

## **A few things we forgot about free speech**

No subject (with the possible exception of football) has been talked about as much yet seriously discussed as little as free speech. Everybody pays lip service to the right to freedom of speech. Few of us appear to give much thought to what that means or why it matters. Sometimes it's necessary to remind ourselves of the obvious and look again at what we take for granted.

After all, it's funny how the simple little things can slip your mind. The first thing that seems to have been forgotten about free speech is that it's supposed to be Free. The second thing that is often forgotten is that it's simply Speech.

This chapter offers a quick reminder of why these things matter, alongside the third thing we often forget: that, when you put those two words together, you have the most important expression in the English language. Free speech is the single most powerful factor in creating and sustaining a civilised society. Without the advance of free speech, the development of life as we know it in the West is unlikely to have been possible over the past 500 years. There could have been little progress towards democracy in Europe or America without the ability to demand political change and to put forward competing principles about how society should be run. Many of

the great scientific breakthroughs would have been unimaginable without winning the freedom to speak out and question the old accepted 'truths' about the world.

Few new artistic or cultural advances would have happened unless there was sufficient freedom of expression for writers and artists to go where none had gone before. None of the mass communications on which the interconnected modern world relies could have thrived without the fight for free speech – or if they existed, they would not be worth having. And the other freedoms we take for granted today, from the high principles of sexual and racial equality in law to the low liberty to gossip about the rich and famous online, would have been hard to secure without first demanding the freedom of all to speak out in public.

In short, without the willingness of some to insist on their right to speak what they believed to be true, we might still be living on a flat Earth at the centre of the known Universe, where women were denied the vote but granted the right to be burnt as witches. That is one good reason why it is time to stop kicking and 'but-ing' free speech around so casually today and get serious about discussing how to defend and extend our most precious liberty.

To begin with the dreaded f-word. It often appears to have slipped our Anglo-American society's mind that free speech is supposed to be Free. That's free as in 'free as a bird', to soar as high as it can and swoop as low as it chooses. Not as in 'free-range chicken', at liberty only to scratch in the dirt within a fenced-in pen and en route to the chopping block.

Free means speech should not be shackled by official censorship imposed by governments, police, courts or any other state-licensed pecknose or prodstaff. Nor should it be stymied by unofficial censorship exercised through university speech codes and 'safe zones', twitterstorming mobs of online crusaders against offensiveness, or Islamist zealots gunning for blasphemy. And nor should it be sacrificed by the spineless self-censorship of intellectual invertebrates.

If it is to mean anything, free speech has to live up to its name. This is the hardest thing for many who claim to endorse the principle to remember in practice. It means that what others say or write need not conform to what you, I, or anybody else might prefer. Bad taste or good, offensive or attractive, cutting or boring. Just so long as it is free.

Here is the terrible truth about free speech. Anybody can choose to write, blog, tweet, chant, preach, phone a radio programme or shout at a television set. Not all of them will have the purity of soul of Jesus Christ or Joan Rivers, the wisdom of Socrates or Simon Cowell, or the good manners of Prince Harry or Piers Morgan. That's tough. They still get the same access to free speech as the rest of us, whether we like it or not.

Defending the unfettered Free in free speech is not a question of endorsing whatever objectionable or idiotic things might be written or said. Nobody had to find *Charlie Hebdo's* cartoons insightful or hilarious in order to stand by its right to publish them. Nor is it a question of being soft and suffering somebody else's nonsense in silence. Free speech means you are also free to talk back as you see fit.

The Free in free speech does mean recognising that free speech is for fools, fanatics and the other fellow too – even if they want to use that freedom to argue against it. Like all true liberties, free speech is an indivisible and universal right. We defend it for all or not at all.

Remembering to put the Free in free speech makes clear why we should oppose attempts to outlaw or curtail certain categories of speech. Freedom is, unfortunately, indivisible. You cannot have half-freedom, part-time freedom or fat-free freedom. You cannot abolish slavery but only for white people or celebrities. Similarly you cannot declare your support for free speech, but only defend those parts of it that you like or that meet your preferred set of standards, however high-minded those preferences might appear. If one leg or even one gangrenous toe remains chained to the post, the entire body is still shackled.

In all the talk about free speech today, how often do you hear free speech spoken of as a universal and non-negotiable right? Instead the focus seems always to be on the butts, the exceptions, the limits to freedom. Everybody in public life might insist that they support free speech, but scratch the surface and it becomes clear that what many support is not so much free speech as speech on parole.

