

Freedom of expression

Western value or precondition for science and democracy?

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(1) **Background – why, how, who?**

Our theme is freedom of expression. We may ask: *Why*, once again? The immediate answer: not least because of recent events and urgent cases. Four points, as a reminder:

There are numerous cases related to *religion*. Mind the attack on Charlie Hebdo in Paris in January 2015, the attack in Copenhagen a month later, and the violent reactions (in 2006) on the Mohammad cartoons in Jyllandsposten (in 2005). Catchwords for these events are Islam and terrorist attacks. Among the catchwords in the debate are “offense of religious feelings” and “utterance responsibility”.

There are cases related to *authoritarian regimes*, for instance Turkey, with Erdogan who tries to restrict public criticism, China with recent restrictions, and Russia with Putin and his control

of media, not to mention countries like Saudi Arabia and Pakistan where utterances seen as blasphemous are severely and brutally punished.¹

Less spectacular, but still important, are cases related to *workplaces*, such as whistleblowers versus loyalty to one's institution, in cases when the prestige or the economic interests are at stake, be it in hospitals, in the police, in schools, in ministries, or in the media and other market-based enterprises.²

Then there are cases where *economic forces* and *new technologies* tend to weaken some of the preconditions for open and enlightened public discourse. Catchwords are new technologies and commercialization of media, factors that lead to increased usage of "social media", often with anonymous and short interventions, without alternative and contradicting views, also with "fake news", and with commercialized journalism and thus with "strategic communication",³ in contrast to the ideal of open and enlightened communication and will-formation.⁴

How to conceive and how to justify freedom of expression in our world today? That is our question. How to cope with this question? How to answer it? Our approach is philosophical, focusing on normative justification and on conceptual controversies – on the one hand, by emphasizing the importance of normative justification, especially in terms of arguments from institutional and speech-act inherent presuppositions, on the other, by discussing cases of (relative) conceptual adequacy and inadequacy.⁵ In professional terms, we shall look at revised versions of transcendental-pragmatics and normative modernization theory, and we shall look at discussions of ambiguous and controversial notions such as personal autonomy and indoctrination, offense and utterance responsibility.⁶

This approach does not imply a neglect or rejection of other attempts at a normative justification of freedom of expression, be it consequentialist or value-based. Our basic justification of freedom of expression, in terms of various "presuppositional arguments", does not neglect or deny other serious arguments for freedom of expression, but "comes in addition" to these other arguments. In so doing, it contributes to an overall strengthening of the normative justification of freedom of expression.

Moreover, *who* am I, speaking? From where do I argue?⁷ Two points: (i) I am raised as a philosopher, by a blend of analytic philosophy and revised transcendental-pragmatics and normative modernization theory.⁸ (ii) I am a former member of the Norwegian commission for revision of § 100 in the Norwegian Constitution (*Ytringsfridomskommisjonen*, 1996-1999).⁹

The mandate given to this commission was motivated by two main concerns: (i) the impact of new technologies and (ii) the impact of multiculturalism. In hindsight, with recent developments in communication technology and the emergence of politicized religion¹⁰ in mind, the importance of these issues has certainly not decreased. For instance, confronted with pre-modern movements and mentalities, well equipped with modern weaponry and communication technology, the need for a universally valid and reliable normative justification of freedom of expression has become an urgent task, nationally and internationally. An appeal to “western traditions” or to “positive law”, conceiving normative justification as a matter of juridical coherence, will not be seen as convincing for those who see the world in a pre-modern religious perspective,¹¹ where their conception of God is conceived as the ultimate source of normative validity. Surely, the inherent juridical work of scholars in jurisprudence is both necessary and important, but that does not suffice when today we are faced with basic questions of normative justification. These questions are by nature philosophical, whether they are discussed by professional philosophers or other citizens.¹²

(2) **Justification? Some brief remarks.**

There are attempts at normative justification that do not work, or do not work any more – for the former, arguments that entail a “*naturalist fallacy*” (i), for the latter, arguments referring to “*religion*” without further ado (ii). I shall briefly recall why. Then there are arguments that do work in various ways, arguments referring to different kinds of *values* (iii), and arguments conceiving freedom of expression as an inherent *individual right* (iv).

(i) We cannot legitimately infer from “is” to “ought”. If we attempt to do so, we commit a “naturalist fallacy”. Facts alone,¹³ e.g. about human nature and behavior, do not allow us to make normative claims, as to what human beings ought to do. So far so good. But then there are “institutional facts”, like “corner” in football or “bankruptcy” in market economy, where the fact itself has a normative impact, i.e., within the “game” (the institution) of football or of market economy. As long as we play these games (act within these institutions), we are obliged

by the game-inherent norms of “corner” and “bankruptcy”.¹⁴ Similar arguments go for the legal institution, run by the rule of law; and even more so in a democratic State, where the citizens in some sense are co-authors for the legal decisions. And this is the standard argument in a legalist perspective, for instance: When the majority in the UN has made a decision, e.g. about freedom of expression as a human right, then this “institutional fact” is normatively binding, and especially for all States that have formally accepted this decision as part of their legal system. This is an argument with considerable political weight.

However, a given majority decision in the UN can be overruled by later majority decisions. Consider the possibility that non-Western states, like China, with its impact in Africa and elsewhere, together with Muslim countries, got a majority in the UN for a redefinition of human rights,¹⁵ weakening the status of freedom of expression. As we know, there have been attempts to weaken freedom of expression as the right to criticize religion (in casu, Islam). So, if a special majority vote is all we have, as a normative justification, then we lack the kind of justification that is needed under new geo-political constellations. In short, the legalist argument, from the “institutional fact” of a majority decision, does not deliver the kind of universal justification that is required in the twenty-first century.¹⁶

(ii) Nor can we justify human rights, like freedom of expression, by referring to *religion* – not any more. To make it brief: in the post-WWII period, in a country like Norway, it made sense to refer to religion as a normative foundation. Apparently, there was (generally speaking) just one religion,¹⁷ and that religion was mild and humane, well adapted to a modern democratic society.¹⁸ But that is no more the case. Now there are all kinds of “religions” around.¹⁹ Some of them can hardly be seen a bulwark against evil,²⁰ nor are all of them well adapted for a modern society.²¹ Hence, in our world today, referring to “religion”, without further arguments, does not work as a universal normative justification.²² Moreover, there are ample ground for enlightened and moderating criticism of religion, not least of the three monotheistic confessions (Judaism, Christianity, and Islam), e.g. due to the problem of evil inherent in these monotheisms.²³

(iii) Then there are arguments referring to *values* of different kinds.²⁴ For instance, “*western values*”, conceived as values inherent in western traditions and societies. But such a *contextualist* argument won’t do, not as a universal justification. It can be contested by defenders of “eastern values”,²⁵ emphasizing social harmony instead of individual freedom, or by traditionalist Muslims, referring to obedience and subordination (“Islam”) as their basic

values. However, this argument might be strengthened by emphasizing the “modernizing” aspects of western traditions and societies, in terms of institutional differentiations and enlightening learning processes, both politically and culturally, not least due to the formative role of the whole range of scientific and scholarly activities and of discursive will-formation. As we shall argue below: in our time, it is not easy to get around this kind of modernization, and in the end it presupposes freedom of expression.

There are arguments emphasizing the *usefulness* of freedom of expression: It is useful for an open society, for cultural flourishing, for the search of truth, for democracy!²⁶ Fair enough. But is it always useful? (And for whom? What about hate speech, for example.) Evidently, more has to be said, looking at different cases, and thereby assessing the strength of this value (freedom of expression) up against other values. But then freedom of expression becomes one value among other values. It easily loses its status as a unique and fundamental norm. Moreover, by this *consequentialist* argument, freedom of expression is not seen as a value in itself, but as instrumental in promoting some other value (which is then seen a value in itself), such as truth, tolerance, democracy.²⁷ An alternative approach, as I shall argue below, is that of seeing freedom of expression as a *precondition* for our own search for better arguments, self-referentially here and now,²⁸ and furthermore as a precondition for science-based societies and modern democracies.

