bill demonstrates the vital role which legislators have in protecting freedom of speech. The House of Lords recently amended the Bill – which creates a series of offences to cover stirring up hatred on religious grounds – to remove the words ‘abusive’ and ‘insulting’ from the offence, leaving only ‘threatening words or behaviour’ capable of prosecution, whilst including a clause protecting freedom of expression.

Will the threatened Act be another example of a bad law which potentially threatens freedom of speech? If so, to what extent will prosecutors, juries and judges defend the right to express ideas that ‘offend, shock or disturb the State or any sector of the population’?

The Human Rights Act 1998 (HRA 1998) has an important role to play in protecting free speech, in particular by Article 10 of the European Convention guaranteeing freedom of expression. Courts must interpret legislation compatibly with the Convention rights or else make declarations of incompatibility, with a presumption in favour of freedom of expression.

Historically, juries have played an important role in mitigating the impact of bad laws. From at least 1670, when a jury at the Old Bailey declined to convict the Quakers Penn and Mead for sedition despite being denied food or water or a chamber pot for several days, juries have occasionally provided a restraint on the excesses of the criminal law. In the eighteenth century juries defied Lord Mansfield by entering not guilty verdicts, leading to the Fox’s Libel Act of 1792 and the ‘great constitutional triumph’ for freedom of the press. In 1885, AV Dicey even suggested that nothing in reality contributed so much to a free press as the jury of 12 shopkeepers. This is perhaps over-optimistic, but since the lowering of age limits in 1972, jurors became younger, more broadminded and arguably more protective of freedom of speech. Securing convictions in obscenity prosecutions, particularly those involving the written word, grew increasingly difficult. Clive Ponting was acquitted by a jury in 1985 of breaching section 2 of the Official Secrets Act despite disclosing secret information about the sinking of the Argentinian cruiser *Belgrano* during the Falklands War. Juries, however, cannot always offer protection, either because they are unsympathetic to the cause or because the offences are tried by magistrates alone.

This is particularly apparent in the field of public order. In *Free Speech Martyrs or Unreasonable Threats to Social Peace?*, Andrew Geddis has rightly observed that section 5 of the Public Order Act 1986 has the capacity to render criminal a large amount of expression undertaken by the archetypal individual dissenter.

In 1962, a Mr Burgoyne was arrested after expressing support for Hitler at a public meeting in Trafalgar Square. His comments provoked complete disorder. He was

convicted of using insulting words whereby a breach of the peace was likely to be occasioned. On appeal, Lord Parker CJ suggested that the court was being confronted with a choice between freedom of speech and public order in which public order took precedence. Further, a speaker had to take his audience as he found them, which seemed to create a ‘heckler’s veto’.

In another case, a demonstrator disrupted play at Wimbledon in protest against apartheid in South Africa. Mr Brutus was subject to the same charge as Mr Burgoyne. The magistrates concluded that his conduct was not insulting. The Divisional Court disagreed. In allowing Mr Brutus’s appeal, Lord Reid in the House of Lords observed that it ‘would have been going much too far to prohibit all speech or conduct likely to occasion a breach of the peace because determined opponents may not shrink from organising or at least threatening a breach of the peace in order to silence a speaker whose views they detest’. Vigorous and distasteful or unmannerly speech or behaviour was permitted provided it was not threatening, abusive or insulting.

The danger of public order legislation which potentially criminalises expression is that it tends to be used. Following the publication of *The Satanic Verses* by Salman Rushdie, a shop selling the book was fire-bombed. In 1989 a UK-based Iranian national alleged that Penguin Books had committed a public order offence by distributing *The Satanic Verses*. Protecting free speech, the Divisional Court held that the unlawful violence alleged had to be ‘immediate’.

The importance of free speech as against the maintenance of public order was resoundingly emphasised by Sedley LJ in *Redmond-Bate v DPP*. Ms Redmond-Bate, a Christian fundamentalist, was arrested for breach of the peace whilst preaching on the steps of Wakefield Cathedral. She was later charged with obstructing a police officer in the execution of his duty. The Divisional Court held that the critical question for a constable is where a threatened breach of the peace is coming from, because it is there that the preventive action must be directed. If the threat of disorder or violence was coming from passers-by who were taking the opportunity to react so as to cause trouble, then it is they and not the speaker who should be asked to desist and arrested if they do not. Sedley LJ recognised that free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative, provided it does not tend to provoke violence. He observed that freedom only to speak inoffensively is not worth having.

This support for freedom of speech and protection of the right to offend has, worryingly, received less support in subsequent public order cases. Although the conviction of a demonstrator for defacing an American flag was quashed it was done so on very narrow grounds which would not preclude a successful conviction on identical facts. In contrast the US Supreme Court has held (*Texas v Johnson*

*Anti-Rushdie protestors take to the streets  
in Luton, England, March 1989  
Credit: PA / Empics*





[1989] 491 US 397), that a conviction for desecrating a venerable object, viz., the US flag, violated the accused's First Amendment right to free speech.

The right to freedom of expression did not protect a member of the BNP who displayed a poster in the first-floor window of his flat, containing the words in very large print 'Islam out of Britain' and 'Protect the British people'. These words were accompanied by a photograph of one of the twin towers of the World Trade Center in flames on 11 September 2001 and a crescent and star surrounded by a prohibition sign. The prosecution did not have to prove that the display of the poster in fact caused anyone harassment, alarm or distress.

The Divisional Court also refused to quash the conviction of a man who stood in a pedestrian area holding a sign with the words 'Stop Immorality', 'Stop Homosexuality', 'Stop Lesbianism' and 'Jesus is Lord'. He was heckled, abused, then physically assaulted. He was charged with a public order offence. In dismissing his appeal the court did not consider whether the magistrates' decision that the sign was 'insulting' was correct, but simply concluded that their decision was not 'unreasonable'.

The House of Lords recently declined to abolish the law of blasphemy, despite the Bishop of Oxford agreeing with a Liberal Democrat peer that 'if God exists he doesn't need the protection of this or any other law'.

Although rarely enforced, the offence of publishing a blasphemous libel is long overdue for abolition. Lord Diplock referred to its 'long and at times inglorious history in the common law'. The last public prosecution was in 1921. But blasphemy was not dead, merely ailing. It was revived by a clash between the publishers of *Gay News* and the indefatigable Mrs Mary Whitehouse in a private prosecution over a poem. The judge held that the publisher's intention was irrelevant.

The jury could, in the proud tradition of juries acquitting defenceless defendants, have acquitted *Gay News*. However, the freedom of a poet to describe in explicit detail acts of sodomy and fellatio with the body of Christ did not engage their sympathy and by a majority they found the publishers and editor guilty. The House of Lords upheld the conviction by a 3–2 majority.

The law of blasphemy was again deployed – this time unsuccessfully – against Salman Rushdie following the publication of *The Satanic Verses*. In *R v Chief Metropolitan Stipendiary Magistrate, ex p Choudhury*, the Divisional Court held that the common law offence of blasphemous libel did not extend to religions other than Christianity. Further, it held that insuperable problems prevented the extension of the law of blasphemy and it sensibly declined to make a bad law worse.

The European Court and Commission have provided a degree of comfort in this conflict. The Commission declared inadmissible a challenge to the conviction of the publisher and editor of *Gay News* for blasphemy in *R v Lemon*. In *Otto-Preminger-Institut v Austria*, the European Court upheld the seizure and forfeiture of a cinema film which disparaged Christ, the Virgin Mary and the Eucharist.

As for treason, although the meaning of section 3 of

the Treason Felony Act 1848 is not straightforward, the language is 'wide enough to cover a press campaign advocating the adoption of a republican form of government by constitutional processes'. In *Rusbridger v A-G*, the House of Lords held that the part which appeared to criminalise the advocacy of republicanism was obsolete and was at odds with the Human Rights Act.

Laws aimed at punishing 'hate speech' are probably the most difficult to challenge and therefore the least well scrutinised. Both domestic and international courts show, many say rightly, little tolerance or sympathy for such speech. The European Court has stated that 'like any other remark directed against the Convention's underlying values, the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10 [which guarantees free expression rights under the European Convention]'. Indeed, under Article 17 of the European Convention such speech would be seen as aimed at the destruction of any of the rights and freedoms guaranteed by the Convention itself. The rights guaranteed by Article 10 were, however, engaged and violated where a journalist was punished for broadcasting a documentary which included an interview with a group of racist youths. The European Court held that the journalist's conviction for aiding and abetting the youths was incompatible with Article 10.

Although the European Court has been insufficiently protective of free speech against religious interests, it has undoubtedly protected freedom of expression in other areas. In *A-G v Times Newspapers Ltd* the House of Lords held that it was a contempt to publish any material likely to prejudice the outcome of pending legal proceedings, regardless of any intention to do so. The European Court held in *Sunday Times v UK* that such a test was incompatible with Article 10 of the European Convention and Parliament then enacted the Contempt of Court Act 1981 (CCA 1981), which was generally regarded as a liberalising measure.

Similarly, journalists have relied on Strasbourg to protect their sources. The journalist Bill Goodwin faced a fine or imprisonment after the House of Lords held that it was a contempt to refuse to identify his source of information regarding a company's finances. The European Court held that this was in violation of his rights under Article 10 and emphasised that protection of sources was one of the basic conditions for press freedom unless it was justified by an overriding requirement in the public interest.

Defenders of free speech must be resourceful when combating bad laws. Occasionally, our lawmakers will resist the emotional and often self-serving urge to enact such laws. Very occasionally they will abolish such laws. Often, however, a speaker whose words have offended, shocked or disturbed must seek to persuade a court that protecting the fundamental right of free expression requires a more tolerant audience. Frequently, however, such toleration only develops over time in response to changes in society, rather than in response to judicial or legislative robustness.

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## Warning from Australia: don't legislate against hate

*An Australian Muslim says that Victoria's laws against incitement to religious hatred have sown division, and undermined freedom of speech, thought and conscience*

The attempt, for the third time, to pass laws outlawing incitement to religious hatred in the UK has, once again, drawn applause from the usual quarters. It has been welcomed by some on the left who seem to view society as so irredeemably racist that only the state can protect people from each other; and it has the support of Muslims who see the law as a weapon to wield against the miasma of Islamophobia.

However, as is often the case with government attempts at social engineering, the results will not be as expected. Indeed, if the Australian experience is any guide, these laws will undermine the very freedoms they seek to protect, and bring division to the community they seek to unite.

As an Australian Muslim who supported the introduction of such laws, I now live with their unfortunate consequences. Like his Blairite counterparts, the premier of Victoria, Steve Bracks, introduced the legislation amid promises of a new era of 'tolerance'. Two years later, it's a strange kind of tolerance when Muslims are suing Christians, witches are suing the Salvation Army, acolytes of Aleister Crowley are suing child psychologists, and faith communities are playing an obscene game of 'gotcha'.

At the heart of such laws lies the fallacious idea that the state can regulate human emotions. Hatred, we are assured, can be struck from the hearts of men with the stroke of a legislator's pen. If people can only be prevented from saying hateful things, then hatred will just dissipate. This is, of course, pure fantasy. Governments might criminalise the public expression of hateful ideas, but they cannot ban the ideas themselves.

In fact, ideas draw strength from attempts to silence them. When the state criminalises hateful ideas, it gives them legitimacy. And when religious communities sue their critics, preferring the force of the law over the force of

argument, it bolsters the view that the criticisms were valid.

The only way to deal with extremism is to confront and expose the ideas that underpin it. This can only be achieved if those ideas can be expressed, and then exposed, in the public domain.

The law's advocates frequently link hateful speech to hateful conduct; implying that unless laws are passed, violence against minorities will escalate. However, most people who hate something do not graduate to violence. And were they to make the quantum leap from disliking Muslims to wanting to hurt them, then there already exist ample laws to prevent both the incitement to commit crimes, and the actual crimes themselves.

One can understand why these laws are so attractive to minorities. Nobody likes to hear nasty things said about them or their faith, but the Australian experience shows that laws of this kind cause more problems than they fix. Not least of all to the very religious groups they purport to protect.

The first major case under the Victorian legislation was brought by the Islamic Council of Victoria (ICV) against Catch the Fire Ministries (CTFM), a small evangelical organisation. CTFM had held a seminar in which some nasty things were said about Islam and its adherents. Some Muslims were in attendance, at the suggestion of an employee of the Equal Opportunity Commission of Victoria (the government body that polices the legislation). Understandably, they were outraged by what was said. The ICV then initiated legal action on their behalf.

