



Martin Rhonheimer

## Freedom of Expression and Democracy

*The following is the opening lecture of Austrian Institute President, Martin Rhonheimer, which was given at the Regional Conference 2016 of the European Students for Liberty in Heidelberg. Its topic was the freedom of expression. The author discusses this right's historical roots, its connection with the modern constitutional state and the civic right of resistance, and, finally, the dangers to free expression that we still face today, especially the danger of political correctness.*

**F**reedom of expression is a fundamental right without which a free and democratic society cannot exist. We have all been raised in this culture of freedom, and that is why we take it for granted. Because it is self-evident to us, we may not have thought about—or we may have forgotten—what exactly are its prerequisites, and what can jeopardize it.

On October 29<sup>th</sup>, 2016, the President of the Austrian Institute, Martin Rhonheimer, gave the opening lecture at the regional conference of the Students for Liberty in Heidelberg (Neue Universität). We document it below. More photos can be found on Facebook.

### Freedom of Expression: A Product of the Enlightenment

It is commonly said that the right to freedom of expression is a product of the Enlightenment (taken in the broadest sense). As an approximation, that is accurate, especially with respect to its present form, and if one is not looking for a deeper account of its origins.

However, the right to freedom of expression is not simply a product of the Enlightenment, but

also a product of modern liberal constitutional thinking, which begins with the struggle for the fundamental right *par excellence*: the right to not be arrested arbitrarily without trial—the so-called right of *habeas corpus*. For modern constitutional thought, this right of the citizen is a *sine qua non*. It is a right that has its roots in the Middle Ages. Only under this shelter of the “rule of law,” against the arbitrariness of state power, can the right to freedom of expression and other freedoms develop.

The confessional wars that followed the Reformation—which were ultimately more about political interests than religion—deepened awareness that freedom of expression is an essential component of a peaceful and flourishing civil coexistence. The English philosopher Thomas Hobbes, against the backdrop of what was for him the traumatic experience of the English Civil War, was still of the opinion that the sovereign—in the service of peace—had the right to determine by law which disputed opinions were acceptable, and to demand from citizens at least external agreement to the prevailing doctrine—i.e. that lip service be paid to it.<sup>1</sup>

<sup>1</sup> Thomas Hobbes, *Leviathan*, e.g. ch. 40; ch. 43.

A little later in the Calvinist Netherlands, the philosopher Baruch Spinoza countered the Englishman Hobbes with precisely the opposite view: without freedom of expression there can be no peace. Spinoza took the view that “the purpose of the state is really freedom,” and that is why the state becomes a tyrant if it does not grant freedom of expression. It is precisely in democracy that people are governed in such a way “that despite apparently different, even opposing opinions, they still live together in harmony.”<sup>2</sup>

John Locke’s liberalism, based in contract theory, also opposed Hobbes’s unilateral peace doctrine: Locke shared Hobbes’s view that a state of social peace requires a state authority able to enforce judicial decisions in disputes. But every government is at the service of its citizens and can be deposed if it violates their fundamental interests—life, liberty, and property. In other words, society as a whole has a right to resist the abuse of power.<sup>3</sup>

Immanuel Kant, who is considered the true representative of the Enlightenment in the German-speaking world, could therefore already build on a longer tradition when he—in the name of the Enlightenment—defended the “freedom of the pen.” The state, according to Kant, had to enforce its monopoly on power in the interest of peace, and therefore—he agreed with Hobbes—it had to strictly reject any right of resistance on the part of citizens. In other words: there must be order—even if, according to Kant’s legal thinking, it must be a liberal order. The guarantor of an order of freedom, however, is a state monopoly on the use of force, which cannot tolerate any resistance. However, and this is where Kant

criticizes Hobbes, rulers can treat citizens unjustly. What is needed, therefore, is the “freedom of the pen”—that is, the freedom of philosophers or intellectuals to use their criticism as a mirror, in the sense of public opinion, to be held up to the public authority: thereby putting that authority in its place, denouncing abuses, and calling for reforms.<sup>4</sup>

Here we can see both the greatness and the limitations of the Enlightenment: its greatness consists in its uncompromising commitment to freedom of thought and freedom of public expression. At the same time, however, we discover (at least in the German Enlightenment, but also in the French Enlightenment) a certain naivety towards the problem of power. It was an illusion to think that philosophers and professors could successfully defend freedoms or—as Diderot tried with the Russian Empress, Catherine the Great—convince absolute monarchs with their enlightened ideas.