(iv) Furthermore, freedom of expression is often seen as an *individual right*, which is inherently given to all normal persons (at legal age).²⁹ When this premise is taken for granted, what has to be justified is not this individual right itself, but restrictions on this right, especially in terms of harm to others and offense of other persons. For sure, there is more to be said, as to freedom of expression as an individual right. For instance: we are all fallible and often in need of improving ourselves, in various ways, not least when taking part in decisions and will-formation, together with other persons, in vulnerable modern democracies. Then there is a distinction between our actual self and our “better self”, and thus between being recognized as what we actually are, and being recognized as what we could and should be – both are important, but not the same. In this sense, freedom of expression is not just a right that one has, as a person. It has a normative content: Since citizens in constitutional democracies do have some political co-responsibility, there is a reason why we as citizens should try to live up to our “better self”, politically and institutionally.

Institutional preconditions, self-referential presuppositions

In some settings we can argue that freedom of expression is normatively justified since it can be seen as a necessary precondition for a given institution, within which we found ourselves, necessarily, actually or voluntarily – be it within a discussion when we discuss, or within cultural modernity where we find ourselves, or within a modern constitutional democracy where we live and where we want to live. When such an institution or activity is given, some norms and principles, some values and competences are required, as necessary presuppositions. Bluntly stated: without freedom of expression, no open discussion, no opposition, no democracy. In positive terms, the other way round: a modern constitutional democracy presupposes autonomous citizens, which presupposes education and enlightenment, which presupposes free will-formation, which presupposes freedom of expression.

Here we are talking in terms of *necessary presuppositions*, of *some* necessary presuppositions, *not* of *all* necessary presuppositions, *nor* do we talk of necessary *and sufficient* presuppositions. For instance, for a modern democracy, not only freedom of expression is required, but also a legal system with infrastructure and professional lawyers; not only appropriate education and basic discursive virtues, but also basic economic resources and appropriate public institutions.³⁰

Moreover, as mentioned above: by emphasizing the importance of these arguments from preconditional necessity and self-referential unavoidability, given certain institutions or activities, we thereby do not disregard or deny the importance and relevance of other kinds of arguments; these preconditional and self-referential arguments come in addition to these other arguments.

Different cases, different approaches?

What works as a reasonable justification in one setting, may not work equally well in another setting. Hence it might be useful to consider different approaches in different cases. Here are a few suggestions:

- (i) **Religious fundamentalists in a modern world** (*in casu* Muslims in Europe). By their monotheism, based on scriptures, they do make validity claims. However, texts do not interpret themselves, they have to be interpreted, and texts are influenced by their surroundings, hence there is a need for historical-philological interpretations, and thereby, all in all, for open and enlightened argumentation in favor of the interpretation that is taken to be the right one. In short, there is an inherent need for *theology as a scholarly discipline*, and that presupposes freedom of research and freedom of expression.

- (ii) **Modern, authoritarian regimes** (*in casu* China and Turkey). These regimes do have *scientific and scholarly research*, which implies an active and systematic search for better reasons and for rejecting less good reasons; hence, free and enlightened discussions are required, which presupposes freedom of expression.
- (iii) **Modern societies**. In societies that are culturally and institutionally modern,³¹ i.e., by differentiation and rationalization of institutions and “value spheres”, with modern institutional differentiations (e.g. between religion and the legal system, and between private and professional roles), and with the various scientific and scholarly disciplines (and thereby also discursive practices, open for counterarguments and aware of one’s own fallibilism), and thus with a need for open and enlightened discussions on important issues in public space – in such societies freedom of expression is presupposed.³²
- (iv) **Modern election-based democracies**, they presuppose *deliberative democracy*, for instance good general education (all functioning modern democracies have mandatory school systems) and a culture of enlightenment, with free public will-formation;³³ thus freedom of expression is presupposed.

Fallibilism, and the unavoidability of discussion – John Stuart Mill

On Liberty (Chapter II, Of the Liberty of Thought and Discussion):³⁴

“There is the greatest difference between presuming an opinion to be true because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.”

Two points to be emphasized:

Fallibilism. Because we are fallible, we need to be exposed to counterarguments, we need opposition and discussion, we need freedom of expression – if not, we cannot be reasonably sure as to what to think and what to do.

Self-reflection. For self-reflexive reasons we cannot say (in first person present tense), that is, we cannot seriously mean: “I know that P is true, but I do not want to be exposed to any counterarguments, because then I might have to change my mind!” Assuming that P is true implies that P could and would prevail despite counterarguments coming up in serious discussions and inquiries.

Transcendental Pragmatics, with similar points – Karl-Otto Apel et al.

The point of departure in transcendental pragmatics is self-reflexive preconditional analyses of speech-act inherent validity-claims in general and of argumentative practices in particular.³⁵ Speech is not an “institution” in a usual sense, and argumentative practices are of different kinds, more or less institutionalized, from casual everyday discussions to formalized doctoral discussions. As pointed out by John Stuart Mill: since we are fallible, discussions are needed, and the point can be strengthened due to pluralism in modern societies. Transcendental pragmatics tries to explicate the various self-reflexive preconditions for serious truth-seeking discussion, i.e., act-inherent preconditions that cannot be denied without self-referential (pragmatic) contradiction.

Hence there is a discursive search for better arguments, as answers to validity-claims (about truth and rightness), *within* discursive practices. Thus transcendental pragmatics promotes *discursive reasoning* and its virtues, in politics and academia as well as in the public sphere and in a modern culture in general.

At the same time there is a reflection *on* discursively unavoidable presuppositions. Thus transcendental pragmatics promotes *reflection*, i.e., self-reflection, on pragmatically necessary preconditions in speech and in discursive reasoning.

By this approach, freedom of expression is seen as a presupposition for discursive rationality, both for self-referential reasons and as required by a pluralistic and science-based modern society. In this sense, freedom of expression is presupposed, and thereby justified, universally and philosophically, by transcendental pragmatics.

There is more to be said about transcendental pragmatics.³⁶ I for one would defend a pluralist and gradualist approach, and thus emphasize improvement (meliorism) as a main task (as a regulative idea).³⁷ But here we leave it at that.

Finally, we recall that these arguments do not deny, but come in addition to the debate on more traditional arguments, e.g. value-based arguments. There are, as it were, different levels of justification, and there are different kinds of arguments, to be applied against different adversaries, be they religious fundamentalists or authoritarian ideologists.

A reminder, of three main approaches, in “ideal types”:³⁸ (1) the liberal and consequentialist approach (Anglo-American style), (2) the institutional approach (German style), and (3) the transcendental pragmatic approach (epistemically revised and institutionally situated)

Liberal approach, presupposes a liberal society, claiming that individuals are free to act and to express themselves as long as they do no harm to other persons, do not offend other persons. In so far, there is no need for a further justification of freedom of expression. The discussion is then primarily focused on legally legitimate restrictions on freedom of expression.³⁹ Cf the harm principle, and the offense principle (cases: pornography, hate speech, and the like). Then, we have a consequentialist discussion: whether freedom of speech, *in casu* hate speech, leads to (more) truth, or rather to offense, or harm.⁴⁰

Institutional approach, emphasizes that freedom of expression is a precondition for democracy, for a liberal democratic society. Hence there is an emphasis on how to justify freedom expression: Freedom of expression is not seen as a “value”, nor is the justification of freedom of expression taken for granted due to a normative notion of pre-social individuals with inherent rights.⁴¹ Freedom of expression is seen as a presupposition for democracy as an institution (and as a culture).⁴²

Transcendental pragmatic approach, where freedom of expression is seen as a self-reflexive precondition for discursive reasoning (here-and-now), as inherent in speech-act (with their speech-act inherent validity-claims), and thus also in (deliberative) democracy, in (discursive) scientific and scholarly research, and in enlightened and melioristic will-formation by fallible and reasonable persons in modern societies.

