

# Freedom of Expression is Not a Given Right

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## Abstract

This article takes its point of departure in a survey published on Press Freedom Day 2013 about Norwegian attitudes to freedom of expression. The results of the survey revealed quite contradictory responses. On the one hand Norwegians were in favour of extensive freedom of expression, but on the other hand there also existed quite pronounced attitudes to limit freedom of expression for opinions and utterances that were regarded as offensive. Based on the survey the article discusses what constitutes offence in relation to utterances, acts, and attitudes. As the survey also was based on conceptions of what makes up a functioning public sphere and discourse in relation to market forces and the development of new communication technologies, the article refers to the Norwegian Constitution's clause on freedom expression and argues for the strong relationship between a pluralistic media system and free expression. In conclusion the article touches upon the relationship between ethics and law.

**Keywords:** public attitudes to freedom of expression; what is offence; the need for a pluralistic public sphere; freedom of expression the market and cultural technologies; ethics and law and freedom of expression

## Introduction

There is an issue that is always at the centre of debates about freedom of expression, namely: what are the limits between acceptable and non-acceptable utterances? And how should pronouncements that are regarded by many or a few as offensive be dealt with? This issue has wide implications both in relation to cultural values as well as to the practice of debate on 'social' (or as I prefer to call them 'interpersonal') media. In such fora, it seems as if anything goes, and there are no limits to the vulgarity that can be brought forward. In the end, this question is linked to how we distinguish between law and ethics. And there is a difference between the two. What is possible from a judicial perspective might be unacceptable from an ethical perspective. Furthermore it is necessary to distinguish between morals and ethics. Morals deal with private, subjective and individual principles, while ethics are about intersubjective values that transcend individual norms. Thus ethics are relevant in how we deal with utterances and actions. This implies that even utterances that from a judicial point of view are and ought to be legal may be ethically questionable and unacceptable.<sup>1</sup> These issues are at the centre of a study of Norwegian attitudes towards freedom of expression that was published on Press Freedom Day May 3<sup>rd</sup> 2013. The project was initiated by the Norwegian Freedom of

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Expression Foundation Fritt Ord, which published the results of a survey of Norwegian attitudes towards Freedom of Expression issues.<sup>2</sup>

## **How Do Norwegians Feel About Free Speech?**

The issues explored in the survey dealt with how a representative selection of the Norwegian population viewed the importance of freedom of expression in general and internationally, and in particular how Norwegians regard this right. They were asked how they themselves had experienced free speech and how they would prioritize freedom of expression compared with other social and political concerns. Further, the group was invited to react to statements in the media, experiences in daily and working life and attitudes towards religion. They were requested to provide their opinions about political surveillance and the fight against terror. And they were asked to indicate whether they personally had experienced harassment and violence as a result of having expressed their opinions.

The findings of the barometer were revealing in many aspects, and they have implications beyond Norway. Perhaps the most striking result of the poll was not that Norwegians clearly were in favour of freedom of expression as a general principle, but that when it came to defending this right for all groups and opinions, attitudes differed. There were surprisingly many who were in favour of restricting controversial and radical positions. For instance, a majority would reject the right of religious extremists to hold public demonstrations, and *only* 57 per cent thought that those who hold extreme opinions should be allowed to publish books containing such opinions. Furthermore Norwegians felt that those who profess to racism or discriminatory attitudes should be prevented from holding demonstrations. On the other hand, 74 per cent thought that it was important to defend freedom of expression even if utterances were experienced as being offensive.

To further expand on the answers: Norwegians in general (82 per cent) felt that they freely could express themselves, and that there was great tolerance for deviant opinions (69 per cent). The interviewees thought they personally were free to speak out without fear, but on the other hand that minorities and women were discriminated when they spoke out (34 and 31 per cent). Assessing the right to freedom of expression in relation to other social concerns, a majority of Norwegians were of the opinion that law and order are more important than freedom of expression (81 per cent to 58 per cent). This is a lower figure than in Denmark (68 per cent), the Netherlands (62 per cent) and Sweden (61 per cent).