### The Anglo-Saxon Legal Tradition of the “Rule of Law”: Freedom of Expression and the Right of Resistance

The Anglo-Saxon concept of the “rule of law,” which was characteristic of the classical liberal constitutionalism of the American Revolution, and the first phase of the French Revolution, proved to be more realistic and promising for the future. It was described by the French philosopher Montesquieu and the English constitutional theorist William Blackstone as a system of “separation of powers” and “checks and balances.”<sup>5</sup> It was not freedom of the pen or the word (of professors) that was fundamental here, but institutional safeguards

<sup>2</sup> Baruch Spinoza, *Theological-Political Treatise*, ch. 20.

<sup>3</sup> Cf. John Locke, *Second Treatise on Government*.

<sup>4</sup> Immanuel Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, A 264 ff.

<sup>5</sup> Cf. Montesquieu, *De l’Esprit des Lois*, Book XI, ch. 6.

anchored in common law—in particular the independence of judges—which forms the backbone of the rule of law. These safeguards, as well as the idea of the constitutional state (the subjugation of the exercise of power to the law) are actually nothing other than the institutionalization of the right of resistance. That is, they constitute the right of the citizen to claim fundamental rights from those holding state power, to have them institutionally secured and to be able to sue in court. This means that individual freedom has precedence over state sovereignty, thus restricting the latter in favor of the former, and subjecting it to law.

Within the framework of this liberal, contractualist approach, freedom of expression is an essential requirement. As a result of the gradual democratization of the bourgeois-liberal constitutional states, and the consequent increase in the importance of public opinion as a real power factor and oppositional authority, the right to freedom of expression, which had previously only been demanded as the right of an elite, became a fundamental democratic right. This makes sense, because democracy needs a public sphere of discussion, which is itself a force within the state and thus has a decisive function in the interplay of “checks and balances.” For that very reason, this public sphere of discussion must not be usurped, manipulated, or controlled by the state.

Thus, we come to a first conclusion: there is a constitutive connection between freedom of expression and the right of resistance. The recognition of this connection and the subsequent demand for freedom of expression on this basis are the lasting merits of the Enlightenment.

## Resistance Can Only Legitimize Itself in the Name of Justice

For the Enlightenment, however, it was also clear that the right of resistance developed on the basis of the fact that there are standards of right and wrong that even a ruler must observe, and which limit his power and authority to govern. Without this conviction, a right of resistance becomes pointless, because morally legitimate resistance can only ever be made in the name of justice. Otherwise it would be merely an attempt to replace the power of others with one’s own power.

We admire those who resisted the Nazi regime and sacrificed their lives for it, not because they simply challenged power, asserted their individuality, or fought for their own “freedom.” We admire them and are grateful to them because they did so in the name of justice, defending not only their own freedom, but the freedom of all.

This fact is the very foundation of the liberal concept of freedom of expression. Anyone who claims that it is based on relativism or on the view that there is nothing objectively right, that the distinction between right and wrong is arbitrary and only subjective, has not understood the deepest motivations of the European Enlightenment, and misjudges its historical roots.

This is particularly important today: contemporary politicians have proclaimed the “primacy of politics.” Law is thus subordinated to day-to-day political requirements—think of the euro rescue policy or the monetary policy of the central banks. This is a creeping danger to freedom in general: including, as we shall see, freedom of expression.