They want speech that is released from custody only on licence with a promise of good behaviour, preferably wearing a security ankle bracelet to stop it straying from the straight and narrow, having signed the rhetorical offenders' register. Speech that is free to toe the line, stick to the script and do what it is told. The reinterpretation of freedom to mean liberty-on-licence is a con that the free-speech fraudsters should not be allowed to get away with.

Once you forget the meaning of 'freedom' and start cherry-picking which people or what type of speech might deserve it, free speech ceases to be a right. Instead it becomes a privilege, to be extended or withheld to the well- or the not so well-behaved as those in authority see fit. This is the message of all those fashionable sermons about how 'rights come with responsibilities'. That is just another way of saying that it is not a right at all, but a selective reward for good behaviour. Rights don't come with butts or provisos.

Today's free-speech fraudsters will claim to support it firmly in principle, yet equivocate in practice. This often translates as supporting it for those who share your attitudes and opinions – less free speech than 'me speech'.

To defend free speech 'in principle' must mean to defend it for all. Otherwise, once a principle becomes negotiable it ceases to be principled at all (as in the old political joke, 'We have principles, and if you don't like them, we have others').

The indivisibility of the right to free speech is also a very practical matter. Once you make free speech a privilege and not a right, who are you going to trust to make the decision about where to

draw that line through free speech? Government ministers? High court judges? Mary Berry and Sharon Osbourne?

This is an old lesson which many, especially on the left, still stubbornly refuse to learn. As far back as the 1930s, the British left campaigned for a ban on marches by Oswald Mosley's black-shirted British Union of Fascists. They got their wish in the Public Order Act of 1936 – and were quickly astonished to discover that the state used its new powers to ban their right to protest, too. Almost eighty years later, and British anti-fascist crusaders are still apparently outraged to find that, when they 'win' a legal ban on a little demonstration by some far-right grouplet, the police will use the same blanket ban to prevent them staging a 'victory' march.

This problem is even more acute now, when everything is judged by the subjective standards of 'offence' and things can be censored or banned not for threatening public order but for hurting somebody's feelings and making them feel 'uncomfortable'. There is no telling where the runaway train of censorship in the name of 'me speech' will end – witness the fate of the UK feminist comedians and speakers who have been surprised to find themselves protested against and even banned from campuses for being deemed offensive to some, shortly after they had demanded the same treatment for sexist blokes. Once you say that free speech is only for those who comply and conform and toe a fashionable line, you are asking for trouble.

The other practical problem with 'me speech' is that, by restricting the free-speech rights of those you detest, you weaken your own and everybody else's rights. You deny others the right to listen and to argue, to test the truth and judge for ourselves. You effectively condemn yourself to being locked in your bubble cell, with only your own and similar opinions to listen to, like a solitary prisoner with only one book to read (and even that is his own boring diary).

As Thomas Paine, the English radical who became a key figure in both the American and the French revolutions of the eighteenth

century, wrote in the introduction to his classic *The Age of Reason* (a critique of religion considered so offensive that it was subject to serial prosecutions by the British government): 'He who denies to another this right, makes a slave of himself to his present opinion, because he precludes himself the right of changing it.'<sup>1</sup> It is not only those directly denied their freedom who are 'enslaved' by selectively chaining some forms of speech.

It is important to remember that free speech in the West, as chapter 3, about the history of the issue, argues, was never a gift from the gods or an act of largesse doled out by governments. From the Magna Carta 800 years ago to today, any liberties that are worth the parchment they are written on have been hard-won in a struggle to wrest them from our rulers. Once won, those liberties do not come with any moral commandments. Nobody has to pass through the eye of an ethical needle to qualify for the right to free speech. There should be no official test to pass or licence to obtain before you can express an opinion.

Free speech is not to be rationed out like charity, to only the most deserving cases. A right is a right, and is not limited by any incumbent responsibilities. Liberties do not come with strings attached, any more than freedom can be exercised in leg-irons.

This is not a plea for irresponsible speech. It is to be dearly wished that people exercise their rights responsibly and take responsibility for what they say. We might like to think that taking responsibility would always involve saying what you mean and meaning what you say; expressing the truth as you understand it as clearly as you are able, and then standing by it for all that you are worth. But wishing that could be true is no excuse for trampling on the speech rights of others in the name of what you imagine their responsibilities should be.