When it came to the issue of tolerance and reactions to offensive utterances, the results were a bit confusing. On the one hand, the majority felt that utterances that were thought to violate religions should be tolerated and that religious minorities must accept offensive criticism. On the other hand, as many as 31 per cent thought offensive utterances about religious groups ought to be punished, and that one should be careful about insulting religious symbols (70 per cent). When it came to punitive reactions against the media, the majority (89 per cent) felt that those who harassed someone on the Internet should be punished. False statements about individuals or groups in the media should also be punished (76 per cent). To disclose details about persons' private lives should be punished (81 per cent). The media should be punished for publishing

untrue statements about individuals and groups (85 per cent). Only 28 per cent thought that the media were open to those who hold deviant opinions.

Persons with extreme opinions should be surveyed (73 per cent) and political parties that aim to overthrow democracy should be banned (48 per cent). And one in six had themselves experienced threats or harassment because of opinions and utterances, ethnicity, religion, gender or sexual orientation.

What may be concluded from the barometer is that there is a contradiction and ambiguity in Norwegian attitudes towards general tolerance and freedom of expression. On the one hand, there is a high degree of support for freedom of expression as a principle, but on the other hand, the survey also reveals that many would support restrictions and even what may be characterized as censorship of unpopular and deviant utterances. It seems that many feel that this best can be achieved through legal means and punishment.<sup>3</sup> Many Norwegians seem to think that it is better to enact laws against things we do not like than to tolerate them.

This attitude is particularly worrying when it comes to what is being perceived as transgressions on the part of the media, where clear majorities call for retributions against media that overstep their limits. As a commentator in the Norwegian daily *Dagbladet* remarked, this may be seen in the context of the Norwegian reactions to the Muhammad caricatures.<sup>4</sup> The Norwegian Government then (apparently in line with Norwegian opinion as referred to above) attempted to explain away the right to religious criticism in the form of caricatures. In this respect, the Government at that time was supported by a majority of Norwegian editors who professed the right to print, but who nevertheless felt that it was tasteless to do so, and that this would create unforeseen reactions. The right to offend is obviously not a right that enjoys clear support in Norway.

### **Offence – Attitudes, Utterances, Acts**

This again points in the direction of one of the most contested areas in relation to freedom of expression today. In many circles, it has now become a trope that as soon as a group can claim to be offended, they can call for restrictions against the right to express oneself freely. This does not even have to be associated with so-called ‘hate speech’. Of course such reactions have their roots partly in the emergence of a sphere of offensive and insulting utterances in various Internet fora. Something that definitely calls into question the issue of who is responsible for what is being posted on Internet sites, and for that matter also elsewhere. But it should not lead to a situation in which calls for new forms of censorship and restrictions on the right to express oneself freely are being heeded.

That hate speech differs from hate acts is as essential is the distinction between causing harm and causing offence. It is here the distinction between attitudes, utterances and acts comes into the argument. One cannot legislate about attitudes. Thought control only exists in authoritarian dystopias. Utterances, however, are expression of attitudes that may be changed when met by counterarguments. Expressions may be obnoxious and hateful, but to ban them when they are not aimed at causing direct harm is to move in the direction of thought control. No one will argue, however, that concrete incitements to harm are protected under freedom of expression. Thus the fatwa against Salman Rushdie and his publishers cannot be protected under free speech arguments?

But Rushdie's novel or the Danish cartoons clearly are protected utterances even if they may have offended many Muslims.

It is worrying that there now are so many calls for restrictions on utterances because they are said to cause offence, often of the kind that is labelled 'group defamation'. What some regard as blasphemy is seen as legitimate critique of religion by others. Who in a democratic society is to decide what is what? Instead of maintaining a right to not be offended, one should argue for the right to be offended. Offence in itself is part of being taken seriously in a society of equal rights for all groups and individuals. Freedom of expression is about protecting minorities of all kinds, not about giving some group privileges because they feel they have the right to define what they feel insults them. If this is introduced, it may lead in the next round to minorities being singled out not for protection, but for other forms of special treatment that might imply forms of discrimination.