## The Medieval Roots of the European Legal Tradition and the Modern Culture of Discussion

The modern liberal constitutional state is thus, as I said, the institutionalization of the right of resistance, so to speak. And it comes from the Anglo-Saxon tradition of the “rule of law.” But English constitutional history does not begin in the modern age—and certainly not in the Age of Enlightenment. The Enlightenment philosopher Montesquieu recognized that the development of the English constitution had its origins in the Middle Ages; he wrote that it originated in the “forests of ancient Germany.” However, the tradition of the separation of powers does not originate in the Germanic forests, but in the British Isles. But it did not take place in total isolation: the English King Henry II (originally Duke of Anjou, i.e. a Frenchman) had studied civil—Roman—and ecclesiastical law at the ecclesiastical University of Bologna. He founded the Universities of Oxford and Cambridge and, to check the feudalistic and anarchistic power of the barons, installed the royal courts of justice, through whose judicial decisions—even in conflict with the Church—common law was enforced throughout England. The English constitutional development was also based in common law. The later attempt by Henry’s son and successor, John, to enforce monarchical absolutism with papal backing and without a country, was to fail at the time because of the barons’ resistance. Against royal arbitrariness—and facing papal opposition—they forced the recognition of basic rights on the king in 1215 with the *Magna Carta Libertatum*. The Magna Carta thus became the first constitutional law of England. From then on, the King’s power was

based on the approval of the barons represented by Parliament and, from 1265 onward, that of the “commons,” namely, the civic representatives of the cities.

From there developed the groundbreaking idea that there must be a supreme judicial authority which, as in the last instance, must judge the legitimacy of the exercise of power according to criteria of right and wrong. It was that very function that the popes of the High Middle Ages claimed in the name of securing peace and justice. This soon led to conflict with the emerging territorial states and the claim of each to absolute sovereignty, a claim that could only be broken by later liberal constitutional thought.

The medieval church, however, became the great political and legal teacher of the west. It handed down the ancient legal culture and founded the modern one of Europe. In particular, it taught that justice takes precedence over sheer power. In the papal claim to be the supreme judicial authority, even for the exercise of worldly power, including that of kings and emperors, it laid the foundation for what we today call judicial review. Only under the protection of this legal culture could the idea of constitutionally protected rights of freedom, including the right to freedom of expression, become established over time.<sup>6</sup>

Moreover, there were the medieval universities, also created by the Church. They were corporations under their own rule and thus largely autonomous, academically free environments. Especially regarding topics of natural philosophy, practically everything could be advanced in this context, including the fact that the earth orbits the sun or that the human organism developed out of nature. In the

---

<sup>6</sup> See, regarding this and the following: Martin Rhonheimer, *Christentum und säkularer Staat. Geschichte – Gegenwart – Zukunft*. With a foreword by Ernst-Wolfgang Böckenförde (Freiburg i. Br.:

2012). See also: Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (Cambridge, MA: Harvard University Press, 2014).

medical faculty of the University of Bologna, human corpses were being dissected for scientific purposes as early as the 13th century. Since it was considered theologically-dogmatically safe—in contrast to the Islamic schools, the madrasa—any speculation or questioning of recognized authorities (as long as it was not about dogma) could be done on the level of natural philosophy. Thus, in the 14th century the Franciscan, and later Bishop, Nicolas of Oresme held the view that the earth might also revolve around the sun (which Thomas Aquinas had already considered possible a century earlier). We owe Nicolas of Oresme in particular for his criticism of the state's monopoly on money: he advocated the view that the minting of coins should be free for everyone and not a privilege of the powerful, who only abused it to enrich themselves. At which university could one teach such things with no fear of repercussions today?

The universities of the Christian Middle Ages enabled the gradual emergence of a culture of science, research, and debate, without which modern science and the enlightenment would never have been possible. Even German philosopher Herbert Schnädelbach (a fierce critic of Christianity and therefore under no suspicion of bias about this) says that the Enlightenment impulse had its foundations in Christian theology itself, because it had always also been “intra-religious enlightenment” (...) “in the sense of a reflection and rational elaboration of what was believed.”<sup>7</sup> That is true, and from it a theological culture of disputation developed, which through proposal and counterproposal sought the better argument for the understanding and justification of the faith. And for that purpose, it also included the

profane sciences, above all, philosophy. It was on this foundation that a recognition of the importance of free discussion could develop.

Such a culture of reflection was missing in the Muslim world. Where it appeared, as for instance with Ibn Rushd (Averroes), it became dangerous for its proponents: they were persecuted and finally, in the 13th century, Al-Ghazali's irrationalism, or hostility to reason, prevailed.<sup>8</sup> The Koran and the Shia were declared to be the only source of knowledge for right and wrong. All attempts to “understand” the faith now become blasphemy, for they restrict the freedom and inscrutability of God. That is to this very day Islam's most basic issue and is also the source of its difficulties with the right to free expression.

