

REVIEW PAPER

FREEDOM OF SPEECH AND EXPRESSION: LEGAL, THEORETICAL, AND CULTURAL REVIEW

Melisa Zukić¹ , Abdurrahman Zukić² 

¹ International Burch University, Sarajevo, Bosnia and Herzegovina

² International University of Sarajevo, Sarajevo, Bosnia and Herzegovina

Correspondence concerning this article should be addressed to Melisa Zukić, International Burch University, Sarajevo, Bosnia and Herzegovina. E-mail: melisa.zukic@ibu.edu.ba

ABSTRACT

This paper offers a chronological review of the path free speech had from ancient societies till the contemporary recession. New media technologies created more access to gathering and disseminating information consequently inducing social changes from Gutenberg's printing press till the Internet era. After the tragedy of WWII, the UN's institutions defined freedom of speech and expression as individual freedom to articulate and express opinions and ideas without fear of censorship, retaliation, or legal sanction including the content and the means of expression. It is protected by law but is not absolute. Limitations are related to hate speech, libel, slander, etc. The Normative Theories provide a synthesis of ideas that express even conflicting views and are a reliable foundation for understanding the development of free speech and the change it induces in society, media, and culture. Libertarian vs. Authoritarian ideas about free speech raised a debate and provided a compromise between radical freedom of speech and government control of media to prevent possible harm in the form of social responsibility theory.

Keywords: Freedom of speech and expression, Normative theory, Social responsibility theory, The Helsinki effect



MAP SOCIAL
SCIENCES

Volume 6

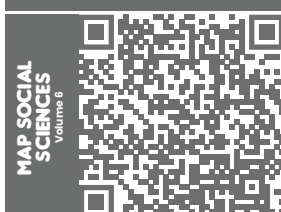
ISSN: 2744-2454/ © The Authors.
Published by MAP – Multidisciplinary
Academic Publishing.

Article Submitted: 05 September 2024
Article Accepted: 17 June 2025
Article Published: 16 June 2025



Publisher's Note: MAP stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.

<https://doi.org/10.53880/2744-2454.2025.6.10>



HOW TO CITE THIS ARTICLE

Zukić M., Zukić A. (2025). **Freedom of Speech and Expression: Legal, Theoretical, and Cultural Review**. MAP Social Sciences, 6, 10–21. doi: <https://doi.org/10.53880/2744-2454.2025.6.10>



© The Author(s). **Open Access Article**
Creative Commons CC BY: This article is distributed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made.



The authors declare a conflict of interest due to a kinship relationship; Abdurrahman Zukić is the son of Melisa Zukić

Introduction

While trying to understand and describe the complicated social and legal chronology of freedom of speech and expression this paper consulted works of Howie (2018), Puddephatt (2005), and Crook (2010) among many others, but also documents such as Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the European Convention on Human Rights (Article 10), the American Convention on Human Rights (Article 13) and of the African Charter on Human and Peoples' Rights (Article 9), finding that it is protected by law in many countries and represents a negative right. Therefore, in most civilized countries, freedom of speech and expression is taken for granted and considered a simple thing. We are used to understanding that free speech is a natural right. However, this right has been guaranteed recently, and the way to its realization was difficult and marked with struggles and unfortunately, blood.

To create a proper social and cultural but also chronological review this paper found the theoretical research of Perry (1993), and McHangama (2022) the most important. The mentioned publications lead us to see Europe as a laboratory for systematic experimenting with free speech throughout history. The results of these social experiments varied depending on rulers and governments and their will to accept the theoretical suggestions of scholars and adjust already present cultural or political backgrounds to freedom and restrictions, respectively. Scholars like Spinoza, Cato, Madison, Constant, and Douglass have preached for freedom of speech and expression but were aware of the possible harm they could carry. Nevertheless, they pointed out, that we are jeopardizing benefits if we cannot accept harm that comes along. The constant contradiction between the necessity for society to have freedom of speech and expression, and fear of irresponsible, harmful, and defamatory misuse took this paper to the point where it was needed to understand the theory behind freedom of speech and its influence on society, culture, and media. Relying on the works by McQuil (1987) along with Stanly and Davis (2012) among many others, this paper reached for normative theories that describe the social context and media as they should be, considering ideal values to be realized. Since normative theories were developed over time, they contain elements from previous theories and represent a synthesis of ideas expressing even conflicting views, e.g. Libertarians who believe

that there should be no laws governing media operations vs. Authoritarians who advocate for control by trusted and highly trained technocrats with professional skills, sometimes while concerning about the power of media content to undermine high culture. Social responsibility theory emerged from this debate and provides a tool for understanding various shades of free speech and legal regulations in different countries and political backgrounds. This paper shares concerns about the recession of free speech. Since new technologies require adaptation to new legal regulations and social responsibilities while shifting to personal users, the future of free speech is advocating media education for individual media users aligned with the professional ethics of journalists.

Understanding Terminology Through the Lens of Legislation

Freedom of speech relies on individual freedom to articulate and express opinions and ideas without fear of censorship, retaliation, or legal sanction. Freedom of expression as Puddephatt (2005) notes is a human right and a part of the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the European Convention on Human Rights (Article 10), the American Convention on Human Rights (Article 13) and of the African Charter on Human and Peoples' Rights (Article 9). Therefore, Freedom of speech and expression is protected by law in many countries and represents a negative right. The government is legally obliged not to act against the person who speaks based on his views. Hence, no one is obligated to publish their views, no one is required to listen to their statements, to agree with them, to acknowledge the speaker or the speaker's views. In this paper, terms like free speech, freedom of speech, and freedom of expression are used and presented interchangeably in various political discourses. However, in a legal sense as Howie (2018) notes, freedom of speech includes any activity of seeking, receiving, and imparting information or ideas, regardless of the medium used. This means according to Puddephatt (2005), that the protection of freedom of speech as a right includes the content and the means of expression.

