

Freedom of Expression: Sticks and Stones

Freedom, Rights and Protest
19 March 2011





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<http://www.rsf-chinese.org/>

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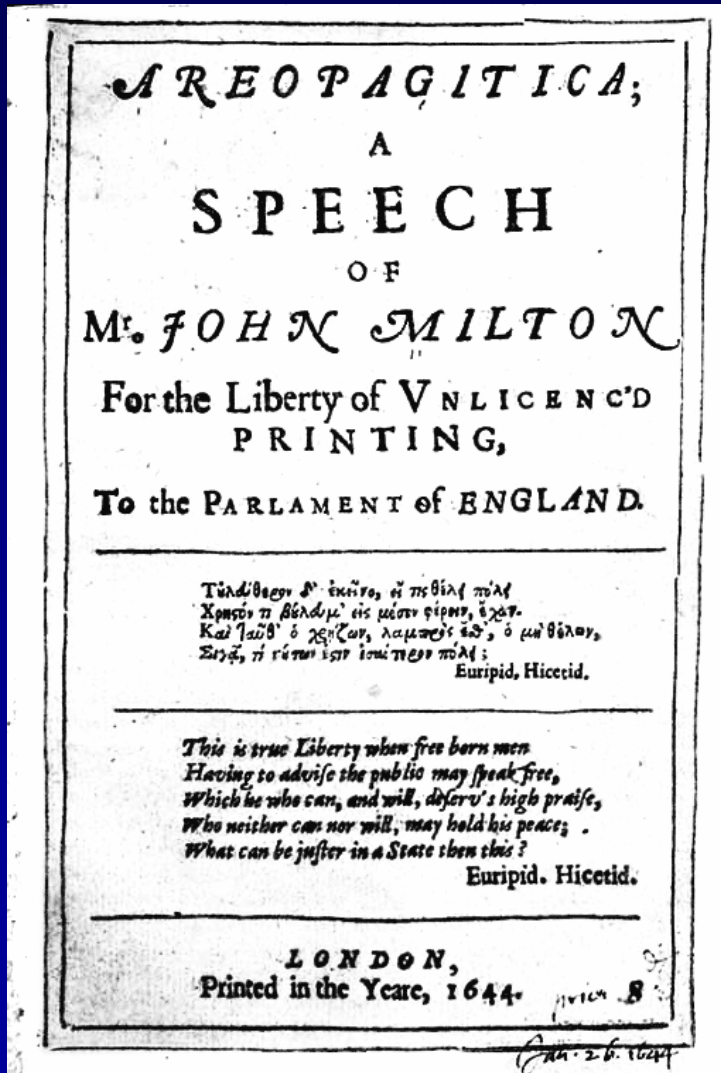


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Areopagitica, 1644



*Let [Truth] and Falsehood grapple;
who ever knew Truth put to the
worse, in a free and open
encounter?*

*Who kills a man kills a reasonable
creature, God's image; but he who
destroys a good book, kills reason
itself, kills the image of God, as it
were in the eye.*

*Give me the liberty to know, to utter,
and to argue freely according to
conscience, above all liberties.*

Bill of Rights 1688

*That the freedom of
speech and debates or
proceedings in
Parliament ought not
to be impeached or
questioned in any
court or place out of
Parliament*



The 18th Century

Déclaration des droits de l'Homme 1789, Art 11

The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, save [if it is necessary] to respond to the abuse of this liberty, in the cases determined by the law

