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Freedom of expression - what is the role of libraries?

In 2006, Article 100, the freedom of expression paragraph, of the Norwegian Constitution of 1814 was amended.¹ The change was based on the preparatory work of a freedom of expression commission appointed by the Norwegian government. The Commission worked for five years. In addition to preparing the proposed new Article 100 of the Norwegian Constitution, the Commission submitted a detailed report that analysed the situation of freedom of expression in Norway and the conditions for the paragraph under discussion. Vigdis Moe Skarstein served as deputy in this Commission. As the National Librarian over the past ten years, she has also followed discussions about freedom of expression. In this article, she discusses the role of libraries in a freedom of expression perspective.

State responsibility

An important prerequisite for the existence of freedom of expression and freedom of information is that society's infrastructure facilitates the conditions. The freedom of expression clause of the Norwegian Constitution states explicitly that the state has the responsibility to facilitate individuals and groups in actual freedom of expression. Maintenance and development of the public sphere is an important prerequisite for an open and informed dialogue. In the preliminary work the commission pointed out – in addition to public broadcasters' specific duties and obligations, as well as rules against the monopolization of media ownership, among others – there is a public responsibility for financing public schools and universities, including the library. Furthermore, the commission emphasized that public support for the arts and media in Norwegian and minority languages, as well as public support for organizations is crucial.

Requirements for library

There is an important question for we who are responsible for libraries: What does this public responsibility for infrastructure mean for libraries and how do we in libraries safeguard that part of the responsibility conferred on us? On a general level, a basic need for knowledge in a democratic society often legitimizes library operations. Which requirements such legitimation demands of library operations is discussed less frequently. What does it mean in terms of practice, to be part of infrastructure requirements that facilitate freedom of expression? What can and should society and the individual demand of libraries in this respect?

Both to show how the change of Constitution Article 100 was an effect of social development and to see this in relation to libraries' mandate in society, I will outline some of the foundational ideas.

Media Development, awareness of the multicultural and industry

When the government appointed the commission in 1996, it was based on the recognition of the rapid development taking place in areas that are important for freedom of expression. Keywords for this development are new media, increasingly comprehensive information

supply and internationalization of the supply of information. At the time (1996), the electronic media and the Internet were only in their infancy compared to what we see today.

Important was also that the media was characterized by a concentration of ownership, and freedom of expression no longer had its traditional role as an inherently political right, but also was used as the basis for business activities. The surplus of information is in itself a challenge for the public-sector planning and regulation.

The multicultural aspect

The Commission's mandate addressed the idea that close contact with people from other cultures raises needs and provides sources of conflict in which the functions and limitations of freedom of expression are important issues. In the Nordic countries there have been several examples of such conflicts, perhaps the most known being the situation surrounding the Mohammed cartoons.

The multicultural perspective has long been a focus in the library, but it has been further put on the agenda in Norway in the Year of Diversity in 2008 and with *Report No. 10 (2011-2012) Culture, inclusion and participation*. Both cases highlight the public library as a place of knowledge and inclusion. The Norwegian and other national libraries are central to the organization of the knowledge to be conveyed in this context.

The flow of information

The overall media development, especially in electronic media and the increased flow of information, greatly affects the library's function as infrastructure in terms of facilitating knowledge and information. At any time, the existing media must be made available and diffused if their contents are to become a reality.

An important question, however, is how the library can help ensure that the right to information is a reality in this surplus of information with ever more types of media as carriers of information. This work also requires knowledge about the individual media characteristics. For example, the role of social media in information sharing has complicated and enriched the flow of information and all matters related to freedom of expression. It is important that the increased amount of information is diverse and not unidirectional, that there is criticism and protection of sources. Libraries have always had these tasks, but now they must apply to new formats.

There shall be freedom of expression

Article 100 of the Norwegian Constitution firmly establishes that there shall be freedom of expression. "Should" is the verb used to preserve the Constitution's original language, and in modern Norwegian should be read as "shall". The constitutional protection of freedom of expression is based on the view that freedom of expression is an essential prerequisite for a democratic society. The same applies to the right and opportunity to stay informed. Thus in thinking about democracy, freedom of expression and information rights go hand in hand.

Freedom of expression should be a fundamental principle enshrined in the Constitution, and can only be waived under exceptional circumstances. Freedom of expression, and especially openness, is a constitutive element of democracy. It needs to be discussed, but it in itself cannot be subject to democratic vote because democracy's boundaries exist through its ability to abolish itself. The content of Article 100 is based on a trust in the exercise of reason in the

public domain, where opinions and attitudes emerge through dialogue and exchanges of opposing statements, opinions and expressions.

Interventions and exceptions

Concern for truth seeking, democracy and the individual's free formation of opinion is the main justification for freedom of expression. The text of the law offers this justification. Any intervention into freedom of expression must be tested against these three principles. One cannot adopt or enforce judicial intervention in classic freedom of expression, freedom of information and the right to silence that cannot uphold these three principles.. It is noteworthy that 2006 was the first time that this rationale was included in the text of the Constitution, thus making it harder than before to downgrade the interests of freedom of expression.

