

## Exploring the boundaries of freedom

Free expression is a fundamental right in democracies, Raphael Cohen-Almagor argues in his latest book, *The Scope of Tolerance: Studies on the Costs of Free Expression and Freedom of the Press* (London: Routledge 2006). Here he outlines the major premises underlying the text which forms the last in a trilogy examining the boundaries of freedom

This is the third book in a trilogy that started with *The Boundaries of Liberty and Tolerance*,<sup>1</sup> and continued with *Speech, Media and Ethics: The Limits of Free Expression*.<sup>2</sup> All three are concerned with boundaries and are interdisciplinary in nature. While the first was in the fields of political science, philosophy and law, the second and third are in the fields of communication, applied ethics and law. The three books supplement each other and together aim to establish a coherent and comprehensive study on the intriguing issue of limits to free expression.

Like every young phenomenon, democracy needs to develop gradually, with great caution and care. Since democracies lack experience, they are uncertain how to fight down explicit antidemocratic and illiberal practices. Abundant literature exists about the pros of democracy, the value of liberty, the virtue of tolerance. Liberal thinkers wish to promote liberty and tolerance; urge governments not to apply partisan considerations that affirm principally their own interests and conceptions; seek ways to accommodate different conceptions of the good, to reach compromises by which democracy will respect variety and pluralism. Much less in comparison has been written in the field of political theory about the intricate issue of the appropriate scope of tolerance. This trilogy attempts to fill this lacuna and to offer tools for thinking and for practice in dealing with harmful expressions.

### Underlying premises

The underlying premises of the three books are:

- *First*, objection to the liberal assumption of

universalism. The hypotheses advanced and the conclusions reached are limited to modern democracies emerging during the last century or so. I believe that there are some basic universal needs that all people wish to secure such as food, raiment, and shelter. I believe that sexual drives are universal and that people need to have some sleep to be able continue functioning. I also believe that we should strive to universalize moral principles. But sociologically speaking we cannot ignore the fact that universal values do not underlie all societies. Some societies reject the moral notions of liberty, tolerance, equity, and justice that liberal democracies promote. Thus my concern is with liberal democracies which perceive human beings as ends and which respect autonomy and variety. The arguments are relevant to other countries, but because non-democratic countries do not accept the basic liberal principles, because their principles do not encourage autonomy, individualism, pluralism, and openness, and their behaviour is alien to the concepts of human dignity and caring, one can assume that the discussion will fall on deaf ears. Non-liberal societies, based on authoritative conceptions and principles, deserve a separate analysis.

- *Second*, free expression is a fundamental right and value in democracies. It is the freedom of the individual to realize herself, to form a worldview and an opinion by giving flight to her spirit. It is the freedom of the individual and the community to bring truth to light through a struggle between truth and falsity. The underlying assumption is that truth will prevail in a free and open encounter with falsehood. Furthermore, freedom of expression is necessary for keeping the vitality of beliefs. It is the freedom to exchange opinions and views in a spirit of tolerance, with respect to the autonomy of every individual, and to persuade one another in order to strengthen, secure and develop the democratic regime. Freedom of expression is crucial to indicate causes of discontent, the presence of cleavages, and possible future conflicts.
- *Third*, one of the dangers in any political system is that the principles that underlie and characterize it may, through their application, bring about its destruction. Democracy, in its liberal form, is no

---

exception. Moreover, because democracy is a relatively young phenomenon, it lacks experience in dealing with pitfalls involved in the working of the system. This is what I call the 'catch' of democracy. The freedoms the media enjoy in covering events are respected as long as they do not imperil the basic values that underlie democracy. Freedom of speech is a fundamental right, an important anchor of democracy; but it should not be used in an uncontrolled manner.