For an obscure organisation with a controversial message it must have seemed too good to be true. Suddenly, CTFM had an international stage and were on the cusp of martyrdom. The ideas that had so offended the Muslims were being aired and discussed on radio, television and in

*Muslim women observe a minute's silence for victims of terrorism throughout the world at Australia's National Security & Harmony Summit in September 2005*

*Credit: Torsten Blackwood / AFP / Getty Images*



print. Their audience had grown exponentially as had their importance to the public debate. Indeed, so far reaching was the interest in the case that the Australian Department of Foreign Affairs took the extraordinary step of requesting updates from the judge, so as to allow Australia's embassy in Washington to respond to correspondence from concerned American Christians. The case had transformed a couple of evangelicals into suburban Joan of Arcs being burnt on the pyre of political correctness.

The effects of the suit were felt across the community. Small teams of Christians, armed with notepads and tape recorders, began attending Islamic lectures, recording possible transgressions that might be used as evidence in the case. Islamic bookstores were mined for nuggets of intolerance. True to its promise, the law had brought Christians and Muslims together like never before.

The court case dragged on for months as the judge listened to complex theological evidence tendered by both sides. Arguments flew back and forth about the nuances of Arabic grammar, the interpretation of various verses of the Quran, the requisite qualifications for Islamic scholarship, and the relative legitimacy of different schools of Islamic jurisprudence. Nobody, it seemed, noticed the inappropriateness of a secular court, more accustomed to matters of trade practices disputes and parking fines, presiding over a case centering on contentious theological arguments.

The judge ruled in favour of the Islamic Council, finding, among other things, that the Christian pastors had mocked Islam and not discussed the religion in 'good faith'. The remedy was to order the two ministers to apologise by way of a court-defined statement on their website, the ministry newsletter, and by taking out four large advertisements in Victoria's two daily newspapers. It wasn't enough that they apologise to the individuals they offended or even the Muslim community, but rather they had to apologise to the entire society. In addition, they were ordered never to utter or publish the offending comments in public again in any Australian state or on the internet.

They refused to comply, insisting they would rather go to jail.

Recent media reports place the legal costs for this Pyrrhic victory at over Aus\$1 million. With CTFM having filed an appeal with the Supreme Court, this expense will only mount. As will the emotions.

While the UK considers the passage of such laws, Australian states cannot drop the issue fast enough. After observing the Victorian experience, then Labor Premier of New South Wales, Bob Carr, promised to fight their introduction in his state. Speaking before parliament, Carr warned: 'The Victorian experience spells out how anti-religious vilification can be misused . . . [These] laws can undermine the very freedom they seek to protect – freedom of thought, conscience and belief.'

He has a point. If public speech is constrained to only that which doesn't offend, then it interferes with the religious freedoms of all citizens. While the secular proponents of this law envision some sort of syncretic utopia, it is a strange religion indeed that proclaims its truth without decrying the falsehood of other faiths. For the true believer,

there is nothing outside his faith except misguidance. The right to offend is therefore as intrinsic to religion as the right to evangelise.

Unlike race, a man can change his religion. It is, after all, simply a collection of deeply-held ideas about the world and how one conducts one's affairs. As a matter of choice, not nature, it does not deserve or require the same legal protections as race or gender. If our claim to pluralism means anything, it must mean a willingness to allow all ideologies – however strange or repulsive – to compete in the free market of ideas. The defective idea will be quickly rejected, with only ideas of substance remaining competitive.

Religion is an abstract concept. This causes issues in a secular state that cannot hold an opinion as to the spiritual legitimacy of a faith. A witch, for example, is therefore entitled to the same protection from vilification as a Christian or Jew. In fact, it is not inconceivable that, with a few constitutional adjustments, even the British National Party in the UK might morph into a 'religion' of sorts, thereby entitled to protection under the religious hatred law.

It's an ambiguity that hasn't been lost on everyone. Convicted paedophile Robin Fletcher, currently serving time in a Victorian prison for drugging, raping and forcing into prostitution two 15-year-old girls, used the legislation to drag both the Salvation Army and the prison authorities to court. By supposedly linking witchcraft with 'Satanism' during an introductory course on Christianity, the Army was alleged to have violated Fletcher's right to protection from religious hatred. The judge hearing the case ultimately dismissed it, but pointed out in his closing statements that the law needed reform so as to reduce its use in vexatious and frivolous lawsuits.

Catholics might soon sue those citizens of Sussex, England, who retain the tradition of burning an effigy of the Pope on Guy Fawkes' Day. Anyone who sings 'Remember, Remember' is certainly fair game, particularly if they sing it to completion ('Burn his body from his head, Then we'll say old Pope is dead, Hip hip hoorah!'). And for Scientologists, angry at mocking media coverage of Tom Cruise's recent antics, the law might give critics of the 'Church' the 'auditing' they deserve. With hundreds of thousands of registered adherents to the Jedi religion around the world, could a bad review of the latest *Star Wars* film be construed as inciting religious hatred? The opportunities for state-enforced tolerance are limited only by one's imagination and sense of pettiness.

Religious hatred laws are also a useful tool for cults wishing to stifle debate or hinder exposure. In Australia, followers of Aleister Crowley's Ordo Templi Orientis have already initiated a lawsuit against a prominent child psychologist. Dr Reina Michaelson, a former Australian of the Year, had the temerity to quote from the group's own *Book of Law* as evidence linking the group with the ritual abuse of children. Currently overseas working with victims of the Asian tsunami, she must now return to Australia to defend herself in the courts.

However, there is one case that captures the sheer ridiculousness of laws against religious hatred. Enter Ms

## Public split over new hate laws

British public opinion is divided over controversial plans to ban incitement to religious hatred, according to an ICM poll for the BBC News website in July.

The poll, taken in the days following the London bombings, found 51 per cent in favour of such a move but 44 per cent against. The proposed new law is meant to protect people of all faiths from abuse but critics say it curbs free speech. The poll of 1,005 people found those who were religious almost as likely to be against it as those who were not.

The survey, which was commissioned as part of a BBC News website series on faith in the UK, found strong support for laws that respect and are influenced by religious values. There was a more divided picture when it came to the broadcast of material that might cause religious offence.

The survey suggests 61 per cent of people believe Britain's laws should respect and be influenced by religious values. Approval for laws respecting religious values was, not surprisingly, high among those who belonged to religions, but even among those with no religion, 3 per cent more were in favour than against.

The fact that the poll was carried out in the days following the London bombings makes the results all the more intriguing. Some 49 per cent of all respondents said broadcasters 'should not avoid language or story lines which might cause any of the main religious groups to take offence', with 45 per cent saying they should.

Among religious people, 45 per cent thought broadcasters should avoid causing offence, but a greater number, 49

per cent thought they should not. Among non-religious people, 45 per cent thought offence should be avoided, and 51 per cent felt it should not. There was a gender divide on this issue too, with 42 per cent of men saying broadcasters should avoid causing religious offence, compared to 48 per cent of women.

The Racial and Religious Hatred Bill currently going through parliament would create a new offence of incitement to religious hatred and would apply to comments made in public or in the media, as well as through written material.

The aim is to protect people from incitement to hatred against them because of their faith.

But ministers insist it will not ban people – including artists and performers – from offending, criticising or ridiculing faiths.

In the BBC's poll, 51 per cent supported legislation 'aimed at preventing abuse or inciting hatred of people because of their religious faith'. But 44 per cent thought 'stopping people from criticising those with other religious beliefs is an unjustified limit on free speech'.

Among people belonging to religions, a category which included Christians, Muslims, Hindus, Sikhs, Jews and other faith groups, 43 per cent were opposed to a ban, compared to 44 per cent among people with 'no religion'.

The BBC/ICM poll was based on interviews with 1,005 people between 8 and 11 July this year.

» » » BBC News Online, Monday, 18 July 2005

Oliva Watts: former policeman, transsexual naturopath, and witch. In March 2003, Ms Watts decided to run for local government in the City of Casey, a community distinguished by its proliferation of Pentecostal churches. The possibility of a transsexual witch entering local government in this most Christian of communities provoked a fierce reaction. A day of prayer was called to protect the city, and councillor Rob Wilson issued a press release suggesting that a witch in the council might be a 'concern' for some residents of the area.

Understandably, Watts was offended. And to whom do disgruntled transsexual naturopath-witches turn for justice? The Equal Opportunity Commission, of course. It wasn't long before Ms Watts had Wilson hauled before the courts on charges of inciting hatred against witches.

At a time when everyone has a group to protect their 'identity rights', witches are no exception. So into the fray stepped the Pagan Awareness Network (PAN). Fuelled by a Aus\$400 donation from the Witches Voice in America ('NeoPagan News/Networking on the net since 1997'), PAN ran a fierce campaign: sending fire-and-brimstone letters to both the premier and attorney general of Victoria; rallying witches across the world; and publishing

pamphlets rebuking the councillor for his wiccaphobia. Watts joined the Wiccan PR blitz. 'I have never in my life done any offensive piece of magic, a curse, a hex,' she assured *The Age* newspaper. 'It would be inconsistent with my beliefs.'

As the trouble brewed, the attorney general moved quickly to clarify his government's position. 'We [the government] govern for all Victorians – and that includes witches, magicians and sorcerers,' he declared.

Faced with the indefatigable forces of PAN and growing legal fees, councillor Wilson conceded defeat, entering an out-of-court settlement. As part of that, he was required to offer a public mea culpa, 'for any hurt felt by Ms Watts'.

By this time, Wilson had already accumulated a legal bill of Aus\$130,000 for the 14-month battle, and, adding insult to injury, the City of Casey faced an increase in its 2005 insurance premium as a result of the litigation.

It would all make a great joke, were it not now illegal to tell it.

» » » **Amir Butler** is executive director of the Australian Muslim Public Affairs Committee, and has written on religious hatred laws for *The Age* newspaper.

MARY KENNY &gt;&gt;&gt;

## When speech became treason

*William Joyce, the last man to be executed for treason in Britain, arguably died for his words, not his deeds. He carried his opinions with him to the gallows, defiant to the end*

William Joyce, popularly known as ‘Lord Haw-Haw’, was the last man to be hanged in Great Britain for the crime of High Treason. He went to the gallows at Wandsworth Prison, London, on the morning of 3 January 1946. His offence had been that he had ‘given aid and comfort to the King’s enemies’ during time of war, and assisted Germany ‘in her war against our country and our king’.

He carried out this High Treason by broadcasting on radio from the Third Reich. Many opposed to his hanging wrote to King George VI to protest that a man should not be executed merely for the words he said. A correspondent to the *Manchester Guardian* wrote: ‘No matter how much we may detest what a man believes we have no right to put him to death for expressing that belief.’

Times change, and values too. Much of what William Joyce said from the Reich’s radio from 1939 to 1945 would not be considered treasonable today: what would be considered totally unacceptable were his anti-Semitic and racist views. Yet, strangely enough, these attitudes were the least remarked-upon by those who listened to him, and never emerged in the various monitoring processes that the BBC and the government did at the time concerning the ‘Haw-Haw’ broadcasts. Neither did they emerge in my own research with older people who remembered hearing him.



*William Joyce,  
pictured in 1938*

*Credit: John Phillips / Time  
Life Pictures / Getty Images*

Listeners had different reactions to Joyce’s broadcasts. Men were more inclined to treat them as some kind of joke; women were more inclined to have been intimidated, and older women could still recall the fearful feelings they experienced, as little girls, hearing that rasping, unmistakable voice over the airwaves – ‘Germany calling! Germany calling!’ What disturbed the authorities, however, was that the Joyce broadcasts were so successful. By 1940, ‘Lord Haw-Haw’ (as he was dubbed by a *Daily Express* radio critic, for his ‘haw-haw, damn-it-get-out-my-way variety [of English speech]’) was pulling in over 16 million radio listeners, which was more people than had ever listened to

a specific radio broadcaster in Britain before, or, quite possibly, since. (If we exclude such single broadcasts as the Abdication of King Edward VIII or some of Winston Churchill’s addresses to the nation.)

But, particularly from 1940 to 1942, the success of the Haw-Haw broadcasts were a source of anxiety to the British authorities, and the Government came within an ace of jamming the broadcasts and banning them. (In Nazi Germany, of course, listening to enemy broadcasts was punishable by imprisonment – and German citizens were arrested for listening to the BBC.)