Media-neutral ban on censorship

The current constitutional clause enables stronger protection and modernising of the previous version of Article 100. It was suggested that the ban on pre-censorship of printed matter had to be taken further and expanded to include all expression, regardless of the medium. Film censorship for people over 18 years had to be abolished, said the Commission. Rules that limit the free establishment of channels, e.g. media and publishing, in the public sphere can only be maintained to the extent that they are justified by technical factors. Developments in media and technology, among other things, make obsolete the scarcity of frequencies, a former technical justification for licensing.

Library as a resource

Scarcity is also about resources. One association to libraries – although not directly comparable with frequencies – is how libraries prioritize the purchasing of media. Can libraries inadvertently practice some form of "censorship" through their acquisition priorities? Do library professional ensure a diverse offer and diverse media types? Do they manage to follow and identify which new media are carriers of knowledge and information that should be facilitated? Is there a risk, consciously or unconsciously, of excluding media that carry values that we as individual actors and society do not like? How conscious are those in libraries of their professional role in the choice of media when one encounters expression one dislikes, when the boundaries of freedom of expression are challenged? These difficult questions have no clear-cut answers, but require an on-going awareness in the pursuit of correctives or guiding thoughts to tackle them.

Diversity as an ideal

In the 70-80's there were strong discussions in public libraries about what was "correct" literature, what librarians thought was the right literature. The discussion about the place of popular literature in libraries, both for adults and children, is a good example. Many thought librarians were judges of literary taste, allowing them to limit diversity using the guise of a quality requirement. Perhaps the development of the book-selection policy has given them the right? It is important to be professional even when it comes to making the choice that reflects diversity of genre, content and expression, both cultural and multicultural.

With respect to diversity, National Libraries have a special responsibility that is more or less covered through a Legal Deposit Act. In Norway, the Legal Deposit Act ensures that a diverse

range of materials is preserved, everything that is published, regardless of media type. The preserved material, however, must also actively be made available to as many people as possible in the present and the future.

Network

Library networks that share tasks and responsibilities are important at the national level but also at the international level. There will never be enough resources to acquire and purchase everything for libraries. One cannot use lack of resources as an argument or excuse for not pursuing diversity. One will always be challenged on how one prioritizes at any time within the existing parameters. There cannot be isolated thinking for each library. However, with strategic thinking about sharing responsibilities and tasks between libraries, a network of libraries could achieve great diversity together. Two areas where library networks and task sharing are important are digitalization and the Internet.

Internet and digitalization

The internet is where people seek knowledge and information today, thus it is particularly important what one prioritises to make available digitally. In a long transitional period, there may be the perception that what is not found on the Internet, in practice, does not exist.

The European Digital Library and Europeana have important discussions about which parts of European cultural heritage should be prioritized. The ideal is to make everything available, but with respect to resources, this is unfeasible. Does one risk, then, prioritising away the hardest ideological questions that are part of our political and cultural history? Do we risk presenting a distorted picture of history over a long period because it takes time to reveal all aspects of the documentation? These are not new issues, but they are intensified in the digital society because internet access is so effective.

A legal basis for digitalization

In a small country like Norway, there is a legal basis in the copyright law for the National Library to digitize systematically its collection for preservation. At least within a reasonable time, it will provide a differentiated documentation. However, here the question of rights and privacy regulates what can be accessed, thus creating a risk of an unbalanced presentation of documentation.

To associate the discussion and pre-examination of material with "pre-censorship" is to go far, although indirectly the way we prioritize resources may have a similar limiting effect. Article 100 of the Norwegian Constitution conceives the term "pre-censorship" more specifically. Nevertheless, it is important to be aware of the responsibility to foster different points of view. By ensuring diversity in library management of knowledge and documentation, library professionals address this responsibility.

Bold Expression

Bold expression, as regulated in the Freedom of Expression article, addresses a balance between verbal and non-verbal expressions. One is free to express whatever one wishes to express, unless it is deemed that legal restrictions are necessary. In a "healthy society" with a public sphere that works controlling, correcting and negotiating decency, limited restrictions

are "necessary". This implies that there cannot be a requirement that statements in the public domain can be deemed "necessary", "positive", "decent" and "true". The burden of proof is the opposite; they are acceptable unless proven otherwise. There is a distinction, however, between verbal and non-verbal expressions. Non-verbal expressions, such as physical presence at demonstrations, are entitled to the same protection that verbal expressions are, but violence will have no protection as freedom of expression. In the Norwegian context, there is an emphasis that the institutionalization of freedom of expression is based on a clear distinction between speech and action that lead to material or physical damage and expressions that do not.

Beacon for Freedom of Expression

In many respects, book and media censorship in different historical periods and contexts has been a tool for controlling bold expressions, limiting freedom of expression and access to diverse knowledge. Access to banned books, both historical and contemporary, is an important political issue, nationally and internationally. The National Library of Norway manages the internet-based international censorship database Beacon for Freedom of Expression, which has more than 50,000 records of banned books, newspapers and other media. The database is an important tool for preserving and facilitating information about censorship in a global and historic perspective. It was conceived as a learning resource for anyone interested in freedom of expression and censorship. Accessible online at www.beaconforfreedom.org, the database is an example of how a network of libraries can collaborate to promote dialogue about freedom of expression. Libraries can submit documentation and titles of banned books and media in their respective countries for inclusion in the database. Beacon for Freedom of Expression is dedicated to the Library of Alexandria.