We should remember that the Free in free speech is not only about the freedom to speak and write as you see fit. It is also about the freedom of the rest of us to hear and read everything that we choose, and to judge for ourselves what is right. The flip-

side of freedom of speech is the freedom to listen (or not) and to choose.

We are under no obligation to take any notice of anybody's words; the right to free speech never entails a 'right' to be taken seriously. But nor does the speaker have any obligation to restrict what they say to what we want to hear. To mean something worthwhile, freedom must be first and foremost for the other person's point of view. George Orwell put in perfectly in his 1945 essay 'The Freedom of the Press' (originally written as a preface to his novel *Animal Farm*, though ironically the publisher refused to include it): 'If liberty means anything at all, it means the right to tell people what they do not want to hear.'<sup>2</sup>

As part of forgetting to put the Free in free speech, we also appear to have forgotten the meaning of tolerance. Today tolerance is talked about in two related ways: either it means allowing the expression of views without judging or criticising them, or it is used as the excuse for closing down views which are too offensive, as in 'we will not tolerate intolerance'. Neither has much to do with true tolerance.

Intolerance is always the enemy of free-thinking. But tolerance and the right to free speech does not mean a free ride. Tolerance is not about allowing anybody to rant away, offend and insult without challenge because 'everybody's entitled to their opinion'. True tolerance means allowing others to express their opinions, however disagreeable – and then being free yourself to tell them what you think of it, just as they are free to repay the compliment to you. In this, I am always with the great Englishman of letters Dr Samuel Johnson, who declared that 'Every man has the right to utter what he thinks truth – and every other man has the right to knock him down for it.'<sup>3</sup> Figuratively speaking, at the very least.

The second thing we have forgotten about free speech is that it is Speech. It is simply words. Words can be powerful tools, but there are no magic words – not even Abracadabra – that in themselves can change reality. Words are not deeds. It follows that

offensive speech should not be policed as if it were a criminal offence.

It is true that 'words can be weapons' in a battle of ideas, or even just in a slanging match. But however sharp or pointed they might be, words cannot be knives. However blunt words are, they are not baseball bats. No matter how loaded they are or how fast you fire them off, words are not guns.

Yet all too often today we see words treated as if they were physical weapons. People in the UK are imprisoned for tweeting insults, as if they had handed out a bodily beating. Outraged online mobs pursue 'rape deniers' or other speech deviants across social media much as the London mob pursued the misogynist murderer Bill Sykes through the Dickensian city. Politicians and public figures in the US or UK are forced to apologise for having caused unintentional offence with some words, as if they had unintentionally caused a war (which is something they would never apologise for, of course).

This confusion of words and deeds is even written into UK law, with the Public Order Act used to imprison thousands of people each year for 'threatening, abusive or insulting words *or* behaviour' (my italics), blurring the distinction between what people say and what they do, as if abusive language really was the equivalent of physical abuse.

Words can hurt but they are not physical weapons. And an argument or opinion, however aggressive or offensive it might seem, is not a physical assault. The difference is far more than semantic. There are and should be laws against assault and threats of violence. There often are but should not be laws or rules against words used to express opinions, however violently one might disagree with them. The right response to violent assault is to end it, as forcibly as necessary, and possibly to lock up the perpetrator. The answer to bad words is not to end speech or lock up the speaker. It is more speech – to resist or simply to rubbish the words objected to.

But should all speech really be free? Is it really possible to draw such a firm distinction between offensive words and criminal

offences? The answer is yes, once we are clear what we mean by free speech as encompassing all forms of expression from ideas and opinions, through invective and insults, to jokes or mindless jabber.

There are other types of speech that the most liberal-minded among us have long considered to be indefensible: direct threats of violence or blackmail, for example, or malicious defamation of individuals, or illegal obscenity such as child pornography. Even the US First Amendment has not protected these forms of words, and the US Supreme Court takes a dim view of what it calls 'fighting words' and incitement, both of which are intended and likely to cause violence or other unlawful action.

But these are not really arguments against free speech. In properly distinguishing between words and deeds, we need to make a distinction between words that are simply speech – the expression of something – and words that instead become part of an action – the execution of something. For instance there is a big difference, recognised by US Supreme Court cases as we shall see, between expressing a general violent hatred of the government or minority groups, and deliberately inciting, provoking or organising specific acts of violence against particular institutions, individuals or groups. The first category is speech, to be tolerated, like it or not (but challenged as you see fit). The second is something other than free expression, and we do not have to put up with it.