What worried the British government about Joyce was not just the treasonable words he uttered, seeking to demoralise his British listeners by assuring them that Nazi Germany was all-powerful and bound to win the war and that Winston Churchill was a poltroon who was in the hands of the Americans and the Jews, but something less tangible than words of treason. Joyce was reputed to have occult powers: to know exactly when a certain city would come under bombardment. ‘We used to listen to the radio every night,’ wrote AA Osborne of Sheldon in Birmingham, ‘and Lord Haw-Haw . . . would tell you where you would be bombed, telling you roads and streets which would be bombed, and believe me, he was not far out’.

The written transcripts at the Imperial War Museum archives don’t quite bear out this claim, and there is no evidence that Haw-Haw said that a certain clock in Bournemouth was slow or that there was a biscuit factory in a certain location in the Midlands, as popular myth has it. However, Joyce did have an excellent memory and a fine knowledge of British topography, and that often came across as eerily prescient to his listeners. In any case, a myth concerning Lord Haw-Haw’s strange powers arose – assisted by the rumour-mill of war, and the censorship imposed on other forms of news – and the belief in his knowledge and influence was widespread. He became, in short, a very influential broadcaster, and a media celebrity *avant la lettre*.

A lesser-known aspect of Joyce’s broadcasts was that he did have a radical side: he was, so to speak, a left-wing Fascist, and often drew comparisons between the classlessness of German society and the class-consciousness of Britain. He taunted the rich and praised the health of the German proletariat, with their superior welfare systems and access to spas (not a National Socialist innovation – a tradition which went back to Bismarck).

The decision was taken, in the end, not to prohibit Lord Haw-Haw. This was not from some great principle of freedom – war suspends such freedoms, in any case – but from British pragmatism. It was more trouble than it was worth. Banning such a celebrated broadcaster would create more of a furore than ignoring him. In any case, time took care of the problem: as the war went on, Haw-Haw seemed

## Radicals warned of treason risk

Islamist radicals who express support for terrorism may face treason charges, the Attorney General's Office has said, the BBC reported in August 2005. Lord Goldsmith and the Director of Public Prosecutions Ken Macdonald have discussed action against three individuals, a spokeswoman said. The Crown Prosecution Service's head of anti-terrorism will meet Scotland Yard officers in the next few days.

Omar Bakri Mohammed, Abu Izzadeen and Abu Uzair are all expected to come under scrutiny.

The spokeswoman for the Attorney General's Office said it was not clear at this stage whether there was enough evidence to bring charges. Officials will be looking at broadcast and published comments as well as speeches and sermons.

'No decision on charges has been made yet. The CPS will be looking at it to see if any offences have been committed,' she said.

Possible charges which will be considered include the common law offences of treason and incitement to treason.

Omar Bakri Mohammed is a London-based cleric for the al-Muhajiroun group. On 5 August, while announcing new measures to clamp down on extremism, Prime Minister Tony Blair said that this group's successor

organisation, the Saviour Sect, would be outlawed.

Mr Bakri caused controversy when he said he would not inform police if he knew Muslims were planning a bomb attack in the UK. He also expressed support for Muslims who attacked British troops in Afghanistan and Iraq.

'For Muslims there, they have a duty to fight occupiers, whether they are British soldiers or American soldiers,' he told Channel 4 News.

British-born Abu Izzadeen, a spokesman for the group al-Ghurabaa (the Strangers) has declined to condemn the 7 July London bombings. He told BBC2's *Newsnight* the bombings were 'mujahideen activity' which would make people 'wake up and smell the coffee'.

Abu Uzair, a former member of al-Muhajiroun, told the same programme that the 11 September attacks in the US were 'magnificent'. He said Muslims had previously accepted a 'covenant of security' which meant they should not resort to violence in the UK because they were not under threat there.

'We don't live in peace with you any more, which means the covenant of security no longer exists,' he said.

>>> BBC News Online, Sunday, 7 August 2005

less of a joke. By 1942, he was losing ground. His last broadcast, in April 1945, was notorious because he was evidently completely plastered. It may have been the first wholly inebriated broadcast ever made.

It seems to me that the trial of William Joyce, in the autumn of 1945, was the British version of a post-war epuration. Rebecca West, in her masterly reporting of the trial itself, observed that he had mocked the country he claimed to love quite mercilessly when they were up against an odious enemy, and scoffed in the faces of those who were losing those they loved in the war effort. (Actually, as it happens, Joyce also quite frequently brought good news to his British listeners, as he read out the names and identities of men who had been captured and were safely held as prisoners of war.) But he was the voice of Nazi Germany and that voice had to pay the price of the regime's infamy.

Many lawyers then – and now – regard *Rex v Joyce* as controversial, if not actually a show trial. A fourteenth-century statute was hurriedly passed through Parliament to copperfasten the treason law. It emerged during the

proceedings that William Joyce was not a British subject at all: he was three-quarters Irish and had been born in America. As such he could not, technically, owe allegiance to the King. But the brilliant prosecuting advocate, Hartley Shawcross, aided by a partisan judge, persuaded the jury that even if Joyce was not a British subject, he had claimed to be British (by falsifying his passport) and had thus wrapped the Union Jack around him. It was treason by intent and the tariff for treason was death.

In effect, William Joyce went to the gallows for what he had said. He died quite bravely, defiant, and joking, to the end. His execution gave him, however, a certain immortality, and brought the ring of tragic consummation to a life which had been buffoonish, ill-judged and, in the values it espoused, contemptible.

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PAUL OPPENHEIMER &gt;&gt;&gt;

## In the name of democracy

*Hitler said that he would use the tools of democracy to destroy democracy. But post-war democratic Germany needed its censorship laws to save face with its friends*

You cannot legally purchase new copies of *Mein Kampf* in Germany, nor publish it, nor shout (or whisper) Nazi slogans. You cannot publish and distribute pro-Nazi literature of any kind, nor watch Leni Riefenstahl's *Triumph of the Will* in a public theatre, nor strut (or shamble) in Nazi regalia – not just the obvious symbols such as swastikas, but even less obvious, though très chic, vintage jackboots and SS helmets.

On the face of it, this seems a puzzling and perhaps disturbing contradiction: one of the world's most liberal democracies banning political books and hate speech in the interests of preserving itself as a liberal democracy.

Yet such is precisely Germany's bizarre and little disputed practice. It pre-dates the breach of the wall in 1989 by decades, and was practised on both sides of the divide. It was maintained as an unquestioned if not pickled principle of German law after the reunification of the country in 1990.

The paradox seems grimly perverse. It was, after all, Hitler who said that he would use the instruments of democracy to destroy democracy. A present question may be whether a liberal democracy can use the instruments of totalitarianism to prop up democracy. Do not modern German book-banning and film censorship laws amount to a morbid splurge of risky self-indulgence, if not self-delusion? Would it not be fair to say that in the end they are most likely to promote if not incite the very ghastliness at which they are aimed?

Other serious questions arise. Is it not a grotesque irony, one exceedingly difficult for any free speech purist to accept with equanimity, that 60 years after the Nazi auto-da-fé of books by Mann, Freud, Zola, Proust, Remarque and Einstein in a square opposite Berlin University, the latest twentieth-century democratic German government is engaged in the same sort of suppression of free expression, albeit this time of Nazi ideas? May not German history simply be continuing by other means down a familiar constrictive path?

'We need this sort of thing here,' a professor of literature at the University of Osnabrück told me two years ago. 'Things are different here from Britain and the USA.'

What he had in mind was the widely reported storm of countrywide neo-Nazi arson attacks and assaults – over 30,000 and including 30 murders – between 1989 and 1995. The total is still mounting, though the official annual count is now down by about one-third, under 1,600. Few of the most recent neo-Nazi criminal violations of existing laws receive more than scattered attention in the UK and US press. Among democracy-committed Germans, however, their persistence casts a distasteful if not ominous shadow.

One of the things that worried the professor at Osnabrück, and would presumably continue to worry him,

is the spotty seductiveness of Nazi propaganda; its lingering appeal to a small but fierce and unyielding minority even half a century after the end of World War II – to the desperate, the nationalistic, the bigoted, the naive and, of course, the evil-minded. He was surely thinking then, and would be now, though we did not discuss it, about the necessity of keeping in place laws and court judgements curtailing certain types of speech, or hate speech, in particular anti-Semitic and racist speech, and insisting on these restrictions even after two generations of democratic education in the west. In the east, such education in democratic ideals began only after reunification; but, contrary to widespread assumptions, most incidents of neo-Nazi violence have taken place not in the economically depressed eastern parts of the country but in better-off western ones.

Along with many other liberal Germans, the professor was not prepared to abandon press controls, or laws criminalising hate speech, at least when it came to pro-Nazi publications and pro-Nazi hate speech. The same stubborn refusal also applied to denials of the Holocaust, which in print and at public assemblies are prohibited under German law.

His views continue to be supported by prominent legal authorities. In a more recent interview in 1997, Thomas Lundmark, a German-speaking US professor of Anglo-American law at the University of Münster, observed, 'I have never, in years of living in Germany and talking with numerous people about this issue, found a single German who favours repeal of the prohibitions.'

The laws themselves, however, have been interpreted by the courts as making several interesting exceptions to their own prohibitions. Their spirit has clearly been understood as more generous than their letter. In arriving at any fair evaluation of modern Germany's official position on hate speech and book-banning, therefore, it may be sensible to take the exceptions into account. Any condemnation of modern Germany on the basis of its existing censorship laws as a 'special case' in which democracy has failed to plant genuine and firm roots, as some have assumed, may be erroneous. At the very least, the free speech absolutists among us may find it useful to reflect on what is clearly a complex issue.

The court-established rule governing all exceptions seems at first glance byzantine enough. It has to do with National Socialist propaganda versus what the Federal German Court (Bundesgericht) has termed 'information' about National Socialism. While it remains illegal (and can earn up to three years in prison and a hefty fine, though the maximum sentence for violations is rarely imposed) to buy, sell or publish pro-Nazi propaganda, it is legal to buy and sell almost the same thing for the sake of academic curiosity and research purposes. You may not, however, publish this

material except as part of your own research. A buyer's motive, rather than the contents of what is bought, has been found all-important in these instances, and the latter is not regarded as automatically propagandistic.

One might, none the less, imagine that this very distinction is almost impossible to make. How, after all, can 'propagandistic' editions of *Mein Kampf* be separated from 'informational' ones? In a well-known case, however, dating back to 1978, and appealed against several times until it was decided at the level of the highest court in the country, German jurists struggled mightily to define the distinction.

The case in point involved an antiques dealer from Fürth, specialising in old coins, who had picked up at an auction, along with all sorts of bric-à-brac, a couple of copies of *Mein Kampf* published in the mid-1930s and early 1940s. He was cited by the police for attempting to sell them at a flea market after failing to sell them in his shop.

What worked in his favour was that he was not a bookseller nor an obvious propagandist. What also mattered was that the books themselves had plainly been published prior to the existence of the Federal Republic of Germany. The court argued that these particular copies of Hitler's notorious testament, as opposed to any that might be published for popular distribution these days, could not possibly be regarded as directed against the post-war, post-Hitler German democratic state.

The antiques dealer from Fürth was let off, but not everyone was happy with the decision, the basis of which lay in the court's perception of an absence of a threat to modern German democracy. To many, the very idea of this, at least in respect to press freedoms, seemed self-contradictory. State interests, no matter how democratic the state, had been made paramount over the inviolability of the principle of a free press. Precisely the same sort of reasoning, one might argue (and some have), could be seen as typical of the premises of any totalitarian regime.

Speculation continues to ripple through legal commentaries, moreover, that the real reason for the court's decision was quite different: Germany's gawky position vis-à-vis Nazi propaganda. Any other decision might have required the banning of Marxist revolutionary literature too, or even the writings of pro-democracy revolutionaries such as Tom Paine. The court's point was to quash specifically Nazi propaganda. Astonishingly in the eyes of some, a certain amount of waffling on principle has been taken as making easier its practical adjustment to social and historical conditions.

Can such an adjustment in the end be managed without compromising democracy itself? Thomas Lundmark, echoing what is probably a majority view, believes that it can, and that such compromises, though seldom acknowledged, are commonplace in all democracies: 'Each society, in the context of its legal culture, has an obligation to respond to its own history. Impositions on liberty are sometimes appropriate.'

Appropriate, however, to what? When asked whether the deepest reason for the preservation of the censorship laws might not in fact be the continuing irrational suspicions of Germany across Europe and the USA, Lundmark is unequivocal. There is little fear among jurists and legislators, he maintains, of 'the building of a new [Nazi] movement. What they fear is the embarrassment to the rest of Germany [if censorship laws were repealed]: how Germans would appear to other Europeans and to people around the world.'