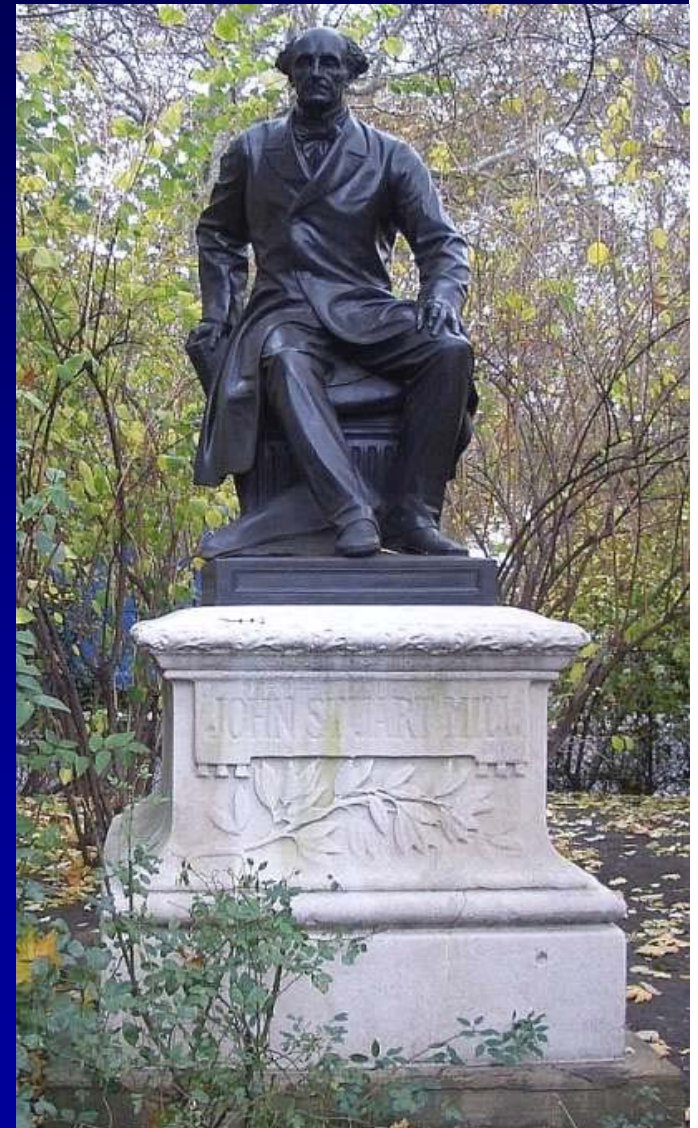
US Bill of Rights 1789, 1st Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

On Liberty, 1859

*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.*

*The only purpose for which
power can be rightfully
exercised over any member
of a civilized community,
against his will, is to prevent
harm to others.*





The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing a panic.

Oliver Wendell
Holmes in *Schenk v*
US 249 *US* 47 (1919)

Article 19, UDHR

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers

Article 10(1) ECHR

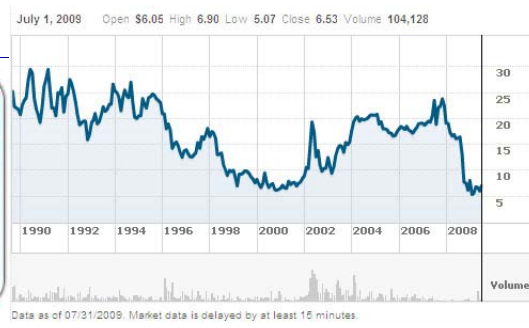
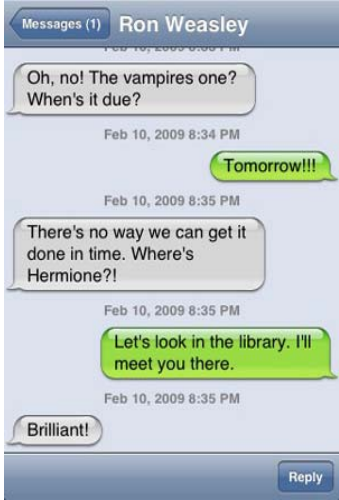
Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, 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 formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 19, ICCPR

- (1) *Everyone shall have the right to hold opinions without interference.*
- (2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- (3) *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) For respect of the rights or reputations of others;*
 - (b) For the protection of national security or of public order, or of public health or morals.*



Regulation and the Media

Restrictions on expression depends not only on the **content** but also the **form** of expression, e.g:

- different regulation of broadcast media vs print media, e.g. Broadcasting Act 1996 and the Ofcom Broadcasting Code
- different regulation according to the **type** of content, e.g. 'horrific, deplorable violence is okay, as long as people don't say any naughty words'
- consequently, different regulation of **the same content** depending on whether displayed in cinema, televised, performed on stage, sold in DVD or downloaded from the internet





Grounds for regulation under Article 10(2)

- *national security*
- *territorial integrity or public safety,*
- *prevention of disorder or crime,*
- *protection of health or morals,*
- *protection of the reputation or rights of others,*
- *preventing the disclosure of information received in confidence, or*
- *maintaining the authority and impartiality of the judiciary.*

Incitement to violence

Section 4 of the
Offences Against The
Person Act 1861 makes
it an offence to:

*solicit, encourage,
persuade, or
endeavour to
persuade, or shall
propose to any person,
to murder any other
person*



Incitement to hatred



Parts 3 and 3A of
the Public Order Act
1986 (as amended
by the Racial and
Religious Hatred
Act 2006)
criminalise
incitement to
hatred on grounds
of race and religion
(but must *intend*
the latter)

Public Order



Section 5 of the Public Order Act 1986:

(1) A person is guilty of an offence if he:

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person *likely to be caused harassment, alarm or distress* thereby.

Defence that 'the conduct was reasonable'.

Public Order



Public Order?

