



Auckland Unitarian Church  
Love beyond belief

## Is Free Speech Free?

Clay Nelson © 9 September 2018

In 1964 I was 15, living in a remote community high in the Colorado Rockies. It had been a tough year. We were still in grief over the assassination of JFK. We were beginning to grow more concerned about our increasing involvement in Vietnam's civil war. But we had our diversions. The Beatles had just taken the US by storm. We just wanted to hold their hand and forget our troubles. Where I lived we were pretty isolated. We could almost ignore the rest of the world. But as we were preparing to get ready for the local fall college and high school football seasons, even our two TV channels couldn't leave us in peace. September 1, we began getting news reports of student unrest at the University of California, Berkeley. This was something new. As both my parents had attended Berkeley, it caught our attention. News media and general public opinion were not positive. The students were demanding free speech. Of all the nerve! They must be unpatriotic trouble-making communists. General support was with the university's efforts to stop their efforts to organise political demonstrations outside the gates of the university. They were accused of irresponsible free speech and not following the rules of those in power.

The next three months as mass demonstrations, mass arrests, and student boycotts followed I had my first symposium in what "free speech" meant and what it cost to have it. One of the lessons I learned is that the more those in power seek to restrict free speech the more it will backfire. By the time Berkeley's Free Speech Movement ended, free speech had become institutionalised at Berkeley and universities around the country had liberalised their own rules to protect it. Over the intervening years I learned that free speech had a long, complicated history that has nuanced what it is, who can express it, what if anything limits it and does it really exist in our tribal society? In the time I have this morning all I can offer is a thin slice to the discussion, hardly better than a clever retort on a placard at a free speech rally. But it may be worthy of an adult RE course. Let me know at morning tea if that would appeal.

I speak to the issue this morning as it has become topical in Auckland with the recent decision of the Auckland Council to not allow two Canadians with far-right views regarding multiculturalism, feminism, and immigration to use one their venues. The council cited security issues. The sponsors of the Canadians eventually hired a private venue, which cancelled their event on the night due to public controversy. On the heels of which, former National Party leader, Don Brash, was uninvited to speak on free speech at Massey University due to "security concerns." This led Auckland University to invite speakers on both sides of the issue to debate free speech, as they had not received the same threats as Massey. One of the speakers, Don Brash, received considerable heckling during his efforts to claim political correctness was hampering free speech. The political right was feeling their free speech was being seriously infringed. The political left was arguing that free speech did not include hate speech.

There is an even more important reason I am speaking to this issue this morning to you, Unitarians. Our history is steeped in the issue of free speech. We are a part of the free church movement which has always held up the idea of a free pulpit. It goes back to 1568 when King John Sigismund, the first and last Unitarian King, proclaimed in the Act of Religious Tolerance and Conscience, "In every place, the preachers shall preach and explain the Gospel, each according to his understanding of it, and if the congregation like it, well, if

not, no one shall compel them for their souls would not be satisfied.” Theodore Parker made it even clearer in an 1841 ordination sermon. His comment on the free pulpit came at the end of the sermon when he spoke to the congregation about how to relate to its new minister. He said truth “speaks in a thousand tongues, and with a pen graves her sentence on the rock forever. You may prevent the freedom of speech in this pulpit if you will. You may hire your servants to preach as you bid; to spare your vices and flatter your follies; to prophecy smooth things, and say, It is peace, when there is no peace. Yet in so doing you weaken and enthrall yourselves .... But, on the other hand, you may encourage your brother [sic] to tell you the truth .... You will then have his best words, his brightest thoughts, and his most hearty prayers.”

This free pulpit understanding is written into any letter of appointment for a Unitarian minister. It is our free church commitment to free speech. While we aren't the only tradition to have a free pulpit, we are overall still in the minority in religious circles. I came here out of the majority. While part of the most liberal stream of Anglicanism, my pulpit was not free until I chose to make it so. It took many years before I was able to find the courage to cross the boundary of dogma and doctrine and tell my congregation fully what I believed. I confess to having been terrified the first time I leapt the fence, and then greatly relieved when the congregation breathed a sigh of relief at finally being told my truth and not that carved in stone by the church. There would be consequences, but I have no regrets. Free speech isn't free, except maybe in places like here where we take it for granted.

Living in a secular, democratic society, we can be forgiven for thinking we have always had freedom of speech and freedom of expression and always will, but that is hardly the case. In the last ten years the number of countries that have a free press has declined from 41% in 2003 to 31% today. There are currently a record 262 journalists being held in prisons and at last count 21 journalists in Russia have been murdered. Since the trial of Socrates in 399 BCE our understanding of what is free speech has evolved and what are its limitations have fluctuated with wars, political upheavals, changes in technology, cultural shifts, religious dogma, and legal challenges.