>>> **Paul Oppenheimer** is a novelist, journalist, translator and poet who formerly worked as a journalist in Germany and taught at the University of Osnabrück. He teaches at The City College of New York and the Graduate Center of the City University of New York. This article was first published by *Index on Censorship* in 1998

*A signed copy of  
Mein Kampf and  
assorted Nazi  
memorabilia, sold  
for £28,000 in  
London, June 2005  
Credit: Carl de Souza /  
AFP / Getty Images*





DD GUTTENPLAN &gt;&gt;&gt;

## Should freedom of speech extend to Holocaust denial?

*In the year that the world commemorated the sixtieth anniversary of the liberation of Auschwitz, there are still those who deny the testimony of history*

The ironies of history are seldom subtle. Thus Charles Clarke's announcement on the eve of Holocaust Memorial Day on 27 February this year that the UK government will seek to end the centuries-long right of *habeas corpus*: henceforth, mere suspicion of certain terrorist activities may result in detention.

Listening to Prime Minister Tony Blair's plea that we retain a sense of proportion, and that the new measures will affect only 'a handful of people' (though the newspaper accounts suggested that coverage would extend to animal rights activists and Northern Irish militants as well as suspected al-Qaeda cells) one could hardly help recalling Martin Niemöller's auto-indictment: 'First, they came for the communists . . .'

So I may perhaps be excused for pointing out that the conflict at the centre of proposals to outlaw Holocaust denial in Britain – between freedom of speech and freedom from a form of racist harassment – has its own history. In 1949, the United States Supreme Court had to decide

whether the city of Chicago acted rightly in fining Arthur Terminiello, a Roman Catholic priest, US\$100 for breaching the peace by making a speech attacking 'atheistic, communistic Jewish or Zionist Jews'.

The record doesn't show whether Terminiello's career as a Jew-baiter extended to Holocaust denial, but his case is relevant to the current debate even without such obvious cues. Robert Jackson, one of the judges who heard Terminiello's appeal, had been chief US prosecutor at Nuremberg. Weimar Germany's failure to defend its constitutional order was still fresh in his mind when Jackson warned his colleagues 'if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the Constitutional Bill of Rights into a suicide pact'.

Not everyone who favours making Holocaust denial a crime in Britain advances a rational argument for doing so. When Blair said in 1997 that there was 'a very strong case' for a law against Holocaust denial he never went into specifics – an omission that looks prudent now that his

*Photo portraits of Holocaust victims in the Hall of Names inside the Yad Vashem Holocaust Historical Museum, Jerusalem*

*Credit: Menahem Kahana / AFP*



government has apparently lost its enthusiasm. Still, while it is unfashionable to say so, I believe there are at least two strong arguments in favour of such a law, and that both arguments deserve to be taken seriously.

The first argument is that Holocaust denial is a form of racial abuse directed not just at Jews but at a particularly vulnerable subset of Jews. As someone who spent more time than I liked reading the works of Robert Faurisson, Arthur Butz and David Irving, I can attest that this is the case.

For all their pseudo-scholarly decoration, the deniers' devotion to historical argument is on a par with Terminiello's contribution to theological disputation. To fail to acknowledge the pain felt by Holocaust survivors at the negation of their own experience – or to treat such pain as a particularly Jewish problem which need not trouble anyone else – is to deny our common humanity, which, in many cases, is precisely the abuser's aim: not to lure the rest of us into joining in, but simply to further isolate the victims by our indifference.

And as a general proposition Jackson was right. Free societies do have not only a right but an obligation to defend themselves. As individuals we are free to emulate Voltaire's willingness 'to give my life to make it possible' for someone whose views we detest to continue to express them. But we do not have the right to impose such self-abnegation on our fellow citizens.

Jackson's fellow justices needed no reminder of where Jew-baiting could lead. Yet by a 5–4 majority the court overturned Terminiello's conviction and, though I think they were right to do so, the thinness of the margin also seems appropriate. This is not a question where certainty is warranted on either side.

In Britain and the US we regard free speech as sacred. Americans venerate the First Amendment, while Britons cite Milton, who in *Areopagitica* said true liberty only exists 'when free-born men having to advise the public may speak free'. Holocaust denial is currently a crime in Austria, France, Germany, Israel, Belgium, Poland, Lithuania and Switzerland. Do the citizens of those countries value freedom less than we do? Or might other factors be involved?

Robert Kahn, author of *Holocaust Denial and the Law*, points to a 'fault line' separating the 'common law countries' of the US, Britain and former British colonies from the 'civil law countries of continental Europe'. In civil law countries the law is generally more prescriptive. Also, under the civil law regime, the judge acts more as an inquisitor, gathering and presenting evidence as well as interpreting it.

Unlike the Anglo-American adversarial system, where fairness is the primary attribute of justice, and the judge functions as a referee, trials under the continental system aim at arriving at the truth. This divergence has a number of consequences.

One of them was on view when David Irving, a British author, sued Deborah Lipstadt, a US academic. Irving claimed that since the Holocaust never happened, it was libellous to call him a Holocaust denier. As the claimant

under British law, Irving was able to force Lipstadt to prove him wrong by, in effect, proving the historical actuality of the Holocaust. This put an enormous additional burden on Mr Justice Charles Gray, who in presiding over the trial had constantly to attend to the claims of truth as well as justice.

Continental judges also have much greater latitude in taking 'judicial notice': that is to say, in declaring that certain facts are well established and need not be proven anew. The result is a system where, by habit if not by aptitude, the courts are more comfortable in simply pronouncing on questions of historical fact.

Ultimately, though, it is the difference in historical experience that ought to constrain our attitude to other countries. In Germany and Austria Holocaust denial is not 'mere' Jew-baiting but also a channel for Nazi resurgence much like the Hitler salute and the display of the swastika, which are also banned.

The case for a ban in Israel should also be obvious, if not beyond argument. Similarly, countries where the experience of occupation and the shame of collaboration still rankle ought to be able to make their own decisions. Blasphemy is still illegal in this country and, though Americans are theoretically free to do all sorts of things, no American these days can afford to be smug about anyone else's liberty. Nor, after Bosnia and Rwanda, can we pretend that free speech is an absolute value. Sticks and stones may break bones, but name-calling can clear a path for genocide.

Where should we set the balance in the UK? My own view is that the existing laws against incitement to racial hatred are sufficient. Making a special case for Holocaust denial might be justified if British Jews were in jeopardy, or if there were a fascist movement in this country, fuelled by Holocaust denial, which posed a genuine threat to democracy. Happily we are far from such dangers and, if we take the Prime Minister at his word and retain our sense of proportion, we ought to recognise that we have far more to lose from even such a tiny erosion of our liberties.

In 1949, the radical journalist IF Stone described himself as 'exactly what Terminiello in his harangues meant by an atheistic, communistic, Zionistic Jew. I would not demean myself or my people by denying him the right to say it.' Stone's denunciation of judges 'who would have permitted some measure of suppression in my protection' as 'not men whose championship I would care to have', could have been written of any number of recent UK home secretaries.

In rejecting Justice Jackson's analogy between Weimar Germany and the post-war US, Stone proved a better historian as well as a more robust libertarian. As an American Jew resident in twenty-first century Britain it seems to me that free speech is still worth the risk.

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AIDAN WHITE &gt;&gt;&gt;

## Journalism & intolerance: setting standards for media action

*The rule should be to set standards for reporting which ensure people get the information they need, without lashings of bias and prejudice. But how?*

In a world where ethnic conflict, racial strife and terrorism linked to extreme nationalism feature strongly on the news agenda, journalists need to be more conscious than ever about the dangers of media manipulation by racists and warmongers.

The 1990s conflict in the Balkans and the genocide in Rwanda in 1994 provided brutal reminders that human rights law, journalistic codes and international goodwill appear to count for little when unscrupulous politicians encourage violence and hatred by fuelling public ignorance and insecurity through compliant media.

In the 2000s war in the Middle East, the manufacture of a clash of civilisations between Christianity and Islam, and a resurgence of community conflict in Europe, dramatically exposed by violence in the urban centres of France and sporadic skirmishes in the UK, the Netherlands and elsewhere, have all stirred centuries-old resentments about foreigners in our midst.

As usual, mass media find themselves recruited to support the cause of intolerance or policies that allow racism to take the stage – immigration, asylum and religious freedom, for instance. Getting the message across without opening the door to prejudice has never been more difficult.

The problem of intolerance is a constant threat to good journalism anywhere in the world. Racial violence in urban communities in North America and Europe, often characterised by incidents of terrorism, the rise in influence in the West of extremist right-wing political parties, the re-emergence of anti-Semitism in many countries of Eastern and Central Europe, widespread religious intolerance in parts of Africa, Asia and the Middle East, and prejudice and discrimination against national minorities on the basis of language and social status, are all part of the global landscape of daily news reporting.

In this complex news environment journalists can become casual victims of prejudice and political manipulation. Too often, ignorance and a lack of appreciation of different cultures, traditions and beliefs lead to media stereotypes that reinforce racist attitudes and strengthen the appeal of political extremists.

How do news media strengthen professionalism against outside pressure? What can journalists do to improve ethical standards, particularly when they are in the crossfire of social conflict? What is the role of unions and associations of journalists and publishers' groups? What standards do media professionals need to set for the training, recruitment and editorial policies that will bring balance and equality into the internal social and employment structure of the media? In the era of spin and blog, rumour and speculation thrive so these questions become ever more important in setting standards for quality media.

Journalists are ethically bound to respect the truth, to be independent and to consider carefully the consequences of what they report and how they report. Media managements have to ensure that discrimination within journalism is eliminated and that populist and dangerous ideas are not exploited purely for commercial gain. The rule should be to set standards for reporting which ensure people get the information they need, without lashings of bias and prejudice.

But how? As a modest start, the International Federation of Journalists launched the International Media Working Group against Racism and Xenophobia (IMRAX) in 1995 to foster better understanding among journalists and other media professionals about intolerance and racism issues. Ten years on, this group is being revived – at an international conference to be held next year in Greece.

The IMRAX starting point is a recognition that within media we need to raise awareness and promote changes that will strengthen quality in journalism. One hesitates to say never again about Rwanda, where unspeakable atrocities were carried out under media direction, or about the Bosnian war, where extreme nationalism turned local broadcasters into war-mongering propagandists. However, journalists can do better when they work without undue pressure either from outside or inside the newsroom.

There is, happily, a growing awareness within journalism. The world's first international conference on racism and journalists – 'Prime Time for Tolerance: Journalism and the Challenge of Racism' in Bilbao in 1997 – was attended by journalists' groups from more than 60 countries. And in this same city in June 2005 another conference was held – the impact of terrorism on journalism and the toxic question of racism were still evident, this time in the way anti-terrorism is being used as a cover for discrimination against Muslims.

Many journalists, particularly in countries like Denmark, Austria, Belgium, Germany, Britain and France, where pluralism and tolerance are giving way to new divisions and a backlash against multicultural ideology, know that the time is right for a new professional campaign to understand and combat the threat of xenophobia in the news.

Ethical codes will not solve all the problems of intolerance in media, but they may help journalists focus on their own responsibility. By setting out the ideals and beliefs that underpin independent journalism, codes of conduct encourage journalists to act according to their conscience.

Codes of ethics begin with sweeping generalities but tend finally to require particular attention to local context and to particular facts. That is how, in the end, ethical dilemmas are resolved. In matters of tolerance, journalists



*Scots media covering the 2001 inquiry into institutional racism that undermined the prosecution of the killers of Surjit Singh Chhokar*

*Credit: David Cheskin / PA / Empics*

need to place the broad sweep of aspirations and values set out in ethical codes firmly in the context of their day-to-day work.

They must constantly remind themselves that regulating ethics is the collective business of journalists, not principally of the corporations which commission and carry their journalism, and especially not of governments.

Governments have a legitimate role in regulating media structures to try to ensure the diversity necessary for freedom of expression to flourish, but journalists' ethics are a matter of content, and when it comes to what news media write or broadcast, governments have no role to play, beyond the application of general law.

Ethics have to be actively supported. Journalists have to act ethically, not merely memorise and parrot ethical codes. The standards or rules of codes are useful and work most of the time. But sometimes genuine conflicts arise – the story is true, but will publication at this moment create more conflict, perhaps violence, and serve the public interest? – and ethical decision-making is required.