#### **Striking a balance between freedom and harm**

- Thus, the *fourth* premise holds that – generally speaking – there is a need to strike a balance between the right to freedom of expression and the harms that might result from a certain speech. It is argued that the right to exercise free expression does not include the right to do unjustifiable harm to others.
- In this context, the *fifth* premise notes that in the liberal framework, the concept of 'rights' is understood in terms of a need that is perceived by those who demand it as legitimate and, therefore, the state has the responsibility to provide it for each and every citizen. Rights are primary moral entitlements for every human being. However, the claim that citizens have rights that the state or the government is obligated to guarantee does not mean that the state may not, under certain circumstances, override these rights. Citizens have a right to freedom of expression, but the state can limit that right in order to prevent a threat to public order, the security of the state, or third parties in need of protection (such as children). Rights are costly, and someone must pay for them. Once we recognize that rights have costs, we can and should ask about the justifications for bearing the costs, weighing them against the harms inflicted upon society as a result of a wide scope of tolerance. While recognizing that as humans we have the need to express ourselves and, therefore, suppressing speech in itself is a form of damage, we should also inquire about the justifications for tolerating the damaging speech and whether these are weighty enough. We should examine how serious is the 'democratic catch' and whether it might seriously harm a certain group of people or endanger democracy.

- *Sixth*, democracy and free media live and act under certain basic tenets of liberty and tolerance from which they draw their strength and vitality and preserve their independence. Two of the most fundamental background rights underlining every democracy are respect for others and not harming others. They should not be held secondary to considerations of profit and personal prestige of journalists and newspapers. Each individual is conceived as a bearer of rights and a source of claims against other persons, just because the resolution of the others is theirs, made by them as free agents. To regard others with respect is to respect their right to make decisions regardless of our opinions of them. We simply assume that each of us holds that our own course of life has intrinsic value, at least for the individual, and we respect the individual's reasoning, so long as she does not harm others.

#### **Power with responsibility**

- *Finally*, indeed, the role of the media is not merely to report what 'is there' and to 'further truth'. Along with the power the media possess come responsibilities of the media to their audience, their profession, and to democracy that enables their functioning.

*The Scope of Tolerance* is about the limits of tolerance and the costs of freedom of expression. The concept of tolerance and its legitimate scope lies at the centre of analysis. It considers problematic expressions that require society to pay a certain price if tolerated. The analysis includes discussions on media invasion into one's privacy; offensive speech (an important and neglected issue); incitement; hate speech and Holocaust denial, and finally media coverage of terrorism.

The book's primary aim is to formulate precepts and mechanisms designed to prescribe boundaries to freedom of expression conducive to safeguard democracy. This interdisciplinary study combines theory and practice, examining the issues of contention from philosophical, legal and media perspectives. Its methodology involved extensive literature survey (books, journal and newspapers articles, classified documents) as well as interviews with experts in media ethics, constitutional law and political extremism in Israel, the United Kingdom, Canada and the United States.

---

The book is dedicated to two friends who died much too early. Gary Schwartz, of UCLA School of Law, and Rafi Livni, who was a physician in several Israeli hospitals, were people who readily contributed to the well-being of their respective societies. Their lives' projects were cut unexpectedly, and the world lost two humanitarians who cared more for others than for themselves. I miss them and cherish their memories.

#### Notes

1 Gainesville, FL: The University Press of Florida, 1994

2 Houndmills and New York: Palgrave-Macmillan, 2001, 2nd ed. 2005

#### Note on Contributor

Raphael Cohen-Almagor is the founder and Director of the Center for Democratic Studies, University of Haifa, Mount Carmel, Haifa 31905, Israel. His publications include *The Boundaries of Liberty and Tolerance* (1994; Hebrew 1994, 1999), *The Right to Die in Dignity* (2001), *Speech, Media and Ethics* (2001, 2005; Turkish 2002), *Euthanasia in the Netherlands* (2004), and *The Democratic Catch* (forthcoming, Hebrew). He is the editor of several other books, among them *Liberal Democracy and the Limits of Tolerance: Essays in Honor and Memory of Yitzhak Rabin* (2000), and *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin* (2000). He has also written two poetry books (in Hebrew): *Middle Eastern Shores* (1993), and *Travels* (forthcoming). Phone: +972-4-8249-785; fax: +972-4-8249-836. Email: rcohen@univ.haifa.ac.il