Of course many serious crimes will involve some sort of speech, whether that means people conspiring to murder or planning a robbery. Nobody imagines that a criminal haggling over the price of a gun on the black market, or demanding money at the point of that weapon, is exercising his free-speech rights, and there will be few 'I am Charlie' banners on parade if Charlie the armed mugger gets his comeuppance.

Those who support free speech have long sought to distinguish words from deeds and to have legal exceptions to the principle overturned or at least defined as narrowly as possible. In the US the

Supreme Court responded by, for example, narrowing the grounds on which speech can be deemed to be ‘fighting words’ and so not protected by the First Amendment. When that category of speech was first defined, in a 1942 Supreme Court case, a Jehovah’s Witness was found guilty of using ‘fighting words’ simply for calling a town marshal who was attempting to prevent him preaching a ‘God-damned racketeer’ and ‘a damned fascist’. By contrast in 1969, the Supreme Court justices overturned a New York law against abusing or burning the American flag, on the ground that ‘mere offensiveness does not qualify as fighting words’. In the early Seventies, in a near-reversal of the original 1942 judgement, they also overturned the ‘fighting words’ convictions of individuals found guilty of cursing at police officers.<sup>4</sup>

The trouble is, however, that in wider discussion in the Anglo-American world today, things are moving in the opposite direction. The tendency now in politics, the media and academia seems always to try to broaden, rather than narrow, the grounds on which words should arguably be kicked out from under the free-speech umbrella.

As we shall see, the insistence that ‘This is not a free-speech issue’ has become a staple expression of the free-speech fraudsters, as a way of maintaining their alleged support for the principle whilst shafting it in practice. Once, the phrase ‘This is not a free-speech issue’ might justifiably be heard only in response to something as serious as a direct threat to kill – or just something as trivial as a request to make less noise in a bar or on the bus. Now we hear it used promiscuously in response to all manner of questions that obviously *should* be ‘free-speech issues’, from demands for new laws against nasty internet ‘trolls’ to bans imposed on controversial political speakers or comedians on campus. It can seem as if some would like to turn the exception to free speech into the rule.

In this spirit there has been a remarkable inflation of the meaning attached to ‘harm’ everywhere from academic philosophy

circles to the UK courts, so that it now includes not only physical harm inflicted by force but also mental or emotional harm said to be inflicted by speech. It might once have been considered straightforward, for example, that the offence of ‘actual bodily harm’ would involve some actual harm to the body. No longer; for the past two decades, UK courts have ruled that ABH could include ‘psychiatric injury’.

Faced with these attempts to impose new restrictions by narrowing the scope of free speech and broadening the exclusions, it is all the more important that we come out fighting for freedom of expression and holding the line between words and deeds.

But what about incitement? Inciting somebody to commit an offence is a crime. Offering an offensive opinion or inflammatory argument should not be. In a sense all arguments are ‘inciting’ – as in urging or provoking – somebody to do something, whether that means to change their opinion or the brand of coffee they drink. Those on the receiving end are still normally free to decide whether to do it. We should be very wary of criminalising speech so long as all that is being chucked about are words.

And what about offensive and hateful speech? These issues are addressed at length in this book. To begin with let us simply remember that in Western societies it is usually only those consensus-busting opinions branded offensive or unpalatable that need defending on the grounds of free speech. Nobody ever tries to ban speech for being too mundane. This is not a question of celebrating extremism or obnoxiousness. It is simply a matter of recognising that, when it comes to upholding the principle of free speech in practice, if we look after those opinions branded extreme, then the mainstream will look after itself.

Free speech is more important than hurt feelings. It is a sorry sign of the times that such a statement might seem outlandish to some. As recently as 1999 David Baugh, a leading black American civil liberties lawyer, defended a Ku Klux Klan leader who had been charged after a cross-burning, gun-toting rally. The attorney

assured the jury that he was well aware that his client and the KKK hated black men like him. But that, Baugh argued, did not alter the racist's free-speech rights: 'In America, we have the right to hate. And we have the right to discuss it.'<sup>5</sup>

Baugh lost that cross-burning case on a point of law. Today he might be widely considered to have lost his mind. Yet he was right. In a civilised society, if we are talking about thoughts and words – however vitriolic – rather than violent deeds, all must be free to hate what or who they like, whether that means Muslims, Christians, bankers or Bono. To seek to ban the right to hate should be seen as no less an outrageous interference in the freedom to think for ourselves than a tyrant banning the right to love. The best way to counter hatreds and ideas we despise is not to try to bury them alive, but to drag them out into the light of day and debate them to the bitter end.