This difficult skill is like all the other skills of journalism: it takes training, time and effort to become good at them. Individual journalists, employers, local journalists' associations and international media organisations have a responsibility to encourage good practice. The sort of ethical dilemmas set out above – the conflict between the need to seek the truth and to minimise harm – cannot be addressed unless journalists are better aware of the potential impact of their work.

There are many different models, but all ethical codes focus on the professional aims of the journalistic mission. They can be used like a checklist, even when journalists are working close to a deadline. They direct thinking and permit conscious decision-making that can be explained later if and when controversy arises about decisions.

The prohibition of discrimination on the basis of race or nationality is one of the most general features of profes-

sional codes of ethics agreed at national and international level. The Code of Principles of the International Federation of Journalists, for instance, was revised in 1986 to include the following article: '7. The journalist shall be aware of the danger of discrimination being furthered by the media and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.' In addition a number of journalists' organisations and a number of public broadcasting organisations have established specialist working groups and published statements and guidelines for journalists revealing a commitment going beyond the good intentions of ethical declarations. At the same time national Press Councils have adopted codes which identify the issue of intolerance and have taken up complaints from members of the public about poor media reporting of race relations issues.

Good examples are the National Union of Journalists in Great Britain and Ireland (NUJ) and its Black Members Council and the initiative by the Netherlands Association of Journalists (NVJ) with the working group Migranten & Media to formulate some general recommendations for journalists. These groups have drafted guidelines for everyday reporting and have suggestions to reporters on how to deal with assignments that involve racist or extreme right wing groups that promote racism and intolerance.

To be effective, journalism must be inclusive, accountable and a reflection of the whole community. Journalists need to develop sources which represent the diversity of thought, feeling, and experience of the people they serve. Such quality and richness cannot be achieved by sitting in the newsroom waiting for an official news release from the Ministry of Information.

But do news organisations reflect the diversity of their community? A news organisation which employs people from different social, ethnic or cultural backgrounds will always be better equipped than those which do not. The

arguments for internal diversity are not for 'do-gooder' journalism, but for improved efficiency, professionalism and performance: ethnic diversity in editorial staffing and performance attracts a broader range of readers, listeners and viewers. When target groups sense the familiarity of media coverage with their own lives, circulation and ratings will increase. Journalism strives for objectivity and diverse ethnic representation in newsrooms can improve access to diverse sources of information from minority communities.

Higher minority representation in the workforce and more balanced coverage attracts consumers from different backgrounds. Advertisers targeting people from different cultural backgrounds will prefer outlets where minorities are more visible.

Journalists and media from different groups need to work together, to exchange information and to learn from each other. Dialogue within and between different media is as important as dialogue between media and society at large.

The IMRAX initiative has helped. It has led to the production of handbooks on equality at work and, in 1998, a joint statement was issued by media employers and journalists in Europe on practical actions to combat intolerance. This will be one of the key initiatives to be revived in the new phase of the group's work next year.

The challenge to both trade unions of journalists and media staff and employers is to agree on concrete ways of moving towards equality of representation in the media. In the short term, employment quotas may help without diluting quality, but setting longer-term employment

targets to ensure a balance within journalism at least equal to the relationship between majority and minority groups in the population at large is important. There is a growing recognition that this is one area where the media industry needs to improve its performance.

When it comes to intolerance and racism, journalists often score very badly on the basic questions. Training gives journalists confidence and skills, and raises professional standards. Too often though, skills training in reporting and editing fail to cover news gathering in an ethnically diverse community and reporting in areas of conflict.

To combat this, a considerable amount of work has been carried out in some of the hot spots of conflict over the past ten years. Programmes have produced handbooks for journalists on covering minorities, numerous training seminars have been organised and networks journalists' groups and training institutions have been established.

All of this helps, but much more needs to be done. The challenge facing journalists and others meeting in Greece in the spring of next year will be to reinforce efforts not only to expose those reporters and publishers who turn in propaganda in support of hate-filled and twisted political causes, but more importantly, to encourage all journalists to take responsibility for their actions, to build professional solidarity and, above all, to give them the confidence to steer clear of the prejudice and ignorance in the world around them.

>>> **Aidan White** is General Secretary of the International Federation of Journalists

## Monitoring racism & xenophobia

The European Monitoring Centre on Racism and Xenophobia (EUMC) is an independent body of the European Union based in Vienna, Austria. It was established in 1997 and became operational in 1998. Its primary objective is to provide the European Community and its member states with objective, reliable and comparable information and data on racism, xenophobia and anti-Semitism in the EU. The data and information is provided to help the EU and its member states undertake measures or formulate courses of action against racism and xenophobia.

The EUMC studies the extent and development of racism and xenophobia, and analyses their causes, consequences and effects. It also works out strategies to combat racism and xenophobia and highlights and disseminates examples of good practice in tackling the issues.

The EUMC operates a European information network on racism and xenophobia (RAXEN) which collects information at national level. Raxen consists of 25 national focal points, one in each EU member state. The information from the national focal points is published in the form of comparative reports or national reports. The EUMC works

in cooperation with the EU institutions, intergovernmental organisations and member state governments. It also cooperates with civil society through round table meetings at national and European levels.

The EUMC publishes an annual report in two parts. The first part provides information on the EUMC's activities and the second part provides information on the situation of racism and xenophobia in the European Union.

The EUMC has also produced reports or undertaken activities on the following issues and groups: racist crime and violence; public discourse on racism; role of the media in combating racism; discrimination in employment, education, housing; legislation to combat racism and promote racial equality; attitude surveys on migrants and minorities; anti-Semitism; Islamophobia; the situation of the Roma community; and racism in sport.

In December 2003, heads of government decided to extend the EUMC's mandate to become a Human Rights Agency.

>>> [www.eumc.eu.int](http://www.eumc.eu.int)

RONALD KOVEN >>>

## Put your own house in order first

*Why should the media allow themselves to be coerced into behaving 'responsibly' by governments, many of them globally notorious for their own irresponsibility?*

Politicians and governments who cry the loudest for the need for the press to act responsibly are the very ones who want freedom to act irresponsibly without the press reporting their deeds. No government cries more loudly for the press to be responsible than that of Robert Mugabe in Zimbabwe. The demand for the press to be responsible is usually nothing but a demand for self-censorship. No journalist calls for irresponsibility. But the question is: responsible for what, and responsible to whom? To governments? The awful history of the twentieth century showed that irresponsible governments that could act with impunity and no accountability to the press and public have done far more harm to humanity than members of the press could have in their wildest dreams. We repeatedly have the awful example of Radio des Mille Collines in Rwanda – calling for genocidal massacres, including the killing of innocent women and children, with names and places given over the air to guide the killers – thrown in our faces as the example of ultimate press irresponsibility. But that was not a free, independent press outlet. It was the propaganda organ of a murderous ruling party.

Independent and free press outlets may have lapses, but they do not wage systematic hate campaigns. That is the specialty of government-directed propaganda organs. Much of the loose talk about the need for a responsible press simply fails to make the necessary distinction between a free and independent press and the propaganda organs of parties to conflicts.

When it comes to war or conflict, few even try to resist the temptation to throw a monolithic entity known as 'the media' all into the same sack – calling for controls and censorship over a generalised category labeled as 'hate media'.

Nobody ever thought to allege that the Holocaust happened in World War II because of Nazi propaganda minister Josef Goebbels or Julius Streicher and his hate sheet *Der Stürmer* (*The Attacker*). We know very well that they were nothing but political instruments of Hitler and Himmler. So, why do we not apply the analogy today? Why do we persist in trying to blame the press for what happens? Could it be that there are conscious or unconscious press-haters amongst us?

In this field, as in so many others, the Anglo-Saxon legal dictum that 'hard cases make bad law' also applies. The fact that Radio des Mille Collines, in fact a weapon of war wielded by the Hutu president against the Tutsis, had a legal status as a private station employing professional journalists does not change what it really was. To want to make general international press law on the basis of that uniquely horrifying example is beyond comprehension. Obviously, the very specific calls for massacres broadcast over Radio des Mille Collines were crimes against humanity and were properly prosecuted as such. It is not because some of the perpetrators happened to be journalists that they should

have been prosecuted in their quality as journalists. They were prosecuted as criminals. No special laws on journalism were needed for that.

There have been well-intentioned assertions of the need to act against 'vigilante journalism'. The leading example that is usually given of such journalism is generally what happened in Kosovo after the Serbian authorities were dislodged from the province. The first instance involved the accusation by the Kosovo newspaper *Bota Sot* that the new international regime was employing Serbs guilty of atrocities against the Kosovo Albanian population. The paper singled out a chauffeur hired by the new international authorities. Two weeks later he was killed. The international regime accused the newspaper of having fingered the dead man and of being responsible for his death.

I know the argument that printing the man's picture and address was tantamount to calling for his assassination. But that was an accusation well after the fact. When the allegations about the chauffeur's war record were published, the new authorities did nothing, either to protect the man in question nor to investigate the charges that had been made against him. They obviously did not perceive a danger, nor that the allegations might be serious. The international regime was unable or unwilling to assume its responsibilities, and it preferred to accuse a newspaper of irresponsibility.

Yet I find it hard to accept the notion that it was unnewsworthy that a new international regime designed to correct the excesses of the past might be hiring persons involved in those very exactions. Should the newspaper have ignored its information?

Should there be no attempt to identify, remove or bring to justice those who commit crimes against human rights? Have we considered what happens when there is no such effort? Take the example of France, where thousands were shot at after the Liberation for collaborating with the Nazi occupiers. Much of that purging was extra-judicial, and the newly freed country's new leader, General Charles de Gaulle, called a halt and preached national reconciliation. The result is that French society still periodically tears itself apart over whether the job was properly done after the war. The needed national catharsis did not take place. That issue now haunts societies all over East and Central Europe. It is not foolhardy to predict that Russia, where there was no de-Bolshevisation, will continue to agonise over the issue for half a century or more, while countries like the Czech Republic, with its 'lustration' programme of truth and reconciliation, will be more socially cohesive. But well-meaning would-be press controllers tell us that news outlets that air grievances are 'hate media' that should be squelched.

We have international press regimes still sitting on psychologically battered societies telling them that the

press must not discuss horrors of the past. In Bosnia-Herzegovina, editors of major press outlets still feel they are being subjected to international censorship. A certain amount of tolerance for excess may indeed be healthy. Take what happened in Romania, where after the fall of the Ceaucescu regime, secret police funds were used to start up a weekly hate sheet called *Romania Mare* (Great Romania). It vented hatred against the country's Hungarian, German, Jewish and Gypsy minorities. At first, it had a circulation of 500,000, the largest in the country. But soon the novelty and shock values wore off, and its circulation dropped to 50,000. It is the same principle that applied to the freeing of pornographic publications in Denmark and in Spain. They started out with huge circulations and eventually fell back to relatively modest ones. Despite being a cliché, the attractiveness of forbidden fruit is no less a reality. The press is far more sinned against than sinning. One never hears about the need for codes of conduct for politicians. One only hears politicians threatening the press that they will legislate an imposed 'responsibility' if the press does not do the censor's job for them.

So. All the calls for self-regulation, or even more hypocritical, the latest fashion, 'co-regulation', are just so many attempts by politicians to work freely in the dark of lack of information for the public.

Seeking the lowest common denominator of content by appealing to the concern we all have to protect children is another approach to impose a form of censorship. The leading club of traditional democracies, the Council of Europe, makes repeated calls against 'illegal and harmful content'. Illegal content is one thing. But the appeals against so-called 'harmful content' are subjective, ill-defined and subject to abuse, especially by the world's authoritarians eager to find negative examples to justify their censorship. It has been rightly noted that famines don't occur in countries where the press is free to warn of their coming. They happen when a Stalin or a Mao or a Mengistu can organise them in secret silence. The Council of Europe, with the best possible intentions, has sometimes given negative examples by adopting rhetoric that can cloak the actions against the press of authoritarians like Lukashenko or Milosevic, right there in Europe, without going farther afield in the distant developing world.

The theme of a recent Council of Europe Forum on 'Responsible Behaviour' by the media and others came as a surprise. The need for government-defined journalistic 'responsibility' was one of the constant themes in the New World Information and Communication Order (NWICO) debate that nearly destroyed UNESCO. That theme keeps recurring. But warnings that the follies of the NWICO debate should not be repeated are generally met with the remark that that is the past, that the Cold War is over. For that very reason, the attempts to reinvent crooked wheels to prevent the press from reporting freely must continue to be resisted. The would-be censors have always dreamt that the press would do their jobs for them, that the press itself would refrain from the inconvenient and messy disorderliness of reporting what goes on in dark recesses where some politicians crave the freedom to act as irresponsibly or as

corruptly as they can get away with. If there is one thing that all political parties can so often agree on when things go wrong, it is that it must be the fault of the press. That way, the whole political class can be freed of its responsibilities.

