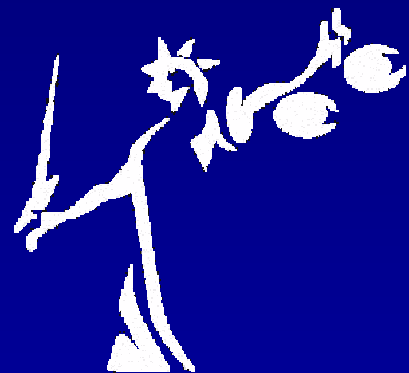


Freedom of Expression





HITLER WAS A HOMO

SPRINGER IS A HOMO.

BUT JE SUS IS

NOT A HOMO

JE SUS

DRUDGE REPORT



PRINCE HARRY FIGHTS ON FRONTLINES IN AFGHANISTAN; 3 MONTH TOUR

Thu Feb 28 2008 11:01:34 ET

They're calling him "Harry the Hero!"

British Royal Prince Harry has been fighting in Afghanistan since late December -- and has been directly involved in gun battles, **DRUDGE REPORT** has learned.

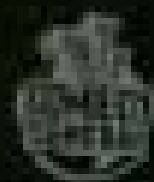
The prince, a junior officer in the Blues and Royals, and third in line to the throne, has been a "magnificent soldier" and "inspiration to all of Briton."

Prince Harry is taking part in a new offensive against the Taliban.

The Ministry of Defense and Clarence House refuse all comment. Army chiefs have managed to keep the prince away from media and to encourage fellow soldiers in his squadron to stay quiet.

Developing...

Comedy Central has refused to
broadcast an image of Mohammed
on their network.



Freedom of Expression

- Why is freedom of expression a human right?
- Can free expression cause harm?
- What are the limits on free expression?

Why is free expression a human right?

‘If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind’

John Stuart Mill, *On Liberty* (1869), Ch 2

Why is free expression a human right?

Different justifications for free expression:

- The need for transparency in a democracy
- The 'marketplace of ideas' and the search for truth
- Self-expression, esp artistic and religious
- Individual autonomy and freedom of choice

Why is free expression a human right?

Potential conflict between dif. justifications:

- Anti-democratic messages
- Does the marketplace always work?
- 'Self-expression' can be hurtful
- Not all choices are meaningful ones

Can free expression cause harm?

‘The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic’

Oliver Wendell Holmes J
Schenk v United States, 249 US 47 (1919)

Can free expression cause harm?

- Panic
- Violence
- Civil unrest
- Hatred
- Alarm
- Distress
- Nuisance
- Invasion of privacy
- Loss of reputation
- Loss of business/market share
- Prejudice to legal proceedings

Can free expression cause harm?

Those, who having opinions which they hold to be immensely important, and their contraries to be prodigiously hurtful, have any deep regard for the general good, will necessarily dislike, as a class and in the abstract, those who think wrong what they think right, and right what they think wrong.

John Stuart Mill, *Autobiography* (1873), para 34.

What are the limits on free expression?

- Blasphemy
- Encouragement/ glorification of terrorism
- Incitement of violence
- Incitement of hatred
- Sedition
- Obscenity
- Indecency
- Official Secrets Act
- Contempt of Court
- Data Protection Act

What are the limits on free expression?

- Defamation
- Misuse of confidential information
- Broadcasting (radio and television)
- Film and DVD classification
- Video game regulation
- Employment restrictions
- Electoral and campaigning restrictions
- Advertising restrictions
- Planning and environmental regulation
- Control Orders
- ASBOs

Article 10(1) ECHR

Everyone has the right to freedom of expression.

This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Article 10(2) ECHR

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such [restrictions] as are prescribed by law and are necessary in a democratic society, in the interests of

national security, territorial integrity or public safety

the prevention of disorder or crime,

the protection of health or morals,

the protection of the reputation or rights of others,

for preventing the disclosure of information received in confidence,

or for maintaining the authority and impartiality of the judiciary.

Section 12 of the Human Rights Act

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to –

a) the extent to which –

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

Some key cases on free expression

Sunday Times v United Kingdom (1979) 2 EHRR 245 (injunction re Thalidomide story to prevent *future* contempt of court)

Derbyshire County Council v Times Newspapers [1993] AC 534 (common law right to free expression mirrors Art 10 ECHR)

Douglas v Hello [2001] QB 967 (balance between Art 8 and Art 10 in privacy cases)

R(Prolife Alliance) v BBC [2003] UKHL 23 (party political broadcast blocked under 'offensive material' restriction of Broadcasting Act 1990, s6(1))

Steel and Morris v United Kingdom (2005) 41 EHRR 22 (lack of legal aid for libel contrary to Arts 6 and 10)

Jameel v Wall Street Journal [2006] UKHL 44 (conditions of 'responsible journalism' for *Reynolds* (1999) 4 All ER 609) defence of qualified privilege)

Some recent cases on free expression

Ken Livingstone v Adjudication Panel for England [2006] EWHC 2533
(suspension for offensive remarks to journalist)

HRH Prince of Wales v Associated Newspapers [2006] EWCA Civ 1776
(publication of comments from private diary)

R (Green) v City of Westminster Magistrate's Court [2007] EWHC 2785 (private prosecution for blasphemous libel re Jerry Springer Opera)

R (BBFC) v Video Appeals Committee (2008) EWHC 203 (BBFC's refusal to classify *Manhunt 2*)

R (Animal Defenders International) v Secretary of State for Media, Culture and Sport [2006] EWHC 3069 (ban on political advertising on TV & radio under Communications Act 2003)

Some criteria for free expression

- Who owns the ideas or information being expressed? Is the information privileged, classified, confidential or otherwise private?
- **What** is the public interest in receiving the ideas or information being expressed? Political speech? Artistic or religious expression?
- **How** is the information or ideas expressed? How is it available? How much control does the recipient have over whether to receive the information or ideas?
- **What** is the relationship between expression and alleged harm? Are any restrictions justified and proportionate?



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