There is a good reason why it's important to remember the meaning of both Free and Speech, however uncomfortable they might make us. Because the third thing we tend to forget about free speech is that it is the most important expression in the English language. Free speech is a key to unlock the door to much that we hold dear.

To borrow a phrase from the techies, free speech might be called the 'killer app' of civilisation, the core value on which the success of the whole system depends. It is worth reminding ourselves of what makes free speech so all-fired important that every other right or claim should have to get in line behind it.

Freedom of thought and of speech is part of what makes us unique as modern humans. The ability consciously to formulate and communicate ideas is one of the things that separates us above all from the animal kingdom. Free speech is the link connecting the individual and society. The essence of our modern humanity is to be able to think freely and rationally, but also to say what you think, to engage with and try to persuade (or be persuaded by) other people.

Free speech is the voice of the morally autonomous individual, nobody's slave or puppet, who is free to make his or her own choices. It is the spirit of the age of modernity on full volume, first captured more than 350 years ago by the likes of Spinoza, the great Dutchman of the Enlightenment, who challenged the political and religious intolerance that dominated the old Europe and set the standard for a new world by declaring that 'In a free state, every man may think what he likes and say what he thinks.'<sup>6</sup>

Free speech is not just about individual self-expression. It is the collective tool which humanity uses to develop its knowledge and understanding, to debate and decide on the truth of any scientific or cultural issue. Free speech is also the means by which we can bring democracy to life and fight over the future of society, through political engagement and the battle of ideas.

Free speech is not just a nice-sounding but impracticable idea, like 'free love'. It has been an instrumental tool in the advance of humanity from the caves to something approaching civilisation. It is through the exercise of free speech and open debate that individuals and societies have been able to gain an understanding of where they want to go and why. The open expression of ideas and criticism has often proved the catalyst to the blossoming of creativity.

That's why history often suggests that the freer speech a society has allowed, the more likely it is to have a climate where culture and science could flourish. Even before the modern age of Enlightenment, those past civilisations that we identify with an early flowering of the arts, science and philosophy had a disposition towards freedom of thought and speech that set them apart.

Ancient Greece, which laid foundations of civilisation in everything from architecture and theatre to mathematics and medicine, was the society where philosophers such as Socrates, Plato and Aristotle lit up the Athenian practice of free speech, or *parrhesia*. (Though even in democratic Athens, as we shall discuss later, Socrates was ultimately executed for taking free speech 'too far'.)

Several hundred years later the era now thought of as the Golden Age of Islamic civilisation, in the Middle East and Spain, was marked by important advances in the arts, education and science. Contrary to the image we might have of an Islamic caliphate today, many of those gains were made possible by a more tolerant attitude towards alternative ideas and foreign philosophies than prevailed under the conformism of the Christian empires of the Middle Ages.

The advance of free speech has been key to the creation of the freer nations of the modern world. Every movement struggling for more democracy and social change recognised the importance of public freedom of speech and of the press for articulating their aims and advancing their cause.

In 1649, at the time of the English Revolution and the execution of King Charles I, the radical Leveller movement petitioned parliament to end all state licensing of the press and allow everybody freedom to publish. Not because John Lilburne and the Levellers thought it would be a nice idea, but because these pioneers of the modern struggle for democracy understood the importance of press freedom and free speech to furthering the people's fight for liberty. As the Levellers' petition declared, 'the liberty [of the press] appears so essential unto Freedom, as that without it, it's impossible to preserve any Nation from being liable to the worst of bondage. For what may not be done to that people who may not speak or write, but at the pleasure of licensers?'<sup>7</sup>