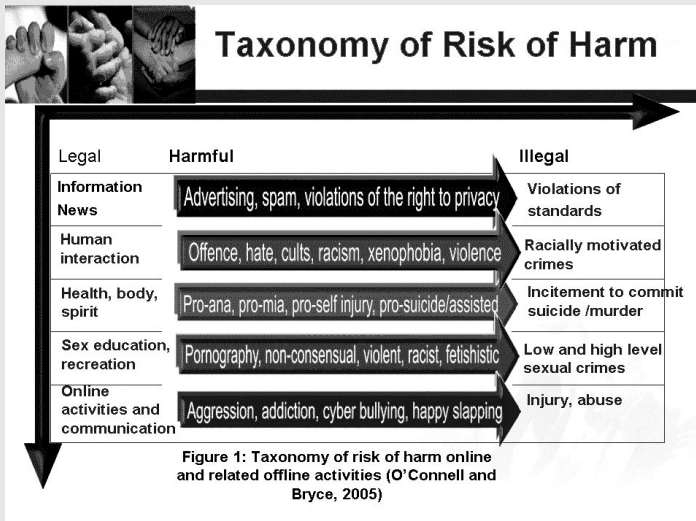
Another approach by governments and political classes to harnessing the press is to assign positive societal tasks for media to carry out. This usually boils down to getting the press to help carry out government or political party agendas. This is done by redefining journalism in terms of some positive adjective. But the practice of journalism needs no justification. As a service to society, journalism is its own justification. It doesn't need to dress itself up with adjectives.

One of the first lessons in journalism is that normative or judgmental adjectives should be avoided, that the facts should be allowed to describe reality without embellishment. One would think that the same principle would apply to attempts to create such new forms of adjectival journalism as 'peace journalism', 'development journalism', 'civic journalism', etc. What's wrong with just plain journalism, pure and simple?

During the NWICO debate, we were told that we should be practicing 'development journalism'. That turned out to be a way of describing journalism supportive and uncritical of developing world governments. It was a perfect illustration of how fine-sounding phrases could be used as code words for more or less sophisticated forms of censorship. We have recently had a similar debate in the United States over something called 'civic journalism.' It was based on the premise that publics are disaffected from the press because it concentrates on bad news and is thus seen to be too negative. That may in practice simply be another way of saying that news media are doing their job as critics of local and national governments. In the democratic context of US society, the intent of the new 'civic journalism' approach was undoubtedly well-meaning and the practical effect perhaps negligible on the watchdog function of the press. But the major press outlets in mainstream American journalism rejected the idea.

Despite the reservations at home, this 'civic journalism' approach was presented in the mid-1990s at a major conference in Prague sponsored by the US Information Agency. After the first presentation of this supposedly innovative approach, an experienced Romanian journalist friend sitting behind me leaned over and asked, 'Who are these people? Are they Communists?' No, they weren't Communists, but they hadn't bothered to ask themselves how the message that the press should work more at promoting the goals and projects of local and national governments might be perceived by journalists from ex-Communist countries. The problem of those journalists was distancing themselves from the sources of power from which they had just been freed, not learning how to share goals with the authorities. So, when I hear talk of 'peace journalism' or the 'conflict resolution' or 'conflict management' roles of the press, I can't help but think that that was exactly how Soviet bloc press controllers liked to describe their way of restricting the press. They issued numerous legal and treaty proposals to drum the so-called 'warmongers' out of the press





A slide from a presentation by Dr Rachel O'Connell and Dr Jo Bryce of the University of Central Lancashire for the Council of Europe's Pan-European Forum on 'Human Rights in the Information Society: Responsible Behaviour by Key Actors' in September 2005 ([www.coe.int](http://www.coe.int)). The aim is to illustrate some perceived connections between 'illegal and harmful content'. Free speech groups see a clear difference between what can be defined as objectively illegal and that which is subjectively harmful. Some of those identified as 'harmful content' providers make a clear demand for freedom of expression. 'Pro-ana' sites for example are sympathetic to anorexia as a personal and aesthetic choice, despite the widespread criticism they have faced. As Ronald Koven notes, appeals against harmful content are 'subjective, ill-defined and subject to abuse, especially by the world's authoritarians eager to find negative examples to justify their censorship'. Making a similar presentation on the sidelines of the World Summit on the Information Society (WSIS) in Tunis in November 2005, the Council of Europe indicated that action to deal with the issues raised by harmful content in such circumstances would focus on 'education and care' rather than regulation. RJ

corps internationally. The phrase 'peace journalism' would certainly have been eagerly accepted as a code word to cover the Soviet campaign for international censorship.

When we start positing that the press has roles or obligations in promoting social cohesion, social solidarity, reducing poverty and so forth, where does it stop? Should we require journalists to get degrees in social work? Society needs news and information if democracy is to work properly. Society needs fora for analysis, discussion and debate of the issues of the day. Society needs practical information like the news of weather, markets and public services. Society also needs the opportunities for distraction provided even by the serious news media. Such traditional functions of the press are more than enough to occupy journalists usefully, without adding in the obligation to pursue good causes that are in fact the realm of politicians, ministers of religion and morality and others for whom advocacy is a way of life – those who want to be able to use the news media as tools.

The press must be free to decide for itself what roles it chooses to play. Some outlets may legitimately decide for themselves to embrace and advance good causes. Many do so in practice. But that must be of their own choosing – not an assignment of roles by extra-journalistic forces. Obliging the press to work for particular goals is an usurpation of its free choice – that is to say, a negation of freedom of the press.

It should be unnecessary to say such banal, self-evident things, but well-meaning efforts to assign positive roles to the press are replete with ideas for forcing the press to do various things not of its own choosing. There is nothing new or unusual in that. It is a constant temptation of those who struggle for causes that they are genuinely persuaded

are for the good of humanity. Thus, in the world of humanitarian NGOs, there is a standing resentment against the press because it does not automatically offer up its space and time to further such NGO goals as human rights, good health, and social harmony. And when the press turns an analytical or critical spotlight on those who do pursue such goals, then the temptation in the NGO world to cry 'Treason!' is often not resisted.

If we call for 'peace journalism,' what principle would forbid 'war journalism'? Journalists should be left free to report and to air the debates, tensions and contradictions that swirl through any free society. That is when they make their best contribution to social health. Hatreds and frustrations must not be allowed to fester in the dark. Venting them in the open is the best strategy for getting rid of them. That is what plain, simple journalism allows – unlike adjectival journalism, prescribed by quack doctors. Freedom is unsettling. It defies people's natural intolerance of instability. Democracy needs apprenticeship. It is far more natural to want to impose the false aesthetics of orderliness. But our history shows us where the calls for order lead us.

A free society needs a free press – no matter how disorderly that may seem. There must also be freedom for the press to get it wrong. That's what free, open debate in the messy business of democracy is all about. Without a free press, free even to make mistakes – and, yes, to pay for them if and when necessary under legitimate laws of defamation applied by independent courts – without such a free press, a society can only be un-free.

>>> **Ronald Koven** is the European Representative of the World Press Freedom Committee. [www.wpfc.org](http://www.wpfc.org)

## RICHARD SAMBROOK >>>

### Think what you say

*The price of free speech is the continual observance and questioning of the media's actions, by editors, audience and regulators, says the BBC head of news*

Sometimes, the dividing line between proper media regulation and censorship can seem crystal clear. Let's look at events in Britain.

The country is no longer fighting a foreign war but the government feels under threat from forces it does not fully understand. It fears that some people are not fully integrated into society. Suddenly, in a single, terrible, unexpected event, many lives are lost. The government faces a danger that it's never seen before. How can it ensure that the country remains at peace and that the rule of law will be upheld? To prevent journalists from giving a platform to dangerous radicals, it proposes some of the toughest legislation against free speech that the country has ever seen. Two measures in particular border on censorship.

No: I'm not describing Great Britain now or even in the last century. This was 1819, when the country had just emerged from the Napoleonic Wars and Parliament was grappling with the aftermath of riots – including one called the Peterloo Massacre, when the army killed a dozen protestors. By the year's end, Parliament had debated and passed six measures to suppress radical newspapers and reduce the possibility of an armed uprising. There were punishments for publications that were judged to be seditious and a bill to control the publishing of opinion not news. Protestors saw this as an infringement of their civil liberties and a curtailing of free speech. But at the time, many people in the country thought it was the right step. They feared a revolution.

Today, of course, we know they were wrong. There was no revolution and the powers taken by the state did damage to press freedom. But without the benefit of hindsight, the relationship between the media and the state is not always black and white. In everyday life, there are shades of grey, too. And that's a harder colour to define because there has to be a balance between our freedoms and protecting the society that allows them. It's hard, too, because to retain the right to freedom of expression, broadcasters must be aware of their responsibilities.

To paraphrase Article 10 of the European Convention for the Protection of Human Rights, everyone has the right to freedom of expression – subject to the laws that are necessary in a democratic society, for example, to protect national security and the rights of others. The difficulty, for governments and journalists alike, lies in defining what might do the damage, when you're not looking through history's telescope.

But there are clear principles that should guide us. Free speech does not mean that we should allow undiluted vitriol to seep on to the airwaves. Free speech does not mean that we can allow interviewees to stir up racial hatred. Free speech does not mean free-and-easy speech. Free speech has a price, despite its name. Its price is the contin-

ual observance and questioning of our actions, by our editors, audience and regulators.

One of the hardest editorial dilemmas is deciding how best to report on hijackers, kidnappers or hostage-takers. Frequently, we have to decide whether it is right to broadcast recordings made by the perpetrators. Since the kidnap and murder of *Wall Street Journal* correspondent Daniel Pearl three years ago, nearly every kidnapping has been accompanied by websites that offer an array of pictures of the victims pleading for their lives, surrounded by their captors. When Ken Bigley, a 62-year-old British engineer, was kidnapped from a house in Baghdad last year, his captors released a series of videos, culminating in footage of his execution. A few weeks later, the process was repeated with a new victim, the British aid worker Margaret Hassan. She too was killed. The videos, which were drip-fed to maximise publicity, posed a stark challenge to broadcasters.

The video of Mrs Hassan showed she was extremely distressed and we saw no benefit in showing that, not least out of respect for the feelings of her family. But the BBC's decision to show stills, not moving pictures, angered some viewers. Some of them complained of censorship. Others complained when we did show parts of a kidnapper's video. They said we were giving 'the oxygen of publicity' to terrorists.

But it's not just a case of weighing up the feelings of a family and the publicity sought by kidnappers, important factors though they are. We also have to weigh up the actions of governments, and the fact that we could be accused of making life easier for political leaders, in the aftermath of the Iraq war. These are not easy decisions; and they're getting harder as kidnappers and other groups make increasingly sophisticated use of the internet and digital video.

We think that viewers and listeners want to see and hear what is happening in the world but in a way that seeks to inform rather than offend. Indeed, the main issue facing us today is how to weigh freedom of expression against the offence some views may cause. Today, of course, the dividing line between freedom of expression and offence is even more sharply in focus because of the government's anti-terrorist bill. Critics of the policy are not just found among politicians and the press; public opinion is divided too.

In the days following the London bombings, BBC News Online commissioned an ICM poll, of a thousand people. It suggested that 51 per cent were in favour of legislation to ban incitement to religious hatred, but 44 per cent were against it as an unjustified limit on free speech.

So should you regulate against 'hate speech' if you uphold freedom of expression? Different countries and their courts have reached different conclusions.

Three years ago, the French author Michel Houellebecq

was sued by four Muslim groups after saying Islam was 'the stupidest religion'. The case was seen as an important battle between free speech and religious conservatism. Houellebecq said it was his right as an author to criticise religions and he was cleared.

In Sweden, earlier this year, a pastor who called homosexuality 'a cancer' was sent to prison for thirty days – but he was freed on appeal. The court said he was protected by the country's law on free speech.

South Africa, however, has special 'Equality Courts' to deal with hate speech and discrimination. In May, an estate agent was ordered to pay damages after sending a mobile phone message to a black house-hunter saying he should 'go back to the townships'. It was hate speech by text.