Section 127 of the Communications Act 2003 makes it an offence to send messages via a public electronic communications network:

which are *grossly offensive or of an indecent, obscene or menacing character*; or

for the purpose of *causing annoyance, inconvenience or needless anxiety to another*



Defamation

“The British Chiropractic Association claims that their members can help treat children with colic, sleeping and feeding problems, frequent ear infections, asthma and prolonged crying, even though there is not a jot of evidence. This organization is the respectable face of the chiropractic profession and yet it happily promotes bogus treatments.”

*British Chiropractic Association v Singh [2010]
EWCA Civ 350*



Privacy



‘Bailed Out Bank
Exec Gags Sun on
Secret Affair’,

The Sun, 2 March 2011

‘Senior Bank
Executive having
affair with
colleague granted
gagging order’

Daily Mail, 3 March 2011

‘Fred The Shred:
I’m Not A Banker’,
10 March 2011

Contempt of Court



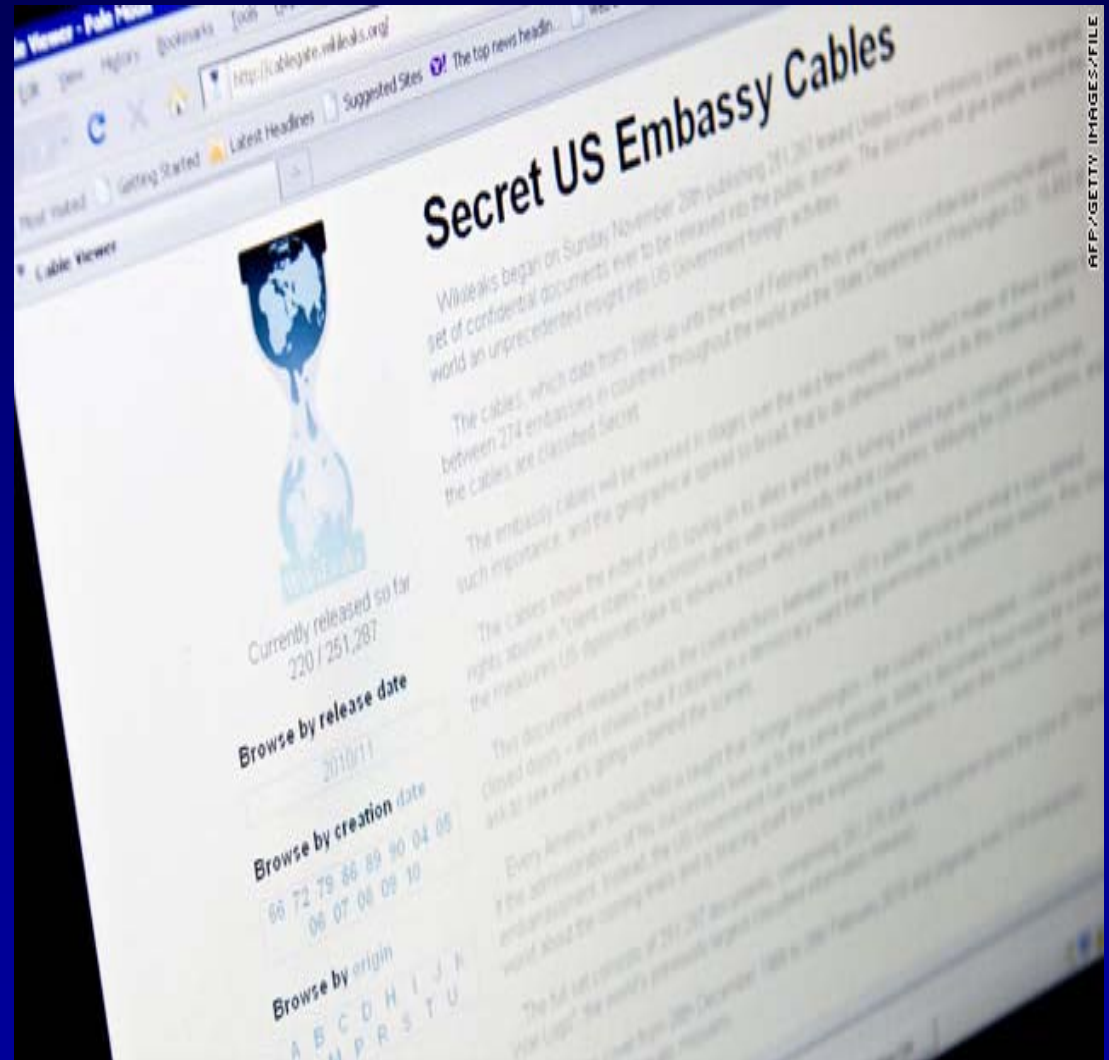
*Attorney General v
Associated Newspapers
and News Group
Newspapers [2011]
EWHC 418*