### Freedom of Expression Today: A Culture of Tolerance

What does all this mean for us today? I would like to break it down to a formula: The right to freedom of expression entails at least two things—a commitment to tolerance and the right to resist. Let us begin with the commitment to tolerance.

The liberals of the 19th century had the view, perhaps somewhat naïvely, that free discussion was the best way to find the truth. They were not relativists and generally did not believe that there was no such thing as truth. They just believed that no one had the right to impose what they considered to be truth—their own opinion—on others. That is the essence of a culture of tolerance, the foundation of a public and democratic culture of discussion.

---

<sup>7</sup> Herbert Schnädelbach, “Aufklärung und Religionskritik,” in *Religion in der modernen Welt. Vorträge, Abhandlungen, Streitschriften* (Frankfurt: 2009), 17.

<sup>8</sup> Regarding this point, see: Robert R. Reilly, *The Closing of the Muslim Mind. How Intellectual Suicide Created the Modern Islamist Crisis* (Wilmington, Delaware: 2010).



Today, tolerance is sometimes understood as an attitude that implies that there is no truth, and anyone who is convinced of the truth of his own views or the truth of his faith is intolerant. I think that this is a false understanding of tolerance. For free discussion depends precisely on convictions, or rather on people who believe their views to be true and correct, but who also believe that the only weapon with which they are allowed to represent these convictions is that of the better argument, and thus the “power” to gain the free consent of one’s interlocutor through arguments.

Tolerance therefore is not directed at opinions, views, or beliefs—in the sense of “everything is equally true” or “there is no truth”—but to persons. That is, to my interlocutors, who hold views that are different from mine and who defend these views with arguments, perhaps even trying to convince me. Tolerance is owed to the person who thinks differently from me, but it is not necessarily owed to their views. That is the only way democracy is possible.

Freedom of expression, and the civil right to it, is based on the notion that we believe that our fellow citizens have something to say and that they have the same right and freedom as we do to defend their own convictions. They should thus be able to do so without the State using its coercive power to set limits in the name of a higher truth, including a religious truth (except those limits necessary to maintain public order and protect the equal rights of all other citizens). On the other hand, in the name of tolerance and freedom of expression, it seems to me intolerant to demand that one’s fellow citizens have no convictions, that they believe in no truths, because that would be tantamount to obliging others to adopt one’s own, in this case relativist, worldview as the only correct one.

## The Rights to Freedom of Expression and Resistance

This is exactly what often happens in public debates. It shows that the right to freedom of expression has a lot to do with the right of resistance. The right to freedom of expression in public is, so to speak, the peaceful and friendly face of the right of resistance—even if such discussions may sometimes be fierce and passionate, and maybe this is sometimes how it has to be. That brings us to the second point.

Today the freedom of expression, understood as a right of resistance, is faced with a grave threat: the compulsion to be politically correct, that is, the pressure toward conformity in the expression of opinion: a pressure which can only be resisted at a high price. This not only undermines the right of expression, but often transforms it into its opposite, which is the obligation to agree to what the “majority” demands.

I am certainly not one of those who generally denounce today’s media as a “lying press” or who considers any form of expression, even the most primitive, to be legitimate. There are indeed limits posed by decency. Thus, there is also political correctness in a positive sense. Public criticism must not poison the well, meaning that it must not work by means of slander and suspicion or seek to destroy the dignity and good name of one’s political opponent. While one may use all the rhetorical means of persuasion, one must also observe the rules of decency, pay attention to the sensitivities of other people, and not demonize them. It is not, however, up to the state or the laws to ensure decency and good taste for citizens. Instead, it is up to the courts to hear complaints against the violation of personal rights, to judge them on the basis of the law and, if necessary, to help the injured parties claim their rights.

But there is also a dictated compulsion to political correctness, which is something quite different from decency and respect for one's opponent: namely, blind conformity, kowtowing, and cowardice.