And that's another problem: in this era of instant communications, combating extremism can present enormous technological and legal difficulties.

Last year, officials from more than sixty countries met in France to discuss ways of combating racism on the internet. At the meeting, which was hosted by the Organisation for Security and Co-operation in Europe, France called for tougher regulations. It believes there is a direct link between racist propaganda on the web and a surge in hate crimes. But the United States said it was against any restrictions on freedom of speech.

At the recent United Nations summit in Tunis to discuss freedom of expression on the internet, the Israeli foreign minister objected to websites that promote terrorism. Where do you draw the line? And if you don't draw a line at all, what are the consequences?

BBC Monitoring, based in Caversham, has examined how journalists have reported conflicts across the world, and whether they have exacerbated tension, by directly inciting violence or breeding distrust. Rwanda is its most compelling case study. There, the media operates in the shadow of its role in the genocide, 11 years ago. The media didn't create Rwanda's day of reckoning. But its 'hate speech' all too accurately reflected and exacerbated the tensions that so tragically surfaced.

Other regions in conflict have also seen 'hate broadcasters' spring up, with the aim of spreading discord – Indonesia, the Philippines and the Democratic Republic of Congo among them.

Should such outpourings be stopped by legislation? Article 20 of the International Covenant on Civil and Political Rights argues that the right to freedom of expression cannot allow the advocacy of nationality, racial or religious hatred if it constitutes incitement to discrimination, hostility or violence. And where the sole purpose of a broadcaster is to spread hate, you can see the point – even if such an aim is a symptom, not a cause, of a wider malaise.

Of course, these examples of hate speech and conflict may seem far removed from our experience in Britain. But in the wake of the London bombs, some critics have been quick to point a finger at tensions in our multicultural society. The head of the Commission for Racial Equality, Trevor Phillips, argued that in recent years, 'we've focused far too much on the multi' and 'not enough on the common culture'.

A recent BBC opinion poll, however, appears to suggest a high level of acceptance of multicultural Britain. Of 1,000 people questioned, 62 per cent said multiculturalism made Britain 'a better place to live'. But almost the same number said people 'should adopt the values and traditions of British culture'.

The BBC World Service recently broadcast a series of *Analysis* programmes examining multiculturalism across the globe. The series started with the shopkeepers of Wembley in north London, where more than half the population was born outside Britain. It's probably the most mixed area of Britain. There are Caribbean shops, Somali shops, Chinese shops and Indian shops; here, indigenous white people are in the minority.

We found only a few people who say they support the England soccer team. Most people want it to lose! But we also found that most of Wembley's inhabitants exist in reasonable harmony. 'We're so used to each other,' one shopkeeper told us, 'that we just get on.'

But our programme also went to Bradford, where 20 per cent of the population comes from outside Britain. Here, multiculturalism appears to have failed. There were race riots four years ago and a councillor from the British National Party has been elected. A policy of celebrating diversity and accommodating the cultures of the minority ethnic communities is now being re-thought. The council told us: 'We have reaped some of the bitter fruits of that emphasis on multiculturalism – the emphasis on what separates us rather than what brings us together.'

Our series showed, however, that Britain's problems are far from unique. In Australia, where one in four of the population is from overseas, multiculturalism is under strain. 'We have to work out what is a genuinely Australian culture,' one interviewee told us.

In Nigeria, 250 different ethnic and language groups live together. But our correspondent concluded that there is no glue holding such cultural diversity together.

In Kuala Lumpur, where all the world's major religions can be found, the Malays' social policies discriminate against the Chinese and Tamils, though racial tension appears low. One person told us: 'Minus the politics we have a fantastic multicultural society!'

In France, multiculturalism is officially frowned upon in favour of conformity and secularism. Religious symbols are banned from schools. Has this policy worked? The recent riots may suggest otherwise.

What does the experience of these different countries tell us? Let me draw two strands together. In our monitoring of the media, we tracked the ebb and flow of 'hate speech', while in our programmes, we discovered that social cohesion is under threat to a greater or lesser degree in the countries we examined. In these circumstances, how do we prevent hate speech, if it exists, from eroding the bonds of society?

Legislation, in many ways, might be seen as a sign of failure. That's because the media should aim to be a force for tolerance and cohesion. As the BBC's director-general said in his first day in the job, we should try to enrich individuals with knowledge, culture and information about

their world. The BBC should enable the UK's many communities to talk to themselves and each other about how they differ and what they hold in common.

That's why our radio series ended with a debate among some of their representatives – about whether multiculturalism in Britain has failed. The question we sought to answer was whether, as some believe, the country has broken down into many separate communities, lacking common values and beliefs.

Professor Tariq Ramadan told the programme that, in times of crisis, we need to know each other. After 7/7, he said, the great majority of British people realised they didn't know anything about Islam. He may be right. In an opinion poll three weeks ago, for BBC News 24's 'Faith Day', more than one-third of those questioned said they had no understanding of Islam.

The question is why? Several speakers at the recent NewsXchange conference in Amsterdam blamed the media for failing to understand and illustrate the complexity of the Islamic world. They said we relied on stereotypes. So here's a challenge we should set ourselves as broadcasters.

We should aim to help the audience understand differences of ethnicity, faith, gender, sexuality, age, and ability or disability, by sensitively reflecting diversity. That means we cannot allow the drip-drip effect of hostility towards a community or a group on to our airwaves. That's an unambiguous principle, but in practice there's a shade of grey.

In a democracy, many different views should be tested. So, in the BBC, we strive to reflect a wide range of opinion and explore a range of views. It means that sometimes, in order to understand extremist views, we will have to talk to extremists. It means that sometimes, when we do so, viewers and listeners will accuse us of giving a platform to such views. I think that's a misunderstanding.

We can't simply explain news events such as 7 July, or conflicts abroad, by only talking to 'safe' contributors, those who hold uncontroversial positions. But – and it is a crucial but – we should always aim to test rigorously any contributor who expresses contentious views.

Good journalism is, for me, the key. We shouldn't lay down artificial rules about which people we can and can't talk to any more than we should decide in advance which kidnappers' videos we can or can't show. It's down to judgement at the time, working within the parameters that we set ourselves in our producer guidelines. We can't give people a platform to stir up hatred, or spread abuse, because we should be a force for cohesiveness not division. But where division exists we should report it as freely and as fearlessly as we can. In doing so, our coverage should be proportionate to the reality we discover on the ground: not causing

trouble, but reporting it; not creating tension, but explaining it.

That's why we made an undercover film, *The Secret Agent*, about the BNP, which has resulted in its leader appearing in court. That's why, occasionally, people may express an idea that vast numbers in the audience may find offensive or disagreeable. How that fits in with the government's proposed legislation we'll have to wait and see. But if our recent experience is anything to go by, the signs are not encouraging.

On 1 August, as part of its ongoing reporting into the London bombings, *Newsnight* interviewed two members of a radical Islamist sect who sought to justify the attacks. Neither of them revealed any evidence of a new plot – rather it was an insight, though a disturbing one, into the minds of British Islamists. We would argue that the interviews were a matter of legitimate public interest. But the police went straight to a judge to get an order under the terrorism act, requiring the BBC to hand over not just the transmitted programme but the rushes, notes and 'any other relevant material'. We've decided it would be wrong simply to hand over the material without any argument. So we await further developments.

Clearly the BBC does not support terrorism, but there is a fundamental principle at stake here. We have to be free to gather news and views to serve the society of which we, too, are a part. We are not here to create a climate of intolerance, but to report upon one if it exists. That's a million miles away from some of the broadcasters I've described, the ones that existed solely to spread hate. Our job as an impartial broadcaster is to report and explain. As history shows, that's vital.

After the events of 1819, it took another 30 years to re-establish the free press. But it happened. Today, it means that a fundamental principle of democracy is freedom of speech: the existence of critical voices that can test the mettle of a system. Censorship has no part in our output and should play no part in the future. But in order to forestall it, both journalists and politicians have a clear responsibility.

It is to remember that free speech is not the same as free-and-easy speech, lest we weaken the ties that bind us. And to recognise that the dividing line between proper media regulation and censorship is a precious one, even when, indeed especially when, it is not always clear.

> > > **Richard Sambrook** is director of the Global News Division of the BBC. This is an edited version of his comments to the EU/NGO Forum in London, 8–9 December 2005

KENAN MALIK &gt;&gt;&gt;

## Say what you think

*Some people argue that the preservation of diversity will increasingly require us to leave less room for a diversity of views. They are wrong*

There are two questions I want to address here. In a plural society, should it be incumbent on people to refrain from giving offence to other groups and cultures? And should it be incumbent on governments to legislate to ensure that free speech is used responsibly?

The underlying, often unstated, assumption in much of the debate on hate speech, free speech and responsibility is that expression must inevitably be less free in plural societies. We live in societies, so the argument runs, that are more diverse than ever before. For such societies to function and to be fair, we need to show respect for other peoples, cultures and viewpoints. And we can only do so by being intolerant of people whose views give offence or who transgress firmly entrenched moral boundaries.

'If people are to occupy the same political space without conflict,' the sociologist Tariq Modood points out, 'they have mutually to limit the extent to which they subject each other's fundamental beliefs to criticism.' One of the ironies of living in a more inclusive, more diverse society appears to be that the preservation of diversity requires us to leave increasingly less room for a diversity of views.

So it is becoming increasingly common these days for liberals to proclaim that free speech is necessary in principle – but also to argue that in practice we should give up that right. The *Behzti* affair, in which a play about Sikhs, written by a Sikh playwright, was closed down after violent protests by the Sikh community in Birmingham towards the end of 2004, is a case in point.

Shortly afterwards, Ian Jack, editor of *Granta* magazine, wrote an essay in which he suggested that whatever liberals believe in principle, in practice we need to appease religious sensibilities because they are so deeply felt. Talking about Islam, Jack pointed out that: 'The state has no law forbidding a pictorial representation of the Prophet and I cannot see how a portrait of Him would cause people to think less of Islam or its believers. But I never expect to see such a picture. On the one hand, there is the individual's right to exhibit or publish one; on the other hand, the immeasurable insult and damage to life and property that the exercise of such a right would cause.'

In other words, because we live in a plural society, there should be self-imposed limits on what we say or do. Or, as Umberto Eco once put it, 'To be tolerant, one must first set the boundaries of the intolerable.'

I disagree. In fact, I say the very opposite. It is precisely because we do live in a plural society that there should be no such limits. In a truly homogenous society, where everybody thinks in exactly the same way, then giving offence could be nothing more than gratuitous. But in the real world, where societies are plural, then it is both inevitable and important that people offend the sensibilities of others. Inevitable because where different beliefs are deeply held, clashes are unavoidable and we should deal with those

clashes rather than suppress them. Important because any kind of social change or social progress means offending some deeply held sensibilities. 'If liberty means anything,' George Orwell once wrote, 'it means the right to tell people what they do not want to hear.'

Not to give offence would mean not to pursue change. Imagine what Galileo, Voltaire, Paine or Mill would have made of Ian Jack's argument that one should not depict things that may cause offence. Imagine he'd lived 700 years ago and had said, 'In principle it's right to depict the earth orbiting the sun, but imagine the immeasurable insult that the exercise of such a right would cause . . .'

Part of the problem in this debate is that there is a continuous blurring of the distinctions between giving offence, fomenting hatred and inciting violence. In the debate about *The Satanic Voices*, many suggested that Salman Rushdie was fomenting hatred by using abusive words about Islam. Giving offence, in other words, is seen as creat-

*Yasmin Wilde as Min and Shelly King as Balbir in Gurpreet Kaur Bhatti's 'Behzti' at the Birmingham Rep theatre before the show was closed in the wake of violence by Sikh groups.*

*Credit: Kali Theatre Company*



ing hatred. At the same time, many believe that fomenting hatred is tantamount to inciting violence. We can see this in the debates about the role of the broadcast media in the mass killings in Rwanda.

These distinctions between giving offence, fomenting hatred and inciting violence are critically important: giving offence is not only acceptable but necessary in a healthy democratic society. Fomenting hatred may well create political and social problems; but these are not problems that can be solved by legislation restricting free speech. The incitement to violence should be an offence, but only if incitement is tightly defined, much more so than it is at present.

Why should giving offence not only be acceptable but necessary? Because it is the freedom to blaspheme, to transgress, to move beyond the pale that is at heart of all intellectual, artistic and political endeavour.