Puddephatt (2005) also mentions that the right to freedom of expression is particularly important for media as the bearer of the general right to freedom of expression for all. Freedom of speech is described in Article 19 of the Universal

Declaration of Human Rights (UDHR) as "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice" (United Nations, 1948). In the International Covenant on Civil and Political Rights (United Nations, 1966), a later version of Article 19 states that the exercise of these rights carries special duties and responsibilities and may, therefore, be subject to certain restrictions in situations when necessary "[f]or respect of the rights or reputation of others" or "[f]or the protection of national security or public order (ordre public), or of public health or morals". Therefore, freedom of speech and expression is not absolute, and its limitations are related to hate speech, libel, slander, etc. Justifications for limitations in freedom of speech include Mill's harm principle, as Bell (2020) notices, which suggests that the purpose of power is rightful over any member of a civilized community in a situation against his will, to prevent harm to others. In the same way, Howard's (2024) offense principle justifies limitation in freedom of speech. The offensive principle describes the restriction on forms of expression deemed offensive to society, considering factors such as extent, duration, motives of the speaker, and ease with which it could be avoided. Freedom of expression is not limited by the right to privacy, as Bret (1999) states, even though greater latitude is given when criticism of public figures is involved.

Since Banjo and Dokunmu (2023) understand freedom as a condition related to media structure, it is not easy to differentiate between the choice of freedom of expression and freedom of expression within limits set by law. Thus, Banjo and Dokunmu, (2023) distinct the freedom of the media (or the press) and freedom of expression, understanding freedom of expression as a wider right that refers to the substance understood as communicated content, like opinion, ideas, information, art, etc. However, the freedom of the press refers to the means for enabling publication that Banjo and Dokunmu (2023), according to Zeno-Zencovich (2008), present metaphorically as a difference between the drink as the content and the bottle as the container. Therefore, in legislation, the protection of freedom is transferred from the substance to the means, as Banjo and Dokunmu (2023) explained. Freedom of the press does not always enable freedom of speech, especially when media owners

suppress information or stifle the diversity of voices necessary for freedom of speech. This limitation could be expressed in well-known A.J. Liebling's words that freedom of the press is guaranteed only to those who own one, argued, at the same time, with Sanders's (2003) words that without money, no voice can be heard.

Normative Theories in Media and Communication

To understand the Theory behind freedom of speech and its influence on society, culture, and media, this paper reached for normative theories because they describe things as they should be, considering ideal values to be realized. Since normative theories developed over time, they contain elements from previous theories and represent a synthesis of ideas developed over the past three centuries that express conflicting views. At one extreme are radical Libertarian ideals, which believe that there should be no laws governing media operations. First Amendment absolutists understand "free press" literally - all forms of media must be unregulated. On the other hand, advocating for control leans on propaganda theories established in the belief that the gathering and transmitting of the information is administered by trusted and highly trained technocrats with professional skills that guarantee they will act in the public interest. Other preachers of media regulation base their views on mass society theory because they were concerned about the power of media content to undermine high culture with trivial forms of entertainment for the masses, although what they consider important moral values can be understood as trivial. Libertarian proponents opposed media regulation. Therefore, social responsibility theory emerged from this debate as a compromise between radical freedom of speech and government control of media to prevent possible harm. Mainstream media mostly use some variant of social responsibility theory to justify their actions. To fully understand social responsibility theory, we must chronologically review the ideas, events, and legal answers that led to its development (Baran & Denis, 2012; McQuail, 1987).

Libertarian theory is directly opposed to authoritarian theory. Authority or a governing elite controls communication to protect and preserve a divinely ordained social order. This control rested in the hands of the king/government, who, in turn, granted licenses to media practitioners. Freedom might exist to publicize minority viewpoints and

culture as long as authorities do not perceive a direct threat to their power. Many early Libertarians were rebelling against religious restrictions on their freedom to communicate so they could follow their conscience and reach the Truth, also known as Milton's self-righting principle, a rationale for preserving media freedom even these days (Baran & Denis, 2012 according to Altschull, 1990).

A marketplace of ideas theory in Normative theory background is a form of Libertarian idea about the self-regulating capacity of media. This theory represents a variation of the capitalist principle of a self-regulating market as Perry (1993) mentions in Adam Smith's classical capitalist theory (Baran & Denis, 2012). By rejecting Libertarianism and technocratic control but calling for government regulation of media and the professionalization of journalism, a new normative theory of mass communication emerged in the 1920s and 1930s. This resulted in the adoption of professional standards: The Canons of Journalism, The American Society of Newspaper Editors (ASNE) in 1923, replaced in 1975 by the ASNE Statement of Principles (Baran & Denis, 2012).

The social responsibility theory of the press is a postwar compromise of The Hutchins Commission on Freedom of the Press in 1942, which released a report of its findings in 1947 (Baran & Denis, 2012, according to Davis, 1990; McIntyre, 1987). Its members consisted of leaders who held strongly Libertarian views and those who thought some form of press regulation was necessary. Ultimately, the Hutchins Commission members placed their faith in media practitioners, giving them all the responsibility while expecting them to increase their efforts to serve the public. Such a shift emphasized the need for an independent and objective press. The most innovative in social responsibility theory was placing responsibility on media for supporting different communities, becoming the voice of all, not just the elite or dominant culture, even when this might reduce their profits or antagonize existing social elites. Therefore, Social responsibility theory challenges media professionals to develop new ways of serving their plural communities and preserving democracy. In such an atmosphere, the media built a wall to protect democracy from external and internal foes. To describe the basic principles of social responsibility theory McQuail (1987) presented a list that media should accept certain obligations to society, therefore relying on high or professional standards of informativeness (truth, accuracy, objectivity, and balance), media

should self-regulate within the framework of law and established institutions, avoid whatever might lead to crime, violence, civil disorder, or offense to minority groups, should be pluralist and reflect the diversity of their society, giving access to various points of view and rights of reply, therefore society and the public have a right to expect high standards of performance, while intervention can be justified to secure public good, so journalists and media professionals should be accountable to society as well as to employers and the market.