The question is: What constitutes a minority? Is it based on race, religion, and sexual preferences? Or does it also comprise opinions, politics, and ideology? If pressure groups of different kinds have the right to define which expressions are religiously, ideologically and politically acceptable, and which are not, then which roles and opportunities exist for those who think differently and are in a minority? Who has the right to maintain that their conviction constitutes the correct interpretation of reality? It is in non-democratic societies where freedom of speech is restricted that minorities are discriminated. Many Muslim countries are examples of this as regards their treatment of Christian minorities, and the arguments used for discrimination are that Christianity involves practices and attitudes that are offensive to the Muslim majority.

Despite constitutional guarantees of free speech in many of the world's legal systems, even the most democratic of societies have never treated freedom of speech as an absolute. The liberal tradition has generally defended freedom of expression for utterances that do not violate others' fundamental rights or lead to predictable and avoidable harm. As mentioned above, incitements to illegality in the form of, for example, sexual abuse of children, sedition, murder, libel and defamation are obvious restrictions. But expressions that do not come under such limitations should be fiercely defended, because a free interchange of ideas is an essential ingredient of democracy. All discussions about freedom of expression in the end come down to defining where the limits are. They should be broad.

The principles of protecting freedom of expression must be technology neutral. While digital technologies open up for abuse, one cannot abandon the values that are basic to democratic cultures, and demand that new forms of communication be controlled in a manner different from other media. Hate speech and other obnoxious utterances found on the Net should be mapped and countered in open debating fora on the Net and elsewhere. Those who are behind such utterances should be held responsible, with special attention to whether they express incitements to concrete illegal actions.

## **How to Secure a Free and Pluralistic Public Discourse**

Free speech is basically an individual right, however it is at the same time collective, and it is this duality that is the basis for analysing and defending freedom of expression as essential for democracy. The relationship and difference between the individual and collective aspects of this right and how it is practised through the media as 'media or press freedom' create a number of problems. The press exercises its freedom by ideally

representing the individual rights of citizens through collective means.<sup>5</sup> A very important issue concerns how forms of media regulation relate to arguments for free speech. How is it possible to promote free speech in media environments that in practice are restrictive?

How we regulate and define freedom of expression was at the centre of work done by the Norwegian Freedom of Expression Commission.<sup>6</sup> And it thus addressed some of the concerns and principles raised in the survey of how Norwegian citizens regard the right to freedom of expression. One of the many dilemmas that the commission faced concerned the seeming contradiction between securing the right of the individual to free speech, on the one hand, and making provisions for a pluralistic media system which might involve restrictions for media owners to exercise unlimited control, on the other. This contradiction has been central to many debates over the interrelationship between ownership of media and thus the right of the owners, on the one hand, and the right of the public, on the other.<sup>7</sup>

This was one of the many dilemmas that the Commission came up against when it was tasked with formulating a new freedom of expression article for the Norwegian Constitution. The new sixth clause of Article 100 of the Norwegian Constitution ("NC 100, 6") states: "It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse." In its explanations to the proposed new clause, the Commission wrote:

The sixth paragraph of the proposed amendment establishes the responsibility of the state for creating conditions enabling an open and enlightened public debate. This thus clearly states the responsibility of the state for ensuring that individuals and groups are actually given opportunities to express their opinions. Maintenance and development of the public sphere is invoked as a major public responsibility, consistent with the view long held by the Norwegian government. Other examples are public funding of schools and universities, public support of the arts and of Norwegian and minority language media and public support of organizations. We might also mention the particular responsibilities of public broadcasting and the rules preventing monopolized ownership of the mass media.<sup>8</sup>

This paragraph opens for new and interesting perspectives on how freedom of expression may be seen in relation to the liberal tradition of defending free speech as a fundamental individual right in relation to state interference, on the one hand, and how to secure basic freedom of the press, on the other. Could this be achieved through active infrastructural engagement by the state in order to secure the conditions for an enabling environment for public debate and pluralism in the arenas of media and communication? Given that freedom of expression is a fundamental protected right in democratic societies, one may question the significance of state infrastructural engagement.