Far from censoring offensive speech, a vibrant and diverse society should encourage it. In any society that is not uniform, grey and homogenous, there are bound to be clashes of viewpoints. Inevitably some people will find certain ideas objectionable. This is all for the good. For it is the heretics who take society forward. From Galileo's vision of the universe to Darwin's theory of evolution, from the drive towards secularism to the struggle for equal rights, every scientific or social advance worth having began by outraging the conventions of its time. Without such heresies and transgressions, society may be more ordered, and more polite, but it will also be less progressive and less alive.

Societies have always been plural in the sense that they have always embodied many conflicting views. What is different today is, first, that such differences are increasingly viewed in cultural terms and, second, that cultures have come to occupy an almost sacred role in society. The plural view is that society is composed of a number of distinct cultures, each different from the other and each homogenous in its beliefs, and that it is important for all individuals to have their particular cultures and values respected.

An individual's cultural background, the argument runs, frames identity and helps define who s/he is. If we want to treat individuals with dignity and respect we must also treat with dignity and respect the groups that furnish them with their sense of personal being. 'The liberal is in theory committed to equal respect for persons,' the political philosopher Bhikhu Parekh argues. 'Since human beings are culturally embedded, respect for them entails respect for their cultures and ways of life.'

I don't want to get into a debate about culture and identity, but I do want to suggest that this is not just an implausible view of culture but a regressive one. Anthropologists long ago gave up on the idea of cultures as fixed, bounded entities because this is not how real societies work. When I was growing in the 1980s, for instance, there existed a strong secular movement within British Muslim communities that challenged both racism and traditional Muslim values. It helped establish an alternative leadership that confronted traditionalists on issues such as the role of women and the dominance of the mosque. But this tradi-

tion became expunged in the late 1980s and early 1990s. Why? Partly because policy makers and government institutions decided to create links with mosques and mosque leaders, to afford them greater political leverage and, in the process, establish their views – and only their views – as 'authentically' Muslim.

Cultures are not homogenous. But if we treat them as homogenous we may make them in reality less diverse than they really are. Certain ideas are offensive to devout Muslims. Certain Islamic ideas are offensive to secularists. That's the nature of society. But what we've come to do, and not just with Muslim communities, is to define cultures by their more conservative elements, and to allow those elements to determine what their cultures supposedly stand for and what is acceptable in terms of free expression. The consequence has been that the demand for the 'responsible' use of free speech has in many cases been used to undermine progressive movements for change and to silence critics of tradition. I know because I, like many others, have been dismissed as Islamophobe for my criticisms of Islam.

It is true that many who today cause offence, such as racists or homophobes, are not progressive at all, but objectionable creatures with odious ideas, heretics who wish to drag society back to the dark ages rather than take it forward. But the right to transgress against liberal orthodoxy is as important as the right to blaspheme against religious dogma or the right to challenge reactionary traditions.

'We believe in free speech,' Greville Janner, chairman of the Holocaust Educational Trust, says. 'But there's a limit, and arousing racial hatred is beyond the limit.' Free speech for everyone except anti-Semites and racist demagogues is, however, no free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree.

But what about the incitement to hatred? It is one thing to offend sensibilities, quite another to foment hatred of certain groups. Should not such hatred be banned? We need to be careful of blurring the distinction between giving offence and fomenting hatred. Opposition to hatred, as I have suggested, is often wielded to outlaw the giving of offence.

But clearly there are cases in which some speech, some article crosses the boundary between offence and hatred. Should such speech be banned? No, it should not: neither as a matter of principle nor with a mind to its practical impact. I oppose such laws in principle because free speech is meaningless if those we despise, including racists, don't have free speech; and, in practice, you can't challenge racism by banning it. You simply let the sentiments fester underground. As Milton once memorably put it, 'To keep out evil doctrine by licensing is like the exploit of that gallant man who sought to keep out crows by shutting his park gate.'

Censoring ugly ideas will not make them go away. It is simply a means of abrogating our responsibility for dealing with them. It is only through freedom of expression that we

can articulate our disagreements with such people and challenge their ideas.

Free speech should not be 'free-and-easy' as Richard Sambrook puts it, but banning hate speech is actually to take the easy way out. Putting on the censor's hat suggests a striking lack of confidence in one's ability to persuade an audience of an alternative viewpoint, not to mention a certain contempt for people's capacity to consider the evidence rationally.

Free speech does not mean accepting all views. It means having all views in the open so that we can challenge the ones we find unconscionable. Today, we do the exact opposite: we ban certain views because they are deemed unpalatable. But there are others we are also frightened of challenging because we don't want to give offence to diverse cultures.

The very fact that we talk of ideas as 'offensive' is indicative of the problem. There are many ways of disagreeing with someone's views – we may see them as irrational, reactionary or just plain wrong. But to deem an idea 'offensive' is to put it beyond the bounds of rational debate. Offensiveness is an affront to an entrenched tradition, a religious precept or one's emotional sensibilities that cannot be erased by reasoned argument. It is a notion that sits well with the moralising, emoting, often irrational approach to politics that we all too often see today.

But hatred, of course, exists not just in speech. Hatred has physical consequences. Racism can lead to racist attacks, homophobia to anti-gay violence. In November 2005, two men were sentenced to life for murdering black teenager Anthony Walker with an axe simply because of his skin colour. Isn't it important, then, to limit the fomenting of hatred to protect the lives of those who may be attacked? Simply by asking this question, we are revealing the distinction between speech and action: saying something is not the same as doing it. But in these post-ideological, post-modern times, it has become very unfashionable to insist on such a distinction.

In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and moral responsibility because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act upon their thoughts and reasoning.

Words certainly have an impact on the real world, but that impact is mediated through human agency.

Racists are, of course, influenced by racist talk. But it is they who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actual actions.

Having said that, there are circumstances where there is a direct connection between speech and action, where someone's words have directly led to someone else taking action. Such incitement should be illegal, but it has to be very tightly defined. Incitement is, rightly, very difficult to show and to prove legally. We should not lower the burden of proof just because hate speech may be involved. Incitement to violence in the context of hate speech should be as tightly defined as in ordinary criminal cases.

The argument that one can only have free speech if people use speech responsibly is in fact to deny free speech. After all, who is to decide when free speech is being used irresponsibly? The government. The authorities. Those with the power to censor and the necessity to do so. The regimes in Iran, North Korea, China all accept that free speech must be used responsibly. That is why they close down irresponsible newspapers, ban irresponsible demonstrations, restrict irresponsible access to the internet. 'Responsibility,' as the writer Philip Hensher puts it, 'is in the eye of the Government, the Church, the Roi Soleil, the Spanish Inquisition and, no doubt, Ivan the Terrible.'

Edmund Burke once complained that Thomas Paine sought to 'destroy in six or seven days' that which 'all the boasted wisdom of our ancestors has laboured to perfection for six or seven centuries'. To which Paine replied: 'I am contending for the rights of the living and against their being willed away, and controlled, and contracted for, by the manuscript-assumed authority of the dead.' Paine had no time for custom, no reverence for the past, no notion of deference to authority.

We could do with a few less Edmund Burkes and a few more Tom Paines today.

> > > **Kenan Malik** is a broadcaster and commentator. This is an edited version of his comments to the EU/NGO Forum in London, 8–9 December 2005



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# Programme development

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## Incitement, hate speech & the right to free expression

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Several NGOs around the world have addressed the issue of hate speech and incitement to hatred. It is a subject that has concerned *Index on Censorship* for some years: specifically, how best to monitor and research hate speech; how best to analyse and contextualise it; how best to respond to it.

Our specific objective is to try and answer the question: how do you confront hate speech without censorship?

With support from the UK Foreign Office's (FCO) Global Opportunity & Human Rights Development Funds, *Index on Censorship* is developing partnerships with media and free expression groups that directly address the issue of hate speech and incitement to racial, religious, cultural or political hatred in different parts of the world.

In general terms we aim to reinforce existing monitoring programmes and to support the development of methodological standards, then develop ways to make the material more accessible to target audiences, and to publish and distribute it among them as widely as possible in support of effective advocacy to confront hate speech without censorship.

We have picked out four regions where a previous FCO-supported hate speech research project run by BBC Monitoring, Caversham, has built up a substantial volume of background material and are meeting partners in these areas with a view to drafting project outlines for activities on the ground.

These outlines will be developed into fully fledged proposals to be submitted to *Index on Censorship*'s existing funding partners. The four regions are Russia, the Middle East, West Central Africa and South Central Europe.

The framework programme presented here is divided into three sub-projects. They are designed to be run concurrently as a single programme in any region or regions, but may be run individually, and/or funded separately. They will share outputs, expertise and documentation generated by project activities wherever they are conducted.

### MONITORING & RESEARCHING HATE SPEECH

A two-year research and monitoring programme. The aim is to draw on existing experience in monitoring hate speech, and to redefine the terms of such research and especially its purpose, before readdressing the issue. *Index on Censorship* works with a number of civil society groups that have already addressed the issue of monitoring hate speech, in quantitative and qualitative terms.

We aim to establish a **research project team**, supported by academic research partners, which would first provide mentor support for these groups, helping them formulate sampling, measurement, design and analysis strategies, then help them implement a programme of region-wide monitoring and research. This phase would set terms of reference for the whole programme.

### ANALYSING & CONTEXTUALISING HATE SPEECH

An 18-month local and regional publication support programme. Here the aim is to support the process of publishing and dissemination of the research material, and to enhance it with independent journalism and opinion to support debate in print, broadcast and professional fora.

This phase of the programme should pay particular attention to contextualising the problem, introducing new perspectives on the issue, from women, minority groups and wider civil society. Most local partners are already active in the media.

We are planning a **publications project team**, supported by an established publishing network, with a clear editorial direction, firstly to support print and online publication, to produce news and campaign PR material, backed by partnerships with media professionals and civil society in local fora. Activities could cover joint publications with media trade magazines and trade unions, and consider locally co-produced radio shows or even TV programmes. This phase would bridge the research (above) with the response (below).

### RESPONDING TO HATE SPEECH

A one-year local and regional awareness and advocacy support programme. Here the aim is build the capacity of civil society to build constructive relationships with the media and media regulators on the issue of hate speech, to encourage greater awareness of the issue everywhere, and help local civil society become an effective advocate for freedom of expression. As Article 19 points out: 'Hate speech is promoted by extremists, but facilitated by poor professionalism and lack of awareness of journalists; by lack of sensitivity for human rights among the general public; and by the virtual absence of an alert civil society.'

Our plan is to support our partners to establish a **campaigns project team**, supported by an established free expression network, to develop and implement a programme of advocacy campaigns at global, regional and national levels with strategies and partnerships to match. The campaign strategy should include a broad range of activities beyond seminars, to include cultural and arts events to promote its message to a wide audience. Training and capacity-building programmes should be integrated into campaign activities.

### Our overall objectives are to

- place 'hate speech' in its political, legal and cultural context without justifying or condoning its views
- promote understanding of the differences between 'harmful' and 'illegal' content and the legislative mechanisms that define them
- raise concerns that steps to confront hate speech can lead to the censorship of robust free expression, sometimes essential to full and free public debate
- make the case against censorship and for self-regulation, without allowing self-regulation to turn into self-censorship
- promote a rational and constructive debate within civil society, the cultural and academic community, the authorities and the media industry on the issues raised
- support methods of confronting hate speech without censorship

>>> Contact *Index on Censorship* Development Director Hugo Grieve for more details  
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## ABOUT INDEX ON CENSORSHIP

*Index on Censorship* magazine was first published in 1972, in response to show trials of writers and intellectuals in Moscow. The idea behind the magazine was to make public the circumstances of those who are silenced in their own countries, wherever that may be, and to publish their work. Since the end of communism, and with an increasingly fragmented world, new and troubling questions have surfaced, some of them challenging the primacy of free expression itself: religious extremism, relative values and cultural difference, the rise of nationalism, the rewriting of history, hate speech, pornography, violence on television and freedom on the internet are just some of them. And we are concerned not only with official censorship, but with any form of silencing, whoever is doing it.

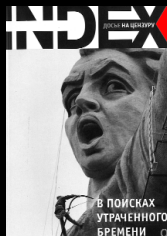
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## WORDS & DEEDS

### Incitement, hate speech & the right to free expression

One of the **greatest challenges** for those who defend free expression is the way this right may be used to **hate** and **harm** others.

It is an issue that has **fascinated** and **frustrated** supporters of free speech for centuries. Certainly in its own 33 years of existence, **Index on Censorship** has found it to be the most **contentious** of all the many subjects the magazine covers.

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