Social and Cultural Chronology of Free Speech Through Lances of Legislation

The humanistic tradition of the West as Perry (1993) sees it, owes much to the Sophists, who explored political and ethical problems, as well as to Stoicism as the main idea of the Hellenistic age that understood a principle of order – logos in the universe, instilled in every human being, that enable people to act prudently. Therefore, as reason is common to people, people are brothers and equals. Even slaves are not denied inner freedom, although their bodies are subordinate to the power of their masters, their minds are independent and free. Athenian direct democracy with the democratic principle of free speech and equality before the law, regardless of everything, still did not include women and slaves. Free speech was an inherent part of the Athenian political system and civic culture, rather than an individual human right, as McHangama (2022) notes, that was based on Herodotus's statement about Athenians as unremarkable people while living under tyranny and his observation that they only reached great heights when they were granted equality of speech. The concepts of free speech in the social reality of Athen were, as McHangama (2022) notes, "Isegoria" as equality of public, civic speech exercised in the Athenian Assembly and "Parrhesia" as "frank" or "uninhibited" speech of the citizens outside the assembly and extended to many spheres of Athenian life including philosophy and theatre. Even in direct democracy, freedom of speech was limited if it opposed established laws and was punishable under a legal procedure known as a "graphē paranómōn" or as an "indictment against illegal proposals" like McHangama (2022) notice. Forms of unacceptable speech in Athenian democracy were "Kakēgoria" as serious public verbal insults that we would call defamation, and "asēbeia," as impiety, punishable by death. Direct Athenian democracy had no public institution of censorship or inquisition to ensure conformity in writing, science, and public

discourse. Later, the Romans adopted the creative way of Greek achievements and passed them on to others, as Perry (1993) notes, expanding the orbit of Hellenism. They ruled the world by reason and the values of the human intellect. Even moral values were acquired through reason. Therefore, an individual is self-sufficient and depends on rational abilities, knowledge, and doing good deeds, directly contributing to international law developed through the expansion of the state that included other peoples (*ius gentium*). Therefore, Romans had an attitude that there were no different laws in Rome and in Athens or different laws now and in the future, as Perry (1993) says, but one eternal and unchanging law is valid for all nations and all times. The basic laws of the early Republic were codified in the Twelve Tables, which touched upon speech. McHangama (2022, p. 19) cites the eighth table: "If anyone shall have slandered or libeled another by imputing a wrongful or immoral act to him, he shall be scourged to death". The Roman Republic's democracy was hierarchical and elitist. Even though the Senate was the most powerful institution in the republic, freedom of discussion was not equal. Senators, as members of the elite, spoke in order of rank. Therefore, ordinary citizens did not have the right to speak. This social atmosphere McHangama (2022, p. 19) explained in Cicero's words in which free speech meant free speech for the "best men" in the Senate, not the plebs, who were "ready to suck the treasury dry," nor the "artisans, shopkeepers and that scum". "Licentia" was an abuse of freedom as "libertas". Libertas rested on laws that granted Roman citizens civil rights and equality before the law. The criteria of whether the speech was endangering freedom depended on the wealth and status of the speaker and the person being addressed. After the Western Roman Empire collapsed, ancient literary works perished, books were burned, and censorship accounted for a small minority of the lost works. Most were destroyed by neglect and the closed-mindedness bred by the dogmatic climate (McHangama, 2022, p. 24). In response to the declining influence of Hellenism, as Perry (1993) states, Christianity offered a reason worth living in the spiritually disillusioned Greco-Roman world as the hope of personal immortality. The fulfillment of God's will and not the full development of human abilities becomes the central preoccupation of life and speech. Referring to the same period, McHangama (2022, p. 31) offers a different perspective of attitude toward freedom of speech and cites historian Dorothea Weltecke: "not a single theological teaching, be it Jewish,

Muslim, or Christian... was left unquestioned either by polemics from outside, by opposing groups from inside, or even by those who, with the best of intentions, could not help not to be convinced." In other words, medieval academics expanded the boundaries of permissible inquiry, even if their questions were still posed in an attempt to explain God's eternal truths. Still, from a modern perspective, medieval limits to freethinking, speaking, and the academic pursuit of truth were formidable. At this point in history, free speech was not recorded, and no one thought or dared to explore the limits of revelation for several centuries to come. In this social context, McHangama (2022) points out the meaning of the Greek word "heresy" as a choice to have an opinion by human perception contrary to holy Scripture. Therefore, heresy was a form of freedom of speech and expression in its essence, limited and censored by the institution of the Inquisition. Gutenberg's printing press invention induced a higher literacy rate, expanded access to knowledge and communication, allowed ideas to spread rapidly, and created a platform for revolutions. The most important contribution to free speech and expression in European society, as Perry (1993) states, was Luther's translation and publishing of the New Testament in German in 1522. Ordinary Germans suddenly got direct access to the word of God by buying (affordably) and owning a copy of the New Testament in their national language. Rare ancient manuscripts were saved from decay and disseminated widely, creating a new class of humanist scholars such as Niccolò Machiavelli, who wrote an emphatic defense of republican liberty and the importance of public speech. On the other side of the world during the same period Sultan Bayezid II and his son Selim I banned Arabic-character printing on pain of death, so the first printing press with Arabic characters did not appear in the Ottoman Empire until the 1720s, and it remained illegal to print Islamic religious texts until 1802. Many scholars see this prohibition as a stumbling block to free speech and the scientific and social development of Ottoman society. In the Enlightenment age, McHangama (2022) noticed that the Union of Utrecht in 1579 is the birth certificate of personal and religious freedom, making Dutch a safe haven for persecuted churches and exiled freethinkers like René Descartes, Pierre Bayle, John Locke, and established itself as the printing house of Western Europe. Amsterdam became the "newspaper hub of early modern Europe" when weekly newspapers or "corantos" became important for many Dutchmen. This contributed to