### Threats to Freedom of Expression: The Compulsion to Be Politically Correct

Today, we are indeed experiencing a tendency to restrict freedom of expression through institutions that manage to enforce rules of permitted and prohibited expressions of opinion in public—these institutions, needless to say, are operating under the protection of the legally guaranteed right of expression. Sebastian Müller-Franken, professor of constitutional law who teaches in Marburg, Germany describes the rules of enforcing the conventions of political correctness in a nutshell. He writes:

The enforcement of the conventions that have been set forth here is the concern of the forces of public opinion, which know how to protect their standards and taboos, primarily by the threat that the deviant will self-isolate, i.e. by the mechanisms of the 'spiral of silence'. Since the guardians of the conventions are always strategically concerned with giving the discussion a moral charge through the lens of discrimination, the person who violates the convention is not simply in error but is indecent. Since hardly anyone can bear to be publicly denounced for immorality (...), this mechanism makes it no longer possible to have frank discussion in many areas. Since the invention of the Internet, swarm aggression in the form of an "outrage mob" has been unleashed to silence those who dare to openly refuse to acknowledge the rules of language. The goal is not to refute the opponent with arguments, but to silence him or her (our translation).<sup>9</sup>

---

<sup>9</sup> Sebastian Müller-Franken, *Meinungsfreiheit im freiheitlichen Staat. Verfassungserwartungen und*

The phenomenon is well-known. It would create no greater legal problem if it were not for the fact that the state itself plays a decisive role in enforcing such rules of political correctness. It does this by adopting and even enforcing language conventions shaped by political correctness in its sovereign area. It also does so by inevitably elevating such conventions to educational content in the state-funded education system, or even by using taxpayers' money to finance academic chairs—for example in the field of Gender Studies—at state universities, and on a large scale. In addition, the media, which are leaders in the enforcement of the rules of political correctness, are largely (at least in Europe) of a public nature, that is, they are institutions that are ultimately dependent on the state and financed by taxpayers' money—in other words, they are forcibly financed by the citizens. Quite apart from the fact that this is an abuse of power, it leads to a culture of public discourse that is one of collective control and forcibly leads to the self-censorship of citizens. This is particularly evident in the case of politicians who do not want to risk their reputation, and thus their career, and so—with few exceptions—they adapt to the mainstream.

This, I believe, is a deadly threat to freedom, because a democracy can thus be transformed, underhandedly and almost unnoticed, into a tyranny of the majority: a manipulated and, what's worse, self-manipulating majority of conformists, kowtowers, and dimwits.

This is not only about bans on speaking, but even more about bans on thinking. The restriction of freedom of speech and expression is a sign of authoritarian states; the imposition of bans on thinking, on the other hand, has the structure of totalitarianism, because it is intended to cover the innermost parts of the

*Verfassungsvoraussetzungen einer gefürchteten Freiheit* (Paderborn: 2013), 60f.

human being. Rousseau was the mastermind of such a “totalitarian” form of democracy. He believed that whoever is in the minority after a vote must also submit his thinking to the verdict of the majority, the *volonté générale*, and acknowledge that he was in error.<sup>10</sup> In this way, thinking that deviates from the majority opinion and the corresponding inner attitude are both censored. It is precisely in this way that the compulsion for political correctness also imposes bans on thinking: through the moral discrediting of minority opinions. Political correctness does not say “this or that view is right or wrong” but “this or that view is evil, immoral, undemocratic, lacking solidarity,” etc. This prevents discussion about “right” and “wrong,” “true” and “untrue,” and it poisons discourse. The strategy of political correctness thus becomes a strategy of exclusion through moralization and emotionalization. In such an environment, the right to freedom of expression loses its dignity and meaning. And in view of the increasing dependence of citizens on an ever more powerful state, this is a deadly danger for freedom—indeed, it is a “road to serfdom.”

### Liberal Resistance: Courage for a Liberal Utopia—with Reason and Moderation

Liberals, but especially young people, should resist such developments and the temptation to kowtow to them, and should avoid becoming conformists. Resistance is a good thing for young people. But it must be resistance with reason and moderation.