Those fighting for American independence from British colonial rule in the eighteenth century also grasped that their democratic revolution required freedom of speech and debate to succeed. The wild pamphleteering and speech-making of the era played a central role in spreading ideas and information, in the forming of American revolutionary associations and forging of a new nation. In 1775, in one of the most famous speeches of the revolutionary era, Patrick Henry called upon his fellow delegates to the Virginia Convention to forget about going cap-in-hand to the Crown and

instead stand and fight their oppressors – 'Give me liberty or give me death!' Henry spelled out the need for free speech to lay bare the truth of what was at stake, even if it risked offending or outraging his more moderate peers: 'I consider it as nothing less than a question of freedom or slavery; and in proportion to the magnitude of the subject ought to be the freedom of the debate. It is only in this way that we can hope to arrive at truth, and fulfill the great responsibility which we hold to God and our country. Should I keep back my opinions at such a time, through fear of giving offence, I should consider myself as guilty of treason toward my country, and of an act of disloyalty toward the majesty of heaven, which I revere above all earthly kings.'<sup>8</sup>

One sure sign of the historic importance of free speech to liberation struggles is the instinctive way that tyrants have understood the need to control it to preserve their power. Thus during the struggle over slavery in America in the nineteenth century, the slave-owning classes did all they could to suppress any public discussion of slavery as a means of keeping control. Southern states outlawed criticism of slavery and used gag rules to prevent the US Congress in Washington even discussing anti-slavery petitions. The Alabama slave code of 1833 decreed that no black person was to 'preach to, exhort or harangue any slave or slaves or free persons of color, unless in the presence of five respectable slave-holders'. The punishment for speaking publicly without supervision was thirty-nine lashes for a first offence, and fifty lashes for each offence thereafter.<sup>9</sup> As the anti-slavery campaigner (and former slave) Frederick Douglass said in 'A Plea for Free Speech in Boston', after an 1860 meeting to discuss the abolition of slavery was attacked by supposed gentlemen in that civilised northern city, 'Liberty is meaningless where the right to utter one's thoughts and opinions has ceased to exist. That, of all rights, is the dread of tyrants. It is the right which they first of all strike down. They know its power ... Slavery cannot tolerate free speech. Five years of its exercise would banish the auction block and break every chain in the South.'<sup>10</sup>



Those striving for freedom and democracy more than 150 years later still understand the centrality of free speech to their struggles. Charter 08, a modestly framed call for political reform in China signed by more than 300 Chinese intellectuals and 'prominent citizens' in 2008, recognises that its proposals for more legislative democracy and greater human rights must rest on 'Freedom of Expression': 'We should make freedom of speech, freedom of the press, and academic freedom universal, thereby guaranteeing that citizens can be informed and can exercise their right of political supervision.' It calls for the abolition of 'political restrictions on the press' (shades of the Levellers) and of 'the crime of incitement to subvert state power' and concludes: 'We should end the practice of viewing words as crimes.'<sup>11</sup> In recognition of the Charter having hit an authoritarian sore spot, the Chinese authorities duly locked up its author.

All of these and many more history-making movements and individuals have demonstrated that if not for the fight for free speech, other freedoms would not be possible. Without the ability to argue your cause there would be no way to clarify your aspirations, make clear your demands, or debate how best to strive for them.

More recent struggles for freedom and equality in Western societies were just as intimately bound up with freedom of speech. The demand for free speech, for the right for their voices to be heard, has proved central to the struggles for women's emancipation, gay liberation and racial equality in the UK and US. There is a grim irony in the fashion, examined in the next chapter, for feminist, trans or anti-racist activists today to demand restrictions on free speech as a means of protecting the rights of the identity groups they claim to represent. Without the efforts of those who fought for more free speech in the past, these illiberal activists would not be free to stand up and call for less of it in the present.

We should remind ourselves, not only of why free speech has been so important to humanity, but of what it has meant in prac-

tice. Free speech at its best has involved the freedom to challenge the most ardent orthodox beliefs of the day, regardless of whose toes that might tread on. That is why the essence of free speech is always the right to be offensive. Those who would deny the right of others to break taboos, offend against the consensus and go against the grain of accepted opinion would do well to remember where we might be without it.

Look at how the likes of Bruno and Galileo were persecuted by the Inquisition in the sixteenth and seventeenth centuries for offering and endorsing scientific insights that we take for granted today. Anybody suggesting now that the Sun circles the Earth would be accused of insulting our intelligence. Yet even four centuries ago, the notion of God's Earth orbiting the Sun as a mere satellite and acolyte was among the most offensive ideas possible to Europe's ruling religious and political powers, and they condemned those who suggested it as heretics. It would be hard to imagine anything more offensive in twenty-first-century Western society than trying to deny votes to women or demanding the reintroduction of legalised slavery. Yet not so very long ago those who opposed such oppression were being arrested and worse for offending against the state or nature in our Anglo-American civilisation.