an egalitarian public sphere, but at the same time, “corantos” were gripped by elite panic, as suspicion of information published by common people with little oversight. Dutch tolerance and the freedom of thought and speech are based more on pragmatism and necessity than principle and were not constitutionally protected. In such an ambient, McHangama (2022) mentions French freethinker in exile, Pierre Bayle, who founded and edited the weekly journal “News from the Republic of Letters” in 1684. He contributed to establishing the Dutch Republic as a European hub, not only for newspapers but also for books and journals. Freedom of speech started through legal routes opposing censorship in England and Europe, expressing itself in the English Declaration of Rights and England’s Bill of Rights (Parliament UK, 1689). It legally established the constitutional right of freedom of speech in Parliament as a so-called parliamentary privilege. Parliamentary privilege includes no possibility of defamation in Parliamentarian’s claims who are free to speak up in the House without fear of legal action. This protection, as Williams (1960) notices, extends to written proceedings, such as written and oral questions, motions, and amendments tabled to bills and motions. In the eighteenth century, advancing of free speech was marked by “penny universities” as coffee houses where pamphlets, newspapers, and books were shared and discussed (Ellis, 1956). Anyone could enter “penny universities” as an informal institution of knowledge for the price of a cup of coffee. This led to the “Blackstonian” model of press freedom explained by Sir William Blackstone as McHangama (2022) presents the importance of press freedom for a free state. He proposes protection against prepublication censorship but not against subsequent punishments, as McHangama (2022, p. 73) notes: “Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity”. The London Journal, between 1720 and 1723, published Cato’s Letters as the most influential argument for free speech. John Trenchard and Thomas Gordon took as a pseudonym the name of Roman senator Cato the Younger, who died for republicanism and free speech under Caesar’s rule (Dabhoiwala, 2022). Their Letter No. 15 was dedicated to the issue of free speech as McHangama (2022, p. 73) cites: “Freedom of speech is the great bulwark of liberty; they prosper and die together: And it is the terror of traitors and oppressors and a barrier

against them”. McHangama (2022) also notes that Gordon’s argument for free speech relies on protecting natural liberty based on Roman tradition as “the bulwark of liberty” more than its Athenian version of egalitarian and democratic free speech. This metaphor of free speech as the “great bulwark of liberty” found its place in Virginia’s Declaration of Rights, James Madison’s initial draft of the First Amendment, French revolutionaries’ speeches, and even Russian radicals’ writings. Cato’s Letters treated justification of limitations of free speech. As McHangama (2022) states, Gordon argued that libel was an unavoidable consequence of press freedom, understanding it as an evil arising out of a much greater good. Therefore, in societies where the government can prosecute writers for literary crimes, no matter their intentions, whether they are real or imagined, no pen is safe. Such trend continues, and McHangama (2022), in his work, recognizes Anders Chydenius as the most influential proponent of press freedom who drafted 1766, a Diet Committee report on press freedom outlining that the freedom of the nation is always proportional to the freedom of printing it possesses. Chydenius’s report persuaded the Diet that the protection of the freedom of the press and information was needed; therefore, in December 1766, the (Swedish) Freedom of the Press Act was adopted and prevailed for eight years. Even though it was legally binding, it abolished preventive censorship except for theological content. The Freedom of the Press Act specifically excludes the following topics: the faith, the Constitution, the royal family, and obscene literature. When Spinozist Johann Friedrich Struensee was appointed as the personal physician of the mentally ill King Christian VII in 1768, got the immoral opportunity to influence the mentally unstable king so the king published permission for unlimited freedom of the press and stopped preventive censorship on September 14, 1770. Thus, Sweden became the only state in the world that abolished press censorship in any form (McHangama, 2022). Such development, as Smith (2006) and Perry (1993) note, set the stage for the French Revolution in 1789, specifically affirming freedom of speech as an undeniable right leading to the adoption of the Declaration of the Rights of Man and the Citizen and the First Amendment to the United States Constitution later in 1791. Diamond (2008) points out Article 11 of the French Declaration, which states that the free communication of ideas and opinions is one of man’s most precious rights. Therefore, every citizen may speak, write, and print with freedom, calling at the same time for

responsibility in cases of abuses of this freedom according to the law. The Declaration famously declared that “men are born and remain free and equal in rights”. Madison’s open satisfaction because of the First Amendment to the United States Constitution in the already set atmosphere, as McHangama (2022, p. 97) mentions, “the right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of this Government”. Following the presented chronology, it becomes obvious that one of the greatest triumphs of the Enlightenment as Perry (1993) states, is the entry of the chapter “Press” in the *Encyclopédie*, as a powerful endorsement of establishing a culture of free speech referring to the law and civil society. However, during the nineteenth century, wealthy businessmen took ownership and control of the press, confirming Mill’s fear of private threats to the culture of free speech. Consequently, press freedom has begun to decline because the new press model became increasingly dependent on advertisements and subsidies from proprietors and political parties. Such a social stage got France in 1881. to issue a new press law and establish freedom of the press, bringing an explosion of publications and starting a golden age of the French press. Since, in the second half of the nineteenth century, the United Kingdom abolished slavery, widened democratic participation, limited religious discrimination, and ensured a safer platform for press freedom, English jurist A. V. Dicey, in *Introduction to the Study of the Law of the Constitution* from 1885, wrote that despite the lack of legal protection of press freedom, “the press, and especially the newspaper press, has practically enjoyed with us a freedom which till recent years was unknown in continental states ” but unfortunately, British colonies did not have such freedom even though the *Encyclopedia Britannica* from 1888 declared: “In the British colonies the press is as free as it is in England”. If such a citation were true, the sun would never have set on the free press (McHangama, 2022, p. 140).