New Zealand's history with free speech offers examples. Early English settlers came here with an understanding of English Common Law where free speech had been institutionalised in the Magna Carta and the 1689 Bill of Rights. They might have even been familiar with John Stuart Mill's essay *On Liberty*, arguing for toleration of different views and individuality, and further arguing that free speech should be restricted only if shown to be harmful to an individual. In spite of that, in 1881 Parihaka happened. It was one of the worst examples in our history of shutting down freedom of expression in the most horrendous of ways.

What happened was two inspirational Maori leaders, Te Whiti o Rongomai and Tohu Kākahi, spoke eloquently about government policies concerning Tangata Whenua, the people of the land, and the loss of their land. They were forthright, clear and nonviolent, but they increasingly got on the government's nerves with their effective exercise of free speech and free expression.

The government decided to shut it down. The message they were putting out was too dangerous to the public or at least too uncomfortable for the government. About 1600 government troops invaded the settlement on 5 November 1881. Many women in the settlement were raped and assaulted. The village was destroyed. O Rongomai and Kākahi were arrested and detained without trial for 16 months.

In June of last year the government apologised, giving \$9 million in reparations, and acknowledging they were the villains, not o Rongomai and Kākahi, who were its heroes.

Another instructive moment from our history concerns former prime minister Peter Fraser. During World War I he was imprisoned for sedition, having spoken out against conscription. One of his fellow inmates would later be an associate minister of this congregation, James Chapple, incarcerated for speaking out against our participation in the war.

While the right is often seen as the culprit in restricting free speech, by World War II, Peter Fraser as prime minister took the opposite position. He instituted censorship during the war. After the war, during the 1951 waterfront strike Prime Minister Sid Holland, leader of the National Party, justified using Fraser's war time regulations to break the strike, including shutting down freedom of expression. They, like Hitler and Stalin, supported free speech when it was convenient.

Today, the biggest threat in New Zealand and around the world to free speech is expanding Mill's injunction about when it should be limited. His position was limiting was warranted only when it caused individual harm. Now it is argued that it should be limited when it causes offense. I mark the Danish cartoon controversy in 2005 as the beginning of this attack on free expression. There were demonstrations around the world after the newspaper published cartoons about Mohammad. Danish advocates for free speech began speaking of the need not to offend. It all came to a head with the terrorist attack on the French satirical magazine Charlie Hebdo after it published a cartoon of Mohammad weeping about the jerks that followed him. The publishers were accused of hate speech.

We now live in an era when free speech that offends someone can be labelled hate speech and quashed. New Zealand has both held up free speech and opposed hate speech in the Human Rights Act. Under Section 61, it's unlawful to broadcast, publish or distribute material that is "threatening, abusive or insulting" and "likely to excite hostility against, or bring into contempt, any group of persons in New Zealand on the ground of colour, race, or ethnic or national origins". It's also unlawful to use such language in a public place, or even in private if the speaker knows it's likely that the words will be published or broadcast. Section 61 treats such behaviour as a civil matter rather than a criminal one, with complaints going to the Human Rights Commission. At present there are no statutes regarding hate speech.

Giving hate speech legal status will have a chilling effect on free speech. Even without that status it has already had that effect. In the couple of cases already brought to the Human Rights Commission it has taken a room full of lawyers to argue whether it is hate speech or just objectionable opinion.

I personally have had to deal with the problem of my free speech offending others. When I put a billboard in front of St Matthew's with the title, "Poor Joseph, God is a hard act to follow," I was inundated with hate mail, much of it offensive, ironically. Complaints were made to the Advertising Standards Authority that I had offended the community. After an extensive investigation the ASA ruled in my favour. Later, when a second billboard received complaints they quickly dismissed them. In today's climate, if hate speech was criminalised I would have to think twice about putting up such billboards, for the world has become tribal. As it was, many of the billboards were defaced or stolen and on two occasions I received death threats that the police investigated. Clearly depending on your tribe your speech should be protected as free speech and the other tribe's speech should be silenced or prohibited as hate speech.

This why free speech isn't free. To protect and preserve it means having to live with being offended. It means having to confront that which you find hateful in the marketplace of ideas, even sometimes at some risk. It means having to trust that an informed humanity will

ultimately reject what is objectionable. It is not by accident that our fourth principle upholds “a free and responsible search for truth and meaning.” Many have died that we might do so and express it freely.