## **The Market and the State**

Can the market still provide the civic outcomes necessary for maintaining the entire democratic function of the press due to increasingly aware and demanding consumers, as media mogul Rupert Murdoch argues,<sup>9</sup> or, in the words of Jürgen Habermas: is an active state and a governed infrastructure necessary to uphold the twin function that the quality press has fulfilled up until now – that is, "[...] satisfying the demand for information

and education while securing adequate profits”<sup>10</sup> In classical liberal philosophy (that is before the rise of neo-liberalism), it was clear that society had a responsibility for ensuring that freedom of expression and access to information were being exercised. Diversity that is as wide as possible in all forms of expression, openness, and pluralism in the sphere of communication should be promoted. The challenge is how to create the conditions that secure these principles.

From the late nineteenth century and onwards, interest in the relationship between mass media and political developments has been growing, and they have increasingly been at the centre of the debate over democracy and free speech. The focus has been on whether the media promote a rational discourse or mainly serve propagandistic and commercial interests. For the contemporary discussion on free speech, it is impossible not to take the technological expansion of all media into consideration. There has always been a perceived potential conflict between mass media and the development of democratic self-governance. This is related to several issues. One issue concerns the question of ownership and control.

The fear is that those who own and control the media – be it large corporations or the state, depending on what type of societies we deal with – will use their control to create skewed interpretations and promote one-sided views and agendas that work to the detriment of a pluralistic public debate and democracy. A second concern has to do with the notion that important and alternative information will be omitted and that limitations on who will have the right to speak will be exercised. A third worry is that the content of the media will be solely based on ratings and commercial interests. Entertainment will supersede critical debate. What the dominant media will offer will be more or less the same from channel to channel. Alternative forms of expression will only find their way to minority and niche media.

Such arguments have been behind forms of regulation of the media in mainly three forms by 1. Restricting and preventing media concentration by limiting monopolistic ownership and other types of regulation for securing a pluralistic media situation; 2. Imposing public-interest obligations particularly to broadcast media; 3. Creating subsidy systems that insure pluralism in the press.

In some parts of the world, the main threat to individual liberty and freedom of expression still comes from the state. The rights of the individual have to be protected against excessive use of state power. In the Western part of the world, however, with the transformation of media organizations into multinational, multimedia commercial conglomerates, the right to freedom of expression is confronted by a threat that does not originate in the excessive use of state power, but rather in the growth and activities of monopolistic media organizations in the form commercial concerns. In an age when global communication conglomerates are key actors in the production and distribution of symbolic goods, reflection on the conditions of freedom of expression cannot be restricted to the territorial framework of the nation state.

Media industries, like other forms of multinational business, are driven primarily by the logic of profitability and capital accumulation. There is, however, no necessary correlation between this form of logic and the promotion of diversity that is as wide as possible in all forms of expression, openness, and pluralism in the sphere of communication. The challenge is to create conditions that secure these principles in an era of globalized and integrated media. It would be in the tradition of the classical liberal

position, expressed among others by John Stuart Mill, to maintain independent media that are free from state intervention, but at the same time recognize that an unregulated media market can lead to monopolization and prevent diversity, thus also limiting the conditions for a free and pluralistic public discourse.<sup>11</sup>

Free and independent media should serve as watchdogs over the abuse of power – both by the state and by market economic institutions – and expose the obstruction of people’s democratic rights by state apparatuses or private parties. The existence of a wide range of information systems and forms of media – from libraries to Internet, from community radios to international television channels, from books to newspapers – is an indispensable, if not sufficient guarantee for the exposure of and a remedy against abuses of power. This requires that the right to freedom of expression be more than a formal right. More than anything it must include arrangements that secure the widest possible participation of all groups in the public debate. It must include accountability, safeguards against monopolization and distortion of the free speech principle. Freedom of expression presupposes that reports about rights violations and their perpetrators are not silenced, and that there is public debate about human rights. At the core of the defence of human rights is a communicative situation that presupposes the absence of all forms of censorship, because the protection of human rights implies that people can speak up to defend their own rights or the rights of others. And this presupposes a diversified media situation.