The temptations of free speech were just to begin. Even though in the Weimar Republic, free speech was fundamental and set in Article 118 of the Weimar Constitution in 1919, as McHangama (2022, p. 144) states: “Every German has the right within the limits of the general laws, to express his opinion orally, in writing, in print, pictorially, or in any other way.... No censorship shall be established,” it allowed censorship of cinema because of possibility, “indecent and obscene literature,” public plays, and exhibitions, “for the protection of youth”. Despite

previously mentioned fundamental rights, article 48 allowed the president to suspend them. Freedom of speech, along with other fundamental rights, could be suspended when public safety and order are threatened. This instrument enabled the suspension of democracy; it was meant to protect and set the stage for the distorted execution of free speech under National Socialism described in Hitler’s “*Mein Kampf*” (Rich, 1959). *Mein Kampf* was published in the Weimar Republic’s time of free speech and became a symbol of the free publication of texts that negate freedom and democracy while advocating for propaganda in service of the State and the Nation. McHangama (2022) mentions Goebbels’s book burning outside the opera in Berlin and other German cities on May 10, 1933. framed with massive propaganda and censorship machinery. Such circumstances warned but also encouraged US President Roosevelt in his State of the Union speech on January 6, 1941, to support Britain’s fight against Nazi Germany and save the freedom of speech and expression everywhere in the world.

After the tragedies of World War II and the triumph of democracy, the United Nations was established and contributed to creating a set of universally recognized human rights based on Roosevelt’s Four Freedoms. Universal Declaration of Human Rights (UDHR) from 1948 set out a series of principles for states to uphold, and the legally binding International Covenant on Civil and Political Rights (ICCPR) from 1966. Both documents protect free speech and freedom of opinion. Such historic achievements were not without ideological friction since the Cold War atmosphere emerged, and the Soviet bloc fought to restrict free speech with clauses obliging member states to prohibit hate speech and, therefore, limit freedom of speech globally. Such discussions in the UDHR began when the UN established a Commission on Human Rights in 1946. The declaration was intended to be universal, so the committee consulted eighteen members of different political, cultural, and religious backgrounds with philosophers and thinkers worldwide. Soon, it became clear that it was a difficult task (Harris, 1956). The US stood along with free speech, relying on their constitution as McHangama (2022, p. 161) states: “There shall be freedom of speech, of the press, and of expression by any means whatsoever”. On the other ideological side, the Soviet Union, with its allies, wanted to obligate states to permit the prohibition of hate speech, also relying on The Soviet Union’s 1936 constitution containing the article, according to McHangama’s (2022, p. 161) note: “any advocacy

of racial or national exclusiveness or hatred and contempt” for punishment. Thus, McHangama (2022, p. 162) explains the Soviet delegation’s arguments for limiting free speech as “the freedom [Article 19] would give to the Nazis would undercut and threaten... the very right affirmed in the article; without the limiting clause, the article would be self – destructive.” In mentioned discussion, the Soviets argument markedly criminalized fascism which was recognized by the Canadian delegate Lester Pearson who warned about such a statement’s potential for authoritarian abuse. McHangama (2022, p. 162) notes it as: “The term ‘fascism’... was now being blurred by the abuse of applying it to any person or idea which was not communist”. The following discussion with the Soviet delegate, Alexei Pavlov, in McHangama’s (2022) work, revealed the true Soviet definition of fascism as the bloody dictatorship of the most reactionary section of capitalism and monopolies, directly meaning – any other ideology but theirs. Such a situation brought democracies to a dilemma since it was already accepted that free speech had its limits; nevertheless, it was dangerous to make a prohibition of hate speech a part of the international human rights declaration because such an element could create a base for abuse and justify state control of the public sphere and, consequently, persecution of opinions inappropriate for the government. Hence, the final version of Article 19, adopted in 1948, included a strong endorsement of free speech with no strings attached. McHangama (2022) highlights the text of Article 19, in which everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. However, during 1961, as McHangama (2022, p. 164) notes, the additional proposal of East European countries, including along with Latin American countries, African countries, and Middle Eastern countries, of the final version of Article 20, which claimed: “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Since the US was outnumbered because of experiences of systematic, humiliating, and oppressive European racism and censorship under colonial rule in newly independent states belonging to the mentioned group, they were sympathetic toward the idea of prohibiting racist hate speech and were very suspicious of Western sincerity. In such context, McHangama (2022, p. 164), referring to the Article 20 adoption, draws attention to the prophetic

warning of a Norwegian diplomat who said that the article could be “so easy to misconstrue that those whom the provision was supposedly designed to protect might very well find themselves its victims”. Even though the US, with Eleonore Roosevelt, advocated for free speech after World War II (Harris, 1956), their inner situation was burdened with many ambiguities concerning freedom of expression. The most important is the Smith Act, or The Alien Registration Act, of 1940, which prohibited the advocating for the violent overthrow of the US government. The Smith Act sent hundreds of people to prison for being members of the Socialist or Communist parties in the era of McCarthyism when Republican senator Joseph McCarthy led a crusade against “communistic atheism”. In this context, it is important to mention Martin Luther King’s words to Americans mentioned in McHangama’s (2022, p. 165) work: “If I lived in China or even Russia, or any totalitarian country, maybe I could understand... the denial of certain basic First Amendment privileges.... However, somewhere I read of the freedom of assembly... the freedom of speech... the freedom of press. Somewhere, I read that the greatness of America is the right to protest for right”.