(3) Norwegian Constitution § 100

Justification of freedom of expression

In the report delivered by the Commission (*Ytringsfridomskommisjonen*, 1996-1999), there are three interconnected reasons justifying freedom of expression. Freedom of expression is seen as a

precondition for seeking of truth, for scientific and scholarly research and discussion,

precondition for (deliberative) democracy, for public deliberation and democratic elections by autonomous citizens,

precondition for the individual’s freedom to form opinions, for personal autonomy by enlightened and autonomous citizens.⁴³

In short:

Search for truth

(Deliberative) Democracy

The individual's freedom to form opinions (personal autonomy)

Interplay between these three preconditions

When all three are taken together, as intertwined: fallible and serious search for truth (cf modern science-based societies and activities), deliberative democracy (not merely an election-based system), and discursive and communicative⁴⁴ will-formation and autonomy-improvement – then these three processes represent a robust justification of freedom of expression.⁴⁵

Norwegian Constitution § 100 – a quotation⁴⁶

There shall be freedom of expression.

No one 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 their 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 municipalities 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.

The authorities of the state shall create conditions that facilitate open and enlightened public discourse.

Two original points, in this § 100

(a) The justification of freedom of expression is written into the paragraph.

(b) *There are obligations for the State: to create conditions that facilitate open and enlightened public discourse.*

(a)

Concerning the need for an explicit justification of freedom of expression: In a globalized world, we have to take immigrations from pre-modern societies into account, and also citizens and representatives of other nations and traditions.⁴⁷ So, evidently there is a need for a clear and explicit justification of freedom of expression. There might also be a need for reminding our judges of the status and importance of freedom of expression. Hence, in this case it is worthwhile to include the justification into the paragraph itself (in this case, § 100 of the Constitution).

(b)

The last sentence in § 100 (“The authorities of the state shall create conditions that facilitate open and enlightened public discourse”) exceeds the realm of what is usually regulated by law, that is, by legal sanctions, by the court according to written law. It states an obligation (general and vague as it is) for the authorities of the State to promote an open and enlightened public sphere, i.e., a *positive* duty.⁴⁸ And then, once we focus on challenges for the idea of an open and enlightened public discourse, there are many factors and forces to consider. Much is needed in order to “create conditions that facilitate open and enlightened public discourse”. Institutions and resources are required, and so are favorable socio-cultural conditions, such as high-quality education for all citizens and basic socio-political equality.

A brief reminder, as to some recent challenges:

- (i) *New technologies.* For instance, there has been a considerable expansion of “social media” (twitter, facebook), of internet and email on mobile phones, and of improved printing facilities. More people have an access to technologies that facilitate communication (independently of editors). Consequently, there are numerous semi-private spheres, but for the same reason less usage of common meeting places. There are more semi-anonymous internet commentaries (and hate speech), but relatively less discussion face-to-face, living up to the ideal of free and enlightened public discourse and will-formation.⁴⁹
- (ii) *Expanding market institutions.* Economic forces have got an increased impact on other institutions, for instance in politics, where strong economic agents play a decisive role by funding (and “buying”) special candidates in the election campaign (cf the US, with weak party structure), and by lobbying, with professional public-

relation assistance, capable of influencing political decisions (once the politicians are elected), e.g., on climate, social welfare, taxes, and the legal conditions for the financial industry. All in all, this is no good news for the role of enlightened discourse on urgent political issues.

- (iii) *Changes in education systems and at universities.* There are trends towards a commercialization of the education system. Universities have become mass institutions, where as many students as possible should “get through”, for economic reasons - often an exhaustive job for university teachers. There are shorter courses, often pre-arranged, less research-based and less spontaneous - and hence there is less reason for attending seminars, given by colleagues. Basic funding is often scarce, and hence one has to apply for external funding – a time-consuming job, and especially difficult for traditional *Geisteswissenschaften*. Moreover, to promote funding, one should preferably write for Anglophone journals; but then there is less time for participating in public discussions in one’s own mother tongue. Also, due to specialization and fragmentation within the various disciplines, participating in public debates may become less tempting.

Evidently, there is a link between the demand for open and enlightened public discourse (last sentence in § 100 of the Norwegian Constitution) and the three justifications of freedom of expression (presented by the Commission), i.e., *democracy*, *truth seeking*, and *free will-formation* – with their interconnections, conceived as social processes and discursive endeavors: democracy and deliberation, seeking truth and listening to counterarguments, free will-formation and improved personal autonomy. Hence, we shall add a few remarks on democracy, deliberation, and personal autonomy (as a “regulative idea”):

(4) Democracy, Deliberation, and Personal Autonomy

Citizenship in modern democracies; power and co-responsibility

Citizens in modern constitutional democracies, with freedom of expression and freedom to organize, have the right to vote and to be elected for the national assembly with its legislative power, and to organize and to take part in public discussions and processes of improved personal will-formation. Thus, as citizen we have some political power, and thereby we are to some degree co-responsible for day-to-day political decisions, and also for the political and legal framing of the society within which we live, each according to his or her capabilities.

Democracy by popular sovereignty, and the need for improved personal autonomy

Traditionally democracy has been justified by the principle of popular sovereignty (*folkesuverenitet*): “those who make the laws and those for whom the laws apply, are the same persons!” – the same persons in space and time. In addition it is presupposed that they understand what they are doing. To put it schematically:

Those who give the laws, are those affected by the law, and vice versa

S = S (identity):

(i) in space

(ii) in time

moreover:

(iii) they understand (sufficiently well) what they are doing

Challenges

At an earlier stage, e.g. in Norway in 1814, main political issues (such as the level of taxation, State payment for the widows of State officials, or whether to build a railway between Christiania and Eidsvoll) were relatively easy to understand. Today it is harder: Go to war against Saddam Hussein? Send weapons to Ukraine? Send soldiers on the ground against ISIS? Make legal decisions on global warming? Revise the legislation for the financial market? In other words, it is harder to understand these questions, and to assess their implications and consequences that often reach far beyond national borders (affecting other people living now) and into the future (affecting future generations), than the ones we were facing in 1814. In short, today, for citizens in modern democracies, it is more difficult to understand what is going on, and what one is doing, often with consequences for those living elsewhere or at a later stage.

As stated above: power implies responsibility. Since citizens in democratic societies have the right to vote and to be elected, the right to organize political activities (e.g., by political parties or political demonstrations), the right to participate in political processes, and the right to education and (in democratic welfare States) the right to economic support for political and socio-cultural activities, then, these citizens do have some special power and possibilities, and thereby they do have some political co-responsibility: Therefore, citizens in modern democracies ought to be educated, ought to be enlightened by public reasoning and will-formation, i.e. they ought to (try to) be (more) autonomous and enlightened citizens – not as a

perfection, but melioristically, as a task for improvement for each citizen, according to his or her position and capabilities, and at the same time State authorities should promote a good common school system and “create conditions that facilitate open and enlightened public discourse”.

Moreover, to function well, modern democracies need relatively efficient, meritocratic and uncorrupt State institutions, in addition to the Rule of Law, and check and balances by enlightened citizens and institutional arrangements.⁵⁰ Hence, all functioning modern democracies have an obligatory school system for their citizens. However, in our time, more is needed. Co-responsible citizens in modern democracies should themselves try to be reasonably knowledgeable and enlightened concerning main political issues.

Mind the story about two American citizens watching the terrorist attack on the Twin Tower on 9/11: “This is like Pearle Harbor”, one of them said. “What’s Pearle Harbor?”, asked the other. “Oh, that was when the Vietnamese attacked us and the Vietnam War started”, was the answer. – The point is this: American citizens have the right to take part in the election of the American president and other top leaders. Thus they have some co-power to influence American politics, at home and abroad, including military interventions, like the one in Iraq. Therefore they ought to have some basic knowledge about these issues.

