

Freedom of Expression in Skokie, Illinois— A Case Study in Human Rights

In this case study, you will explore how freedom of speech is interpreted and protected differently from country to country, and consider how certain rights may infringe on other rights. You will also examine the United States' unique approach to freedom of speech.

On March 8, 2010, the Iranian border police prevented the eighty-two-year-old Iranian poet Simin Behrbani from leaving Iran to go speak in Paris. She was stopped at the airport and her passport was taken from her. She was stopped because some of the ideas in her poems criticize the policies of the Iranian government.

Most U.S. citizens cannot imagine being arrested or detained for political ideas that they express in a poem, newspaper article, or in any other way. Today, citizens of many countries share the same expectation: that they are free to express their ideas. Freedom of expression is a basic human right.

Freedom of expression is not protected equally in all societies. In some cases, like the example of Iran, governments suppress the expression of ideas that criticize or suggest alternatives to their policies. Other governments' constitutions claim to protect freedom of expression, but the reality is often different. For example, journalists in Russia face pressure and even violence for expressing political ideas that criticize the government.

There are limits to freedom of expression even in countries that protect it as a general principle. This is often done to prioritize other rights that governments believe are more important. For example, some countries prohibit speech that is hateful or meant to intimidate ethnic or religious groups.

How is the U.S. protection of free speech different than in other democracies?

For many U.S. citizens, the rights in the First Amendment of the Constitution remain sacrosanct and absolute. For them, freedom of expression and speech embodies the bedrock idea of human rights. Today the U.S. interpre-

tation about what speech is protected is much broader, and could even be considered radical when compared to other countries' interpretations.

In a famous example, in 1977 a group of Nazis from the National Socialist Party of America proposed to march in uniform through Skokie, Illinois, a small city with many Jewish survivors of the Holocaust. Even though the city of Skokie wanted to prevent the march, local and federal courts ruled that the First Amendment protected the group's right to march. U.S. courts have ruled that the only kind of speech that is not protected is speech that incites immediate violence. Speech that is directed at ethnic or religious groups and that could be considered offensive or intimidating is protected by the First Amendment. In short, speech that promotes hatred is permitted, while speech that promotes immediate violence is not. Even speech promoting the overthrow of the U.S. government is permitted, provided it is not intended to incite immediate violence.

This is sharply different than in other democracies. Other constitutions grant the freedom of speech, but also include provisions when it can be limited. For example the constitution of South Africa prohibits "advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm." In the Netherlands it is illegal to insult someone publicly on the basis of race, religion, or sexual preference. In Germany, the Nazi party is outlawed, as is the sale or distribution of Nazi symbols and Adolf Hitler's book, *Mein Kampf*. The International Covenant of Civil and Political Rights states that any expression of national, religious, or racial hatred that is intended to cause discrimination, hostility, or violence should be prohibited.

“In much of the...world, one uses racial epithets at one’s legal peril, one displays Nazi regalia and the other trappings of ethnic hatred at significant legal risk, and one urges discrimination against religious minorities under the threat of fine or imprisonment. But in the United States, all such speech remains constitutionally protected.”

—Frederick Schauer, U.S. professor of constitutional law, 2005

The broad interpretation of freedom of expression in the United States is not limited to speech, but also gives more latitude to what the press can publish than in other countries.

What are arguments behind the different interpretations of the limitations of speech?

One rationale behind prohibiting certain kinds of speech is the desire of governments to promote social harmony. For example, South Africa’s leaders hoped to minimize social

and racial tensions, and the violence that might come with them, after the end of South Africa’s racially based and discriminatory apartheid system. Germany’s decision to ban the Nazi party and Nazi symbols came after tens of millions of people died because of the actions of the Nazis. Nevertheless, many other countries without the painful historical experiences of South Africa and Germany also limit speech more than the United States.

The U.S. interpretation of what speech should be protected evolved a great deal during the twentieth century. U.S. courts became more and more unwilling to limit the expression of political ideas, even ideas that advocated changing or ending the U.S. political system. In part, this may be because there is a political tradition of being critical of government and an emphasis on individual freedom and responsibility in the United States.

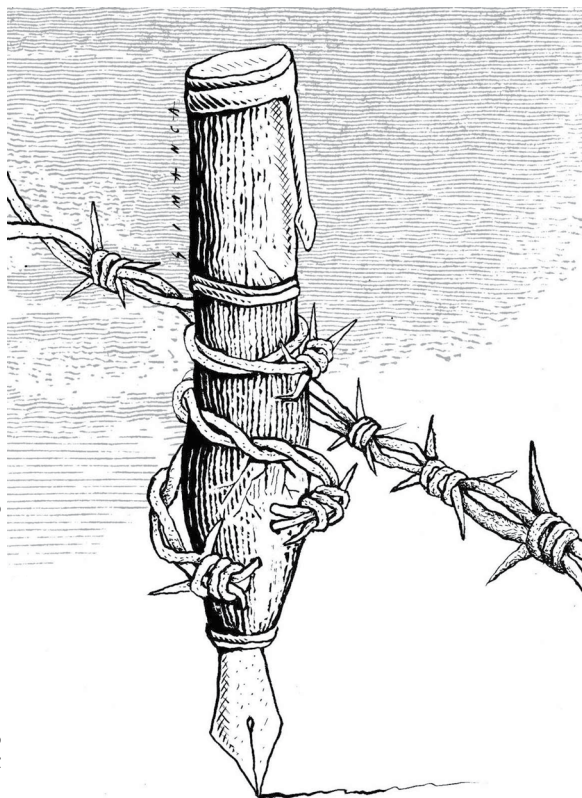
“The best test of truth is the power of the thought to get itself accepted in the competition of the market.... I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death.”

—Supreme Court Justice Oliver Wendell Holmes, 1919

Advocates for the U.S. interpretation of what speech should be permitted echo Justice Holmes. They argue that the responsibility for regulating opinion should rest with the public, not with the government.

The issues surrounding the differing interpretations of freedom of expression raise important questions for all to consider.

- Should freedom of expression be prioritized above the right to be free from discrimination, intimidation, or threats of violence?
- When one set of rights infringes on another, how should we decide whose rights and which rights take priority?



“Censorship.”

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