## **Freedom of Expression and Cultural Technologies**

Freedom of speech implies the liberty to express opinions and ideas without hindrance, and especially without fear of punishment. It is obvious that these principles also must apply to communication systems of all sorts, and also, therefore, to the Internet. These fundamentals are technology neutral.

One of the basic arguments in relation to dealing with freedom of speech in modern society is that it is a right that is in the public not the private realm, and that is historically and intrinsically linked to the development of mass media and technological means of communication from the printing press to the Internet.<sup>12</sup> Thus, the old formulation in Article 100 was “There shall be freedom to print”, which was a reflection of the communication technologies that existed in 1814 when the Norwegian Constitution was first adopted. The fact that this was later interpreted as encompassing other forms of mediated speech created problems. Thus up until the new Article was passed, there was no media-neutral way of looking at freedom of expression. Moving pictures were for instance subject to censorship also for mature and autonomous individuals.

This legacy also implied another problematic aspect of the way mediated communication is looked at in relation to arguments for free speech. The role and importance of popular culture have been downplayed in arguments for free speech, if not looked upon with outright suspicion. The reasons for this are many. Popular culture has been despised by elites, for instance when it comes to arguments for free speech. In such cases, an object designated as art may be considered to have higher value and may be allowed to bypass decency laws whereas a similar image deemed as belonging to the popular sphere (e.g. a sex website) may be considered pornographic. In this context, the question of the relationship between popular and mass culture has been important. Thus what is regarded as mass and low culture has more often been subject to stricter

forms of regulation than individual and high culture. However, if the issue is to promote a truly democratic culture it is necessary to be equally concerned with speech that not only deals with public issues, but also forms of expression that have nothing to do with rational and public debate but speak to emotions. They relate to popular and mass cultural forms of expression however vulgar they may seem to some.

Freedom of speech is concerned with the freedom of autonomous individuals to consume, create and distribute cultural expressions of whatever form, as long as they do not conflict with other fundamental rights. Freedom of expression is also about disagreeing with the mores and aesthetics of a society's dominant taste cultures. It is not only the elites who should have the opportunity to participate in, create and consume culture of their choice. Cultural expressions contribute to the development of constitutive meanings of communities and sub-communities. Creating and consuming creative utterances of all kinds is part of the cultural mix in which people live. Such expressions are both linked to interpersonal forms of communication as well as mass communication. The blurring of these forms of communication currently occurs in the new digital technologies, and they create new challenges and opportunities in relation to freedom of expression. People's expressions in the form of day-to-day utterances in the most mundane situations – conversation, accusations, insults, denials, complaints, gossip – are at the margins of public speech, and should not be controlled. One of the problems of laws against hate speech is that they may constitute an invasion of the private sphere of individuals.

Digital communication technologies represent a new challenge to the debate over freedom of speech. They open up for “[...] a new set of conflicts over capital and property rights that concern who has the right to distribute and gain access to information.”<sup>13</sup> This concerns copyright law and piracy and regulation of telecommunications and relates to issues that are of an ethical as well as a legal nature in relation to issue such as “Internet shaming” – privacy, reputation, etc.<sup>14</sup>

These prospects are largely due to the fact that the Internet ideally provides, simultaneously, a participatory interface and a two-way flow of information between many different users. It is a medium that creates virtual spaces where communities without borders from around the world can enter into communication with each other. This makes the Net particularly suited to serve global as well as new, local social movements. Now, I do not think that any technology constitutes a totally independent logic in itself; technology is linked to political and social contexts, and its development must be discussed in relation to political choices, the Net as well. On the other hand, it has also become clear that the Internet has qualities that make it a very advanced tool for surveillance and that it must be seen in relation to the increasing number of legal provisions and technical systems of surveillance and interception of communications now being introduced.