In our time there are numerous challenges for democratic societies – inequality and poverty, lack of appropriate institutions, unsustainable demographic trends, the impact of globalized capitalism and powerful pressure groups, new technologies and strategic communication whereby the public sphere has increasingly become an arena for strategic actions and manipulation, not for open and enlightened learning-processes and discursive will-formation. At the same time, the world has become more complex and risky, and thus there is increasingly a demand, for citizens in modern democratic societies, to be updated and to improve their status as autonomous persons.

Two implications

(i) Further extension of the voting rights?

Traditionally there has been a fight to extend the right of citizenship, *to extend the voting rights* (and the right to be elected) to ever new groups of people: workers, women, former slaves, youth, immigrants. Traditionally, e.g. from 1814 onwards, this was the great narrative of an ongoing extension and strengthening of democracy.

And rightly so. However, in our time, with modern technologies, global capitalism, and political decisions with long-term, complex and often hardly predictable consequences, the situation is changing. Being a citizen in modern crisis-ridden societies has become more difficult. In our time, being a citizen (ideally as an autonomous and reasonably enlightened person) requires a mastery of the official language, a reasonable knowledge of main political issues, and a fair understand of how the modern society functions, where one lives. There will always be discussions as to where the line should be drawn in such matters – as to what should be expected and required. However, what is new, is a need to reconsider the traditional narrative, namely, the assumption that an extension of voting rights to ever wider groups is always reasonable and desirable. This challenge may appear as a troublesome paradox: General education may have improved, but the complexity of the political situation has grown even faster.

(ii) Juridical obligations versus moral duties, versus political duties

For citizens in modern democracies there are different kinds of demands and duties: There are *juridical obligations* and sanctions, with the dichotomy between guilty and not guilty, to be decided by the court, according to positive (written) laws. And there are *moral duties* and sanctions, decided by social, non-juridical sanctions, often of a gradual nature. But there are also *political duties*, in terms of co-responsibility for the day-to-day political decisions in one's own country, as well as co-responsibility for the political regime itself ("meta-political duties"): as citizens we may help to *change institutions* (for the better or the worse, cf Thatcher), to *change political rhetoric, narratives and attitudes* (cf Churchill), to *change constitutional framings* (cf the new Norwegian constitution of 1814). There are gray zones and also interference between these obligations and duties. Nevertheless, not only is the analytic *distinction between moral duties and legal obligations* essential for liberal democracies: Not everything that is morally blameworthy should be legally forbidden, i.e. should be punished legally. This is an important point when discussing freedom of expression. Moreover, it is vital that citizens in modern democracies also have *political* (and "*meta-political*") *duties* – not only legally codified duties, or traditionally moral duties.⁵¹

As we shall see below, these points, about political co-responsibility and political duties, are important for the discussion about (what is called) “utterance responsibility”.

(5) Legal Limits to Freedom of Expression

What about limits to freedom of expression? At the outset, we recall three standard points, for legal limits to freedom of expression, namely, utterances that imply:

- (i) a real danger for war and chaos, and severe political instability,⁵²
- (ii) serious defamation of living persons,
- (iii) incitement to murder or to severely harm somebody.

In this paper, we shall restrict ourselves to questions of limitations that are related to *offense*, *utterance responsibility*, and *indoctrination*.

(6) Hot Issues: Indoctrination, Utterance Responsibility, Offense.

Central topics in the ongoing discussions of religion

At first a reminder: freedom of expression is challenged, not merely by authoritarian and traditionalist regimes, but also more informally, for instance

by being intimidated into silence, or scared to self-censorship – that is:

- (i) being frightened and scared by potential violence and terror, to silence and self-censorship (cf the greater caution, in newspaper and publishing editorials, after the terrorist attack on Charlie Hebdo in January 2015),

by undue social pressure – that is:

- (ii) social pressure from traditions, religions, local communities,

by indoctrination and manipulation – that is:

- (iii) hidden manipulation (“behind our back”) and active indoctrination, e.g. in religious or political institutions (cf various forms of organized religious and

political brainwashing, but also professional marketing and manipulation by public-relation agents and powerful stakeholders).

Communication versus Indoctrination

There is an important analytic (paradigmatic) distinction between *communication* and *manipulation*, between discursive (truth-seeking) communication and strategic (indoctrinating) action.⁵³ In practice, these are gradual distinctions, but still politically important: Manipulative utterances, aiming at changing the choices taken by co-citizens, changing their personal preferences and narratives – that is, trying to undermine their personal autonomy (and their open and enlightened search for truth) – such manipulative utterances and acts are detrimental for the freedom of expression. Such strategic activities contradict the principles that (according to § 100 of the Norwegian Constitutions) constitute the justification of freedom of expression – that is, undermine deliberative democracy, open and enlightened search for truth, and personal autonomy by open and enlightened will-formation.

As an example, consider the question whether political advertisements⁵⁴ should be allowed in public television. Surely, there are pro's et con's. But to my mind, the counter-arguments are the stronger ones, due to the probable impact of economically wealthy agents with their strategic communication agents, experts in manipulating and indoctrinating other persons, contrary to the justificatory principles for freedom of expression.⁵⁵

Interestingly, we find similar arguments, against indoctrination and manipulation (though applied differently) in Talal Asad,⁵⁶ in his article “Freedom of Speech and Religious Limitations”.⁵⁷

- (i) In discussing freedom of speech and religious limitations Asad emphasizes the negative impact of “seduction”, of being led astray. Seduction destroys freedom! (For instance, cf marketing, aiming at seducing, at manipulating potential consumers.)
- (ii) However, Talal Asad does not see (or at least, he does not say) that this argument “strikes back” on religious preaching and religious practices with the aim of forming other persons to become loyal followers of a special religion, blind for alternatives, i.e., by seducing them.
- (iii) How come? How can it be that Talal Asad does not see the critical feed-back of his own argument against seduction, with its relevance for religious preaching and practices? Presumably, because, for Asad, true life and true freedom is a life as a Muslim. Basically, for Asad, seduction is bad when it leads us away from Islam.

The truth of Islam is presupposed, in an essentialist and dogmatic manner, far from modern notions of discursive and fallible search for truth, with freedom of expression as one of its preconditions.

Utterance Responsibility

Utterance responsibility versus freedom of expression?

Utterance Responsibility has become a main theme in public debate after the violent reactions to the Danish cartoons. However, there is a distinction between a negative and a positive interpretation of utterance responsibility, and this distinction is often overlooked in the ongoing discussions.

- (i) *Utterance Responsibility*₁ (*ytringsansvar*₁) is often seen as a *negative* duty, as to what we should *not* say, briefly stated: “take care, do not offend!” Be considerate, be polite! However, there is a danger, that of becoming a “thought police”: “You should not utter politically incorrect views!” (For instance, in the debate on immigration or Islam.) In short, this is basically a negative moral norm, as to what we should not say (and how), in normal social situations.
- (ii) *Utterance Responsibility*₂ (*ytringsansvar*₂) can also be seen as a *positive* duty, as an ideal for personal improvement, for trying to be better informed, more enlightened and knowledgeable, as a gradual task toward improved personal autonomy (dependent on personal positions and possibilities), and also as a norm for improvement in public debates and thus for discursive criticism of short-comings of various kinds, e.g. in politics and religions: “seek and speak truth, with fair criticism when needed!” This is primarily a positive duty, to try to promote an open and enlightened public discourse and will-formation.

Here again, consider the distinctions between *political and moral duties* and *legal obligations*. Utterance Responsibility, according to the positive interpretation, is a political and moral duty, not a legal obligation to be sanctioned by legal punishment, if neglected.

The *positive* version of utterance responsibility is highly important, but often overlooked. The *negative* version can be seen both as reasonable (as a psychological attitude) and as problematic (as a demand for political correctness). However, this much should be said in favor of the negative version of utterance responsibility: There is a challenge as to the way of behaving toward less educated and enlightened persons. In concrete interpersonal constellations, oral or

in writing, a superior social (educational, linguistic) position should not be used to intimidate those who have fewer resources.⁵⁸ On the other hand, when it comes to discursive and artistic utterances in public space, the situation is different. Moreover, since we all are fallible, we all need to be confronted, time and again, with our own short-comings and stupidities, our prejudices and our conceptual poverty and bias. Hence, positive “utterance responsibility” is important.