---

<sup>10</sup> Jean-Jacques Rousseau, *Du contrat social and Discours sur l'économie politique (de l'Encyclopédie, V)*; both in Jean-Jacques Rousseau, *Œuvres complètes III: Du contrat social, écrits politiques*,

Personally, I do not think much of an anarchist form of resistance, as it is manifested in the call for the abolition of the state. I know this call from the years that followed 1968 as the call of the New Left, of the Neo-Marxists: they dreamed an ideological dream of the “dying out of the state” and a society free of domination. That dream is now being cultivated again—albeit in a completely different form—by the so-called anarcho-capitalists, and it often unfolds in an angry and unobjective, even demagogic criticism of democracy that throws the baby out with the bathwater. This dream is a deception and dangerous illusion, as deceptive as the left-wing neo-Marxism of the student revolt of the late 1960’s and 70’s. In the stateless private-law society that anarcho-capitalists who call themselves “libertarian” dream of, there would be no public space, no citizens, and thus no civil and fundamental civic rights to invoke. Outside the existing contractual relations, no right could be claimed, not even the right to freedom of expression. In such a society there would only be owners and non-owners—and armed insurance companies competing for their customers. I think that, in the light of historical experience, such a return to an almost feudalistic society would be a horror scenario. It has little to do with classical liberalism.<sup>11</sup>

Classical liberals, including those who are young, should maintain a sense of proportion concerning the real prerequisites of freedom. This does not mean that a “liberal utopia,” as Hayek understood it, should not also be, as he describes it:

[A] truly liberal radicalism which does not spare the susceptibilities of the mighty [...], which is not

eds. Eduard Gagnebin and Marcel Raymond (Paris: 1964 and 1975).

<sup>11</sup> See the following review, well worth the read, by Bijan Nowrousian and Oliver Marc Hartwich: [Die Irrtümer des Hans-Hermann Hoppe](#).





too severely practical and which does not confine itself to what appears today as politically possible.

He continues:

We need intellectual leaders who are prepared to resist the blandishments of power and influence and who are willing to work for an ideal, however small may be the prospects of its early realization. They must be men who are willing to stick to principles and to fight for their full realization, however remote.<sup>12</sup>

It is precisely for this reason that we must defend freedom of expression against the pressure of conformity and the temptation to cower, but also without giving in to the temptation of a utopia that denies reality. Injustice and the fact that most of the ills that afflict our society are caused by the state and by politics

must be called by their names—even if it is uncomfortable for those who hold the levers of power, and even if it can sometimes have detrimental consequences for the critic. Thank God that freedom-loving people in our part of the today's world need not fear for life and limb. However, social ostracism may well be the price one has to pay for walking with one's head held high. That is precisely why networks and gatherings of like-minded people like we have here at this conference are so important. Encourage each other in your quest for freedom, but without forgetting that it must be a responsible freedom that should never exclude the question of what is good and true. ■

---

<sup>12</sup> F.A. Hayek, "The Intellectuals and Socialism," *The University of Chicago Law Review* 16 (1949): 417-433 at 432. It can be downloaded [here](#).



## About the author:

Martin Rhonheimer is Professor of Ethics and Political Philosophy at the Faculty of Philosophy of the Pontifical University of Santa Croce in Rome. He is co-founder and president of the Austrian Institute of Economics and Social Philosophy and lives in Vienna. He has published numerous books in various languages, including:

[Christentum und säkularer Staat. Geschichte - Gegenwart - Zukunft](#) (with a foreword by Ernst-Wolfgang Böckenförde), Herder, Freiburg i. Br. 2012, ISBN 978-3451306037, 480 pgs., € 29

[Homo sapiens: die Krone der Schöpfung](#). Herausforderungen der Evolutionstheorie und die Antwort der Philosophie. Springer VS, 2016, 288 pgs., ISBN 978-3-658-12074-0, EUR 49,99

[The Common Good of Constitutional Democracy: Essays in Political Philosophy and on Catholic Social Doctrine](#), Catholic University of America Press, Washington D.C., 2013, ISBN 978-0813220093, 535 pgs., \$44.95.

[The Perspective of Morality](#). Philosophical Foundations of Thomistic Virtue Ethics. Washington D.C.: The Catholic University of America Press, 2011. ISBN 978-0-8132-1799, 467 pgs., \$39.95.

[Personal Homepage Martin Rhonheimer](#)

## How to cite this paper:

Martin Rhonheimer, Freedom of Expression and Democracy, Austrian Institute Paper No. 12-EN (2016)

## Original version (online) and Download of the Working Paper:

<https://austrian-institute.org/en/blog/freedom-of-expression-and-democracy-opening-lecture-at-the-students-for-liberty-regional-conference/>

© Martin Rhonheimer, 2016

© Austrian Institute of Economics and Social Philosophy, Vienna, 2016