The Internet community and defenders of freedom of expression fight to hold onto freedom of speech on the Net, and to extend its use as a democratic and free medium.<sup>15</sup> They come up against attempts at censorship and control by states, corporate interests, political groups, and other kind of organizations – among others, religious. The Internet contains all forms of content. The objectives of censorship attempts are to control not only the content but also the possibilities the Net has as a free and democratic area for communication. The digital technologies must be regulated in the same manner as other forms of mediated communication. The principle of freedom of expression is technology neutral.

The responses of a representative selection of Norwegian citizens to the challenges of free speech that I referred to at the beginning of this article show that even in one of the world's most democratic countries, the implications of freedom of expression are controversial. What is not contentious is a broad acceptance of the principle of free speech as a general human and civil right. But as soon as the issue becomes what this suggests in relation to tolerating deviant and extreme and uncompromising opinions, the situation changes.

There is significant suspicion of the principle that utterances that may cause offence should not be permitted. Furthermore there is substantial support for political surveillance of people with extreme views. Furthermore there exists a deeply felt suspicion in relatively broad sections of the media. They are seen by 25 per cent as representing political authorities and by 13 per cent as representing commercial interests. A majority think the media provide broad information and reveal things that should be criticized, but they are not open to people with controversial opinions (as many as 28 per cent feel this way). And this may be substantiated by the considerable support shown for punishment of transgressions both on the Internet (89 per cent) and in the media (85 per cent). This could be interpreted as indicating that the right of the press to administer its own ethical principles in an independent press council is not something that enjoys wide support.

### **Concluding Remarks on Ethics and Law**

In relation to the arguments for free speech, there has always been an overemphasis on the political and rational elements of freedom expression rather than focusing on its wide cultural implications. Thus in the Norwegian Constitution, the basis for freedom of expression is given in the following manner: "the seeking of truth, the promotion of democracy, the individual's freedom to form opinions." This formulation may be criticized for emphasizing political issues as well as rational discourse over other forms of speech. On the other hand, it is important that the formulation emphasizes the importance of the individual's personal autonomy as a precondition for free speech. The question that arises from this is obviously what is an individual and what is a person.<sup>16</sup> And this is an issue where legal and ethical considerations may enter into conflict.

In a democratic society, the Constitution guarantees that all citizens have the right to express themselves freely also when it may offend the feelings and morals of others. Nevertheless, it is reasonable to relate this right to free speech and not be legally constrained to ethical considerations and responsibilities that recognize the right of all citizens to equal freedom. Freedom of expression does not only relate to individual freedoms and rights, but also to a form of social and intersubjective responsibility. However ethical restrictions are also problematic, for if an ethical majority impresses its interpretations on minorities, then real freedom of expression does not exist and open public discourse will be restricted and thereby the acceptance of deviant opinions as well. There is a dialectic between free expression in a judicial sense, on the one hand, and ethical considerations, on the other. Thus there is a principle of reciprocity at play when we discuss the limits of freedom of expression, and there are limits, however wide they may be. The right to free speech that we claim for those with whom we agree must also be extended to those with whom we do not agree and whose opinions we may detest. Only in this way can reciprocal acceptance be established.

In this perspective, the need to insist that controversial and deviant opinions be part of the broad concept of free speech is essential. So is the need to create conditions for pluralistic media as well as for securing equal rights of expression in all media. Freedom of speech is dependent on tolerance and that is not something that is a given. It is a tenet that must be constantly defended. Freedom of speech is not guaranteed anywhere; it is the result of a constantly on-going struggle.