Offense (*krenking*)

Utterances that offend somebody, may count as cases where freedom of expression should be legally delimited. This goes for severe cases where someone is offended – insulted, hurt, wounded, provoked or violated – by certain utterances.

However, in liberal modern democracies, this principle – “do not offend other persons!” – goes for *living persons*, not for dead persons, not for theories, not for traditions and cultures, nor for convictions or religions (cf Norwegian Penal Law, § 135a⁵⁹). It applies to living persons, as a defense of a living person’s deeper feelings and self-esteem, identity and autonomy.

Moreover, there is a problem here, since the claim of being offended by certain utterances may function as a *power strategy* that *kills the debate*. (Cf the proposal in the UN to ban criticism of religion, because it is said to offend Islam – the Prophet, the Coran, and the feelings of many Muslims.)

Finally, the terms are ambiguous: Utterances offending, insulting, violating a person’s deeper feelings and self-esteem, identity and autonomy – these are ambiguous terms that are open for different interpretations. We shall here consider two interpretations of the term “offense”:

Offense₁, offense by utterances that are *provocative*, causing *bed and hard feelings*: anger, rage, sadness, a feeling of being hurt, being provoked.

Offense₂, offense by utterances that *break down a person’s autonomy and self-esteem*: by brainwashing, indoctrination, manipulation, bullying.

Offense₁. For this interpretation of being offended, emotions and feelings are essential. For instance, consider the following statement by Prime Minister Jens Stoltenberg in response to

the violent acts in the Muslim world (in 2006), after the publication of the Mohammed cartoons in Jyllandsposten in the fall of 2005: “It is important that we show respect for the feelings of other human beings.”⁶⁰ However, motions and feelings are ambiguous phenomena. Here is a list of some interpretations:⁶¹

- (i) Emotions: by *physical causes* – e.g., when you get a nail through your hand.⁶²
- (ii) Emotions: in *a certain situation* – e.g. anger because you just lost your bus. (But then it turned out that the bus you saw leaving, was not your bus anyway.)⁶³
- (iii) Emotions: that are *information-dependent* – e.g. rage because of the last political poll. (But then it turned out that it was false; according to correct information your favorite party did really well.)
- (iv) Emotions: that are *culture-dependent* – e.g. anger or sadness because other people utter their indifference or contempt for essential forms of behavior, values and rituals that belong to your culture and tradition.⁶⁴
- (v) Emotions: that are *truth-dependent* – e.g. anger or sadness because other people do not accept that your Holy Scripture is the true one, do not accept as true that your understanding of these scriptures is the correct one, and do not accept as true that God, through these scriptures, have decided how we should dress and what we should eat (also in modern societies).⁶⁵
- (vi) Emotions: that are *faith-dependent* – for instance, anger or sadness because other people do not share our religious convictions, e.g. about eternal life, or about resurrection and Judgment Day, or do not believe that we can talk with angels and those who are dead.⁶⁶

The point is now the following: There are *many kinds of emotions*. Some emotions are “given” (as it were), physically, physiologically and otherwise, and some emotions are dependent on cultures and traditions, or on religious and other convictions that are not shared by everybody.⁶⁷ Moreover, some emotions are dependent on our understanding of the situation, or our conceptions of what is true, or our convictions concerning controversial religious and metaphysical issues. In other words, in some cases (but not in all) our emotions can rightly be seen as *more or less reasonable or unreasonable*. And in some cases (but not in all) we can be said to be *responsible for our emotions*, either because we should not have engaged ourselves in certain activities or put ourselves in certain situations, or because we could and should have been more enlightened and well informed both as to the nature of our truth-claims (opening for discursive practices), and as to the reasonable disagreement in religious and metaphysical matters (thus opening up for a reflexive awareness of one’s own position, seeing it from the

outside, and thus being open for tolerance for those who do not share our views and visions). To state it sharply: *those who feel hurt and offended, by utterances presented by other people, should not always have a veto in such cases*. Nor should we always “show respect for the feelings of other human beings”.⁶⁸

Offense₂. There is an important point, related to this second interpretation of the term offense, namely, that of degrading another person or of breaking someone down, as an autonomous person, either by explicit bullying and disregard⁶⁹ or by unheeded *manipulation and indoctrination*. For the latter, consider *advertising* on the market, and *strategic communication* in politics, but also *religious teaching and preaching*, aiming at a specific mind-formation of other persons, not least of children.⁷⁰ Freedom of religion – yes, for the educator (preachers), but what about those who are “educated” in this way? They are often brainwashed, without the possibility of independent reflection and personal appropriation at a later stage, when they grow up. This is a severe point, though it is often overlooked in the discussion about freedom of expression, and about freedom of religion. To state it bluntly, we may quote two statements from the enlightenment philosopher Ludvig Holberg:

“Children should become humans before they become Christian. ... But one begins by a drilling of divine Catechisms, whereby everyone stubbornly defends the sect within which he is raised, and thus becomes unreceptive for other arguments at a later stage.”

“Hence, if one learns theology before he learns to be a human being, he will never be a human being.”⁷¹

For sure, children are always raised within some socio-cultural setting. The problem emerges with the process of socialization takes the form of an indoctrination that undermines personal autonomy, when they get older.⁷²

These points, about manipulation and brainwashing, are not of minor concern. They are crucial for a civilized and reasonable interaction between human beings. Breaking down a person’s autonomy, by verbal manipulation and indoctrination (and also by rituals and other social practices), may rightly be seen as a deadly sin. In many ways it is worse than utterances that foster anger and rage. Furthermore, remember that the breaking down of a person’s free opinion-formation is a violation of the normative foundation of freedom of expressions, as stated in § 100 of Norwegian Constitution.

Mutual and equal recognition of other persons implies that we take them seriously as persons, as reasonable and fallible (like we ourselves). In so doing, we do not treat them as objects, but as persons who are able to act responsibly and to take arguments seriously. Hence, there is a *double recognition* (*Anerkennung*): a recognition of what persons *de facto* are, and a recognition of what they *ought to be*.⁷³ Recall the difference between our “actual ego” and our “better ego”! In acts of mutual recognition, we ought to take both into consideration – what we actually are, and what we could and should be; and what they are and what they could and should be. In considering only their actual ego, we tend to underestimate our co-humans. In considering only their “better ego”, we tend to overestimate them. Hence there is a need for situational discretion (and critical self-reflection): When should we have more of the former, when more of the latter? Those who never speak out frankly and critically, underestimate other persons, and hence they do harm to their status as autonomous individuals. Those who always speak out frankly and critically, overestimate other persons, and hence they may provoke bad feelings. Hence, this, at least, should be a rule: be polite, and do not use your superior position, socially or intellectually! Uneducated illiterates should be treated respectfully, but not paternalistically, as if they were beyond reason and responsibility. In short, in such cases there is a need for a discretionary and situational use of Utterance Responsibility. At the same time, we should be aware of our own fallibility and short-comings.

(7) Summary and Conclusion

Freedom of expression is here conceived as a precondition for vital modern institutions: democracy, truth seeking, and personal autonomy in terms of free identity formation. Then there is interplay between the three, whereby discursive reasoning can be seen as a common denominator. All in all, to my mind, the justification given in the Norwegian Constitution § 100 stands firm.

Then there are some reasonable legal limitations to freedom of expression: threat for war and chaos and severe instability,⁷⁴ defamation of living person’s honor and esteem, and severe threats to murder or to do severe harm to someone else.