Besides everything done for human rights and freedom, the real breakthrough did not come until the Helsinki Final Act of 1975. that primarily aimed to ease tensions in the Cold War era and avoid a nuclear war (Thomas, 2001). The Soviet bloc insisted on the inviolability of frontiers and non-invention in internal affairs and the Western bloc on the respect for human rights and fundamental freedoms, including specifically the freedom of thought, conscience, religion, or belief. The signatories agreed to facilitate the freer and wider dissemination of information, including newspapers, magazines, books, radio, and TV, and to improve working conditions for foreign journalists. Moscow accepted this document since they considered human rights only rhetorical, but it ensured Western commitment to sovereignty and non-intervention. Unexpectedly this document emboldened dissident groups within emerged nuclear physicist Andrei Sakharov, who was banned from accepting the Nobel Peace Prize for his human rights work. Therefore, he held a press conference in his apartment, announcing the establishment of the Moscow Helsinki Group to monitor the implementation of the Helsinki Agreement in the USSR (McHangama, 2022). The Helsinki Effect triggered responses from the communist states starting the third wave of democratization between the late 1970s and early 2000s, introducing a Golden Age of free speech

unsurpassed in human history with the emergence of new digital technologies such as satellite TV and the World Wide Web. However, in McHangama's (2022, p. 169) work, it becomes notable that free speech entered into a recession precipitated by a "third wave of autocratization". He refers to Eleanor Roosevelt's warning about ICCPR Article 20, saying that if hate speech prohibitions become embedded in human rights law, any criticism of public or religious authorities might easily be described as incitement to hatred and consequently prohibited. Roosevelt's Prophecy was challenged in 2005, with the publishing of twelve prophet Muhammad's cartoons in the Danish newspaper Jyllands-Posten. After many violent incidents against writers and artists, the Organization of Islamic Cooperation (OIC)¹ at a high-level summit in December 2005, called for the OIC's heads of state to condemn the cartoons as defamation of Islam and encouraged other states to criminalize this phenomenon as a form of racism. Loopholes that the communist states had introduced into ICCPR's Article 20, meant to protect an atheistic and materialistic ideology, unexpectedly are supposed to protect theistic doctrines from criticism and satire. In its quest, as McHangama (2022, p. 181) notes, the OIC calls out European democracies as hypocrites because many European states have blasphemy laws, including Denmark itself, reminding that since the 1990s the European Court of Human Rights has not protected free speech in cases of satire or criticism of religion that is deemed "gratuitously offensive to others" and that therefore – according to the court – does "not contribute to any form of public debate capable of furthering progress in human affairs". Such a legal landscape allowed the OIC to have a binding legal instrument. The EU group in Geneva could not decline OIC's arguments and was abandoned by the Bush administration in 2006 when they stepped out of the Human Rights Council. The situation was crucially changed, as McHangama (2022) states, when the Obama administration reentered the Human Rights Council in 2009 and launched a multilateral global offensive to undermine OIC's resolutions against defamation of religions. So, in 2011, the OIC was forced to abandon its resolution. Instead, the US ensured a majority for the new Resolution 16/18, which got a win in the middle of the free speech recession, providing that human rights law protects people, but not religions or ideologies. The resolution calls only on the criminalization of incitement to imminent violence based on religion or belief, simultaneously protecting blasphemous speech and hate speech

more than European hate speech laws and the ICCPR Article 20. Nevertheless, in the twenty-first century, McHangama (2022, p. 187) noticed the decline of the West while the United States remained "the most speech protective of any nation on Earth". Western Europe has experienced a sharp decline in civil liberties since 2008, clashing between violent religious fundamentalism and secular values. Interestingly, the free speech recession emerged during the triumph of digital communications technology, even though it was expected that the internet would create a social environment for prevailing free speech and banishing censorship, just like when the printing press emerged as a new communications technology, causing significant disruptions in the social and political order but at the same time, inducing progress and enlightenment.

Free Speech, Social Media, and Democracy

In the Internet era when blogs become mainstream and crucial in news gathering and dissemination, they have a central role in democracy's public discourse. Therefore, social responsibility is not just questioning whether they practice journalism or not but whether they can remain independent. Even though its truths are provisional, and its ethos is collective and messy, the interaction it enables between writer and reader is unprecedented, visceral, and sometimes brutal, but it heralds a golden era for journalism, as Stanly and Davis (2012, p. 122) state. The UN Freedom of Expression report in October 2016 about illegal limitations on freedom of expression describes restrictions that include journalists and bloggers, critics of the government, dissenters from conventional life, provocateurs, and minorities. Recently established laws and policies show that Western democratic governments are willing to limit the freedom of public debate and discussion (Howie, 2017). The same author describes this trend in the emergence of anti-protest laws and the government surveillance of citizens' telecommunications metadata. It is agreeable that online posts (such as hate speech) of ordinary people may sometimes lead to real-life harm. However, it should not be a reason for legal restricting of free speech and expression as McHangama (2022, p. 205) persuasively argues it. The most important of his arguments are study results showing that freedom of expression is associated with less violent extremism and social conflict in democracies, recognizing the preventive effect of free speech on terrorist attacks. One of McHangama's (2022, p. 205) arguments is the 2017 study's conclusion that