Let's be clear on what we are talking about here. The right to be offensive is not about the freedom to fart in a restaurant, or to yell drunken abuse in the street, or to direct personal insults at the Pope's or anybody else's mother. We should be wary of self-centred souls who wish to turn petty matters of personal interaction into major issues of political debate. They bring to mind the exchange in *The Big Lebowski*, where serial offender Walter Sobchak, having been asked to be quiet at the coffee house, responds in high dudgeon: 'Excuse me, dear? The Supreme Court has roundly rejected prior restraint!' However, Walter's companion The Dude puts him straight: 'This isn't a First Amendment issue, man.'<sup>12</sup> Good manners generally cost nothing in terms of free speech either – although we should resist demands to tone down an argument in the name of

civility. Heat and passion are important. Being honest and above all clear in what you say, however, is usually more important than just being loud or lairy. Being passionate about your argument need not necessarily involve being profanely rude to the other side (although it might).

But the right to be offensive is really about what you say rather than the way you say it. It is about having the liberty to question everything; to accept no conventional wisdom at face value; to challenge, criticise, rubbish or ridicule anybody else's opinion or beliefs (in the certain knowledge that they have the right to return the compliment to you).

This is what makes the right to be offensive so invaluable. It is why it has been key to human progress and the advance of our collective culture and society through modern history. We would do well to remember that it is the cutting edge, the beating heart, of freedom of speech and of the press. What, after all, would be the point of those freedoms if you were only at liberty to say what somebody else might like? How could it be a right if it was withdrawn the moment you choose to use it to say what others consider wrong?

Thus has free speech become the voice of individual choice, scientific truth, and political progress. If we forget why free speech matters so much to our society, and allow its standing to be sunk in a deluge of ifs and buts and not-too-fars, we risk undermining those foundations of civilisation and ruining any prospects of building on them further.

Remembering why free speech matters so much should lead us to demand more of it rather than less. Even before concerns about free speech were brought to a head by the *Charlie Hebdo* massacre and the Copenhagen shooting, the truth is that there was not enough freedom of speech in the UK, US or Europe. And things have been getting worse.

In recent years it has been easy for civil liberties lobbyists in the UK and Europe to appear rather smug about free speech on the

home front. They could go about banging the drum on behalf of free-speech martyrs in China or Iran, whilst pointing out that, in our societies, freedom of expression had been made safe by the European Convention on Human Rights (ECHR), incorporated into UK law under Tony Blair's New Labour government by the 1998 Human Rights Act, which enshrines the right to freedom of expression.

In fact the ECHR and the Human Rights Act embody the attitude of 'free speech, but ...'. As the leading UK textbook on civil liberties and human rights says, the legal conventions 'recognise that the exercise of these freedoms comes with special responsibilities, and so may be subject to restriction for specified purposes'.<sup>13</sup> As soon as you attach legal responsibilities, never mind special ones, a freedom ceases to be a right.

That problem is spelt out by a glance down the list of the 'specified purposes' for which the ECHR, supposed stone tablet of European liberalism, concedes that freedom of expression can legitimately be restricted:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>14</sup>

It is enough to make you wonder what might escape such a broad net of 'conditions, restrictions or penalties'. The 'public safety' and the 'protection of health and morals', for example, sound like the sort of catch-all excuses for restricting free speech

beloved of dictators down the decades. Once a formal commitment to freedom of expression is hedged around by so many caveats, it appears as a triumph for the alleged responsibilities over the actual right. It is the restriction of speech in the name of freedom. And it is ultimately up to the learned judges of the UK and European courts, of course, to decide just how much liberty to allow.

In the US, the First Amendment to the Constitution sets out a far clearer commitment to free speech, stating baldly that 'Congress shall make no law ... abridging the freedom of speech, or of the press.' Those fourteen words set a global gold standard for free-speech law that has still to be equalled anywhere in the world more than 200 years later.

Some of us in the UK get called 'First Amendment fundamentalists' for arguing that we could do with a First Amendment-style hands-off attitude to free speech over here. It is not meant to be a compliment, but to imply that there is something of the dangerous extremist about embracing the spirit of the First Amendment. That is a sign of the times.