Moreover, freedom of expression is challenged in various domains, for instance by religion, by authoritarian regimes, by loyalty to workplace and social conformism, and by institutional and technological trends and market forces, weakening the possibility of open and enlightened public discourse. Hence, there is a need for a legal

defense of freedom of expression. However, the last point in § 100 of the Norwegian Constitution – concerning the need to facilitate an open and enlightened public discourse – exceeds the realm for legal regulations that work “negatively”, by punishing those acts that are legally forbidden; the last point in § 100 requires “positive” actions in support of open and enlightened public discourse, such as good education systems for all citizens and a strengthening of the various aspects of the public sphere. But it also points toward “negative” efforts, aiming at a restriction of the infelicitous impact by strategic communication, unheeded manipulation and powerful market agents.

There is an important difference between legal obligations and political and moral duties. Freedom of expression is primarily a legal issue. Utterance responsibility is primarily a moral and political issue. Not everything that is morally blameworthy or politically bad should be legally forbidden.

Moreover, we should consider the distinction between a “negative” notion of utterance responsibility, related to a norm for politeness and political correctness, and a “positive” notion of utterance responsibility, emphasizing the political and moral demand to try to improve oneself, as to one’s ability to be reasonably updated and to participate in open and enlightened public discourse on vital issues.

Furthermore, there is a distinction between offending someone by provoking bad feelings and offending someone by violating his or her personal autonomy and self-esteem. Moreover, emotions are of various kinds. Among the negative emotions brought forward by free utterances, there are emotions that could be seen as unreasonable, and there are emotions for which those concerned can be seen as responsible. Hence, arguments from emotional offense, referring to utterances that might hurt someone’s feelings, cannot be seen as a final arbiter, without further clarification. Hence, offending someone’s feelings is not a straight-forward argument, to be used in order to set limits for the freedom of expression. Each case has to be considered carefully. In some cases those having negative feeling might themselves be (co-)responsible for their feelings.

Offending, in terms of breaking down a person’s autonomy and self-esteem is a serious matter. However, fair critique of false consciousness, reification, alienation, and a lack of cultural modernization are cases for legitimate and even desirable utterances, aiming at enlightenment and personal improvements. Moreover, dogmatic religious and political preaching and will-formation might be seen as deplorable, to the extent that they function as obstacles for personal autonomy and integrity.⁷⁵

All in all, freedom of expression is a precondition for modern societies. In extreme cases, there are reasonable limits to our utterances. But many arguments against freedom of expression are either ambiguous (like the ones about “utterance responsibility”) or they may “strike back” against those who try to use them against freedom of expression, for instance when defending a dogmatic preaching that may function as infelicitous indoctrination.

In many cases, not least for critical utterances concerning religious convictions and practices, the main concern should rather be the need for cultural modernization and self-critical enlightenment – a need for personal and cultural improvement that requires a series of institutional and socio-cultural modernization processes – than a request for restrictions on the principle of freedom of expression.

Concluding remarks

We recall recent events and other urgent cases – authoritarian regimes, pre-modern religions, demands for loyalty at workplaces, and informal social control. Within a constitutional democracy, freedom of expression is legally defended, if necessary by courts and punishment. Nevertheless, in a modern society there is also a need for State authorities to promote a common education system and to create conditions that facilitate open and enlightened public discourse. In modern crisis-ridden societies, due to the importance and urgency of freedom of expression, there is a need for a strong support of freedom of expression in all these respects.

Finally, freedom of expression is not merely a “western value”, or merely a “value” among other values, to be freely chosen or neglected. Freedom of expression is basically a *precondition* for *democracy* (for deliberative democracy), for *science* (for discursive activities in scientific and scholarly work), and for *personal autonomy* (for free and enlightened opinion- and will-formation), and thus for *modern societies* in general.

¹ Cf the Saudi Arabian citizen Raif Badawi who was sentenced to 1000 lashes, 10 years in prison, and a fine of 1 million riyal (equivalent to \$ 267.000), for having offended Islam.

² In praising dissidents in China, like Liu Xiaobo, what do we say about whistleblowers like Mordechai Vanunu and Edward Snowden (who will never get the Nobel Peace Prize, due to Norwegian foreign policy)?

³ E.g. in terms of lobbying and public-relation activities, also within political parties, acting strategically and short-term, for the next election. Cf Tarjei Skirbekk, *Hvordan vinne valget?* Oslo, Spartacus, 2015.

⁴ This is certainly an ambiguous situation, since new technologies (such as internet and “social media”) open up new arenas for free utterances and for free access to information. At the same time, enlightened public debates in a common public space (like printed newspapers and books) tend to lose ground (not least among the younger generation). Moreover, market forces and bureaucratic control-systems tend to change the work situation for many professions (e.g., for teachers and university people) in a way that is negative for their participation in the public sphere.

⁵ For further discussions of cases, see Skirbekk, *Vit og vitskap* (1998), also NOU 1999/27, and Skirbekk “Ytringsfridom i ei globalisert verd. Med striden om muhammed-teikningane friskt i minne: korleis kan vi grunnje prinsippet om ytringsfridom i eit globalisert verdssamfunn?”, *Årbok 2007*, Det norske videnskaps-akademi, 2007: 266-282.

⁶ These are my points, as a philosopher: (i) a revised version of transcendental pragmatics (cf Skirbekk, *Rationality and Modernity*, Oslo/Oxford: Scandinavian University Press/Oxford University Press, 1993, espec. chap. 1 and 2) and (ii) the debate on relative conceptual adequacy (cf Skirbekk, *Herausforderungen der Moderne aus wissenschaftsphilosophischer Sicht*, Berlin: Logos Verlag, 2012: 73-90).

⁷ Home page <http://gunnarskirbekk.no> and <http://www.uib.no/personer/Gunnar.Skirbekk#>.

⁸ Moreover, I have all along been interested in political issues and political theory, and also in religious questions (cf homepage). In addition I have collaborated with Chinese colleagues, on cultural modernization in East Asia and in Europe (cf the Marco Polo program at UiB).

⁹ See NOU 1999/27, especially chapter 2.

¹⁰ Combined with mass migration.

¹¹ Hence there is need for a “modernization of consciousness” (Habermas, *Zwischen Naturalismus und Religion*, Fr.a.M., Suhrkamp, 2005: 146), broadly speaking, for (i) recognition of the fact that other reasonable persons hold different beliefs and convictions (cf “reasonable disagreement” about “comprehensive doctrines” in John Rawls), (ii) recognition of all the various kinds of scientific and scholarly research, with their argumentative and self-critical virtues, and (iii) recognition of institutional differentiations and a pluralism of social roles, e.g. between private life and public and professional roles, and between religion and law (the secular nature of the legal system).

¹² There were 16 members in the commission: lawyers, journalists, members of NGOs, scholars of media research, of literary studies and Sami studies, a philosopher, and a historian (as its leader).

¹³ Conceived of as neutral facts, as in the natural sciences.

¹⁴ We are free to play or not play the game of football. What about market economy?

¹⁵ For instance, by a stronger emphasis on socio-economic rights, compared with political and civil rights.

¹⁶ However, the legalist argument can be strengthened by referring to democratic and enlightened procedures leading up to a decision. Freedom of expression can thus be conceived as a presupposition for that kind of procedures.

¹⁷ A Scandinavian version of Lutheran Protestantism.

¹⁸ Both theologically and institutionally.

¹⁹ For instance, when Jürgen Habermas talks positively about “religion” in modern societies, he has the modernized and “good” versions in mind. Cf his notion of a “modernization of consciousness”. Moreover, his interest in religion in modern societies (societies that are intellectually secular, with secular legal procedures) is caused by his current worry concerning a lack of moral motivation and solidarity in these societies, not by the question of normative justification. Cf Habermas 2005 and *Nachmetaphysisches Denken II*, Berlin, Suhrkamp, 2012 (the latter, also with a discussion of rituals as a basis for religion).

²⁰ Cf the Islamists of Isis/Daesh and Boko Haram.

²¹ That is, institutionally differentiated societies, with the whole range of sciences and scholarly activities, not merely natural sciences and technology, but also self-critical social sciences and humanities, including critique of religion.