¹ An intergovernmental umbrella organization for the Muslim world comprising fifty – seven member states

violent far-right extremism in Western Europe was amplified by “extensive public repression of radical right actors and opinions” recognizable in “non-violent hate crimes”, such as verbal insults, threats, which emerged when the Dutch far-right politician Geert Wilders was prosecuted for hate speech, suggesting a “backlash effect” in which “repression of the radical right may be a catalyst [of hate crimes] due to increasing polarization and radicalization”. Further McHangama’s (2022) arguments rely on the results of studies showing that fake news is rare, about 0.15%, and that social media users are lost in digital echo chambers and filter bubbles in which their existing prejudices are endlessly confirmed. Such standing point, McHangama (2022, p. 206) is leaning on results of multiple studies showing that “exposure to diverse news is higher [on social media] than through other types of media”, and that “ranking algorithms do not have a large impact on the ideological balance of news consumption”, confirming as it was known for audience exposed to propaganda in previous historical periods that in ideological echo chambers and filter bubbles were only those who were already afflicted by political partisanship. On the other hand, such a type of freedom of speech and expression has its reverse side and it does not fit in democracy as we are imagining it. An alarming trend for democracies in the digital media era is jeopardizing free speech and freedom of the press via metadata retention laws. Metadata retention law discourages people from sharing information about matters of public interest while endangering the fundamental tenet of journalism – access to information and keeping sources safe and confidential because of increased surveillance of peoples’ telecommunications metadata². Howie³ (2017) states that The European Court of Justice also noticed the invasion of people’s privacy using metadata collection and its impact on free speech, as the fact that the data is retained without the subscriber or registered user being informed is likely to cause the persons concerned to feel that their private lives are the subject of constant surveillance. Howie (2017) continues with the statement of the European Court of Justice⁴: “That data, taken as a whole, is

liable to allow very precise conclusions to be drawn concerning the private lives of the persons whose data has been retained, such as everyday habits, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of those persons and the social environments frequented by them. In particular, that data provides the means...of establishing a profile of the individuals concerned, information that is no less sensitive, having regard to the right to privacy, than the actual content of communications”. Therefore, Howie (2017) is concerned that schemes of the mass collecting and retaining metadata that allow authorities access to the private lives of users are declared by courts in Europe to be invalid because they impact the right to privacy⁵ but, also their impact on freedom of expression is notable when metadata retention laws are used to pursue journalists’ sources and undermine press freedom in such activities. The nature of data collection without transparency discourages the legitimate exercise of freedom of expression, and therefore democratic ambient in society.

The Future of Free Speech

Open access to free speech in the Internet era soon revived autocracies to fight back and democracies to rethink their basic concepts of free speech with cyberspace as a global public sphere. Such an environment looked for legal protection of free speech which Congress provided by adopting Section 230 of the Communications Decency Act (CDA 230) in 1996. It granted immunity to online intermediaries from user-generated content and their good-faith efforts to moderate objectionable content. CDA 230 was strengthened by speech-protective court decisions creating a legal framework of “Internet exceptionalism” argued by Jeff Kosseff that without such preconditions, “the Internet would be little more than an electronic version of a traditional newspaper or TV station, with all the words, pictures, and videos provided by a company and little interaction among users” (McHangama, 2022, p. 193). Concerning social media⁶, elite panic comes in phases and cascades

2 Metadata is not the content of communications, but the details around it – the time and place you made a phone call, the length of the call, the recipient, or the web browser you visited, and for how long. Metadata can reveal an enormous amount about a person’s habits, private life, and social life (Howie, 2017).

3 Howie (2017) according to European Court of Justice, Citation2016, para. 100

4 Howie (2017) according to the European Court of Justice, Citation2016, para. 99.

5 Howie, (2017) according to European Court of Justice, Citation2016; German Federal Constitutional Court, Citation2010.

6 Elite panic, as it is coined by sociologists Lee Clarke and Caron Chess, describes the atmosphere when democracies, governments, and institutions demand more restrictions on online free speech. Elite panic, in McHangama’s (2022, p. 201) work is: “an attribution that is almost exclusively applied when looking down at people who do not occupy positions of power or authority”, and occurs in a time of crisis “when decision-makers are under intense media scrutiny or when considerable financial or reputational resources are at stake”. Another driver is that “uncertainty or disagreement about distributions of responsibility” generates unrelenting pressure for elites to act immediately (McHangama, 2022, p. 201), such a situation consequently leads to rash actions making even worse problems than those they are trying to solve.

downwards. It focuses on social media users problematizing their judgment between truth and lies during unmediated access to information. Thus, the government and traditional media set new condemnations and regulations, that lead social media platforms to try to soothe critics constantly while modeling their terms of service and content moderation. In such an atmosphere, platforms abandon any principled approach that cannot be defended. In this context, an interesting example is Mark Zuckerberg's announcement in 2020, that Facebook would no longer tolerate Holocaust denial, even though two years before as McHangama (2022, p. 201) noticed, Zuckerberg stood on the point that only "misinformation that is aimed at or going to induce violence... [or] result in real harm" should be taken down. Even though Facebook and Twitter remain inspired by First Amendment ideals, the platforms changed their directions emphasizing the importance of safety and prevention of harm which led 2019, Facebook's founder Mark Zuckerberg to call for stronger regulation of the internet, without even trying to agree on the need for reform of CDA 230 in Congressional hearings in October 2020 (McHangama, 2022). Even though the most important benefit of social media is ensuring free and instant access for ordinary people to unmediated information (even when it can be harmful), the idea of free speech is opposing centralized, corporate, and algorithmic social media platforms. Therefore, McHangama (2022, p. 209) mentions Mike Masnick's proposal that social media should be pushed to be built around open protocols controlled by end users, which "would allow end users to determine their tolerances for different types of speech but make it much easier for most people to avoid the most problematic speech, without silencing anyone entirely or having the platforms themselves make the decisions about who is allowed to speak". Peer-to-peer model like Usenet updated with blockchain technology looks like as "censorship resistant" because the individual users host the content and are not depending on a company or a government. McHangama (2022, p. 209) mentions Twitter's CEO Jack Dorsey in 2019, announcement that his company is developing "an open and decentralized standard of social media". Such blockchain technology is currently too complex and inconvenient, therefore most people are trading significant parts of their privacy and free speech for the convenience and reach of Facebook and Twitter. The anonymity of blockchain is constantly raising questions about the impunity of malicious users like terrorist groups or child abusers. Still, the architect of the World Wide Web, Berners-Lee, is leaning on two thousand years