## Notes

1. This issue has been discussed in Norway in relation to debates about what is responsibility in Net fora in relation to hate speech and other objectionable utterances in the aftermath of the July 22, 2011 tragedy. In this context, both the distinctions between ethics and law as well as private and public are central. One article that may exemplify this is: Lysaker, Odin & Henrik Syse (2013) "Ingen yttringsfrihet uten etikk", *Aftenposten* 28.05, 2013. I have used some arguments from this article here.
2. <http://www.fritt-ord.no/en/hjem/mer/yttringsfrihetsbarometer/> (Accessed May 13, 2013). The survey will be repeated every second year, and it is also hoped that it can be used for international comparison.
3. Now it should be mentioned that the phrasing of some of the questions in the poll is not particularly precise, and that there are methodological weaknesses in the survey.
4. Egeland, John O. (2013) "De mørke kildene", *Dagbladet*. May 11, 2013.
5. This issue is discussed in Steel, John (2012) *Journalism & Free Speech*. London. (Routledge)
6. The Commission was appointed by the Government and served between 1996 and 1999. It went through the principle arguments for freedom of speech internationally, assessed the Norwegian laws pertaining to the issue and came up with a proposal for the new article in its report. I was a member of the Commission. The proposal was adopted in 2004 by the Norwegian Parliament in a slightly different form than the one proposed by the Commission. The original report in Norwegian (NOU 1999: 27) can be found at <http://www.regjeringen.no/nb/dep/jd/dok/nouer/1999/nou-1999-27.html?id=142119> (last accessed May 15, 2013). The Norwegian National Commission published an abbreviated form of the report in English for UNESCO in 2005 under the title *There shall be freedom of expression*. Oslo 2005.

The article is number 100 of the Constitution and it reads: There shall be freedom of expression.

No person may be held liable in law for having imparted or received information, ideas or messages unless this can be justified in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the individual's freedom to form opinions. Such legal liability shall be prescribed by law.

Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever. Clearly defined limitations to this right may only be imposed when particularly weighty considerations so justify in relation to the grounds for freedom of expression.

Prior censorship and other preventive measures may not be applied unless so required in order to protect children and young persons from the harmful influence of moving pictures. Censorship of letters may only be imposed in institutions.

Everyone has a right of access to documents of the State and municipal administration and a right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of the individual or for other weighty reasons.

It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse.

7. See, e.g., Lichtenberg, Judith (ed) (1990) *Democracy and the Mass Media*. Cambridge, New York, Oakley. (Cambridge University Press)
8. *There shall be freedom of expression*. op. cit. p. 17
9. Speech held in London, March 13, 2006 [http://www.newscorp.com/news/news\\_285.html](http://www.newscorp.com/news/news_285.html) (Last accessed 15.05.2013)
10. *Suddeutsche Zeitung*, May 16, 2007
11. Thompson, John B. (1995): *The Media and Modernity*. Cambridge. (Polity Press) p. 240-241.
12. See: Winston, Brian (2005) *Messages. Free Expression, Media and the West from Gutenberg to Google*. London and New York: Routledge.
13. Balkin, Jack M. (2004) "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society. *New York University Law Review*. [Vol 79: 1 April 2004] p. 3.

14. See: Levmore, Saul & Martha C. Nussbaum (eds) (2010) *The Offensive Internet*. Cambridge Mass, London, England (Harvard University Press)
15. I have treated this issue in Rønning, Helge (2010) "Tools for Democracy or for Surveillance. Reflections on the Rule of Law on the Internet" in Gripsrud, Jostein & Hallvard Moe (eds) (2010) *The Digital Public Sphere. Challenges for Media Policy*. Göteborg (Nordicom)
16. This issue has been discussed in Holst, Cathrine & Anders Molander (2009) "Freedom of Expression and Freedom of Discourse. Examining a Justificatory Strategy" in Kierulf, Anine & Helge Rønning (eds) (2009) *Freedom of Speech Abridged. Cultural, Legal and Philosophical Challenges*. Göteborg (Nordicom)