²² True, in John Rawls there is an interesting attempt to elaborate the notion of reasonable disagreement and overlapping consensus between different “comprehensive doctrines”, including different religions, to the effect that reasonable citizens, each according to their reasonable “comprehensive doctrine”, may find a common ground for a living together in a liberal and ordered society. Even those who find themselves in a minority position, have good reasons to comply with majority decisions, since it is reasonable, in this kind of ideal setting, to have confidence in the reasonable decision-making procedures where all positions and perspectives are seriously considered, also values and viewpoints that end up as minority positions. To be sure, Rawls political philosophy, operating inherently within a liberal and well-ordered society, is not meant to be a universal justification, for “outsiders” (as it were). It is a normative model, from within (*in media res*), under ideal conditions. However, what then, as to the trustworthiness of the supposedly reasonable decision-makers (and especially in cases of unfavorable decisions, seen from one’s own position), if there are increasing socio-economic differences, between super-wealthy elites and a populace living under precarious conditions? (Cf Piketty on increasing differences; cf socio-economic tensions in Europe. And the US, with Trump.) And what then, if prominent decision-makers, in a modern world with scientific and scholarly differentiations, operate within narrow professional perspectives? (Cf Jens Stoltenberg as a Prime Minister – a serious person, but with a narrow professional perspective, that of a short-sighted and one-dimensional economist.) And what then, if people more generally become suspicious as to the reasonableness of members of the ruling elite? (Cf the discussion of false consciousness and ideological bias, as in Freud or Marx.) Rawls lived in the US in the mid-twenties century. Since then the world has changed, in ways that are relevant for the empirical realism of the ideal presuppositions of his historically situated contextualist approach. Today we are confronted with various new and severe challenges, e.g. globalization and social tensions, and the role of “religion” in modern pluralistic and precarious societies. Today there is a need to justify and defend the very idea of a civilized modern society, threatened e.g. by pre-modern mentalities and movements.

²³ Those who want to protect monotheistic religions against inherent and enlightened criticism, should read Peter Rohs, *Der Platz zum Glauben* (Münster: Mentis Verlag, 2013), who convincingly shows how extensive this kind of criticism can be.

²⁴ Cf e.g. Ulf Petäjä, «What is the Value of Freedom of Speech?», in Kierulf and Rønning, *Freedom of Speech Abridged?* Gothenburg, Nordicom, 2009.

²⁵ In countries influenced by Confucius, as in China and Singapore.

²⁶ Cf e.g. Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government*. New York, Harper & Brothers, 1948. And Lee Bollinger, *The Tolerant Society*. New York, Oxford University Press, 1986.

²⁷ What then, if Truth is given, by the words of God? If so, why freedom of expression? (People may go astray, be seduced by unsound reasoning! See later, Talal Asad, “Freedom of Speech and Religious Limitations”, in Craig Calhoun, Mark Juergensmeyer, and Jonathan VanAntwerpen, eds., *Rethinking Secularism*, Oxford, Oxford University Press, 2011: 284f.) Well, as fallible beings we need to listen to counterarguments and take them seriously. E.g., see J. S. Mill below.

²⁸ See later, quote from John Stuart Mill. For the (gradual!) distinction between empirical and preconditional arguments, see Skirbekk 1993, chap. 1 and 2, and Skirbekk *Timely Thoughts*, Lanham: University Press of America, 2007, chap. 1. This point is also relevant to the distinction between consequentialist arguments and transcendental pragmatic arguments.

²⁹ See Tomas Scanlon, «A Theory of Freedom of Expression», *Philosophy and Public Affairs*, vol. 1, no. 2, 1972, and “Freedom of Expression and Categories of Expression”, *University of Pittsburgh Law Review*, vol. 40, no. 4, 1979.

³⁰ In short, not merely political and civil rights, but also social and economic possibilities.

³¹ Broadly speaking, in the sense of Max Weber and John Stuart Mill.

³² We recall, “modernization of consciousness”, in Habermas 2005: 146.

³³ But also other enabling presuppositions, such as the right to organize (cf the case of Hans Nielsen Hauge, see G. Skirbekk, *Multiple Modernities. A Tale of Scandinavian Experiences*, Hong Kong 2011), and a fair development of professional, meritocratic and uncorrupt State institutions (cf Francis Fukuyama, *Political Order and Political Decay*, 2014).

³⁴ There is also a consequentialist reading of Mill, but here (referring to this quotation) we go for a presuppositional and self-reflexive reading of Mill.

³⁵ Cf e.g. Skirbekk, “Transcendental pragmatics. A historical perspective on the late Frankfurt School (Apel, Habermas, Wellmer)”, in K. Mikalsen et al., eds, *Modernity – Unity and Diversity*. Oslo, Novus, 2016.

³⁶ Skirbekk, ed., *Striden om sanningen* (Gothenburg, Daidalos, 2004).

³⁷ Skirbekk 2011 and 2015.

³⁸ “Ideal type”, in the sociological sense – as simplified versions – not as ideals, in a normative sense.

³⁹ It is one thing to defend freedom of expression externally (e.g. against Islamist and Chinese Communist Party), something else to take it for granted that individuals are free and autonomous persons, with a given right to act as they please, as long as they do no harm to others. Cf Cathrine Holst and Anders Molander, in Kierulf and Rønning, 2009, and comments in Gunnar Skirbekk «Hinsides liberalisme og paternalisme. Personleg autonomi som regulativ idé og normativ fordring», in Atle Måseide and Gunnar Skirbekk eds. *Filosofi i vår tid. Festskrift til Jon Hellesnes*, Oslo, Samlaget, 2009. (As a background, Gunnar Skirbekk «’Din tanke er fri... ‘ om å grunngi det rettslege vern av ytringsfridom» and «Same fridom for alle ytringar?», in *Vit og vitskap*, Bergen, Fagbokforlaget, 1998.) Cf also Ch. J. Eberle, «Basic human worth and religious restraint», *Philosophy and Social Criticism*, 35/2009 (<http://psc.sagepub.com/journalsReprint.nav>), who argues that the liberal notion of the individual presupposes a religious notion of human worth.

⁴⁰ Cf ‘*Stanford Encyclopedia of Philosophy*’; a standard view, I assume. Presupposition: individual freedom; question: what about restrictions, how to justify restrictions of free speech? Justification of limits on speech: Harm principle, Offense principle. There are discussions on legal punishment (law) versus social control (moral), but no discussion in depth on whether or not there might be a lack of personal autonomy, and, if so, how to promote personal autonomy. There is a final reference to democracy, but democracy is not the primary concern, not is this article. Among the references: George Kateb, “The Freedom of Worthless and Harmful Speech”, in *Liberalism without Illusions*, ed. Bernard Yack, Chicago, University of Chicago Press, 1996. Joel Feinberg, “Offense Principle” – *Harm to Others: The moral limits of the criminal law*. Oxford, Oxford University Press, 1984, and *Offense to Others: The moral limits of the criminal law*. Oxford, Oxford University Press, 1985.

⁴¹ Both positions might be questioned, e.g. from a Chinese or from a traditionalist perspective.

⁴² Cf *Rechtslexikon.net*: a standard view, I assume, as a German (post-WorldWarII) approach. *Art. 5 Abs. 1 GG – Recht auf freie Meinungsäußerung. Meinungsäußerungsfreiheit, Informationsfreiheit, Meinungsbildungsfreiheit. ... Eine notwendige Bedingung liberaler Lebensluft in Gesellschaft und Staat. ... Das Problem der inneren Pressefreiheit hängt eng mit der zunehmenden Pressekonzentration zusammen, die die Vielfalt des Meinungsspektrums der Zeitungen zu gefährden droht. ... Die modernen technischen Möglichkeiten dürfen jedoch nicht dazu führen, dass der Rundfunk dem freien Spiel der Kräfte überlassen bleibt. ... Art. 5 GG als demokratiekonstituierendes Grundrecht, welches Grundlage der freiheitlich-demokratischen Staatsordnung ist.*

⁴³ Well known points, cf e.g. Eric Barendt, *Freedom of Speech*, Oxford, Clarendon Press, 1996.