of history and suggests that a more decentralized Internet is the best option for the future of free speech. Such a utopistic attitude still does not provide the needed idea of resolving the ancient conflict between authority and free expression (McHangama, 2022).

Conclusion

Freedom of speech and expression has been an interesting topic for social sciences till the beginning of theoretical social deliberation. Ancient Greece and Rome set the stage for freedom of speech and expression in Europe. Middle Ages induced heresy as a form of free speech for those who dared to think freely surpassing the content of holy scriptures while Gutenberg's printing press changed the face of Europe and the world forever by increasing literacy and the availability of books. Literate people dared to think, speak, and print freely consequently reforming the societies. Such technology increased publishing activities and legal regulations following free press laws which never lasted for long but have helped knowledge to spread and created an atmosphere for England's Bill of Rights, the French Declaration of the Rights of Man and the Citizen, and the First Amendment to the United States Constitution. Freedom of speech, slowly but surely, became a part of European societies until it was tested in the Weimar Republic when the "Main Kampf" was published, advocating for dismissing freedoms and inducing propaganda. After the tragedies of WWII, the United Nations and following institutions on global and national level documents guaranteed freedom of speech. The Helsinki effect stopped the Cold War and induced the golden era of free speech straightened with new digital technologies. The Internet era brought new concerns about the recession of freedom of speech and its role in democracy. Since the theoretical approach relied on the Social responsibility theory within Normative theories of media, the future of freedom of speech is shifting its responsibility from journalists as professionals to personal users of digital media and adjusting regulations in this direction. Such change requires media literacy education for individual users of digital media to perform social responsibility adequately.

Reference

Baran, S. J., & Denis, D. K. (2012). *Mass communication theory: Foundations, ferment, and future* (6th ed.). Wadsworth Cengage Learning.

Bell, M. C. (2020). John Stuart Mill's harm principle and free speech: Expanding the notion of harm. *Utilitas*, 32(1), 1–18. <https://doi.org/10.1017/S095382081900029X>

Brett, S. (1999). *Limits of tolerance: Freedom of expression and the public debate in Chile*. Human Rights Watch.

Cate, F. H. (1996). Law in Cyberspace. *Howard Law Journal*, 39(2), 565 – 579. Available at: <https://www.repository.law.indiana.edu/facpub/592>

Crook, T. (2010). *Comparative media law and ethics*. Routledge.

Dabhoiwala, F. (2022). Inventing free speech: Politics, liberty and print in eighteenth-century England. *Past & Present*, 257 (Supplement 16), 39–74. <https://doi.org/10.1093/pastj/gtac024>

Ellis, A. (1956). *The penny universities: A history of the coffee-houses*. Secker & Warburg.

Gillespie, T. (2018). *Custodians of the internet: Platforms, content moderation, and the hidden decisions that shape social media*. Yale University Press.

Harris, R. J. (1956). The impact of the Cold War upon civil liberties. *The Journal of Politics*, 18(1), 3–16. <https://doi.org/10.2307/2126673>

Howard, J. W. (2024). Freedom of speech. In E. N. Zalta & U. Nodelman (Eds.), *The Stanford encyclopedia of philosophy* (Spring 2024 ed.). Stanford University. <https://plato.stanford.edu/archives/spr2024/entries/freedom-speech/>

Howie, E. (2018). Protecting the human right to freedom of expression in international law. *International Journal of Speech-Language Pathology*, 20(1), 12–15. <https://doi.org/10.1080/17549507.2018.1392612>

McHangama, J. (2022). *Free speech: A history from Socrates to social media*. Basic Books.

McQuail, D. (1987). *Mass communication theory: An introduction* (2nd ed.). Sage Publications.

McQuail, D. (2010). *McQuail's mass communication theory*. Sage publications.

Parliament UK. (1689). Bill of Rights. <https://www.parliament.uk>

Perry, M. (1993). *An intellectual history of modern Europe*. Houghton Mifflin.

Puddephatt, A. (2005). Freedom of expression. In R. K. M. Smith & C. van den Anker (Eds.), *The essentials of human rights: Everything you need to know about human rights* (pp. 127–130). Hodder Arnold.

Rich, B. M. (1950). Civil liberties in Germany. *Political Science Quarterly*, 65(1), 68–85.

Sanders, K. (2003). *Ethics & journalism*. Sage Publications.

Smith, D., & Torres, L. (2006, February 5). Timeline: A history of free speech. *The Guardian*. <https://www.theguardian.com/media/2006/feb/05/religion.news>

Thomas, D. C. (2001). *The Helsinki effect: International norms, human rights, and the demise of communism*. Princeton University Press.

United Nations. (1948). *Universal Declaration of Human Rights*. available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

United Nations. (1966). *International Covenant on Civil and Political Rights*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Williams, E. N. (1960). *The eighteenth-century constitution, 1688–1815: Documents and commentary*. Cambridge University Press.