Yet from the point of view of this free-speech fundamentalist it is arguable that even the First Amendment does not take us far enough. Even in its own legalistic terms, it leaves the interpretation of freedom for the whole of American society in the hands of the nine Supreme Court justices. It is for them alone to judge, for example, whether what somebody says crosses the line from protected speech to 'fighting words' which are granted lower protection. As that same authoritative legal textbook observes with lawyerly understatement, this 'still leaves the right to free speech somewhat exposed'.<sup>15</sup> As we shall see, there have been times in not-so-distant history, such as around the First World War and during the Cold War, when the Supreme Court generally took a dim view of the free-speech rights of any radical political views and dismissed those it deemed to pose a 'clear and present danger' to the status quo.

Once you step outside the legal confines of the courtroom, the power of the First Amendment to protect free speech in America is severely limited. The constitutional ban on legal censorship by the state has not prevented the proliferation of informal censorship and bans across US college campuses, for example.

Those who imagine the US safe from all this behind the all-important First Amendment forget that, even in America, the cultural tide appears to be turning against free speech. We might all do well to recall the words of the US judge Learned Hand who, speaking in 1944 at a wartime rally for liberty in New York's Central Park, warned against investing 'false hopes' in the paper constitution and the courts to protect freedom: 'Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.'<sup>16</sup>

Free speech may not have died in the hearts of the men and women of the West, but it is ailing badly. The combination of official censorship, unofficial censorship and self-censorship is reducing the scope for debate, creating a climate of stultifying conformism and the fear of straying from the straight and ever more narrow. Free speech is left looking like that 'free-range' chicken, fenced in and approaching its use-by date. If we want to live in a truly tolerant world we should reject every demand to cage, censor, parole or punish speech. No matter how sympathetic a case the censors make, and however much you might abhor the words others use.

Behind the universal lip service paid to the principle, if we forget the true meaning of free speech the losers will not only be those relatively few who find themselves banned or prosecuted for 'speech crimes'. We will all be the poorer for allowing the creation of a culture in which people become scared to say what they mean, development of knowledge is stifled, political debates effectively suspended, and where, as the chapters in this section show, from the university campus to the internet we are living with a bland, 'safe' environment in which anodyne becomes the new normal.

It's time to expose the free-speech fraud of those who claim they support it in principle yet dump on it in practice, and to take a stand for unfettered free speech. That will involve a considerable leap in imagination from where we are. Our society has forgotten why free speech should count above other concerns. Such is the lack of faith in freedom that it is not unusual to hear free speech talked about as some kind of trick, something that people 'hide behind' to pursue a different agenda. It is now considered almost unimaginable that anybody could support free speech without a long list of exceptions.

As the political director of Huffington Post UK stated in matter-of-fact style in the aftermath of *Charlie Hebdo*, 'None of us believes in an untrammelled right to free speech. We all agree there are always going to be lines that, for the purposes of law and order, cannot be crossed; or for the purposes of taste and decency, should not be crossed. We differ only on where those lines should be drawn.' Unfortunately his presumption was pretty well justified.<sup>17</sup>

Some of us do, however, believe in 'an untrammelled right to free speech' where opinions and ideas are concerned, regardless of whether or not they might be to our or somebody else's taste. Much of this book is devoted to challenging the arguments for drawing more sweeping lines through free speech for the alleged purposes either of law and order or of 'taste and decency'.

To turn things around means dealing with new opponents of free speech today. The next chapter examines the creeping problem of the silent war on free speech – a war fought by those who claim to support free speech, but ... The battlegrounds are many in this war. It is primarily a fight, not just against censorship, but conformism; not just to end restrictive laws, but to free the mind of society.

As the Victorian genius J. S. Mill says, in his landmark essay *On Liberty*, 'Protection, therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of soci-

ety to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them'.<sup>18</sup> The consequence of what we have forgotten about free speech has been to give a free hand to those who wish to impose conformist ideas as 'rules of conduct on those who dissent from them'. However it is presented and excused, the result of infringing on free speech is always to close down discussion and bland everything out in a world of grey conformism.

No doubt the awful truth is that a world in which we enjoy free speech will contain ugly, difficult and hurtful ideas as well as good and inspiring ones. But the alternative to free speech is inevitably worse. That is why free speech is always a price worth paying, and much too important to pay mere lip service to.