Freedom of expression in conflict with other interests

The Commission thoroughly discussed areas where classic freedom of expression may conflict with other interests, both individual and public interest. This is particularly problematic in relation to issues of reputation, individual privacy, intrusion of solitude, and the private sphere. The Commission concluded that the public disclosure of that which is private is principally unfortunate, but there is no need for strict legal protection of citizens' public reputation. The Commission argued that no one should be legally responsible alone for making false statements, defamation libel or slander, under the assumption that an assertion was made in good faith with respect to the truth of the allegation. This legal detail provides greater freedom of expression than the current defamation law.

Privacy and Legal Deposit

Privacy is relevant to libraries and National Libraries in particular. It is difficult to find the balance between preserving internet-based documents and protecting privacy. When does information published online become public and when is it private? In many countries, this matter is on the agenda in relation to legal deposit laws and the question of the "right to be forgotten". In Norway, the legal deposit law is under revision in order to find a solution where one both can take care of digital cultural heritage and knowledge but also protect privacy.

Hate speech

Hate speech is also related to the issue of privacy. The Commission stated that hate speech represents one of the most difficult and controversial areas related to the limits of freedom of expression. Freedom of expression in the public space leads to airing grievances, purging and negotiating standards about decency of opinions through discussion and critique. In order for the public to be able to function in this way, discriminatory attitudes must be expressed, for it is only when they are expressed, that they can be combated through public criticism. In principle, therefore, freedom of expression is intended to protect against discrimination. Thus, the Commission concluded that Norway, with a reasonably alert public, does not need to implement further more criminal sanctions against discriminatory speech than the already existing and accepted minimum international standards.

Public access

An open society stipulates not only that everyone have the right to express themselves. It also assumes citizens have the right to information. An important principle in the new proposal to Article 100 is the constitutional grounding of citizens' right to access information from the government and courts. Exceptions to public access to documents and public meetings can only be adopted when particularly weighty considerations make this necessary. Here this means showing that the exception is not contrary to the interests of truth seeking, democracy and the individual's free formation of opinion.

Again, the principle that citizens have a right to information is one of many that require an infrastructure, including libraries, if the ideal should be an actual reality. I have offered above many observations in relation to individual aspects of the constitutional clause and reasons for it. Nevertheless, the most important aspect of the relationship between the library and freedom of expression is that which focuses on the library as part of infrastructure. The professional role of libraries, based on principles of responsibility to diversity, providing access to information in a range of formats, as well as opinion-based action, give the library a unique role in freedom of expression.

The infrastructure requirement

The Commission's proposed legal provision on freedom of expression in the Norwegian Constitution was based on the notion of the empowered individual. This means that as individuals we achieve autonomy and competence by meeting others, hearing their arguments and weighing their alternative perspectives. Gradually and step-by-step, a reflexive identity develops. Only by this process can the individual achieve the free formation of opinion. With such a starting point, the basis for the liberal changes – and it cannot be repeated often enough – becomes confidence in the exercise of reason in the public sphere where utterances emerge and meet counter-opinions that act as protection.

Confidence in the exercise of reason in the public domain implies, however, the existence of an alert public. This, again, requires access to knowledge and information. Precisely giving attention to developing and maintaining the public, the Commission was concerned about infrastructure requirements. Thus, public funding of public service as a socially-constitutive system is crucial, as I have tried to illuminate. This is where the relationship between the library and freedom of expression is most relevant.

Library as a public service

The delivery of information in new media means that more knowledge and cultural influences are available for more users than before. The demand for quality will increase with greater opportunities to control the sources. I imagine that libraries and librarians can increasingly become professional facilitators of knowledge also about the individual sources. Knowledge about sources, providing information about sources and references to sources, has always been one of the library's core areas of expertise. This is a particular challenge with respect to freedom of expression and information law, and the growing challenge relates to multimedia development. Meeting this challenge is as important as following and pointing out violations of freedom of expression in one's own and other countries. The concern is about not only the ideals we have or what requirements we will demand of others. The matter concerns which demands are placed on us in libraries. Thus, libraries become an important part of public service.

ⁱ <http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/>

Article 100

There shall be freedom of expression.

No person may be held liable in law for having imparted or received information, ideas or messages unless this can be justified in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the individual's freedom to form opinions. Such legal liability shall be prescribed by law.

Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever. Clearly defined limitations to this right may only be imposed when particularly weighty considerations so justify in relation to the grounds for freedom of expression.

Prior censorship and other preventive measures may not be applied unless so required in order to protect children and young persons from the harmful influence of moving pictures. Censorship of letters may only be imposed in institutions.

Everyone has a right of access to documents of the State and municipal administration and a right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of the individual or for other weighty reasons.

It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse.