

## **Editorial**

Freedom of expression is a fundamental right recognised in national and international human rights law. It is a multi-faceted right that entails not only the right to express our ideas, but also the right to seek and receive information about ideas. As students, we value universities and other educational forums as one of the most relevant arenas for the pursuit and expression of ideas. From the classroom to the Internet and the public arena, the opportunities to express ourselves seem almost endless; but lately it has become clear that they are not without restrictions.

International case law upholds that freedom of expression is a basic right, but not without recognising its limitations. In Europe, to be able to say and do as we please is considered a core value. However, what is experienced as a core value in the Europe can be blasphemy in other regions of the world. We must therefore pay attention that the views we express are not inflammatory or cause a threat to civil peace, and incite violence. This seems reasonable enough on its surface, but who determines what is or is not inflammatory?

What means nothing to one person might be extremely disparaging to another. What is wildly offensive to one may be simply a funny joke to the other. This was recently demonstrated in the Jyllands-Posten Mohammed cartoon controversy, where a Danish newspaper published twelve cartoons depicting the Islamic prophet Mohammed. A complaint was filed alleging that Jyllands-Posten had disturbed public order by publishing the cartoons, thereby publicly ridiculing or insulting dogmas of worship of a lawfully existing religious community. While it was eventually found that there was no basis to conclude that the cartoons constituted a criminal offence, this incident sparked dialogue on censorship and freedom of expression.

Denmark is not the only European country to make headlines for freedom of speech issues. In France, film star Brigitte Bardot was convicted twice for 'inciting racial hatred' after Islamophobic comments in her writings. In the Netherlands, there has been recent controversy regarding the prosecution of Geert Wilders for his controversial film about the promotion of violence in the Islamic religion.

Each of these claims was brought by parties exercising their rights under various legal frameworks. Each of these cases was deemed serious enough to be considered by a national court, and each has garnered serious media attention. While not all legal actions are successful, one still has to wonder, do cases like these chill important political and social dialogue? One great concern is that people will keep their opinions to themselves after hearing about cases where the expression of an unpopular or politically incorrect opinion led to legal actions and/or social and career implications. While we certainly shouldn't make statements or demonstrations with the goal to incite violence or cause civil hysteria, the definition of 'being inflammatory' enjoys

a wildly subjective interpretation in the legal world, which – in our opinion – ought to be objective and treat everyone as equals. The reality is that the wave of freedom of expression cases may lead to the self-censorship of individuals, fearful of prosecution. As stated by George Orwell “If freedom of speech means anything at all, it is the freedom to say things that people do not want to hear.”

In this issue, authors make arguments that we think everyone *will* want to read, as they examine a diversity of topics addressing freedom of expression. Confronting some of the most controversial and most discussed matters, Almagor discusses holocaust denial as a form of hate speech, while Huhn reflects on the American position on hate speech. Newey, on the other hand, writes about why free speech is so valuable and analyses various contentious actions and how they fit in with freedom of expression. In a nod towards our increasingly technological society, Bollier puts forth his concept of the ‘Digital Republic’, and Aufderheide looks at freedom of expression from the angle of fair use in copyright. We are also reminded that freedom of expression applies not only to people but to the corporate world as well, as Araiza discusses the impact on regulations of campaign financing, and Krezminska provides insight in to the market economy and commercial speech, with specific attention to tobacco advertising. Issues of media pluralism (Komorek), the limits of rights to public protest (Passavant), and the social and philosophical character of free speech (Moon and Latré) are discussed in turn, to provide our readers with broad perspectives on the topic. We are also treated to articles and points of view from other esteemed writers, including a review of Grayling’s book, “Liberty in the age of terror: a defence of civil liberties and enlightenment values”.

Taken together, this issue is a perfect example of what ALF stands for: an open arena of thought for actual questions with legal relevance where both scholars and young academic talents meet. Freedom of expression is the *a priori* condition of our existence as a critical journal.

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