⁴⁴ Petäjä 2009. His is dichotomies, “sender versus receiver” and “individual versus collective”, are infelicitous.

⁴⁵ As constitutive regulative idea.

⁴⁶ Official version.

⁴⁷ Consider the reactions (2006), nationally and internationally, against the Mohammed cartoons in *Jyllandsposten* in 2005. For instance, on February 5 thousands of Syrians enraged by caricatures of Islam's revered prophet, torched the Danish and Norwegian embassies in Damascus.

⁴⁸ As to what one should do, as to what is legally forbidden.

⁴⁹ Due to new technologies (and thereby a new media situation and new social groups, e.g., fewer traditional workers), party politics has become more demanding, cf Tarjei Skirbekk 2015. Politicians are supposed to be ready with comments at once and any time. Little time for long-term perspectives. Result: strategic communication (run by professional public-relation experts) rather than open and enlightened discourse.

⁵⁰ Cf Francis Fukuyama, *Political Order and Political Decay*, 2014.

⁵¹ For instance in terms of *Gesinnungsethik*, disregarding institutional and consequential issues.

⁵² Cf the reactions of western leaders after the Danish cartoons: Foreign Minister Jonas Gahr Støre and Prime Minister Jens Stoltenberg were afraid of violence from Muslim communities. They did not try to explain that the principle of freedom of expression is more than a western value, that it is a precondition for democracy and for a science-based modern society. Instead they said that the editor of the small Norwegian magazine (Vebjørn Selbekk), who had published the cartoons, had done something that was “very serious for Norway”. («Statsministeren legger ikke skjul på at det han mener redaktøren [Selbekk] har bidratt til, er svært alvorlig for Norge.» *VG net* 06.02.2006.) «What is dangerous about this type of situation is that extreme people use a wrong act to justify another wrong act.» («*Det som er farlig i denne typen situasjon, er at ytterliggående folk bruker en gal handling [Selbekk] til å rettferdiggjøre en annen gal handling.*») Hence, Selbekk's act, publishing the cartoons, is presented as being equivalent to the brutal and violent acts in various Muslim communities, where lives were lost. According to Stoltenberg, “It is important that we show respect for the feelings of other persons.” (“*Det er viktig at vi viser respekt for andre menneskers følelser.*”) See later, on respect for feelings.

⁵³ Cf the distinction between „persuade“ versus “convince“; “überreden” versus “überzeugen”; in Norwegian, «*overtale*» versus «*overtyde*».

⁵⁴ «Commercialized political propaganda”.

⁵⁵ Cf *Hvordan vinne valg?* Tarjei Skirbekk, 2015.

⁵⁶ His father was an Austrian Jew who converted to Islam, his mother was an uneducated and pious Muslim from Saudi Arabia. Talal Asad is a Muslim and anthropologist inspired by Michel Foucault and Edward Said.

⁵⁷ Cf *Rethinking Secularism*, Craig Calhoun, Mark Juergensmeyer, Jonathan VanAntwerpen (eds.), Oxford, Oxford University Press, 2011: 282-297.

⁵⁸ See later (Offense 2), on humiliating, or even breaking down, another person.

⁵⁹ Cf Norwegian Penal Law (*Straffelova*) § 135a (which is subordinate to the Constitution): «*Den som forsettlig eller grovt uaktsomt offentlig setter frem en diskriminerende eller hatefull ytring, straffes med bøter eller fengsel inntil 3 år. Likt med en offentlig fremsatt ytring, jf. § 7 nr. 2, regnes en ytring når den er satt frem slik at den er egnet til å nå et større antall personer. Som ytring regnes også bruk av symboler. Medvirkning straffes på samme måte. Med diskriminerende eller hatefull ytring menes det å true eller forhåne **noen**, eller fremme hat, forfølgelse eller ringeakt overfor **noen** på grunn av **deres** (a) hudfarge eller nasjonale eller etniske opprinnelse, (b) **religion** eller **livssyn**, eller (c) **homofile legning, leveform eller orientering**, (d) **nedsatte funksjonsevne.***» (Our usage of bold letters.) Worth noticing: possible restrictions are related to persons (“noen”, somebody in Norwegian), not to religious and ideological theses or convictions. In short, according to this law, there are no restrictions on our critique of religion.

⁶⁰ We recall: Prime Minister Jens Stoltenberg in 2006, after the violent reactions in the Muslim world against the Danish cartoons: “*Det er viktig at vi viser respekt for andre menneskers følelser*”. *VG net*, February 6, 2006.

⁶¹ The list is not exhaustive. Moreover, here we focus on negative emotions, not on positive ones.

⁶² Then there are *physiologically* rooted sensations, e.g. related to food (and hunger), sex, sleep, temperature etc.

⁶³ There are feelings and moods related to various *activities and social roles*. E.g., being stuck in a traffic jam will generally foster other feelings that those of persons walking on the pavement.

⁶⁴ Here we have a whole range of phenomena, open for contempt by outsiders: from circumcision of boys and religious slaughtering of animals, the avoidance of greetings by handshaking and the covering of the hair of fertile women, to the question whether or not supposedly holy persons should be portrayed.

⁶⁵ But how do we know? As human beings we are fallible, cf John Stuart Mill; i.e., in order to be reasonably sure, we are dependent on the will and ability to seek better reasons, reasons that prevail in open and enlightened research and discussion. Hence, theology, as a scholarly discipline, has to be open for this kind of truth-seeking procedures, including various kinds of critique of religion.

⁶⁶ E.g., when should it be allowed to laugh, and to whom, and for what? Furthermore, is it alright to show contempt of those who have sad feelings when the rain dance did not bring rain, or of those who have anxiety for social contact with people who are hiv-positive? But then we ought to cope with the distinction between knowing and believing, and as to what can be conceived as cognitively meaningful versus cognitively meaningless statements, or as to statements that are seen to be falsifiable versus those that are not. Moreover, we ought to internalize a reflective awareness of a legitimate pluralism of faith-dependent convictions – as a precondition for tolerance in a modern society. References: logical positivism, Popper, Kant, and John Rawls.

⁶⁷ Cf the discussion of “reasonable disagreement” in John Rawls.

⁶⁸ Cf citation from Jens Stoltenberg above.

⁶⁹ Lack of recognition, not being seen, or being seen in a degrading way, e.g. due to class relations, or due to age or ethnicity.

⁷⁰ Cf Talal Asad on seduction, mentioned above.

⁷¹ My translation. Holberg citation: «*Barn må gjøres til mennesker før de blir kristne; ... Men man begynner først med guddommelige hemmeligheters katekisasjon, noe som fører til at enhver hårdnakket forsvarer den sekt som han er oppdratt i, og ikke er mottakelig for andre argumenter senere...*» (*Moralske tanker*, ed. F. J. Billeskov Jensen, 1992, p. 35.) «*Thi, hvis een lærer Theologie, førend han lærer at blive Menneske, bliver han aldrig Menneske.*» (*Moralske tanker*, ed. G. Robe, 1859, Libr. I, Epigr. 5, pp. 43-44.)

⁷² Or that conveys a socio-cultural identity that does not comply with the preconditions of a modern society. Again, cf Habermas on “modernization of consciousness”.

⁷³ Cf the feminist saying (found on a postcard): „*Natürlich müssen wir die Männer nehmen wie sie sind. Aber man darf sie nicht so lassen.*” “Naturally, we have to take men as they are. But one should not let them remain like that.”

⁷⁴ It must be a real threat, not just an excuse for limiting the right to free expressions.

⁷⁵ In the worst case, such activities might break down a person’s autonomy; cf children going to dogmatic religious schools, e.g. Coran schools, or being exposed to clan and community activities with tight social control and lack of cultural modernization.