Official Secrets

Official Secrets Acts
1911 and 1989

R v Shayler [2002]
UKHL 11

Binyam Mohamed
v Foreign Secretary
[2010] EWCA Civ 365



Source Protection

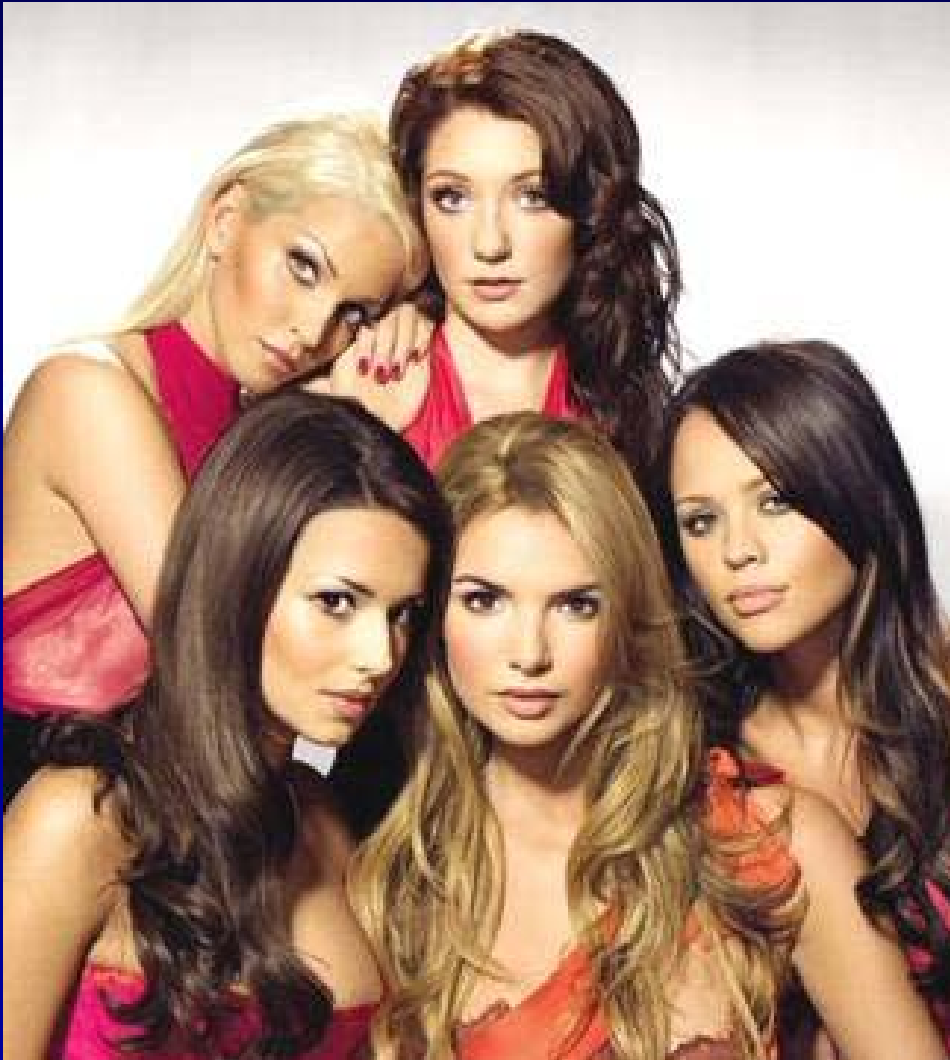
*Sanoma Uitgevers
BV v The
Netherlands*
(Grand Chamber,
14 September 2010)



Copyright and Trademarks



Obscenity and Indecency



Obscene Publications Act 1959 -
'deprave and corrupt', e.g. violent
pornography, bestiality, torture, etc

But defence of public good, i.e. 'in
the interests of science, literature,
art or learning, or of other objects
of general concern'

See also:

Protection of Children Act 1978

Indecent Displays Act 1981

CJIA 2008

Video Recordings Acts 1984, 2010

Blasphemy and Sediton

Section 79(1) of the
Criminal Justice and
Immigration Act 2008:

*The offences of blasphemy
and blasphemous libel
under the common law of
England and Wales are
abolished*

Section 73 of the Coroners and
Justice Act 2009 abolished
common law offences of
sedition, seditious libel,
defamatory libel and
obscene libel



Article 10 v the 1st Amendment



‘Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker.

As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro from tort liability for its picketing in this case.’